



COUNCIL AGENDA: 3/28/23

FILE: 23-440

ITEM: 10.1(a)

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Christopher Burton

**SUBJECT:** SEE BELOW

**DATE:** March 14, 2023

Approved

Date

3/17/2023

**COUNCIL DISTRICT: 6**

**SUBJECT: BURBANK NO. 47. ANNEXATION TO THE CITY OF SAN JOSE OF A SANTA CLARA COUNTY TERRITORY LOCATED ON THE EAST SIDE OF SOUTH BASCOM AVENUE BETWEEN BASILE AVENUE AND PARKMOOR AVENUE AND THE SOUTHWEST CORNER OF LASWELL AVENUE AND PARKMOOR AVENUE, AS WELL AS PORTIONS OF SOUTH BASCOM AVENUE AND BASILE AVENUE.**

## **RECOMMENDATION**

Adopt a resolution ordering the annexation of territory designated as Burbank No. 47, which involves the annexation to the City of San José of approximately 1.31 gross acres of land generally located on the east side of South Bascom Avenue between Basile Avenue and Parkmoor Avenue (APN 277-29-045) and the southwest corner of Laswell Avenue and Parkmoor Avenue (APN 277-29-044) and adjacent portions of South Bascom Avenue and Basile Avenue, and the detachment of the same from the appropriate special districts.

## **SUMMARY AND OUTCOME**

On May 31, 2022, the applicant, Trang Tu Nguyen, filed concurrent applications for the annexation and rezoning of the 0.51-gross-acre site at 560 South Bascom Avenue, consisting of unincorporated land in Santa Clara County, to the CP Commercial Pedestrian Zoning District and the R-1-8 Single-Family Residence Zoning District. In conformance with Santa Clara County Local Area Formation Commission (LAFCO) road annexation policies, the area to be annexed includes portions of South Bascom Avenue and Basile Avenue and totals 1.31 gross acres (as depicted in Exhibit "A", Geographic Description Annexation to the City of San José Entitled Burbank No. 47 and Exhibit "B" Annexation to the City of San José Entitled Burbank No. 47).

The site is within San José's Urban Growth Boundary and Urban Service area and the annexation is consistent with Envision San José 2040 General Plan vision, goals, and policies, as well as the West San Carlos Urban Village Plan (the site is within the Plan boundaries), and the Zoning Code. The annexation includes detachment from the Burbank Sanitary District, Santa Clara County Central Fire Protection District, the Santa Clara Valley Water District, the Santa Clara County Library District, and the Santa Clara County Lighting Service Area. Upon completion of the annexation proceedings, the territory designated as Burbank No. 47 will be annexed into the City of San José and eligible to receive City services. Until such time, the subject property will remain under the control and jurisdiction of the County of Santa Clara.

## **BACKGROUND**

On February 14, 2023, the City Council certified the Determination of Consistency with the Envision San José 2040 General Plan Final Program EIR and Addendum thereto; approved Ordinance No. 30884, a rezoning (File No. C22-040) to the CP Commercial Pedestrian Zoning District and the R-1-8 Single-Family Residence Zoning District; and scheduled the date of March 14, 2023, to consider a resolution ordering the annexation of Burbank No. 47. Subsequently, the City Manager requested a cost implications analysis and the matter was deferred to the date of March 28, 2023. The rezoning designation is a required process prior to the approval of an annexation, and the zoning becomes effective upon the annexation of the property into the City.

The City Council voted unanimously (10-0-1, with Torres absent) on February 14, 2023, to adopt Resolution No. 2023-35 to initiate the annexation. In accordance with Section 5.20.070 of the Santa Clara County Zoning Ordinance, properties are subject to annexation when they are (1) located within the Urban Service Area of a city, (2) contiguous to property within the city, and (3) the proposed development of said property requires a development permit. These criteria of the Santa Clara County Zoning Ordinance align with LAFCO goals to focus development in urban areas and ensure the logical and reasonable development of local agencies, pursuant to California Government Code Section 56301. Upon further consideration by City staff following the February 14, 2023 City Council hearing on Resolution No.2023-35, detachment from all current services, including Burbank Sanitary District, is recommended to keep City services consistent and avoid any duplication of services.

### *Site and Surrounding Uses*

The annexed area is located on the east side of South Bascom Avenue between Basile Avenue and Parkmoor Avenue (APNs 277-29-044 and 277-29-045), as well as portions of South Bascom Avenue and Basile Avenue. Surrounding land uses include single-story commercial buildings to the west, a vehicle sales lot to the north, single-family houses to the east, and Interstate 280 to the south.

## **ANALYSIS**

The annexation area is within the Urban Service Area of the City of San José and is also contiguous to a property to the west that is within City limits. The site is currently developed with a vacant theater building totaling approximately 14,100 square feet and 10 parking spaces. No development of the project site is proposed at this time.

LAFCO requested the annexation boundary to include the adjacent streets (portions of South Bascom Avenue and Basile Avenue) with a total area of 1.31 gross acres, in order to comply with LAFCO's street annexation policies. These policies require an annexation to be designed to include a continuous section of roadway sufficient in length to allow maintenance and policing of the street by a single jurisdiction.

Proceedings are being conducted under provisions of the California Government Code Section 56757, which grants the City conducting authority and allows the completion of reorganization in Santa Clara County without LAFCO review provided the proposed annexation is located within the City's Urban Service area and the City Council adopts a resolution initiating the resolution. Pursuant to Section 56757, the City Council adopted a resolution on February 14, 2023, initiating the annexation.

Before approving the reorganization proposal pursuant to Section 56757, the City Council is required to make certain findings as listed below. Staff comments follow each finding in italics.

1. That the unincorporated territory is within the City's Urban Service Area as adopted by LAFCO and set forth in the City's General Plan.

*The territory is located within the City's Urban Service Area as shown on the Envision San José 2040 General Plan Land Use / Transportation Diagram (Exhibit C).*

2. That the County Surveyor has determined the boundaries of the proposal to be definite and certain and in compliance with LAFCO Annexation Policies.

*The County Surveyor certified the boundaries of the annexation as definite and certain on September 2, 2022 (Exhibit D).*

3. That the proposal does not split lines of assessment or ownership.

*All affected parcels are being annexed in their entirety. No lines of assessment or ownership will be split.*

4. That the proposal does not create islands or areas in which it would be difficult to provide municipal services.

*No such islands are being created as the subject territory is contiguous to the City of San José territory to the west and south. The annexation would not result in islands in which it would be difficult to provide municipal services. The annexation would expand the existing City boundary within the City of San José to the east and north in a contiguous manner and incrementally help reduce the size of a larger existing County territory island in which it is currently located.*

5. That the proposal is consistent with the City's General Plan 2040.

*The annexation is consistent with the adopted Envision San José 2040 General Plan in that the annexation territory is within the City's Urban Service Area. In accordance with the City of San José Municipal Code Section 20.120.110, the CP Commercial Pedestrian Zoning District is a conforming zoning district under the Neighborhood/Community Commercial General Plan designation and the R-1-8 Single-Family Residence Zoning District is a conforming zoning district under the Residential Neighborhood General Plan designation.*

6. That the territory to be annexed is contiguous to existing City limits.

*The west and south sides of the area proposed for annexation are contiguous to the City limits, as shown on the attached annexation map (Exhibit B).*

7. That the City has complied with all conditions imposed by the Commission, if any, for inclusion of the territory in the City's Urban Service Area.

*On June 24, 2022, the City of San Jose informed LAFCO of its intent to annex the subject territory. During the review process, the annexation boundary was modified to comply with LAFCO's street annexation policies. Since then, the City has received no further conditions of approval from LAFCO with respect to the subject annexation. Furthermore, on June 23, 2022, the City advised the following applicable special districts of its intent to annex the subject property: Burbank Sanitary District, Central Fire Protection District, Santa Clara Valley Water District, Santa Clara County Lighting Service Area, and Santa Clara County Library Services. Although an objection was received from the Burbank Sanitary District, the City has decided to proceed with the detachment.*

## **EVALUATION AND FOLLOW-UP**

Upon obtainment of LAFCO's certification of the proposed annexation and recordation of the resolution ordering annexation with the Office of the County Clerk-Recorder for the County of Santa Clara, the approximately 1.31-gross-acre area of unincorporated Santa Clara County designated as Burbank No. 47 will be within the incorporated area of the City of San José and eligible to receive City services. The City of San José reserves the right to seek LAFCO's certification and record the resolution ordering annexation only after a development proposal has been submitted or permitted for the subject property or upon issuance of a building permit.

### **COST IMPLICATIONS**

There are no associated City costs or service obligations until the subject property is annexed. The annexation shall become effective upon submittal of a development permit application, submittal of a building permit application, or issuance of a building permit, at the discretion of the Director of Planning, Building and Code Enforcement. In addition, the subject property is within the city's service area for existing municipal services (including Police, Fire, Libraries, etc.) and as such is not anticipated to create a new fiscal impact. Any increased demand for services will be assessed in conjunction with an associated development application.

### **COORDINATION**

This project was coordinated with the City Attorney's Office, the departments of Environmental Services, Public Works, Transportation and Santa Clara County LAFCO.

### **PUBLIC OUTREACH**

This item is being conducted in accordance with Sections 56662 and 56757 of the California Government Code for annexations that have the consent of all landowners and for which no public hearing or notice is required. However, in accordance with City Council Public Outreach Policy 6-30, a notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the subject property, published in the San Jose Post Record, and posted on the City website. A sign was posted on the subject site. Staff has been available to respond to questions from the public.

This memorandum will be posted on the City's Council Agenda website for the March 28, 2023 City Council meeting.

### **COMMISSION RECOMMENDATION AND INPUT**

No commission recommendation or input is associated with this action.

### **CEQA**

The environmental impacts of this project were addressed by a Determination of Consistency with the Final Program EIR entitled, "Envision San José 2040 General Plan Final EIR," adopted by City Council Resolution No. 76041 on November 1, 2011, and addenda thereto; and Supplemental Program EIR entitled, "Envision San José 2040 General Plan Supplemental EIR," adopted by City Council Resolution No. 77617 on December 15, 2015, and addenda thereto.

HONORABLE MAYOR AND CITY COUNCIL

March 16, 2023

**Subject: Burbank No. 47 Annexation**

Page 6

**PUBLIC SUBSIDY REPORTING**

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/

CHRISTOPHER BURTON, DIRECTOR  
Planning, Building and Code Enforcement

For questions, please contact Robert Manford, Deputy Director, at 408-535-7900.

**Attachments:**

Exhibit A – Burbank 47 Geographic Description

Exhibit B – Burbank 47 Plat Map

Exhibit C – General Plan Land Use/Transportation Diagram

Exhibit D – County Surveyor Certification

**EXHIBIT "A"**  
Geographic Description

**ANNEXATION TO THE CITY OF SAN JOSE**

Entitled  
**BURBANK No. 47**

All that certain territory in the County of Santa Clara, State of California, described as follows:

Being Lots 274, 275, 276 and a portion of Lot 277, as said Lots are shown upon Tract No. 121, entitled "Re-Subdivision of Beverly Place – Unit No. 5", filed for record on October 19, 1939 in Book 4 of Maps at Page 21, Records of Santa Clara County, a portion of Lot 250, as said Lot is shown upon Tract No. 156, entitled "Map of Beverly Place – Unit No. 6", filed for record on September 16, 1940 in Book 5 of Maps at Pages 12 and 13, Records of said County, a portion of South Bascom Avenue, a portion of Basile Avenue, and more particularly described as follows:

**BEGINNING** at a point on the southerly line of Lot 50, said point being at the intersection of the southerly line of said Lot with a line parallel with and 47.00 feet westerly, measured at right angles, from the monument line of South Bascom Avenue (formerly San Jose and Los Gatos Road), as said Lot and monument line are shown upon Tract No. 177, entitled "Bradley Manor – Unit No. 1", filed for record on March 3, 1941 in Book 5 of Maps at Pages 44 and 45, Records of said County, said point being also at the intersection of the northerly line of the existing City of San Jose annexation boundary, described and designated as Moorpark No. 17, as passed and adopted on June 11, 1973 by the City Council of the City of San Jose, Ordinance No. 16813 with the easterly line of the existing City of San Jose annexation boundary, described and designated as Moorpark No. 21, as adopted on March 19, 1985 by the Santa Clara County Local Agency Formation Commission, recorded on March 25, 1985 as Document No. 8360838, Official Records of Santa Clara County;

Thence, (1) leaving said point and along the westerly line of said South Bascom Avenue and along the easterly line of said Moorpark No. 21 annexation, North 00°20'49" West, 50.00 feet to the northeasterly corner of said Moorpark No. 21 annexation;

Thence, (2) leaving said northeasterly corner of said Moorpark No. 21 annexation and continuing along said westerly line of said Bascom Avenue, North 00°20'49" West, 122.90 feet to the intersection with the westerly prolongation of the northerly line of said Basile Avenue;

Thence, (3) leaving said westerly line of South Bascom Avenue, along said prolongation line and along said northerly line of said Basile Avenue, North 89°37'00" East, 337.13 feet;

Thence, (4) leaving said northerly line of said Basile Avenue, South 00°23'00" East, 60.00 to the southerly line of said Basile Avenue;

Thence, (5) along said southerly line, South 89°37'00" West, 95.00 feet to the easterly line of said Lot 274 of said Map of Tract No. 121 (4 Maps 21);

Thence, (6) leaving said southerly line of Basile Avenue, along said easterly line of said Lot 274 and along the easterly line of said Lots 275 and 276 of said Map of Tract No. 121 (4 Maps 21), South 00°23'00" East, 160.00 feet to the northerly line of said Lot 250 of said Map of Tract No. 156 (5 Maps 12-13);

**EXHIBIT "A"**  
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**ANNEXATION TO THE CITY OF SAN JOSE**

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Page 2 of 2

Thence, (7) along the said northerly line of said Lot 250, North  $89^{\circ}37'00''$  East, 115.00 feet to the westerly line of Laswell Avenue;

Thence, (8) along said westerly line of Laswell Avenue, South  $00^{\circ}23'00''$  East, 8.91 feet to the beginning of a tangent curve to the right, having a Radius of 20.00 feet;

Thence, (9) southwesterly along said curve, through a central Angle of  $100^{\circ}29'59''$ , with an arc Length of 35.08 feet to the northerly line of Parkmoor Avenue;

Thence, (10) along said northerly line of Parkmoor Avenue, North  $79^{\circ}53'01''$  West, 218.93 feet to the beginning of a non-tangent curve, concave to the northeast, having a Radius of 20.00 feet, with a radial line that bears South  $10^{\circ}09'05''$  West;

Thence, (11) northwesterly along said curve, through a central Angle of  $79^{\circ}30'06''$ , with an arc Length of 27.75 feet to the northeasterly corner of said Moorpark No. 17 annexation;

Thence, (12) leaving said corner and along said northerly line of said Moorpark No. 17 annexation, North  $79^{\circ}39'56''$  West, 86.50 feet to an angle point therein;

Thence, (13) continuing along said northerly line of said Moorpark No. 17 annexation, South  $89^{\circ}39'11''$  West, 17.00 feet to the point of **BEGINNING**.

Containing and area of 1.310 acres, more or less.

**As shown on EXHIBIT "B" map attached hereto and made a part hereof.**

This description is for assessment purposes only and is not a legal description of the lands as defined in the Subdivision Map Act of the State of California. This description is not to be used as the basis for sale, lease or finance of the lands described herein.

By: John Koroyan  
John Koroyan  
P.L.S. No. 8883

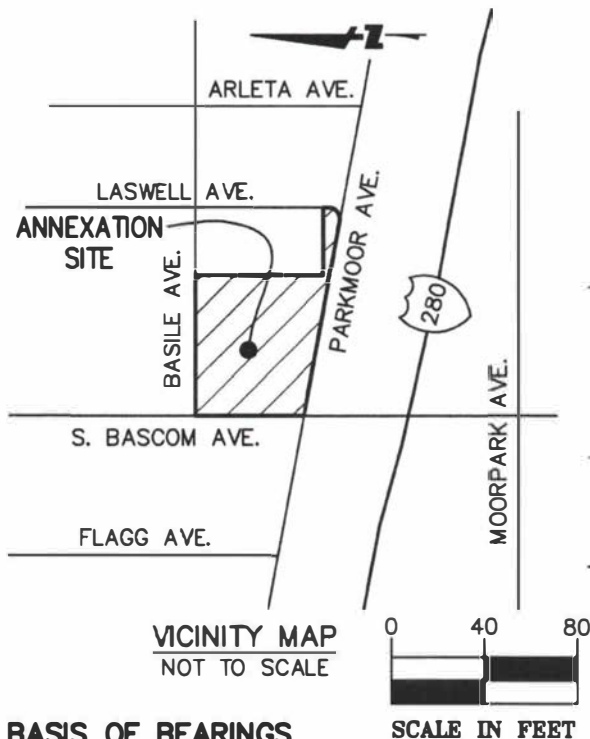


Date: AUG. 30, 2022



**COURSES:**

- ① N00°20'49"W 50.00'
- ② N00°20'49"W 122.90'
- ③ N89°37'00"E 337.13'
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**BASIS OF BEARINGS**

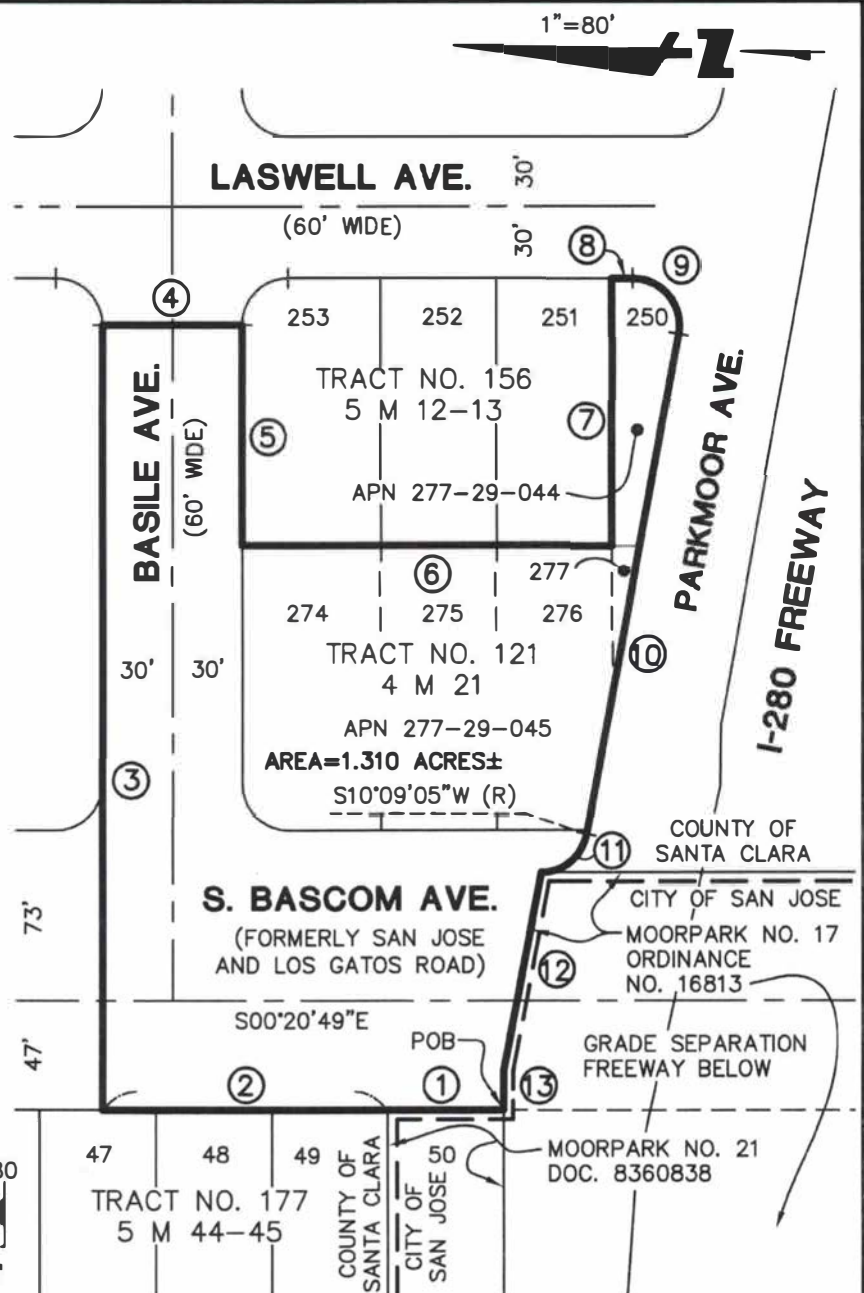
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**LEGEND**

- BOUNDARY LINE OF PROPOSED ANNEXATION
- - - EXISTING CITY OF SAN JOSE BOUNDARY LINE
- APN ASSESSOR'S PARCEL NUMBER PER ROLL YEAR 2021-2022
- POB POINT OF BEGINNING



BKF NO. 20210449 (BURBANK THEATRE)

**NOTE**

THE LOCATION AND DESCRIPTION OF THIS PROPOSED ANNEXATION IS FOR ASSESSMENT PURPOSES ONLY AND IS NOT A LEGAL DESCRIPTION OF THE LANDS AS DEFINED IN THE SUBDIVISION MAP ACT OF THE STATE OF CALIFORNIA. THIS MAP AND DESCRIPTION IS NOT TO BE USED AS THE BASIS FOR SALE, LEASE OR FINANCE OF THE LANDS SHOWN HEREON.

**EXHIBIT "B"**

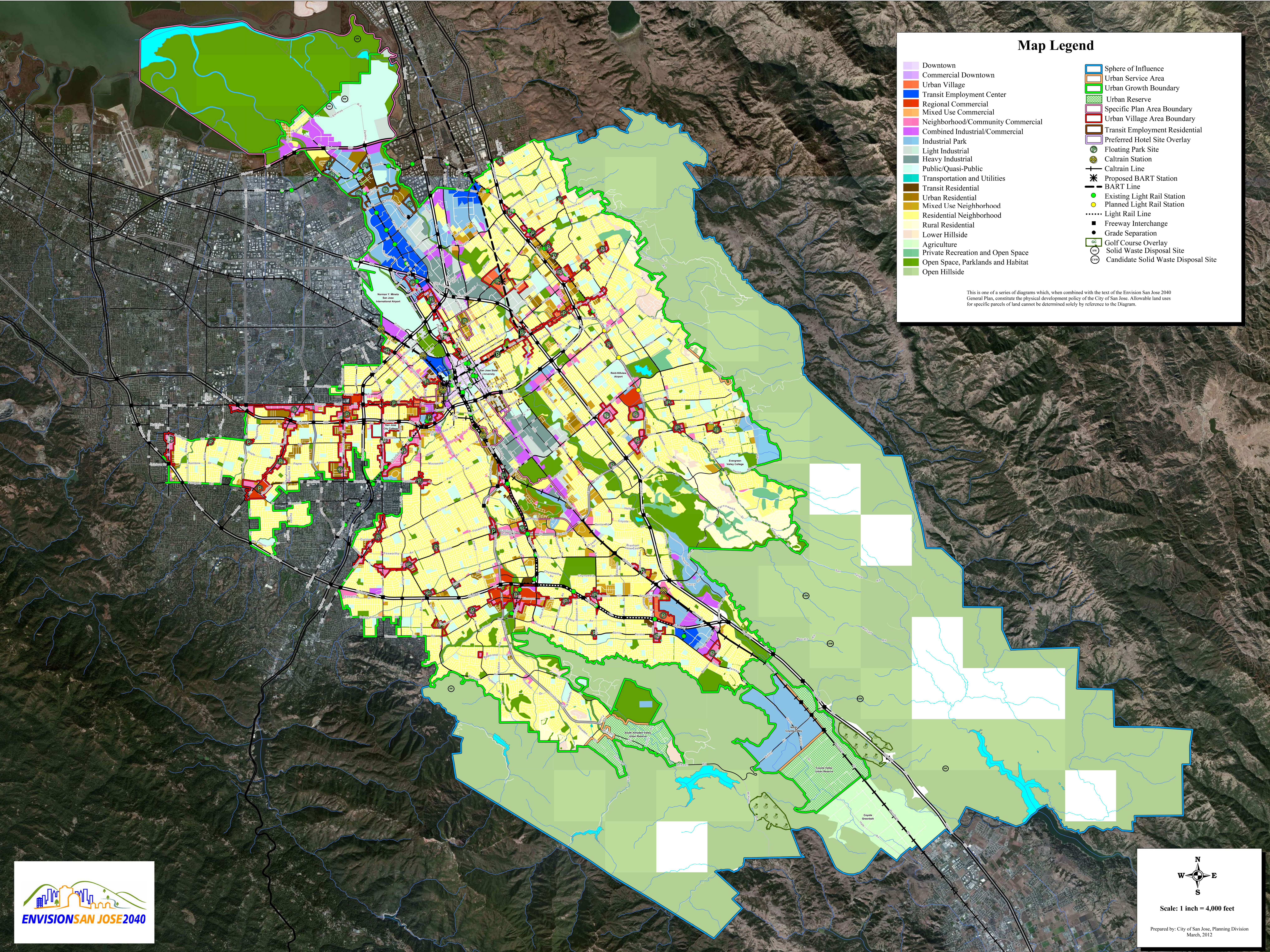
ANNEXATION  
TO THE CITY OF SAN JOSE  
ENTITLED  
BURBANK NO. 47

08/30/2022, SCALE 1"=80'  
SHEET 1 OF 1



# ENVISION SAN JOSE 2040 GENERAL PLAN

## LAND USE/TRANSPORTATION DIAGRAM





# County of Santa Clara

## Planning and Development

### Office of the County Surveyor

County Government Center

70 West Hedding Street, E. Wing, 7<sup>th</sup> Floor

San Jose, California 95110

(408) 299-5730



September 2, 2022

Kora McNaughton

Planner II

City of San Jose, Planning Division

200 East Santa Clara Street,

San Jose, CA 95113

408-535-7800

**SUBJECT: Burbank No. 47 Annexation**

Dear Kora McNaughton:

The attached revised map and description dated August 30, 2022 of territory proposed for annexation to the City of San Jose entitled **Burbank No. 47** is in accordance with Government Code Section 56757 (c) (2). The boundaries of said territory are definite and certain. The proposal is in compliance with the Local Agency Formation Commission's road annexation policies.

Sincerely,

Jeremy Koenig, PLS

Deputy County Surveyor



Date: SEPTEMBER 2, 2022

Attachments: legal description, plat, GIS exhibit

cc: LAFCO Executive Officer (w/attachment)

County Assessor's Office (w/attachment)

Board of Supervisors: Mike Wasserman, Cindy Chavez, Otto Lee, Susan Ellemberg, S. Joseph Simitian  
County Executive: Jeffrey V. Smith

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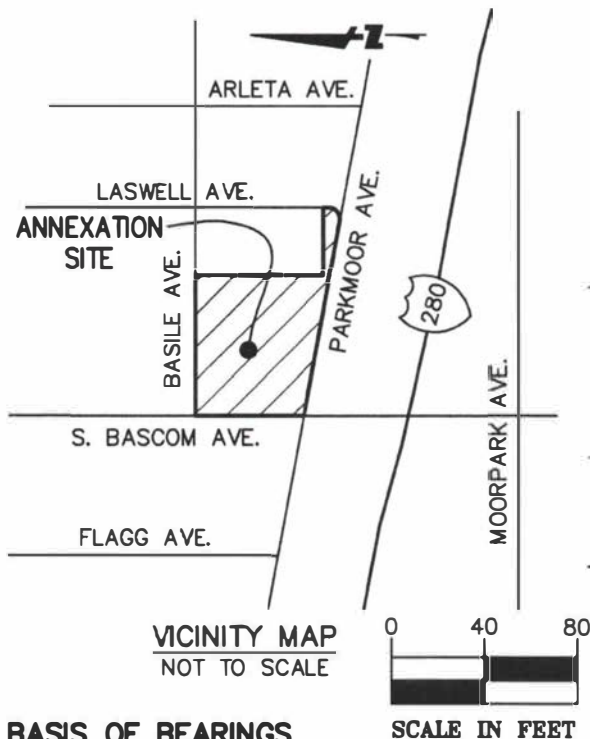
By: John Koroyan  
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Date: AUG. 30, 2022

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## **BASIS OF BEARINGS**

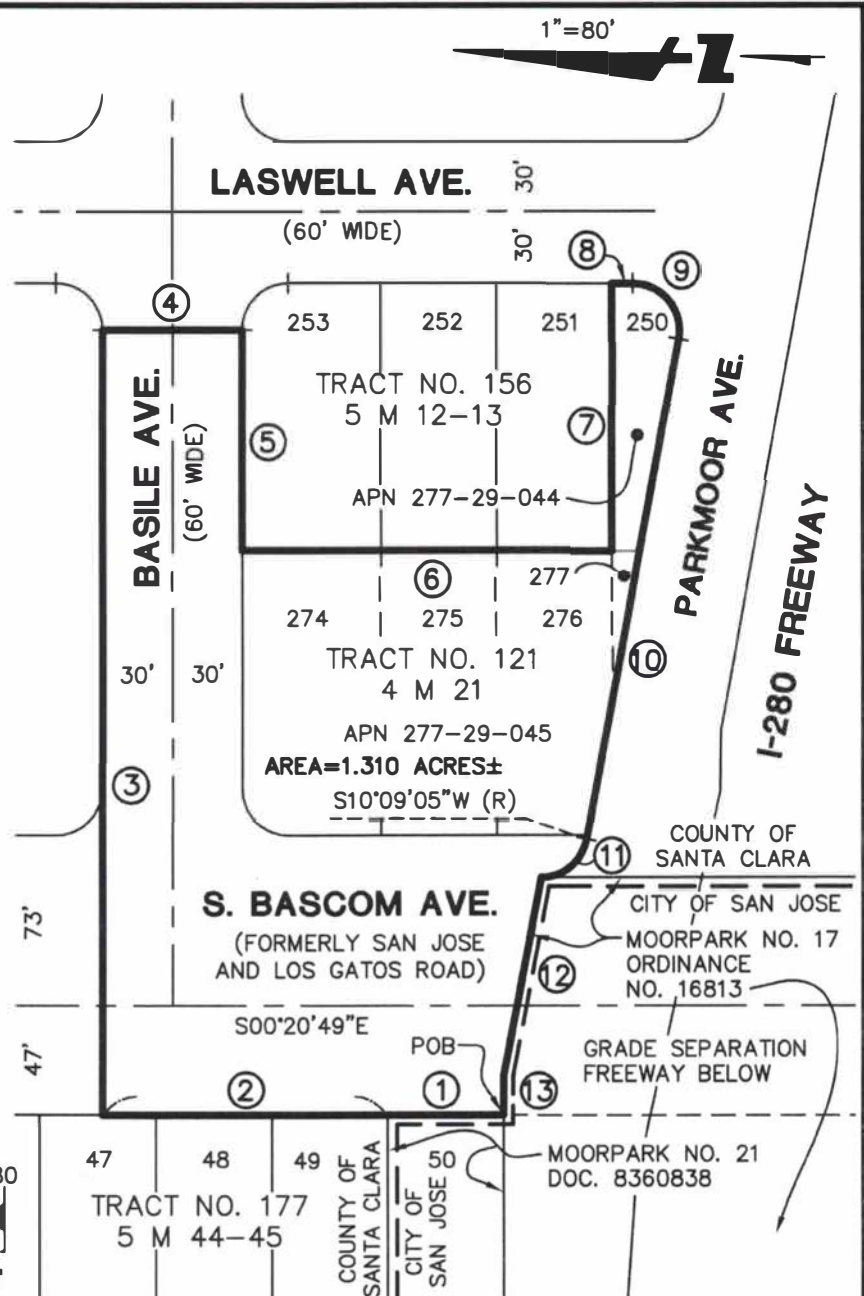
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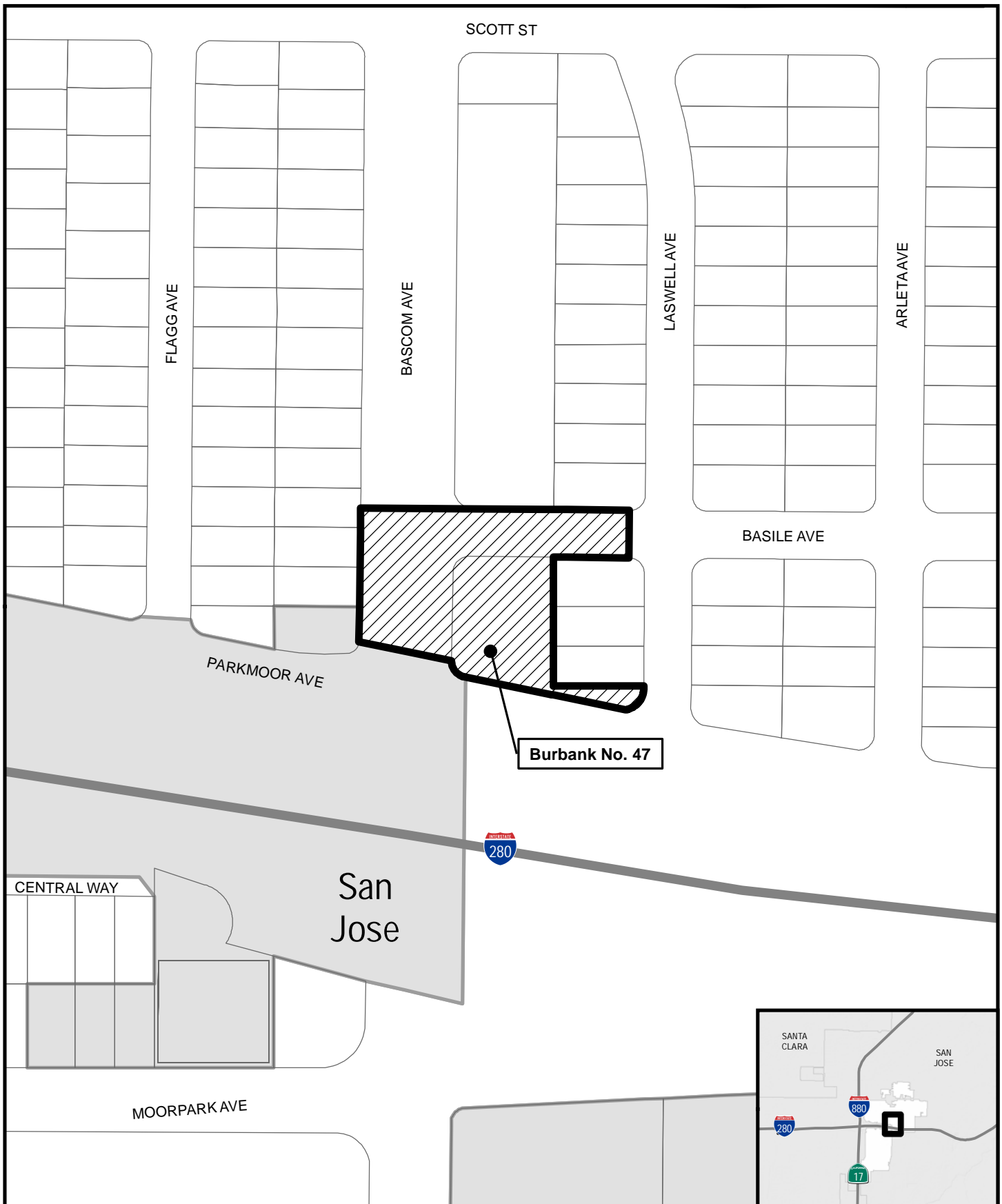
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## **EXHIBIT "B"**

ANNEXATION  
TO THE CITY OF SAN JOSE  
ENTITLED  
BURBANK NO. 47

08/30/2022, SCALE 1"=80'  
SHEET 1 OF 1



Burbank No. 47

CENTRAL WAY

San Jose

MOORPARK AVE



**County of Santa Clara**  
 Department of Planning and Development  
 County Government Center, East Wing  
 70 West Hedding St., 7th Floor  
 San Jose, California 95110

**EXHIBIT A**  
**Burbank No. 47**  
**1.31 acres +/-**

Prepared for the Office of the County Surveyor  
 September 02, 2022  
 August Hanks, County Surveyor



Area of Annexation



Incorporated Lands



Unincorporated Lands

