COUNCIL AGENDA: 03/28/23
FILE: 23-442
ITEM: 10.2

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Christopher Burton

SUBJECT: SEE BELOW

DATE: March 13, 2023

Approved

Date **3/17/2023**

COUNCIL DISTRICT: 6

SUBJECT: BURBANK NO. 44 – ORDER OF ANNEXATION OF SANTA CLARA COUNTY TERRITORY LOCATED ON THE NORTHEAST CORNER OF WEST SAN CARLOS STREET AND BROOKLYN AVENUE

RECOMMENDATION

Adopt a resolution ordering the annexation of territory designated as Burbank No. 44, which involves the annexation to the City of San José of approximately 0.895 gross acres of land located on the northeast corner of West San Carlos Street and Brooklyn Avenue (APNs 274-16-050, 052, 053, 069 & 070) and the detachment of the same from the appropriate special districts including County Lighting District, Central Fire Protection District, Burbank Sanitary District, and Santa Clara County Library District.

SUMMARY AND OUTCOME

On July 13, 2020, the architect, Salvatore Caruso, on behalf of Oak Glen Ventures, LLC, filed four concurrent applications including the annexation (File No. Burbank 44) and pre-zoning (File No. C20-011) of the 0.895-gross-acre site at the northeast corner of West San Carlos Street and Brooklyn Avenue, consisting of five unincorporated parcels in Santa Clara County, to the CP Commercial Pedestrian Zoning District (later changed to MUC Mixed Use Commercial Zoning District per staff's request), and a Conditional Use Permit (File No. CP20-020) and a Vesting Tentative Map (File No. T20-016) for a mixed-use development project on a 1.25-acre-site comprised of the above five unincorporated parcels and two lots within the current City limits. The Conditional Use Permit and the Vesting Tentative Map will be heard separately after the annexation has been certified by the Local Agency Formation Commission of Santa Clara County (LAFCO) and the ordering resolution recorded with the Office of the Clerk-Recorder.

The subject 0.895-acre-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, the 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. 44 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 28, 2023, the City Council certified the 1881 West San Carlos Project Environmental Impact Report, approved Ordinance No. 30889, a pre-zoning (File No. C20-011) to the MUC Mixed Used Commercial Zoning District for the subject property, and scheduled the date of March 28, 2023, to consider a resolution ordering the annexation of Burbank No. 44. The pre-zoning designation is a required process prior to the approval of annexation, and the zoning becomes effective upon the annexation of the property into the City.

The City Council voted unanimously 11-0-0 on February 28, 2023, to adopt Resolution No. 2023-50 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's 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 28, 2023 City Council hearing on Resolution No.2023-50, 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 Land Uses

The annexation area is located at the northeast corner of West San Carlos Street and Brooklyn Avenue and includes the subject five parcels (APNs 274-16-050, 052, 053, 069 & 070). The subject site is surrounded by commercial buildings to the east and to the east across Boston Avenue, multifamily residential and a parking lot to the north, a parking lot and a commercial building to the west across Brooklyn Avenue, and commercial buildings to the south across West San Carlos Street.

ANALYSIS

The annexation area is within the Urban Service Area of the City of San José and is also contiguous to properties to the south, east, and west that are within City limits. The areas shown in grey on the map below are located within unincorporated Santa Clara County and the areas within the red lines are the parcels to be annexed. These parcels are currently developed with three connected commercial buildings along West San Carlos Street and the associated parking lot at the rear. The annexation boundary has been certified by Santa Clara County Surveyor (Attachment 1 - County Certified Burbank 44 Annexation Boundary).



A Conditional Use Permit, File No. CP20-020, and a Vesting Tentative Map, File No. T20-016, are currently on file. These two applications will be heard separately by the Planning Commission after the annexation has been certified by LAFCO, pursuant to Section 20.120.300 of the Zoning Code. The ordering resolution has been recorded with the Office of the Clerk-Recorder. The Conditional Use Permit and Vesting Tentative Map applications request demolition of all existing buildings and structures on site and the development of a 7-story, approximately 227,617-square foot mixed-use building on an approximately 1.23-gross acre site consisting of seven lots including this subject five unincorporated lots and two lots within the City limits. This mixed-use building would include a 246-bed, 125,262-square-foot Residential Care Facility for the Elderly (RCFE), 61 multifamily residential units, and 6,000 square-foot ground floor retail space with alternative parking (stackers) on the ground floor and in the basement.

The annexation proceedings are being conducted under provisions of the California Government Code Section 56757, which grants the City Council authority as the decision-making body on the annexation and allows the completion of the reorganization in Santa Clara County without LAFCO review. Pursuant to Section 56757, the City Council is required to make certain findings as listed below. Staff's analysis follows each finding.

1. The unincorporated territory is within the City's Urban Service Area as adopted by LAFCO.

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.

2. 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 August 27, 2021, as shown in Attachment 1 – County Certified Burbank 44 Annexation Boundary.

3. The proposal does not split lines of assessment or ownership.

The annexation will not split lines of assessment or ownership.

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

The annexation area is contiguous to the City of San José territory to the west, east, 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 north, east, and west in a contiguous manner, and help incrementally reduce the size of a larger existing County territory island in which it is currently located.

5. The proposal is consistent with the City's adopted General Plan.

The annexation is consistent with the Envision San José 2040 General Plan goals and policies in that it directs urban development to areas within the Urban Service Area and within city boundaries and the subject site is within the Urban Service Area and Urban Growth Boundary.

The annexation site is located within the MUC Mixed Use Commercial land use designation within the 2040 General Plan Land Use/Transportation Diagram, which allows residential and commercial mixed-use development. The proposed project is a mixed-use development and therefore is consistent with the MUC land use designation.

6. The territory is contiguous to existing City limits.

The area proposed for annexation is contiguous to the City limits along the south, east, and west boundaries as shown in Attachment 1.

7. The City has complied with all conditions imposed by the Commission for the inclusion of the territory in the City's Urban Service Area as follows:

On September 16, 2020, the City of San José informed LAFCO of its intent to annex the subject territory. The City has received no further conditions of approval from LAFCO with respect to the subject annexation. Furthermore, on September 19, 2020, the City advised the following applicable special districts, from which the territory would be detached, of its intent to annex the subject property: The Central Fire Protection District, the Burbank Sanitary District, the Santa Clara Valley Water District, the Santa Clara County Lighting Service Area, and the Santa Clara County Library Services. The City received an objection to detachment from the Burbank Sanitary District (BSD). The City will proceed with the detachment from BSD to keep City services consistent and avoid any duplication of services.

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 0.895-gross-acre area of unincorporated Santa Clara County designated as Burbank No. 44 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

The streets and sidewalks along the subject annexation area are within the boundaries of existing City limits and public services area, therefore, there are no additional City costs or service obligations due to this annexation. 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.

COORDINATION

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

PUBLIC OUTREACH

This item is being conducted in accordance with Section 56662(a) 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 the 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 1,000 feet of the subject property and posted on the City website. Three signs have been posted on the subject site since December 2020. Staff has been available to respond to questions from the public. A joint community and environmental scoping meeting were held on December 17, 2020, via Zoom webinar, to inform the surrounding community of the proposed project.

COMMISSION RECOMMENDATION AND INPUT

The Planning Commission's discussion and recommendation are included in the memorandum to the February 28, 2023 City Council meeting (Attachment 2).

CEQA

Pursuant to Section 15168(c)(2) of the CEQA Guidelines, the City of San José has determined that the annexation is consistent with the 1881West San Carlos Project Environmental Impact Report (Resolution No. 2023-49).

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
Planning, Building and Code Enforcement

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

Attachments: Attachment 1 – Burbank No. 44 County Surveyor Certified Annexation Boundary
Attachment 2 – February 28, 2023 City Council Memorandum from the Planning Commission

County of Santa Clara
Planning and Development
Office of the County Surveyor
County Government Center
70 West Hedding Street, E. Wing, 7th Floor
San Jose, California 95110
(408) 299-5730

August 27, 2021

Angela Wang
Planner
City of San Jose, Planning Division
200 East Santa Clara Street,
San Jose, CA 95113
408-535-7800

SUBJECT: **Burbank No. 44 Annexation**

Dear Ms. Wang:

The attached revised map and description dated January 5, 2021 of territory proposed for annexation to the City of San Jose entitled **Burbank No. 44** 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

PROFESSIONAL LAND SURVEYOR
JEREMY D KOENIG
PLS 9394
STATE OF CALIFORNIA

Date: 5/27/2021

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

January 5, 2021
BKF No. 20200127

EXHIBIT "A"
Geographic Description

ANNEXATION TO THE CITY OF SAN JOSE

Entitled
BURBANK No. 44

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

Being Lots 10, 11, 12, 13, 14, 25, 26 and portion of Lot 27, in Block 14, of the Map of Interurban Park Tract, filed for record on December 5, 1904 in Book K of Maps at Page 21, Records of Santa Clara County, more particularly described as follows:

BEGINNING at the southwesterly corner of said Lot 12, in Block 14, of said Map of Interurban Park Tract, said corner being also at the intersection of the northerly line of West San Carlos Street, formerly Stevens Creek Road, being 100.00 feet in width with the easterly line of Brooklyn Avenue, being 50.00 feet in width, said corner being also at the angle point in the existing City of San Jose annexation boundary, described and designated as Burbank No. 40, as adopted on June 24, 2008 by the City of San Jose Resolution No. 74505;

Thence, (1) leaving said corner and along the easterly line of said Brooklyn Avenue and along the easterly line of said Burbank No. 40 annexation, North 00°15'00" West, 215.08 feet to the northwesterly corner of said Lot 10, in Block 14, of said Map of Interurban Park Tract;

Thence, (2) leaving said corner and said easterly line of said Burbank No. 40 annexation, along the northerly line of said Lot 10, in Block 14, of said Map of Interurban Park Tract, North 89°54'10" East, 125.03 feet to the northwesterly corner of the existing City of San Jose annexation boundary, described and designated as Burbank No. 18, as adopted on June 30, 1965 by the City of San Jose Resolution No. 27621;

Thence, (3) leaving said corner and along the westerly line of said Burbank No. 18 annexation, South 00°15'00" East, 45.02 feet to the southwesterly corner of said Burbank No. 18 annexation;

Thence, (4) leaving said corner and along the southerly line of said Burbank No. 18 annexation, North 89°54'10" East, 125.03 to a point in the westerly line of Boston Avenue, being 50.00 feet in width, said point being also a point in the westerly line of said Burbank No. 18 annexation;

Thence, (5) along said westerly line of Boston Avenue and along said westerly line of said Burbank No. 18 annexation, South 00°15'00" East, 45.02 feet to the northerly line of the existing City of San Jose annexation boundary, described and designated as Burbank No. 11, as adopted on July 22, 1960 by the City of San Jose Resolution No. 18810;

Thence, (6) along said northerly line of said Burbank No. 11 annexation, South 89°54'10" West, 73.36 feet to the westerly line of said Burbank No. 11 annexation;

EXHIBIT "A"
Geographic Description
ANNEXATION TO THE CITY OF SAN JOSE
Entitled
BURBANK No. 44

Thence, (7) along said westerly line of said Burbank No. 11 annexation, South 00°15'00" East, 125.04 feet to a point on said northerly line of West San Carlos Street, said point being also the northeasterly corner of said Burbank No. 40 annexation;

Thence, (8) leaving said corner, along said northerly line of West San Carlos Street and along the northerly line of said Burbank No. 40 annexation, South 89°54'10" West, 176.70 feet to the point of **BEGINNING**.

Containing and area of 0.895 acres, more or less.

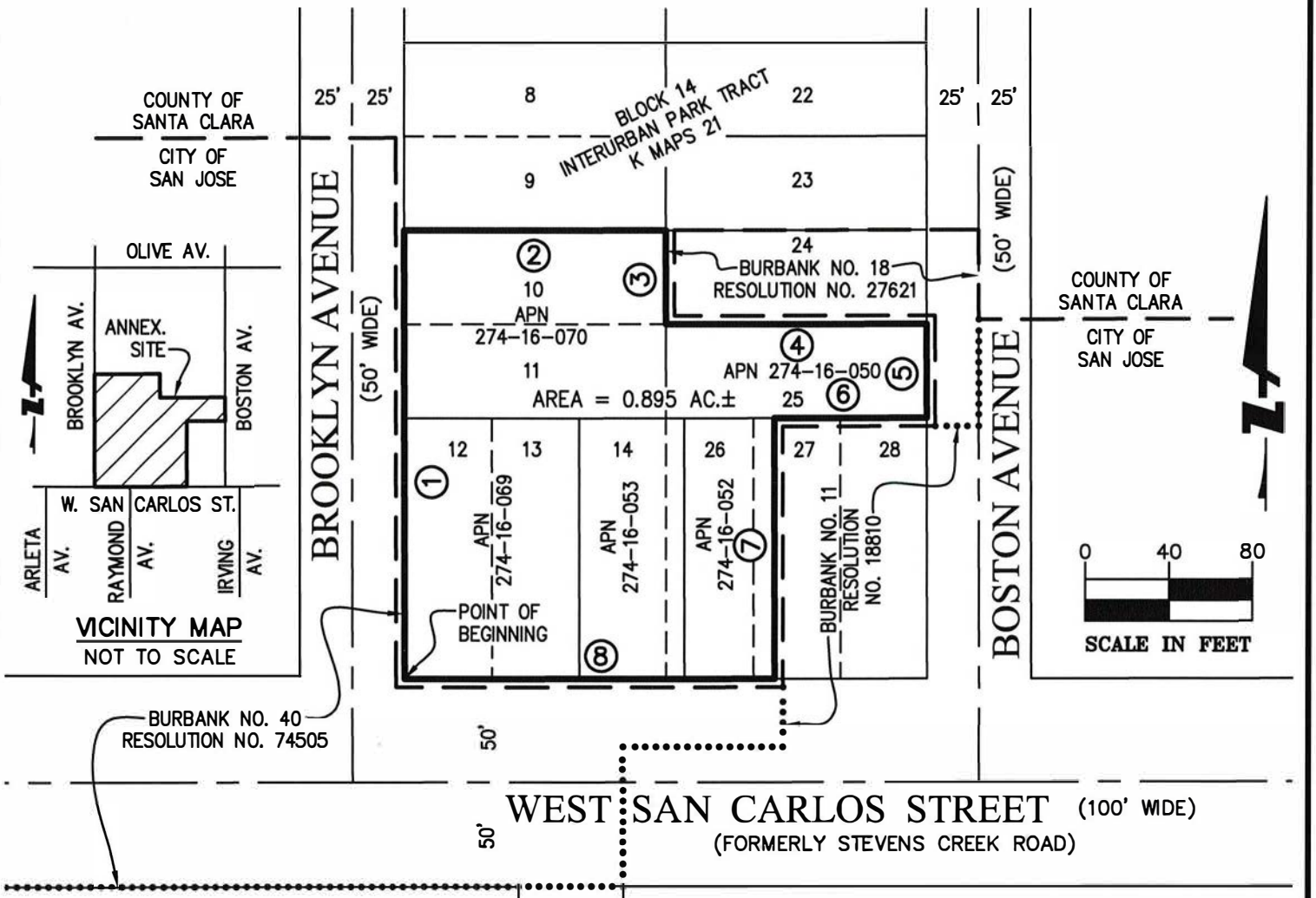
As shown on EXHIBIT "B" attached hereto and made a part hereof.

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: JAN. 5, 2021





COURSES:

①	N00°15'00"W	215.08'
②	N89°54'10"E	125.03'
③	S00°15'00"E	45.02'
④	N89°54'10"E	125.03'
⑤	S00°15'00"E	45.02'
⑥	S89°54'10"W	73.36'
⑦	S00°15'00"E	125.04'
⑧	S89°54'10"W	176.70'

BASIS OF BEARINGS

THE BEARING N00°15'00"W OF THE MONUMENT LINE OF BROOKLYN AVENUE, BETWEEN FOUND MONUMENTS AT WEST SAN CARLOS STREET AND OLIVE AVENUE, AS SAID BEARING AND AVENUE IS SHOWN ON THAT CERTAIN PARCEL MAP, FILED FOR RECORD ON MAY 22, 1991 IN BOOK 626 OF MAPS AT PAGE 10, 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 2020-2021

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.

BkF
ENGINEERS / SURVEYORS / PLANNERS

1730 N. FIRST STREET, SUITE 600
SAN JOSE, CA 95112

BKF NO. 20200127-10

LICENSED LAND SURVEYOR
JOHN KOROYAN
No. 8883
STATE OF CALIFORNIA

JAN. 5, 2021

EXHIBIT "B"

ANNEXATION
TO THE CITY OF SAN JOSE
ENTITLED
BURBANK NO. 44

01/05/2021, SCALE 1"=80'
SHEET 1 OF 1

COUNCIL AGENDA: 02/28/23
FILE: 23-276
ITEM: 10.2

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: January 23, 2023

COUNCIL DISTRICT: 6

SUBJECT: FILE NOS. BURBANK 44 & C20-011-ANNEXATION AND PREZONING FOR CERTAIN REAL PROPERTY LOCATED AT 1883-1887, 1891-1995, 1897-1899 WEST SAN CARLOS STREET AND 13 BOSTON AVENUE

RECOMMENDATION

The Planning Commission voted 10-0-0 to recommend that the City Council take all of the following actions:

1. Adopt a resolution certifying the Environmental Impact Report for the 1881 West San Carlos Project (SCH #2020120059), make certain findings concerning significant impacts, mitigation measures, and alternatives, and adopt a Statement of Overriding Considerations and a related Mitigation Monitoring and Reporting Plan, in accordance with the California Environmental Quality Act.
2. Approve an ordinance prezoning an approximately 0.895-gross-acre site in Santa Clara County unincorporated territory designated as Burbank No. 44 into the Mixed Use Commercial Zoning District.
3. Adopt a resolution initiating proceedings and scheduling February 14, 2023, for City Council consideration of the reorganization of the territory designated as Burbank No. 44, which involves the annexation to the City of San José of approximately 0.895 gross acres of land from Santa Clara County unincorporated territory and the detachment of the same from the appropriate special districts, excepting the Burbank Sanitary District.

SUMMARY AND OUTCOME

If the City Council approves all the actions listed above as recommended by the Planning Commission, the City will be able to continue the process to annex five unincorporated parcels (1883-1887, 1891-1995, 1897-1899 West San Carlos Street, and 13 Boston Avenue) totaling 0.895 acres from the County of Santa Clara into the City of San José and the 0.895-gross-acre site will be prezoned into the MUC Mixed Use Commercial Zoning District to allow a mixed-use project on a 1.23-acre site located on the north of West San Carlos Street between Brooklyn Avenue and Boston Avenue consisting of this 0.895-acre area and two adjacent parcels currently

within the City limits. The zoning of the site will not take effect until certification of the annexation by the Local Agency Formation Commission (LAFCO).

BACKGROUND

On December 14, 2022, the Planning Commission held a Public Hearing to consider the Environmental Impact Report (EIR), Annexation, and Prezoning. The Planning Commission recommended that the City Council adopt the resolution certifying the Final EIR for the 1881 West San Carlos Mixed-Use Project, adopt a Statement of Overriding Considerations and a related Mitigation Monitoring and Reporting Plan, and approve the subject Annexation and Pre-Zoning.

Staff Presentation

Planning staff provided a brief oral presentation of the proposed project, including the intent of the Annexation and Prezoning, the annexation process, and the project's conformance with the General Plan, the San José Municipal Code, and City Council Policy 6-30: Public Outreach. The environmental project manager briefly discussed the environmental review process and project compliance with the California Environmental Quality Act (CEQA), including the need for a Statement of Overriding Considerations for the Significant and Unavoidable Impacts to Cultural Resources.

Applicant Presentation

The project architect Salvatore Caruso, representing the applicant, stated the purpose of the annexation and the prezoning is to facilitate a mixed-use development that complies with the West San Carlos Urban Village Plan, and he would answer questions from the Planning Commissioners.

Public Hearing

Chair Oliverio opened the public comment portion of the agenda.

One member of the public representing the Northern California Carpenters Union stated that a lot of construction workers are underpaid and urged developers to take this into consideration for their future construction projects.

Commissioner Discussion

Commissioner Rosario commented that this appears to be a great project and this section of the West San Carlos St. (project area) certainly needs to be intensified.

Commissioner Cantrell asked about the historic value of the site. The applicant responded that the buildings on site are old and the conditions are not good. The Historic Preservation Officer responded that the historic resources consultant for the project concluded that the buildings on site are not eligible for City Landmark designation, but there was a difference of expert opinion disclosed in the EIR where the City concluded based on the information outlined in the historic report that 1883-1887 West San Carlos Street and 1891-1895 West San Carlos Street are eligible

for listing in the San José Historic Resources Inventory as Candidate City Landmarks. The City determined there would be a significant and unavoidable impact to cultural resources due to the demolition of the two buildings. Commissioner Cantrell inquired whether the historic buildings are worth saving. The Historic Preservation Officer responded that properties in the Burbank area are generally modest and the two buildings are not examples of "high-style" architecture, but modest interpretations of the architectural styles popular at the time. The two buildings are some of the last remaining buildings along West San Carlos Street that represent the early twentieth century commercial development in the Burbank area prior to the rapid industrialization of San José in the Post World-War II era.

Commissioner Ornelas-Wise asked how the City determines whether a site or structure is eligible for listing on the San José Historic Resources Inventory or is eligible for designation as a City Landmark. The Historic Preservation Officer responded that the Historic Preservation Ordinance outlines eight significance criteria that are based on significant historical development, persons, and events. The buildings represent the historical development of the West San Carlos Street commercial corridor in Burbank prior to World War II and the people that lived in the Burbank community in the early twentieth century.

Commissioner Ornelas-Wise asked the Environmental Project Manager whether any of the project alternatives analyzed in the Draft EIR are feasible. The Project Manager responded that the project alternatives may not be economically feasible for the applicants, however, CEQA does not take financial implications into account. The preservation alternatives would not meet the project objective to develop an intensive mixed-use development on these parcels.

Commissioner Ornelas-Wise commented that this annexation would help redevelop and revitalize the unincorporated area.

Commissioner Young made a motion to approve the staff recommendation. Commissioner Ornelas-Wise seconded the motion.

The motion to recommend City Council approval of the project was approved (10-0-0).

ANALYSIS

Analysis of the proposed CEQA clearance, Annexation, and Prezoning, including conformance with the General Plan, Zoning Ordinance, and City Council Policies is contained in the attached staff report.

Climate Smart San Jose Analysis

The recommendation in this memorandum aligns with one or more Climate Smart San José mobility goals. The purpose of the annexation and prezoning is to facilitate a mixed-use development that would be consistent with General Plan and Zoning Code. The mixed-use development would facilitate mobility choices other than single-occupancy gas-powered vehicles, increase the population density and facilitate job creation within the City limits by providing high-density mixed use residential development with commercial uses in a location within an identified growth area (West San Carlos Urban Village).

EVALUATION AND FOLLOW-UP

Should the City Council adopt the resolution certifying the EIR, and approve the Annexation and the Prezoning, the City will be able to continue the process to annex five unincorporated parcels (1883-1887, 1891-1995, 1897-1899 West San Carlos Street, and 13 Boston Avenue) totaling 0.895 acres from the County of Santa Clara into the City of San José and the 0.895-gross-acre site will be prezoned into the MUC Mixed Use Commercial Zoning District to allow a mixed-use project on a 1.23-acre site located on the north of West San Carlos Street between Brooklyn Avenue and Boston Avenue consisting of this 0.895-acre area and two adjacent parcels currently within the City limits. The zoning of the site will not take effect until certification of the annexation by LAFCO.

COORDINATION

The preparation of this memorandum has been coordinated with the City Attorney's Office.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the February 14, 2023, Council meeting.

Outreach was undertaken for this item in addition to the agenda posting described above. These outreach efforts are described below.

Following City Council Policy 6-30, three required on-site signs describing the project have been posted on the project site since December 2020. A joint community and environmental scoping meeting was held on December 17, 2020, via Zoom webinar, to inform the surrounding community of the proposed project. Questions and comments from the public and staff's responses are included in the attached Planning Commission staff report.

Public Notices of the community meeting and public hearing were distributed to the owners and tenants of all properties located within 1,000 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.

COMMISSION RECOMMENDATION AND INPUT

The Planning Commission has reviewed this request and recommended the City Council take the actions stated in the recommendation section of this report.

CEQA

The City of San José, as the lead agency for the project, prepared a Draft EIR for the project. The Notice of Preparation was circulated from December 3, 2020, until January 8, 2021. The Draft EIR was circulated for public review and comment from July 15, 2022, through August 30, 2022.

The City received five written comment letters during the public circulation period. All comments have been fully responded to in the Final EIR. A summary of the public comments received on the Draft EIR is provided in the Planning Commission staff report, as well as information on responses to the comments.

The Draft EIR and Final EIR are available for review on the project page on the City's Active EIR website at: https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/cp20-020-1881-west-san-carlos-project.
A copy of the signed Mitigated Monitoring Reporting Program is attached to the proposed CEQA resolution.

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, Secretary
Planning Commission

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

Attachment: Planning Commission Staff Report

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: PLANNING COMMISSION **FROM:** Christopher Burton

SUBJECT: Burbank 44, C20-011 & ER20-146 **DATE** December 14, 2022

COUNCIL DISTRICT: 6

Type of Permit	**Annexation and Pre-zoning**
Applicant / Owner	Oak Glen Ventures, LLC
Location	Northeast corner of West San Carlos Street and Brooklyn Avenue (1883-1887, 1891-1995, 1897-1899 West San Carlos Street, and 13 Boston Avenue)
Assessor Parcel Nos.	274-16-050, 052, 053, 069 & 070
Existing Zoning	Unincorporated
Proposed Zoning	Mixed Use Commercial
General Plan Land Use Designation	Mixed Use Commercial
Growth Area	West San Carlos Urban Village
Historic Resource	The buildings at 1883-1887 West San Carlos Street and 1891-1895 West San Carlos Street are eligible for listing in the San José Historic Resources Inventory as Candidate City Landmarks.
Annexation Date	N/A
Annexation Acreage	0.895-gross acres
Pre-zoning Acreage	0.895-gross acres
Project Planner	Angela Wang
CEQA Clearance	Environmental Impact Report for the 1881 West San Carlos Project (Burbank 44/C20-011/ CP20-020/T20-016), State Clearinghouse No. 2020120059
CEQA Planner	Reema Mahamood

RECOMMENDATION

Staff recommends that the Planning Commission recommend the City Council to take all of the following actions regarding the project site located on the northeast corner of West San Carlos Street and Brooklyn Avenue (1883-1887, 1891-1995, 1897-1899 West San Carlos Street, and 13 Boston Avenue) ("Project Site"):

1. Adopt a Resolution certifying the Environmental Impact Report (EIR) for the 1881 West San Carlos Project (SCH #2020120059), make certain findings concerning significant impacts, mitigation

measures, alternatives, and adopt a Statement of Overriding Considerations and a related Mitigation Monitoring and Reporting Plan, in accordance with the California Environmental Quality Act (CEQA).

2. Approve an ordinance pre-zoning an approximately 0.895-gross acre site in Santa Clara County unincorporated territory designated as Burbank No. 44 into the Mixed Use Commercial Zoning District.
3. Adopt a resolution initiating proceedings and scheduling January 31, 2023, for City Council consideration of the reorganization of territory designated as Burbank No. 44, which involves the annexation to the City of San José of approximately 0.895-gross acres of land from Santa Clara County unincorporated territory and the detachment of the same from the appropriate special districts, excepting the Burbank Sanitary District.

PROJECT BACKGROUND

As shown on the attached Vicinity Map (Exhibit A), the Project Site is located within an unincorporated area of Santa Clara County on the northeast corner of West San Carlos Street and Brooklyn Avenue (1883-1887, 1891-1995, 1897-1899 West San Carlos Street, and 13 Boston Avenue). This approximately 0.895-gross acre site consists of five lots, APNs 274-16-050, 052, 053, 069 & 070, and is currently developed with three connected commercial buildings along West San Carlos Street and the associated parking lot at rear.

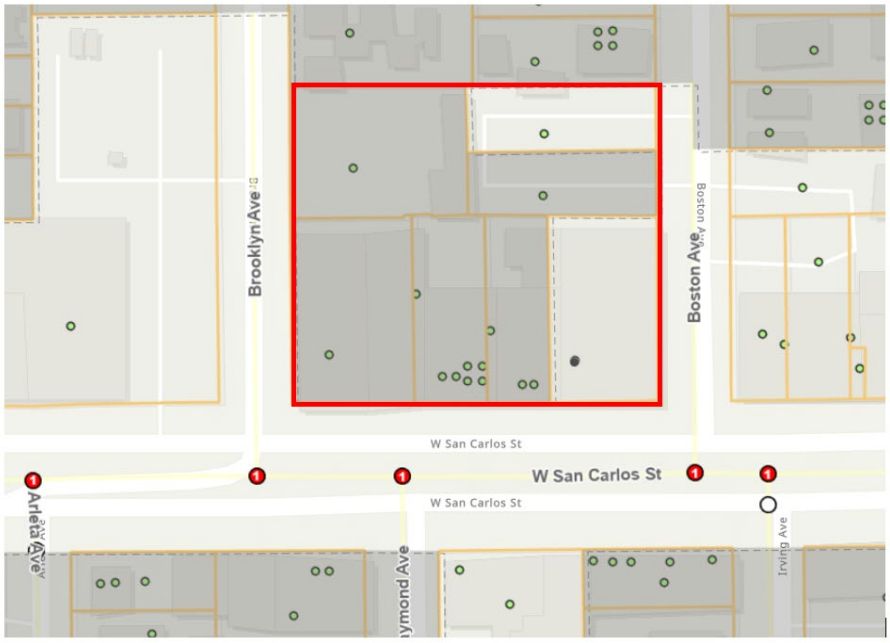
The Project Site is surrounded by commercial buildings to the east and to the east across Boston Avenue, multifamily residential and a parking lot to the north, a parking lot and a commercial building to the west across Brooklyn Avenue, and commercial buildings to the south across West San Carlos Street.

SURROUNDING USES			
	General Plan	**Zoning District**	**Existing Use**
North	Mixed Use Commercial & Residential Neighborhood	Mixed Use Commercial & N/A – Unincorporated San Jose (County of Santa Clara)	Parking lot and multifamily residential
South	Mixed Use Commercial & Urban Village	Mixed Use Commercial & N/A – Unincorporated San Jose (County of Santa Clara)	Commercial
East	Mixed Use Commercial	Mixed Use Commercial	Commercial
West	Mixed Use Commercial	Mixed Use Commercial	Commercial

On July 13, 2020, the architect, Salvatore Caruso, on behalf of Oak Glen Ventures, LLC, submitted the following four Planning applications:

- Annexation, File No. Burbank 44, to allow the annexation of the approximately 0.895-gross acre site into City of San José jurisdiction from the unincorporated Santa Clara County jurisdiction on the project site situated on the northeast corner of West San Carlos Street and Brooklyn Avenue (1883-1887, 1891-1995, 1897-1899 West San Carlos Street, and 13 Boston Avenue).
- Pre-zoning, File No. C20-011, to pre-zone the above unincorporated area to Commercial Pedestrian Zoning District (the proposed zoning district was later changed to Mixed Use Commercial per City's request during the review).
- Conditional Use Permit (CUP), File No. CP20-020, to allow the demolition of all existing structures on site for the construction of a 7-story, approximately 227,617-square foot mixed-use development consisting of a 246-bed, 125,262-square foot Residential Care Facility for the Elderly (RCFE), 61 multifamily residential units, and 6,000 square-foot ground floor retail space with alternative parking (stackers) on the ground floor and in the basement on an approximately 1.23-gross acre site consisting of seven lots including the above five unincorporated lots and two lots within the City Limits.
- Vesting Tentative Map, File No. T22-016, to merge the existing seven lots into one lot and allow one lot subdivision for condominium purpose to include up to 61 residential condominium units, one senior care facility unit, four commercial condominium units, and one basement parking garage condominium unit (for retail and residential) on the 1.23-gross acre site.

The map below shows the Annexation boundary and the Conditional Use Permit boundary. The area in red lines is the 1.23-acre Conditional Use Permit area, and within this boundary, the area in grey is the unincorporated area proposed to be annexed to the City of San Jose.



The annexation application includes the detachment from the appropriate districts including the Central Fire Protection District, Santa Clara County Lighting Service Area, and Santa Clara County Library Services. The project site would remain in the Burbank Sanitary District.

Only the Annexation and Pre-zoning components of the project are being considered at this time, as Section 20.120.300 of the Zoning Code does not allow the public hearing notice for the related Planning permits (Conditional Use Permit application (CP20-020) and Vesting Tentative Map application (T22-016) to proceed until after the Annexation is certified by the Local Agency Formation Commission of Santa Clara County (LAFCO)) when the site would be consider part of the City of San Jose. The CUP and Tentative Map will therefore be scheduled for public hearing by the Planning Commission, after the annexation has been certified by LAFCO. The analysis of CP20-020 and T20-016 is therefore not included in this staff report but will be analyzed in the staff report for the subsequent Planning Commission hearing.

For purposes of CEQA compliance, the Environmental Impact Report (EIR) was required to analyze all the separate discretionary actions and planning activities associated with project entitlement and development of the 1.23-acre site, including the pre-zoning, annexation, CUP, and tentative map. The EIR identified significant and unavoidable project impacts related to:

- **Cultural Resources:** The buildings at 1883-1887 West San Carlos Street and 1891-1895 West San Carlos Street are eligible for listing in the San José Historic Resources Inventory as Candidate City Landmarks. Demolition of these buildings would result in a significant unavoidable impact.
- **Cumulative Cultural Resources:** Demolition of the structures at 1883-1887 West San Carlos Street and 1891-1895 West San Carlos Street, which are eligible as Candidate City Landmarks, would constitute a cumulatively considerable impact to the historic structures associated with the Burbank community.

As analyzed in the EIR, there are no feasible mitigation measures to reduce the impact to the cultural resources that would also meet the project objectives to construct the mixed-use project. The EIR was prepared in accordance with Title 21 of the San José Municipal Code and the California Environmental Quality Act of 1970, as amended (CEQA). A statement of overriding consideration is required for environmental impacts that cannot be reduced to a less than significant level. Pursuant to Section 21.07.020 of the San José Municipal Code, the Planning Commission is required to make recommendations to the City Council for projects requiring an EIR and a statement of overriding consideration. Therefore, the EIR, the annexation and pre-zoning applications are before the Planning Commission for a recommendation to the City Council.

ANALYSIS

The proposed **Annexation** and **Pre-zoning** have been analyzed with respect to consistency with:

1. Envision San José 2040 General Plan
2. Municipal Code – Zoning Ordinance
3. City Council Policies
4. California Environmental Quality Act (CEQA)

Envision San José 2040 General Plan Consistency

As shown in the attached General Plan Map (Exhibit B), the subject site has an Envision San Jose 2040 General Plan designation of ***Mixed-Use Commercial***. The site is also within the West San Carlos Urban Village boundary. This designation is intended to accommodate a mix of commercial and residential uses with an emphasis on commercial activity as the primary use and residential activity allowed in a secondary role. New development on a property with this designation should accordingly include commercial space equivalent to at least a 0.5 FAR (Floor Area Ratio) for the property with a typically appropriate overall FAR of up to 4.0, allowing for medium-intensity development. Consistent with the General Plan, residential density is allowed up to 50 DU/AC in the Mixed-Use Commercial designation. Appropriate commercial uses include neighborhood retail, office, medium-scale hospitals or other health facilities, and medium-scale private community gathering facilities.

Analysis: The MUC Mixed Use Commercial Zoning District is intended to implement the Mixed Use Commercial general plan land use designation. Therefore, the pre-zoning of the site to Mixed Use Commercial (MUC) Zoning District is the conforming district to this General Plan land use designation.

The proposed pre-zoning is also consistent with the following General Plan policies:

a. 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.

b. 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.

c. 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.

d. 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:
The Project Site is within the City's Urban Growth Boundary and Urban Service Area and is connected to parcels and streets that are within the boundary of the City of San José. The MUC zoning district is a conventional zoning district. Pursuant to Table 20-270 of the Zoning Ordinance Section 20.120.110, the MUC Zoning District is a conforming zoning district to Mixed Use Commercial General Plan Land Use designation. The MUC Zoning District also enforces projects within adopted Urban Villages to comply with the adopted Urban Village plan.

Zoning Ordinance Conformance

As shown in the attached Zoning Map (Exhibit C), the subject site is currently located in an unincorporated area of Santa Clara County and is not within an existing City zoning District. The Pre-Zoning would pre-zone the site to the Mixed Use Commercial (MUC) Zoning District. This proposed pre-zoning conforms with Table 20-270 of the Zoning Ordinance Section 20.120.110 as discussed above, which identifies the MUC Zoning District as a conforming district to the MUC General Plan Land Use/Transportation Diagram land use designation.

The MUC Zoning District would allow the Project Site to be developed in accordance with the allowable uses listed in Table 20-138 under Zoning Ordinance Section 20.55.203, and to be consistent with the MUC General Plan land use designation and conform with the West San Carlos urban village Plan.

The proposed project includes annexation of the approximately 0.895 gross acres of unincorporated Santa Clara County to the City of San José, including detachment from the Central Fire Protection District, Santa Clara Lighting Service Areas and Santa Clara County Library Services. Upon completion of the annexation proceedings, the subject site would be eligible to connect to City services, and the aforementioned MUC zoning 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 January 31, 2022 hearing.

City Council Policy Consistency

City Council Policy 6-30: Public Outreach Policy for Pending Land Use Development Proposals

As indicated above, the annexation and pre-zoning are to facilitate a mixed-use development (CP20-020) which is currently under review. This mixed-use development would include 61 dwelling units therefore it is defined as a Large Development Proposal under this policy. Following City Council Policy 6-30, the required on-site signs have been posted onsite facing each street since December 2, 2020, to inform the neighborhood of the project. A Joint Environmental Scoping and Community Meetings was held on December 17, 2020, via Zoom. Approximately 18 people attended the meeting. Public Notices of the community meeting and public hearing were distributed to the owners and tenants of all properties located within 1,000 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.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

A Draft Environmental Impact Report (DEIR), State Clearinghouse No. 2020120059, was prepared for the 1881 West San Carlos Project (Burbank 44/C20-011/ CP20-020/T20-016/ER20-146) in compliance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines. The DEIR was circulated for public review and comment from July 15, 2022, through August 30, 2022.

An EIR was prepared because of the potential for significant and unavoidable impacts to cultural resources, namely, the buildings at 1883-1887 West San Carlos Street and 1891-1895 West San Carlos Street which are eligible for listing in the San José Historic Resources Inventory as Candidate City Landmarks. Demolition of these buildings under the proposed project would result in a significant unavoidable impact. While implementation of Mitigation Measures CUL-1.1 and CUL-1.2 would lessen the impact, the impact would remain significant and unavoidable.

Mitigation measures were developed to lessen the following impacts to less than significant levels: exposure of sensitive receptors to toxic air contaminants during construction, disturbance and/or destruction of nesting migratory birds during construction, exposure of sensitive receptors to construction noise for more than one year, and exposure of neighboring historic buildings that could potentially be impacted by vibration during construction.

Standard Permit Conditions are also required to ensure no impacts occur during construction and operation of the project. These Standard Permit Conditions include best management practices for construction related air quality impacts, protection of nesting migratory birds, compliance with the Santa Clara Valley Habitat Plan, protection of unknown subsurface cultural resources and human remains, erosion control during construction activities, water quality impacts during construction, best management practices to control noise during construction, and achieving an interior noise level of less than 45 dBA DNL after construction.

The project includes Conditions of Approval of the project for maintaining an interior noise standard of less than 45 dBA, maintaining any trees planted in the public right-of-way, and installing red curb markings on either side of the project driveway to ensure clear sight lines for drivers exiting the project site.

DEIR Recirculation Unnecessary

The Draft EIR was circulated for public review for 45 days consistent with CEQA Guidelines Section 15132 starting on July 15, 2022 and ending on August 30, 2022.

A First Amendment to the DEIR was prepared that provided responses to public comments submitted during the public circulation period and revisions to the text of the DEIR.

A total of five comment letters were received.

Staff responded to the comments and questions in the First Amendment and none of the comments raised represents new significant information that would warrant recirculation of the Draft EIR pursuant to CEQA Guidelines Section 15088.5(a). The recirculation of an EIR is required when significant new information is added to the EIR after public notice is given of the availability of the Draft EIR for public review but before certification. “Information” can include changes in the project or environmental setting as well as additional data or other information. New information added to a Draft EIR is not “significant” unless the Draft EIR is changed in a way that deprives the public of meaningful opportunity to comment on a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (CEQA Guidelines Section 15088.5).

Final EIR

The First Amendment was posted on the City's website on December 2, 2022, and all commenters were notified via email of the document's availability. The Draft Environmental Impact Report (DEIR) and First Amendment are available for public review on the City's website: https://www.sanjoseca.gov/your-government/departments/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs.

The First Amendment together with the DEIR constitute the Final Environmental Impact Report (FEIR) for the proposed project.

Statement of Overriding Considerations

The proposed project would result in the following benefits:

- Develop approximately 61 housing units to achieve the Envision San José 2040 General Plan goals of providing housing at higher densities and the City's West San Carlos Urban Village Plan by increasing employment and residential capacities
- Provide 246 senior care beds that responds to the needs of the community including seniors and families in keeping with the Envision San José 2040 General Plan policies for social equity and diversity and the development of multi-generational housing
- Create "new commercial and mixed uses to enhance the circulation within the village", by creating active retail on the ground floor uses along West San Carlos Street as envisioned in the West San Carlos Urban Village Plan
- Support the City's environmental stewardship goals by providing a modern LEED building with sustainable energy and water usage, natural ventilation and electric vehicle parking
- Create a senior care facility and ground floor retail to emphasize economic development within the City to support San José's growth as a center of innovation and regional employment
- Promote the development of Urban Villages to provide active, walkable, bicycle-friendly, transit-oriented, mixed-use urban settings for new housing and job growth activity to an innovative workforce and consistent with the General Plan's environmental goals
- Intensify an existing low-density land use into high-density, mixed-use urban commercial and residential per the Urban Village Plan
- Provide bicycle parking for residents to help support the goals of the Envision San José 2040 General Plan
- Provide a Transit Demand Management (TDM) Program to reduce vehicle trips and parking demand by promoting the use of multimodal transportation options including a ride-share program.

The overriding considerations set forth above constitute a separate and independent grounds for finding that the benefits of the Project outweigh its significant unavoidable environmental impacts. These matters are supported by evidence in the record that includes, but is not limited to, the Envision San José 2040 General Plan and the West San Carlos Urban Village Plan.

PUBLIC OUTREACH

Staff followed Council Policy 6-30: Public Outreach Policy to inform the public of the proposed project. Three on-site signs were posted on the property since December 2020. A Joint Environmental Scoping and Community Meetings was held on December 17, 2020, via Zoom. There were approximately 18 members of the public attended the meeting. Two speakers were in favor of the project and the rest asked questions and expressed concerns. Comments and concerns were mainly about the development proposal (CP20-020). Below is a summary of the comments and responses.

December 17, 2020 Virtual Community Meeting
Number of Attendees: 18 +/-
Major Comments and Concerns
Parking: Concerns about overflow parking to streets and the lift parking system.
Sanitary Sewer: How will this project impact sanitary sewer system? Will the sewer fees be increased due to this project?
School: How will local school bonds be impacted by the city becoming part of the City?
Historic Resources: Has a historic resources survey been conducted? Request more information about the existing buildings on site.
CEQA: How will the environmental impacts of project be analyzed?
Building Design: Concerns about the massing/height compatibility to the adjacent two-story buildings.
Construction impact

Parking:

The proposed mixed-use development (CP20-020) is required to meet the minimum parking requirement per Zoning Code.

Sewer:

The project site would remain in Burbank Sanitary District (BSD). The sanitary sewer fees will be assessed by BSD. The City would collect the storm sewer fees.

School:

The developer would be required to pay school fees prior to obtaining the building permit. District Bonds would be a decision of the school district.

Building Design:

The mixed-use development is required to comply with the design guidelines included in the West San Carlos Urban Village Plan, including the height transition requirement. The detail analysis will be provided in the staff report for the second Planning Commission hearing.

Construction Impact:

The Conditional Use Permit, CP20-020 will include construction conditions and mitigation measures to minimize the construction impact.

Environmental Impact Analysis:

An EIR was prepared and circulated as discussed above.

Historic Resources:

A Historic Evaluation of the existing buildings was prepared and two of the existing buildings are identified as eligible City Landmarks. The EIR concludes that the project would result in significant and unavoidable impact to the cultural resources due to the demolition of the Candidate City Landmarks.

Project Managers: Angela Wang

Approved by: /s/ Robert Manford, Deputy Director for Christopher Burton, Planning Director

ATTACHMENTS:	
Exhibit A:	Vicinity Map, Aerial
Exhibit B:	General Plan Land Use Designation
Exhibit C:	Existing Zoning Map
Exhibit D:	Proposed Zoning Map
Exhibit E:	Burbank No. 44 Annexation Initiating Resolution
Exhibit F:	C20-011 Pre-zoning Ordinance
Exhibit G:	Environmental Impact Report Resolution and Mitigation Monitoring and Reporting Program (MMRP)
Exhibit H:	County Certified Burbank 44 Annexation Boundary
Exhibit I:	C20-011 Pre-zoning Plat Map and Legal Description

Applicant/Owner of 1891 West San Carlos St (APN 274-16-053)	**Owner of 1883 W San Carlos St & 13 Boston Ave (APN 274-16-050, and 052)**	**Owner of 1899 W San Carlos St (APN 274-16-069, and 070)**
Oak Glen Ventures, LLC 305 Vineyard Town Center, #228 Morgan Hill, CA 95037	Paul Dorsa & Linda Dorsa Trustees 140 W Main St Los Gatos, CA 95030	James V. Thomason & Pat Thomas Trustees 37269 N Wild Barley Path San Tan Valley, AZ 85140

Exhibit A: Vicinity Map/Aerial

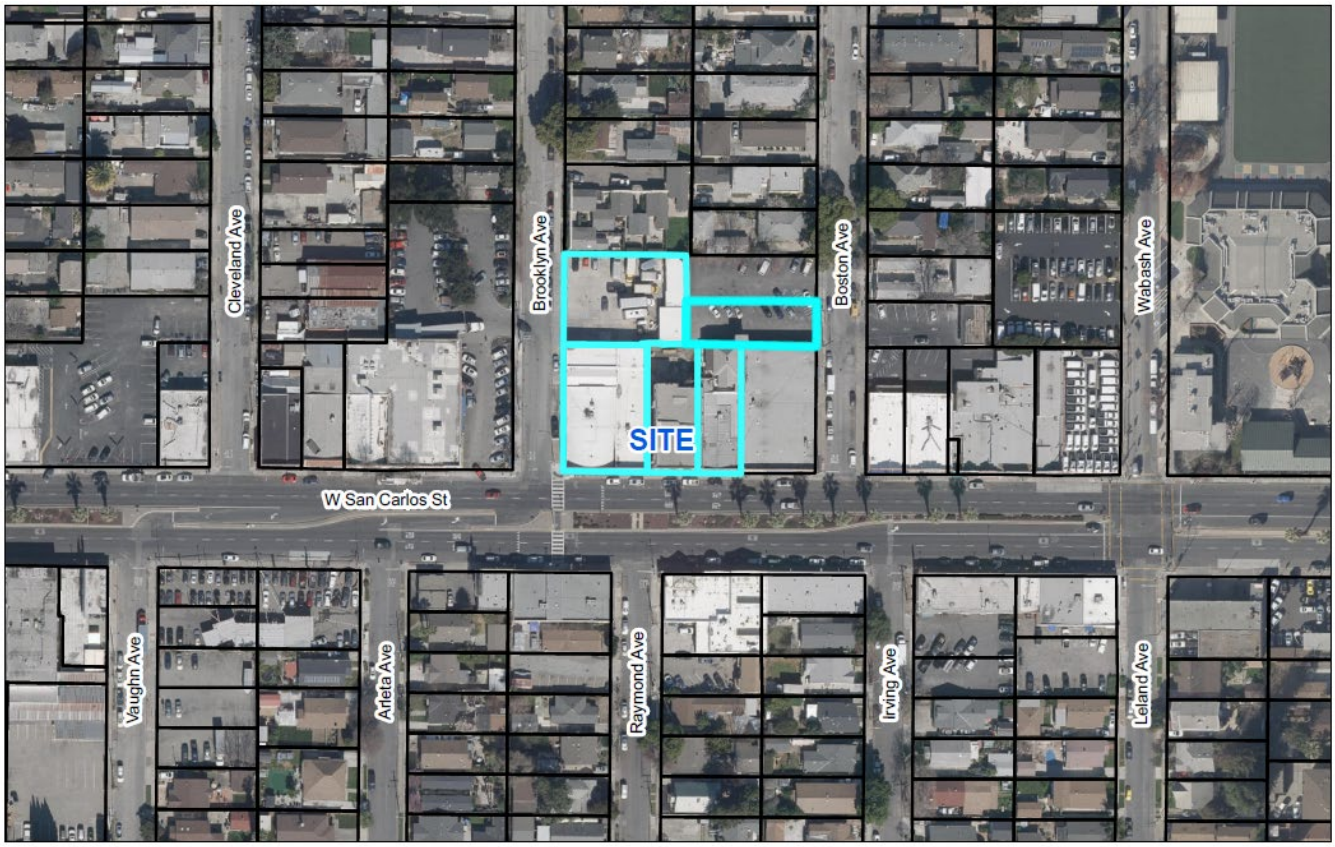


Exhibit B: General Plan Land Use Designation

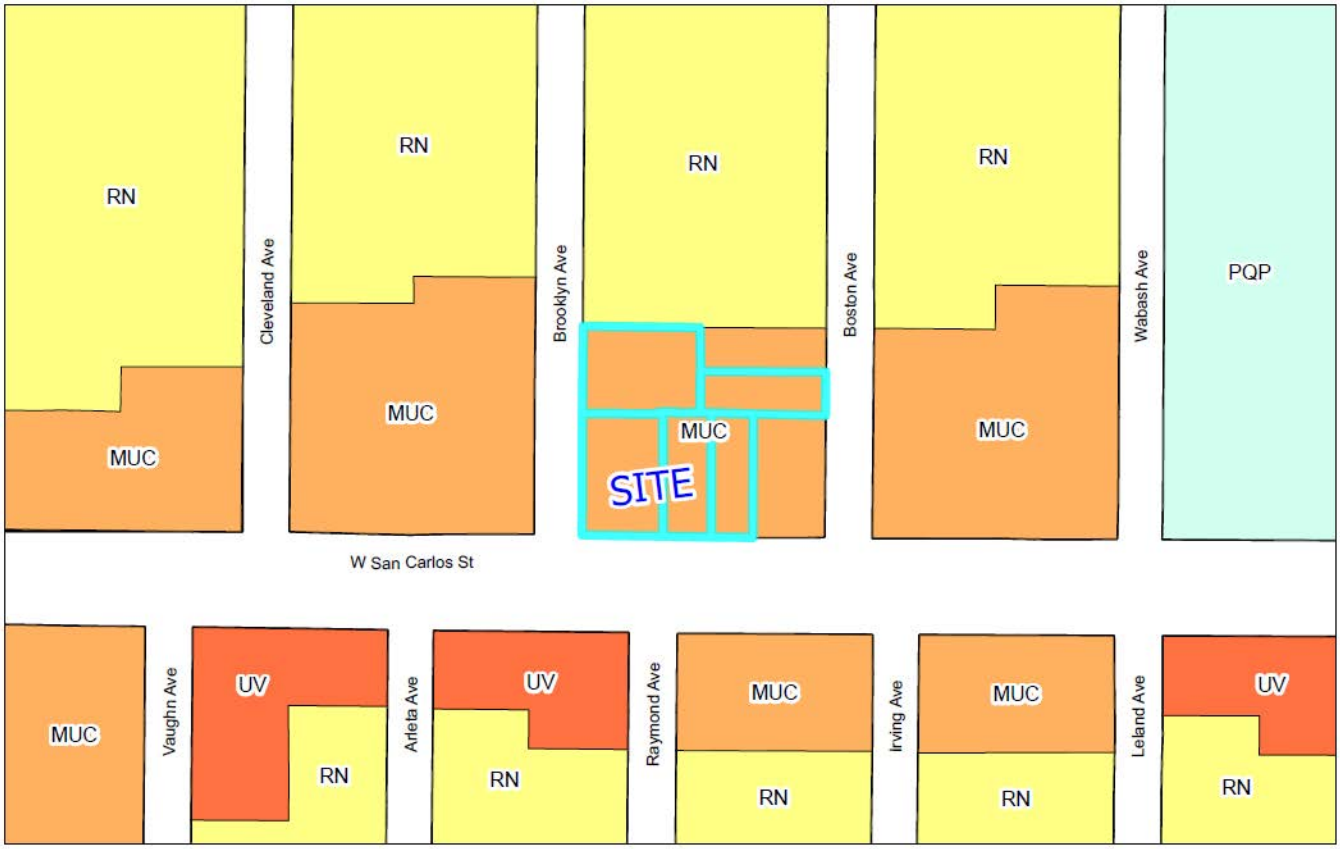
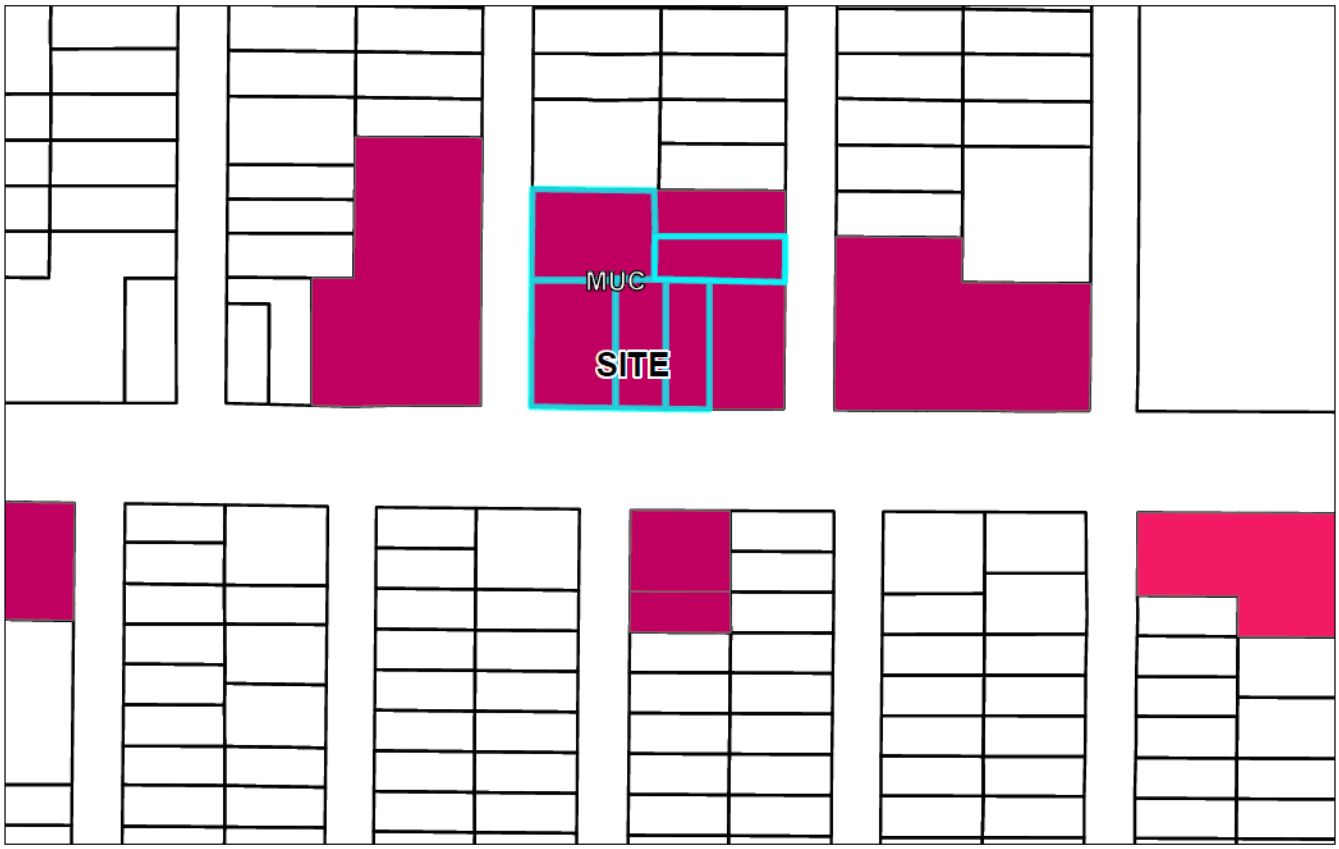


Exhibit C: Existing Zoning Map



Exhibit D: Proposed Zoning Map



Burbank 44 (Annexation), C20-011 & ER20-146

Links to Attachment E-I

Click on the title to view document

Exhibit E: Burbank No. 44 Annexation Initiating Resolution
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Exhibit H: County Certified Burbank 44 Annexation Boundary
Exhibit I: C20-011 Pre-zoning Plat Map and Legal Description

Public Correspondence received after 12/7/22