



CITY COUNCIL STAFF REPORT

File No.	Burbank No. 47, C22-040, and ER22-192
Applicant	Trang Tu Nguyen
Owner	Tru Investments, LLC
Location	East side of South Bascom Avenue between Basile Avenue and Parkmoor Avenue (560 South Bascom Avenue, APN No. 277-29-045) and the southwest corner of Parkmoor Avenue and Laswell Avenue (APN No. 277-29-044)
Existing Zoning	Unincorporated
General Plan Land Use Designation	Neighborhood/Community Commercial and Residential Neighborhood
Council District	6
Historic Resource	N/A
Annexation Date	N/A
CEQA	Determination of Consistency with Envision San José 2040 General Plan Final Program EIR, Resolution No. 76041, and Addendum thereto

APPLICATION SUMMARY:

Conforming rezoning of two parcels within Santa Clara County unincorporated territory totaling 0.51-gross acres, including an area of approximately 0.47 gross acres (APN No. 277-29-045) to the City of San José CP Commercial Pedestrian Zoning District and an area of approximately 0.04 gross acres (APN No. 277-29-044) to the City of San José R-1-8 Single-Family Residence Zoning District, and the annexation of the subject property and portions of South Bascom Avenue and Basile Avenue to the City of San José.

RECOMMENDATION:

Staff recommends that the City Council:

1. Consider the Determination of Consistency with the Envision San José 2040 General Plan Final Program EIR, Resolution No. 76041, and Addendum thereto.
2. Approve an ordinance rezoning two parcels within Santa Clara County unincorporated territory totaling 0.51-gross acres, including an area of approximately 0.47 gross acres (APN No. 277-29-045) to the City of San José CP Commercial Pedestrian Zoning District and an area of approximately 0.04 gross acres (APN No. 277-29-044) to the City of San José R-1-8 Single-Family Residence Zoning District.

3. Adopt a resolution initiating proceedings and setting February 14, 2023, for City Council consideration of the reorganization of the territory designated as Burbank No. 47, which involves the annexation to the City of San José of approximately 1.31-gross acres of land from Santa Clara County unincorporated territory and the detachment of the same from the appropriate special districts, with the exception of the Burbank Sanitary District.

PROJECT DATA

GENERAL PLAN CONSISTENCY			
General Plan Designation		Neighborhood/Community Commercial <input checked="" type="checkbox"/> Consistent <input type="checkbox"/> Inconsistent Residential Neighborhood <input checked="" type="checkbox"/> Consistent <input type="checkbox"/> Inconsistent	
Consistent Policies		Implementation Policies IP-1.1, IP-1.7, and IP-8.2	
SURROUNDING USES			
	General Plan Land Use	Zoning	Existing Use
North	Neighborhood/Community Commercial and Residential Neighborhood	Unincorporated	Used car sales lot; single-family residential
South	None	Unincorporated	Highway 280
East	Residential Neighborhood	Unincorporated	Single-family residential
West	Neighborhood/Community Commercial	CP Commercial Pedestrian and unincorporated	Small auto-oriented retail

PROJECT DESCRIPTION

On May 31, 2022, the applicant, Trang Tu Nguyen, requested the rezoning of the subject 0.51 gross-acre site (described and depicted in Exhibit “C”) at 560 South Bascom Avenue, consisting of unincorporated land, to the Commercial Pedestrian Zoning District and the R-1-8 Residence Zoning District. The site is currently developed with a vacant theater. The applicant has indicated their intent to address existing construction violations and convert the building to a kitchen and bath design showroom, although plans for interior or exterior modifications have not yet been submitted to the City of San José.

The project site is within the City’s Urban Growth Boundary and its Urban Service area. An application to annex the subject site to the City of San José (File No. Burbank 47) was filed concurrently with the subject rezoning request, including detachment from the appropriate special districts. The annexation application includes detachment from the Santa Clara County Central Fire Protection District, Santa Clara Valley Water District, Santa Clara County Library District, and the Santa Clara County Lighting Service Area. The project site would remain in the Burbank Sanitary District. The total area of the annexed territory is 1.31 gross acres and includes portions of South Bascom Avenue and Basile Avenue (as depicted in Exhibits “A” and “B”). These actions align with Santa Clara County Local Area Formation Commission (LAFCO) goals to focus development in urban areas and to ensure logical and reasonable development.

Site Description and Surrounding Uses

The subject site consists of a 0.47-gross acre parcel on the east side of South Bascom Avenue between Basile Avenue and Parkmoor Avenue (APN No. 277-29-045) and a contiguous 0.04-gross acre parcel on the southwest corner of Parkmoor Avenue and Laswell Avenue (APN No. 277-29-044) (see Figure 1). The site is currently developed with a vacant theater building. Surrounding 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.



Figure 1: Aerial image of the subject site

Background

The subject site has direct access from South Bascom Avenue, Basile Avenue, Laswell Avenue, and Parkmoor Avenue. The parcel fronting South Bascom Avenue is within the West San Carlos (West) Urban Village boundary, while the smaller parcel is outside the Urban Village boundary. The applicant has requested a conforming prezoning of the larger parcel to the CP Commercial Pedestrian Zoning District and the smaller parcel to the R-1-8 Single-Family Residence Zoning District. This conforming prezoning would bring the site in conformance with the NCC Neighborhood/Community Commercial and the RN Residential Neighborhood General Plan Land Use/Transportation Diagram land use designations, respectively. There are currently no development applications on file for the subject site.

ANALYSIS

The project was analyzed for conformance with the following: 1) the Envision San José 2040 General Plan, 2) the Zoning Ordinance, and 3) the California Environmental Quality Act (CEQA).

Envision San José 2040 General Plan Conformance

The subject site has an *Envision San José 2040 General Plan* Land Use/Transportation Diagram land use designations of Neighborhood/Community Commercial and Residential Neighborhood (see Figure 2).



Figure 2: General Plan Land Use/Transportation Diagram

Most of the subject site (0.47 gross acre) is located within the Neighborhood/Community Commercial designation, which supports a very broad range of commercial activity, including commercial uses that serve the communities in neighboring areas, such as neighborhood-serving retail and services and commercial/professional office development. Neighborhood/Community Commercial uses typically have a strong connection to and provide services and amenities for the nearby community and should be designed to promote that connection with an appropriate urban form that supports walking, transit use, and public interaction. This land use designation supports a floor area ratio (FAR) up to 3.5.

The remaining 0.04 gross acre is in the Residential Neighborhood Designation. This designation is applied broadly throughout the City to encompass most of the established, single-family residential neighborhoods. The intent of this designation is to preserve the existing character of these neighborhoods and to strictly limit new development to infill projects which closely conform to the prevailing existing neighborhood character as defined by density, lot size and shape, massing, and neighborhood form and pattern. Existing development within this designation will typically have a density of approximately 8 DU/AC, but in some cases, this designation may be applied to areas already developed at slightly higher or slightly lower densities.

The rezoning to CP Commercial Pedestrian Zoning District is consistent with the following Envision San José 2040 General Plan policies:

1. Fiscally Sustainable Land Use Framework Policy FS-3.9: Per City, County, and LAFCO policy, locate existing and future urban development within city boundaries. Implement this policy through San José's existing agreement with Santa Clara County which requires that unincorporated properties within the Urban Service Area either annex to the City, if possible, or execute a deferred annexation agreement prior to approval of development.
2. Implementation Policy IP-1.1 Land Use/Transportation Diagram: Use the Envision General Plan Land Use/Transportation Diagram designations to indicate the general intended land use, providing flexibility to allow for a mix of land uses, intensities and development forms compatible with a wide variety of neighborhood contexts and to designate the intended roadway network to be developed over the timeframe of the Envision General Plan. Use the Zoning designation to indicate the appropriate type, form, and height of development for particular properties.
3. Implementation Policy IP-1.7 Land Use/Transportation Diagram: Ensure that proposals to rezone and prezone properties conform to the Land Use / Transportation Diagram, and advance Envision General Plan Vision, goals, and policies.
4. Implementation Policy IP-8.2- Zoning: Use the City's conventional zoning districts, contained in its Zoning Ordinance, to implement the Envision General Plan Land Use/Transportation Diagram. These districts include a range of allowed land uses, development intensities, and standards within major land use categories (residential, commercial, and industrial) together with zoning districts for other land uses such as mixed-use and open space. The various ranges of allowed use and development intensity correspond generally to the respective Envision General Plan land use designations while providing greater detail as to the appropriate land uses and form of development.

Analysis: Consistent with Policy FS-3.9, the subject property is within the City's Urban Growth Boundary and Urban Service Area and is connected to a street and parcel that is within the boundary of the City of San José. The immediate area has a mix of small retail establishments and auto-oriented businesses on South Bascom Avenue flanked by single-family residential neighborhoods. Pursuant to [Table 20-270](#) of the Zoning Ordinance, CP Commercial Pedestrian is listed as a conforming district for the General Plan Land Use Designation of Neighborhood/Community Commercial, and R-1-8 Single-Family Residence is listed as a conforming district for the Residential Neighborhood land use designation. The rezoning allows for a variety of commercial uses on the Commercial Pedestrian portion of the subject site, including retail sales, personal services, and offices but prohibits most auto-related uses.

On the portion of the site zoned R-1-8, the allowed uses include single-family homes (with an allowed density range from one to eight dwelling units per acre), accessory structures, and residential care facilities. Additional uses such as churches or parking would require a conditional use permit. However, the size of the site (approximately 0.4

acres, or 1,700 square feet) and the R-1-8 development standards would preclude most uses.

West San Carlos (West) Urban Village Plan Conformance

The subject site is also located in the Bascom Commercial Character Area of the West San Carlos (West) Urban Village Plan. The Plan highlights the role of the Burbank Theater, which is located on the subject site, as “a signature element contributing to this area’s unique identity.” In September 2022, the City’s Historic Landmarks Commission approved the addition of the theater, which was built in 1949 and is currently vacant, to the City’s Historic Resources Inventory as Eligible for the National Register of Historic Places (ENR), Eligible for the California Register of Historical Resources (ECR), and a Candidate City Landmark.

According to the Urban Village Plan, the land use concept of the Bascom Commercial Character Area is to “maintain the current commercial character of this southern gateway to the Village while still allowing for future higher-intensity development in keeping with the Urban Village goals of increased walkability and neighborhood-serving retail. Future development is envisioned up to three stories with a mix of ground-floor commercial and upper-level offices as part of the Neighborhood/Community Commercial land use.”

Analysis: The Plan encourages rezoning to zoning districts that are consistent with its land use policies and design guidelines. Prezoning the portion of the site adjoining South Bascom Avenue to the CP Commercial Pedestrian Zoning District would allow ground-floor commercial uses and offices and is therefore in conformance with the Urban Village Plan. The original use of the site as a theater would be allowed in the CP Commercial Pedestrian Zoning District with the approval of a Special Use Permit.

Zoning Ordinance Conformance

The proposed prezoning would conform with Table 20-270, [Section 20.120.110](#) of the San José Municipal Code, which identifies the CP Commercial Pedestrian Zoning District as a conforming district to the Neighborhood/Community Commercial General Plan Land Use/Transportation Diagram land use designation and the R-1-8 Single-Family Residence Zoning District as a conforming district to the Residential Neighborhood land use designation.



Figure 3: Zoning Map

The CP Commercial Pedestrian Zoning District would allow that portion of the property to be used and developed in accordance with the uses listed in [Table 20-90](#), including retail sales, personal services, public eating establishments, and offices. The parcel is currently developed with the Burbank Theater, which was built in 1949. The R-1-8 Single-Family Residence Zoning District would allow the smaller parcel to be used and developed in accordance with the uses listed in [Table 20-50](#), however the small size of that parcel and the R-1-8 development standards, as shown below, would likely preclude development.

The project proposes annexation of the approximately 0.51 gross acres of unincorporated Santa Clara County to the City of San José, including detachment from the Burbank Sanitary District, Santa Clara County Central Fire Protection District, Santa Clara Valley Water District, Santa Clara County Library District, and the Santa Clara County Lighting Service Area. Upon completion of the annexation proceedings, the subject site would be eligible to connect to City infrastructure and services, and the aforementioned CP and R-1-8 zoning districts would be effective.

The annexation proceedings are being conducted pursuant to California Government Code Section 56757, which designates the City Council of the City of San José as the conducting authority. A full report regarding the proposed annexation will be provided to the City Council for the February 14, 2023, hearing.

Development Standards

The parcel fronting South Bascom Avenue is subject to the West San Carlos (West) Urban Village Plan design guidelines for new development or redevelopment, which take precedence over the development standards established for the Commercial Pedestrian Zoning District, except where the Urban Village Plan guidelines are silent. The following development standards are contained in the West San Carlos (West) Urban Village Plan and applicable to the subject site:

**West San Carlos (West) Urban Village Plan Development Standards
(for the Bascom Commercial Character Area)**

Development Standard	Required
Setback from single-family residential property line	15 feet (minimum)
Height	55 feet (maximum)
Number of Stories	3 (maximum)

The development standards of the Commercial Pedestrian Zoning District are as follows:

Commercial Pedestrian Zoning District: Development Standards

Development Standard	Required
Front Setback	No minimum, 10-foot maximum
Side Setback (corner)	None, or as established in approved Urban Village Plan
Rear Setback	25 feet (minimum), or as established in approved Urban Village Plan
Height	50 feet (maximum), or as established in approved Urban Village Plan

The existing theater building, constructed in 1949, is a legally non-conforming structure that maintains an approximately 25-foot front setback, an approximately 10-foot side setback along the northerly lot line, a zero-foot side setback along the southerly lot line, and an approximately five-foot rear setback.

The smaller parcel fronting Laswell Avenue and Parkmoor Avenue is subject to the development standards of the R-1-8 Single-Family Residence Zoning District, as follows:

Development Standard	Required
Front Setback	20 feet (minimum)
Side Setback (interior)	5 feet (minimum)
Side Setback (corner)	12 feet (minimum)
Rear Setback	20 feet (minimum)
Height	35 feet (maximum)
Stories	2.5 (maximum)

Future redevelopment of the site would be evaluated for conformance to these development standards, all other municipal code regulations, and City policies and guidelines. No development applications are currently on file for this site.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that the rezoning is pursuant to or within the scope and in furtherance of the Final Program Environmental Impact Report for the Envision San José 2040 General Plan (“FPEIR”), which was certified and adopted by City Council Resolution No. 76041 on November 1, 2011, and the Supplemental Program EIR (“SPEIR”) for the City’s Greenhouse Gas Reduction Strategy adopted by City Council Resolution No. 77617 on December 15, 2015. The FPEIR and SPEIR were prepared for the comprehensive update and revision of all elements of the City of San José General Plan, including an extension of the planning timeframe to the year 2040.

No new or more significant environmental impacts beyond those identified in the Envision San José 2040 General Plan Final Program Environmental Impact Report (FPEIR) and Supplemental Program EIR (SPEIR) have been identified, nor have any new mitigation measures or alternatives which are considerably different from those analyzed in the FPEIR and SPEIR been identified.

PUBLIC HEARING NOTIFICATION

To inform the public of the project, staff followed Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

/s/
CHRISTOPHER BURTON, Director
Planning, Building, and Code Enforcement

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

Attachments: Exhibit A – Geographic Description
Exhibit B – Plat Map
Exhibit C – Rezoning Ordinance Exhibit A (Boundary Map)

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);

ANNEXATION TO THE CITY OF SAN JOSE

Entitled
BURBANK No. 47

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.

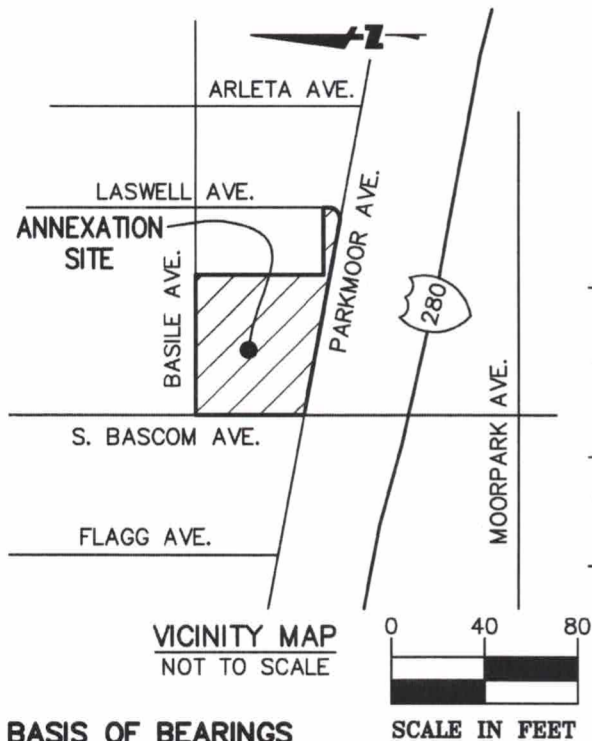
By: John Koroyan
John Koroyan
P.L.S. No. 8883



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'
- ④ S00°23'00"E 60.00'
- ⑤ S89°37'00"W 95.00'
- ⑥ S00°23'00"E 160.00'
- ⑦ N89°37'00"E 115.00'
- ⑧ S00°23'00"E 8.91' (8.95' PER DOC. 18122961)
- ⑨ R=20.00' A=100°29'59" L=35.08'
- ⑩ N79°53'01"W 218.93'
- ⑪ R=20.00' A=79°30'06" L=27.75'
- ⑫ N79°39'56"W 86.50'
- ⑬ S89°39'11"W 17.00'

**BASIS OF BEARINGS**

THE BEARING S00°20'49"E OF THE CENTERLINE OF S. BASCOM AVENUE (FORMERLY SAN JOSE AND LOS GATOS ROAD), BETWEEN BASILE AVENUE AND MOORPARK AVENUE, AS SAID BEARING IS SHOWN ON MAP OF 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, CALIFORNIA.

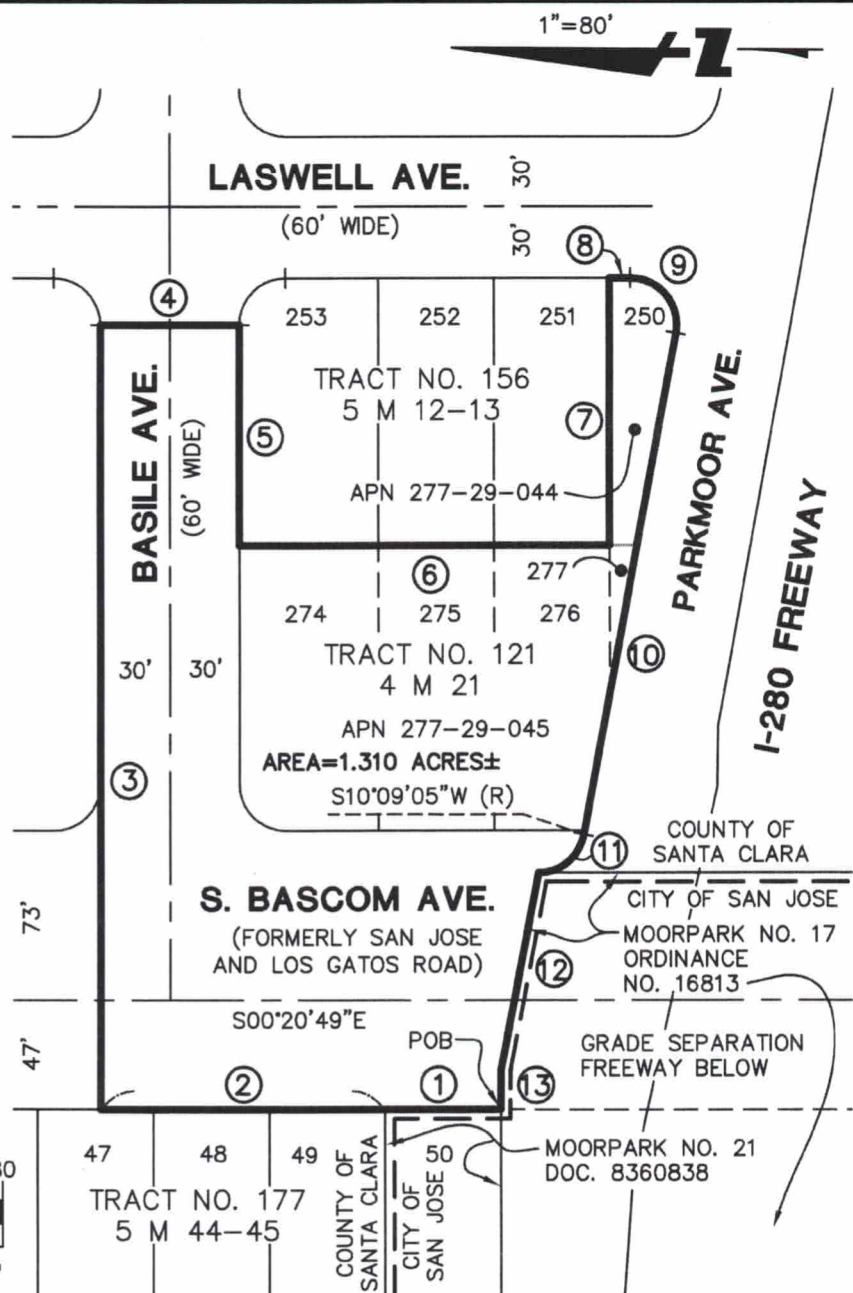
LEGEND

- 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



AUG. 30, 2022

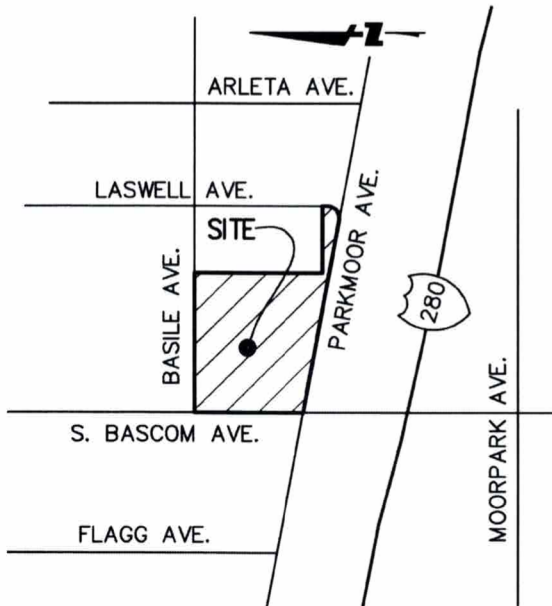
BKF NO. 20210449 (BURBANK THEATRE)

**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

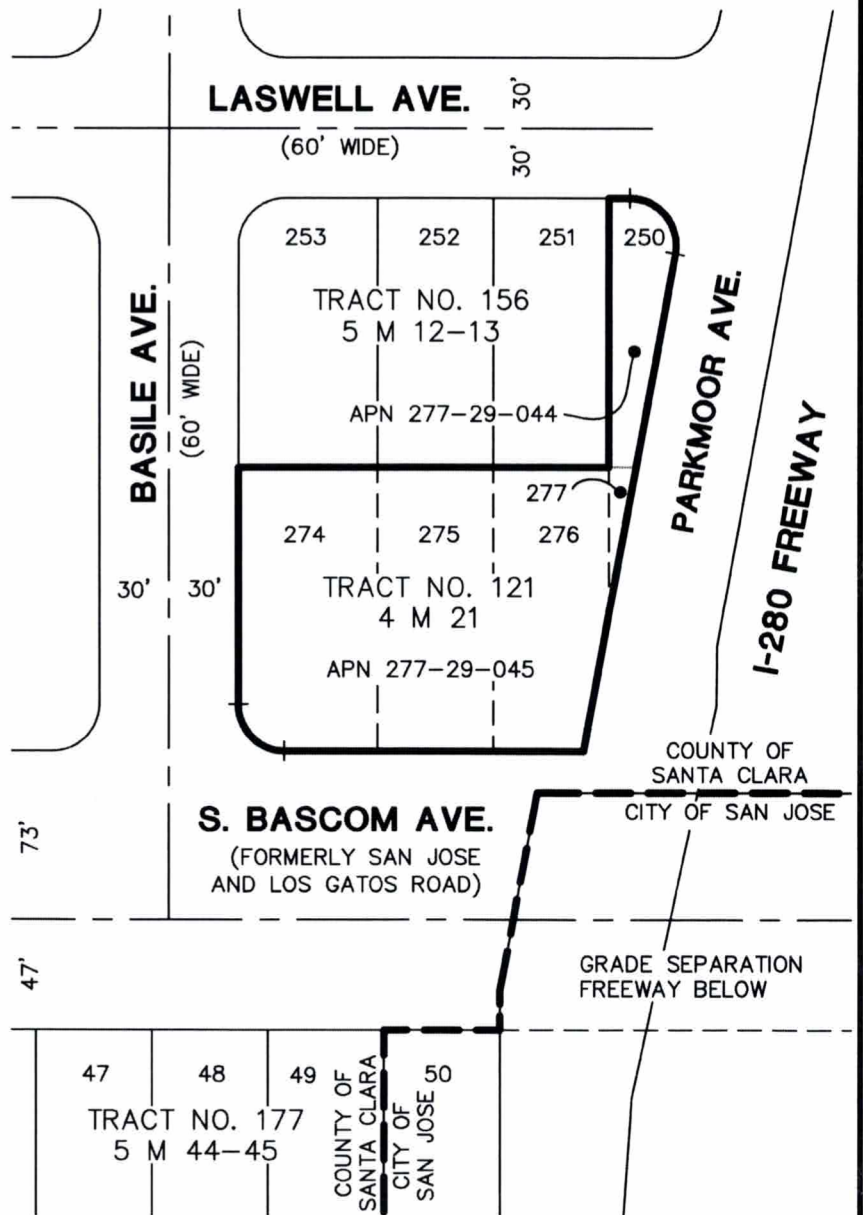
08/30/2022, SCALE 1"=80'
SHEET 1 OF 1



VICINITY MAP
NOT TO SCALE

LEGEND

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



1"=80'

0 40 80
SCALE IN FEET



EXHIBIT "A"

BOUNDARY OF
PROPOSED PREZONING
FILE NO. C22-040

FEB. 8, 2023 SCALE 1"=80'
BKF No. 20210449 SHEET 1 OF 1