

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen
Hans F. Larsen

SUBJECT: SEE BELOW

DATE: 05-17-10

Approved

Date

5/20/10

COUNCIL DISTRICT: 4

SUBJECT: INTENTION TO FORM MAINTENANCE DISTRICT 23 (BERRYESSA RD FROM I-680 TO PIEDMONT RD)

RECOMMENDATION

Adoption of a resolution of intention to form Maintenance District 23 (Berryessa Rd from I-680 to Piedmont Rd) and directing the Director of Public Works to create and file an Engineer's Report.

OUTCOME

Adoption of a resolution initiates the formation process for establishing a new assessment district and satisfies the requirement to allow affected property owners the opportunity to vote on the proposed new assessment.

BACKGROUND

Berryessa Road is a four lane major thoroughfare that requires median islands for traffic control and safety. A typical City median is either paved or has trees with a rock based ground cover. The Berryessa Road enhanced landscape in the median island, which include a variety of trees and flowering shrubs, was installed in 1986 utilizing San Jose Redevelopment Agency funds. The maintenance of the enhanced landscape on these specific street islands has been covered by a limited contract amount set aside in the General Fund. In recent years, the condition of the street landscape maintained by General Fund resources has significantly declined. The primary reason for this decline is that the number of developed acres of street landscape has increased over many years while funding for maintenance has sharply decreased in recent years. Given the City's fiscal condition, further reductions are being proposed in this and future years. Compounding these issues is the fact that the type of landscaping being installed in many of the new landscapes built in the last 15 years has included high-level amenities such as shrubs, ground covers, extensive irrigation systems, pavers, and other amenities that require significant maintenance resources and effort to sustain them in acceptable condition.

On March 17, 2009, staff presented to Council a status report on the City's Street Landscape and Tree Services Program. As a result of the report, Council reconfirmed the Median Island Landscape Program policy adopted on June 9, 1994 specifying that only Type 1 landscaping be installed on City streets unless an alternative funding source has been identified for maintenance. Type 1 includes trees and hard or bare surfaces as the City maintained standard. Type 2 includes trees, shrubs, ground covers, and/or paving materials. Council also approved two strategies that are being implemented:

- 1) Converting existing weak or underperforming Type 2 landscapes to Type 1 designs which reduces required maintenance and water consumption.
- 2) Expanding the network of Maintenance Assessment Districts and Community Facilities Districts in the City to fund higher level landscape in those areas where the adjacent property owners want this level of service and are willing to pay for it.

To facilitate strategy number two, Council approved \$250,000 in funding for staff to determine the feasibility and community interest of establishing special districts around areas with existing Type 2 landscape and if feasible conduct the public notice and balloting process.

ANALYSIS

In preparation for this initial Council action, staff met or spoke with several major land owners and stakeholders within the boundaries of the proposed district and determined that there was enough interest for staff to schedule a community meeting. On December 9, 2009 the Departments of Transportation and Public Works conducted the first of two community meetings to gather the sentiment of the rest of the community not already contacted regarding the existing level of maintenance, the possibility of establishing a Maintenance District to fund the optimal maintenance of the landscape and the necessity for the conversion of the enhanced landscape to Type 1, if a district is not formed. Approximately 12 land owners attended the meeting and requested more detail about costs, the possibility of a lower cost option, and the possibility of adding street tree maintenance. The second community meeting was held on January 20, 2010 to address concerns raised at the first meeting and to present assessment possibilities. At the second meeting, most of the 15 land owners who attended did not want to see the landscape removed and found the lower cost option much more desirable over the original assessment proposal, but were undecided about including street tree maintenance. Staff informed the attendees that a tiered ballot will be utilized in which there will be two items to vote on. The primary item would be to support or oppose the formation of the district for median island maintenance, and the secondary item would be to support or oppose the addition of street tree maintenance to the district. The street tree option can only be implemented if the district is approved.

There are approximately 200 parcels within the proposed boundaries of the district representing close to 100 acres of land. The City operates a neighborhood park and community center on lands owned by the County of Santa Clara and the Santa Clara Valley Water District. As a

tenant of these parcels, the City will be responsible for the associated assessment. The Engineer's Report will determine the City's assessment and any general benefit costs to be paid by the City from the General Fund or other funds generally available to the City.

Staff recommends that Council initiate proceedings to form a new Maintenance Assessment District. Staff also recommends that the proposed assessment include a provision for the assessment to be adjusted annually by applying the average annual change in the Consumer Price Index for the San Francisco-Oakland-San José area, in order to keep pace with inflation.

State and local law require that any new assessment on property must be approved by the owners of the parcels assessed through a form of an election process called an assessment ballot proceeding whereby property owners within the district cast ballots in favor or opposed to the assessment, with votes weighed by the amount of the assessment on each parcel. The amount of the assessment by parcel is determined in the Engineer's Report. The assessment can only be implemented if affected property owner ballots protesting do not outweigh the ballots cast in favor of the assessment. In the event the ballots submitted in opposition to the assessment exceed the ballots in favor of the assessment, Council cannot impose the assessment. For maintenance districts, a four-step process is necessary for Council to complete the assessment ballot proceeding. The actions required of Council are to:

- Adopt a resolution of intention and to direct the Director of Public Works to file an engineer's report;
- Adopt a resolution preliminarily approving the engineer's report, and setting the date and time of the public meeting, public hearing and tabulation of ballots;
- Conduct a public meeting; and
- Conduct a public hearing, and at the end of the hearing, tabulating the ballots.

The proposed schedule of events for imposition of an new assessment:

December 9, 2009	1st Community Meeting (staff)
January 20, 2010	2nd Community Meeting (staff)
June 8, 2010	Adopts resolution of intention (Council)
August 10, 2010	Adopts resolution to preliminarily approve the Engineer's Report, set Public Meeting, Hearing, and Tabulation of Ballots (Council)
September 17, 2010	Publishes Notice of Public Meeting and Hearing (staff)
September 17, 2010	Mails Notice of Public Hearing along with property owner ballots (staff)
September 28, 2010	Conducts Public Meeting (Council)
November 16, 2010	Conducts Public Hearing and tabulate ballots (Council)

Council may, at any time during the process, withdraw its intent to form the district.

If approved:

December 8, 2010 Records Notice of Assessments with County Recorder (staff)
August 10, 2011 Delivers list of assessments to County Tax Collector (staff)

EVALUATION AND FOLLOW-UP

As a property owner subject to an assessment, Council must decide at the November 16, 2010 Public Hearing whether to vote favorably, negatively or to abstain from casting a ballot. The Engineer's Report will determine the City's assessment and any general benefit costs to be paid by the City from the General Fund or other funds generally available to the City. If after the close of the Public Hearing, the district is approved by the property owners within the district, the assessments will be placed on the County Property Tax bills for collection. Staff will bring forward appropriation and funding sources recommendations for Council approval at a later date as appropriate.

POLICY ALTERNATIVES

Alternative #1: Discontinue General funded contractual maintenance and convert enhanced landscaping in median islands to Type 1.

Pros: The election process would be avoided and assessment funds would not be expended for staff costs associated with the process; No assessment burden on property owners during this difficult economy.

Cons: Removing existing landscape could give the impression that the City has little concern for negative community impact; Property owners not given the opportunity to decide what happens in their community.

Reason for not recommending: The property owners are accustomed to the existing Type 2 landscaping currently installed in the medians. Many property owners who attended the community meetings expressed interest in saving the landscaping.

Alternative #2: Partner with a volunteer organization or the neighborhood itself to maintain the existing landscape.

Pros: Reduces the cost of maintenance to the City; Allows the neighborhood the opportunity to organize and take pride in collectively beautifying their community.

Cons: Need to have viable community organization, which can obtain liability insurance and has contracting authority, performing the work; Additional liability of having private citizens perform work in the center of a four lane street; Additional liability associated with public safety concerns if work not performed appropriately; Possible inconsistency of work quality along medians; Potential need for enforcement of contractual obligations or removal of improvements if work is not performed to standards; Requires City staff to regularly monitor performance.

Reason for not recommending: Private citizens in the right-of-way creates a great risk to themselves and potentially to others if the work is not performed or completed properly; The citizens would need to be able to form an organization that can lawfully enter into contracts with the City and obtain liability insurance and, if applicable, workers compensation coverage; There is uncertainty of the length of time volunteers will commit to provide maintenance, resulting in

the need to revisit our current dilemma; The City would need to regularly monitor the work as it would with any contractor, and potentially remove work that is not maintained safely or to City standards.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

While this action does not meet the \$1 million threshold under Criterion 1, this memorandum will be posted on the City's website for the June 8, 2010 Council Agenda. Community outreach included staff meeting or speaking with several major land owners and stakeholders in the proposed district area and holding a community meeting on December 9, 2009, and a follow-up meeting on January 20, 2010 to present options for the district and receive public comment. The community meeting invitations were 1) mailed to each of the owners of the 200 properties as listed in the County records, 2) mailed to the occupant of each site address, and 3) hand delivered to each property. The presentation for the second meeting was emailed to anyone who requested a copy since a few attendees wanted to have something to show their neighbors who were unable to attend. City staff is continuing to compile public comments and is available to respond to inquiries throughout the formation process.

COORDINATION

This memorandum, related documents and resolutions were prepared in cooperation with the City Attorney's Office, the Departments of Parks, Recreation and Neighborhood Services and Planning, Building and Code Enforcement, and the City Manager's Budget Office.

FISCAL/POLICY ALIGNMENT

This action is consistent with 1) the Council-approved Budget Strategy to continue to move in the general direction of setting fees and charges that recover costs of service, 2) the Median Island Landscape policy, and 3) the March 17, 2009 Council approval to either convert existing weak or underperforming Type 2 to Type 1 designs if an special district is not formed to fund the maintenance.

COST IMPLICATIONS

The formation costs are covered by the \$250,000 Council approved on March 17, 2009 to establish special districts if feasible around areas with existing Type 2 landscape.

The City operates a neighborhood park and community center on lands owned by the County of Santa Clara and the Santa Clara Valley Water District. As a tenant of these parcels, the City will be responsible for the associated assessment. The Engineer's Report will determine the City's assessment and any general benefit costs to be paid by the City from the General Fund or other funds generally available to the City.

BUDGET REFERENCE

The table below identifies the fund and appropriation used to fund the staff costs associated with the public outreach conducted to determine the feasibility and community interest of establishing special districts around areas with existing Type 2 landscape.

Fund #	Appn #	Appn. Name	RC#	Total Appn	2009-2010 Adopted Capital Budget (Page)	Last Budget Action (Date, Ord. No.)
465	7066	Maintenance Assessment District Development	159231	\$150,000	V-984	02/09/2010 Ord. No. 28698

CEQA

CEQA: Exempt, PP10-090

Planning has found that the operation and maintenance of existing public facilities from this district to be exempt from the environmental review requirements of the California Environmental Quality Act of 1970, as amended.

/s/

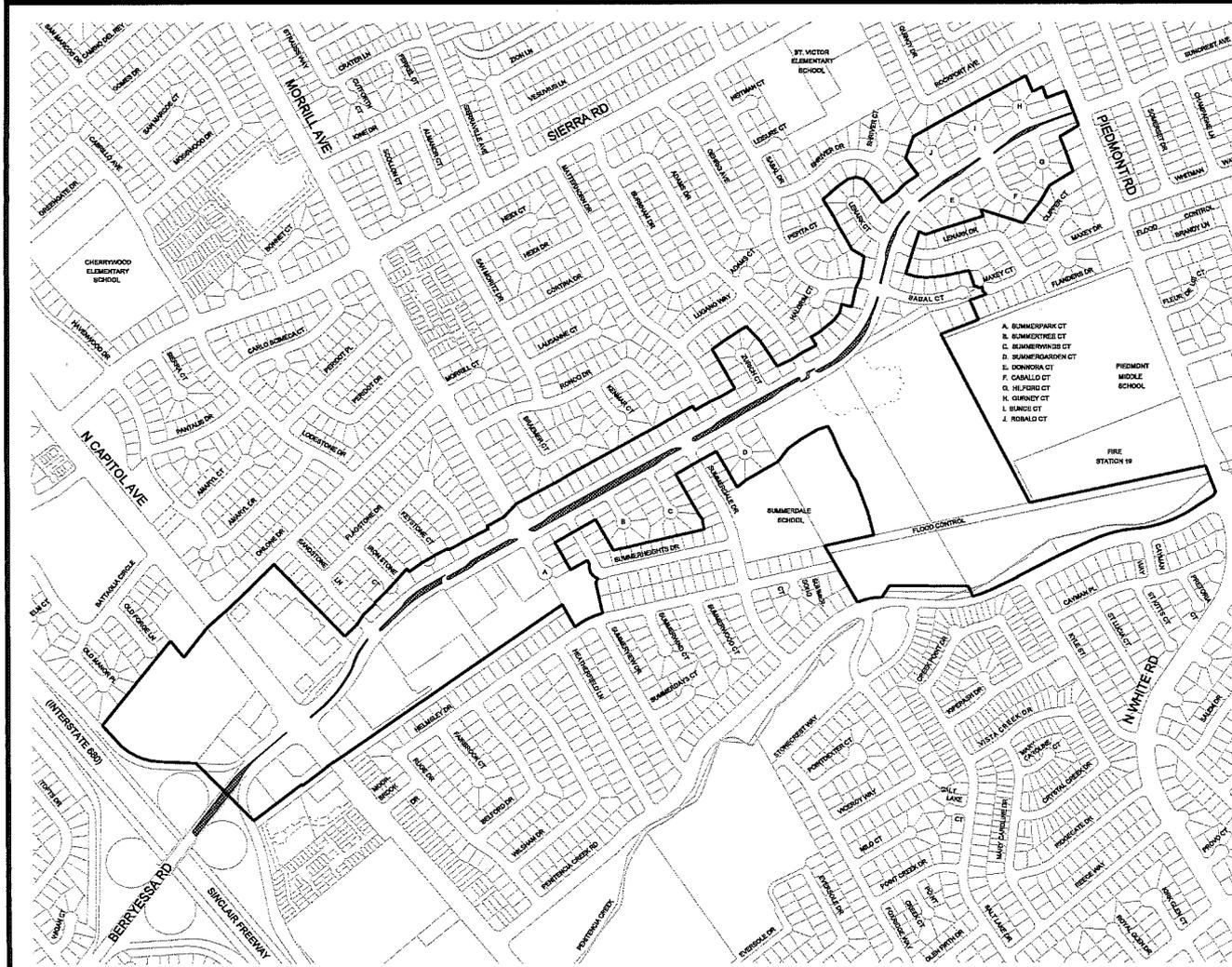
KATY ALLEN
Director, Public Works Department

/s/

HANS F. LARSEN
Acting Director of Transportation

For questions please contact TIMM BORDEN, DEPUTY DIRECTOR, DEPARTMENT OF PUBLIC WORKS, at (408) 535-8300.

PD:tmb
Attachment
CMmd23ROIv1.doc



CERTIFICATIONS

(1) DIRECTOR OF PUBLIC WORKS
 FILED THIS _____ DAY OF _____, 2010, IN THE OFFICE OF THE DIRECTOR OF PUBLIC WORKS OF THE CITY OF SAN JOSE.

 SALLY ALLEN
 DIRECTOR, PUBLIC WORKS DEPARTMENT

(2) CITY CLERK
 FILED THIS _____ DAY OF _____, 2010, IN THE OFFICE OF THE CITY CLERK OF THE CITY OF SAN JOSE.

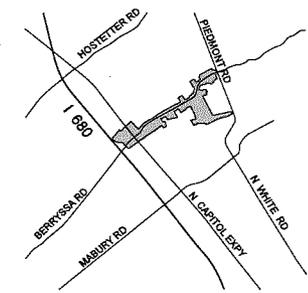
 LEE PRICE, M.M.C.
 CITY CLERK

(3) CITY COUNCIL
 BY RESOLUTION NUMBER _____ ON THE _____ DAY OF _____, 2010, AN ASSESSMENT WAS LEVIED BY THE CITY COUNCIL ON THE LOTS, PIECES, AND PARCELS OF LAND SHOWN ON THIS DIAGRAM. THE APPROVED DIAGRAM AND ASSESSMENT ROLL FILED IN THE OFFICE OF THE DIRECTOR OF PUBLIC WORKS CONTAINS THE EXACT AMOUNT OF EACH ASSESSMENT LEVIED AGAINST EACH PARCEL OF LAND SHOWN ON THIS DIAGRAM.

 LEE PRICE, M.M.C.
 CITY CLERK

(4) COUNTY RECORDER
 FILED THIS _____ DAY OF _____, 2010, AT THE HOUR OF _____ O'CLOCK _____ M. IN BOOK _____ OF MAPS OF ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS PARCEL _____ IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SANTA CLARA. FEE PAID: _____

 REGINA ALFONSO, COUNTY RECORDER
 COUNTY OF SANTA CLARA



LOCATION MAP

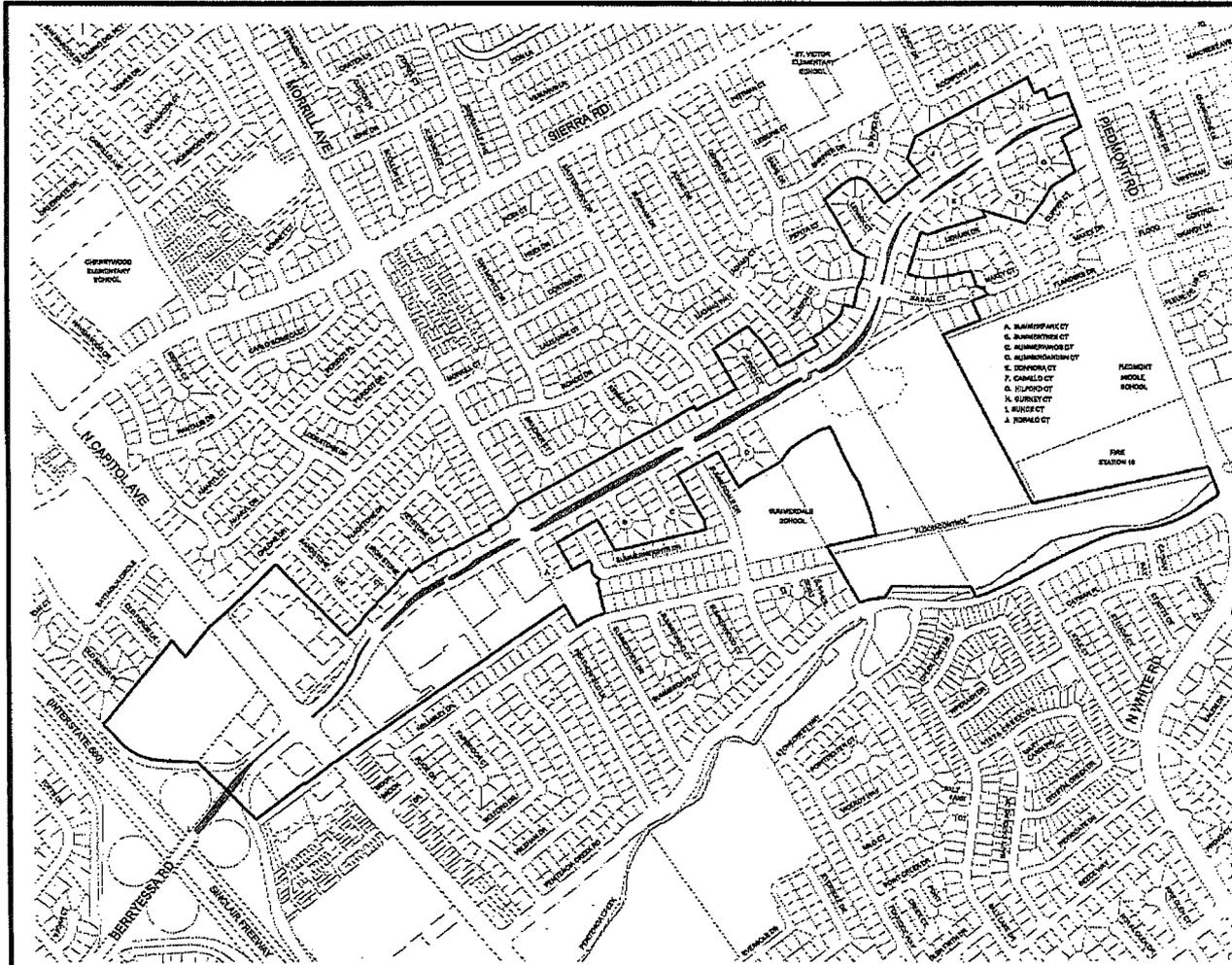
CITY OF SAN JOSE
 CAPITAL OF SILICON VALLEY
PUBLIC WORKS DEPARTMENT
 DEVELOPMENT SERVICES DIVISION
 BY SPECIAL DISTRICTS

LEGEND

	DISTRICT BOUNDARY		STREET RIGHT OF WAY
	MAINTENANCE AREA		PRIVATE STREET
			PROPERTY LINE

SCALE: 1" = 400'

CITY OF SAN JOSE, COUNTY OF SANTA CLARA
 STATE OF CALIFORNIA
MAINTENANCE DISTRICT 23
 (BERRYESSA)
 FISCAL YEAR 2010-11



CERTIFICATIONS

TO DIRECTOR OF PUBLIC WORKS
 FILED THIS _____ DAY OF _____, 2010, IN THE OFFICE OF THE DIRECTOR OF
 PUBLIC WORKS OF THE CITY OF SAN JOSE.

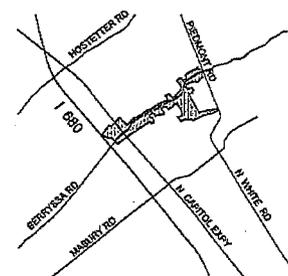
BY CITY CLERK _____
 CITY CLERK
 DIRECTOR, PUBLIC WORKS DEPARTMENT
 FILED THIS _____ DAY OF _____, 2010, IN THE OFFICE OF THE CITY CLERK OF
 THE CITY OF SAN JOSE.

BY CITY COUNCIL _____
 CITY CLERK
 BY RESOLUTION NUMBER _____, ON THIS _____ DAY OF _____
 2010, AN ASSESSMENT WAS ORDERED BY THE CITY COUNCIL ON THE LOTS, BLOCKS, AND PARCELS OF
 LAND SHOWN ON THIS DIAGRAM. THE APPROVED EXHIBIT AND ASSESSMENT SHALL FILED IN THE
 OFFICE OF THE DIRECTOR OF PUBLIC WORKS CONTAINS THE EXACT AMOUNT OF EACH ASSESSMENT
 LINED AGAINST EACH PARCEL, OF LAND SHOWN ON THIS DIAGRAM.

BY COUNTY RECORDER _____
 CITY CLERK
 FILED THIS _____ DAY OF _____, 2010, AT THE HOUR OF _____ P.M. IN
 BOOK _____ OF MAPS OF ASSESSMENT AND BOUNDARY FACILITIES DISTRICTS
 PARCELS _____, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SANTA CLARA.
 FILE NO. _____

COUNTY RECORDER COUNTY RECORDER
 COUNTY OF SANTA CLARA

- A. BANNER PARK CT
- B. BANNERVIEW CT
- C. BANNERWOOD CT
- D. BANNERWOOD CT
- E. BANNERVIEW CT
- F. BANNERVIEW CT
- G. BANNERVIEW CT
- H. BANNERVIEW CT
- I. BANNERVIEW CT
- J. BANNERVIEW CT



LOCATION MAP

CITY OF SAN JOSE
 CAPITAL OF SILICON VALLEY
PUBLIC WORKS DEPARTMENT
 Department of Public Works
 1000 BERRYESSA AVENUE
 SAN JOSE, CA 95131
 TEL: (408) 287-3000
 FAX: (408) 287-3000
 WWW.SANJOSE.CA.GOV

LEGEND

DISTRICT BOUNDARY	STREET RIGHT OF WAY
MAINTENANCE AREA	PRIVATE STREET
	PROPERTY LINE

0 400' 800' 1200'

SCALE: 1" = 400'

CITY OF SAN JOSE, COUNTY OF SANTA CLARA
 STATE OF CALIFORNIA
MAINTENANCE DISTRICT 23
 (BERRYESSA)
 FISCAL YEAR 2010-11

SHEET 1 OF 1