

# City of Calistoga

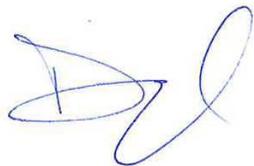
## Staff Report

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4 **TO:** Honorable Mayor and City Councilmembers  
5 **FROM:** Derek Rayner, Deputy Public Works Director  
6 **VIA:** Michael Kirn, Public Works Director/City Engineer  
7 **DATE:** December 20, 2016  
8 **SUBJECT:** Consideration of Resolutions of Necessity to Acquire Property by  
9 Eminent Domain, for Temporary Construction and Public Access  
10 Easements Required to Build the Berry Street Replacement Bridge  
11 Project at 1328 Berry Street, APN 011-222-001, and 1341 Berry  
12 Street, APN 011-171-010 in the City of Calistoga

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13 **APPROVAL FOR FORWARDING:**



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Dylan Feik, City Manager

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18 **ISSUE:** Consideration of Resolutions of Necessity to Acquire Property by Eminent  
19 Domain, for Temporary Construction and Public Access Easements Required to  
20 Build the Berry Street Replacement Bridge Project at 1328 Berry Street, APN 011-  
21 222-001, and 1341 Berry Street, APN 011-171-010 in the City of Calistoga.

22  
23 **RECOMMENDATION:** City staff recommends that the City Council open the  
24 hearing on the Resolutions, take testimony, close the hearing and consider adoption  
25 of the Resolutions of Necessity to acquire Temporary Construction and Public  
26 Access Easements ("Easements") on the parcels referenced above.

27  
28 **BACKGROUND:** Berry Street Bridge crosses the Napa River just south of the  
29 Washington/Berry/3<sup>rd</sup> Street intersection, in the City of Calistoga. This bridge is over  
30 97 years old and structurally and seismically deficient and needs to be replaced.

31  
32 *The Need for Temporary Construction and Public Access Easements:*

33 To complete construction on the Berry Street Replacement Bridge Project  
34 (“Project”) the City needs to acquire Temporary Construction and Public Access  
35 Easements (“Easements”) on three adjoining properties where work will be  
36 performed. Work will also be performed on a fourth adjoining property; however,  
37 that property is already owned by the City (Fireman’s Park). The Easements are  
38 required so the contractor will have enough room to access, demolish, and build the  
39 new structure. Easements are required from the elementary school property, the  
40 Meyer property, and LeStrange property. The City owns 60-feet of right-of-way and  
41 the new bridge structure width varies between 52’ to 58’.

42  
43 The proposed Easement on the LeStrange property is large enough to  
44 accommodate temporary bicycle and pedestrian bridge, which was identified as  
45 necessary to the community during the September 18, 2013 community forum. The  
46 existing bridge is heavily used by the public to access the existing elementary  
47 school, church, park, and residences in the area.

48  
49 The Berry Street Bridge Replacement Project Initial Study and Mitigated Negative  
50 Declaration (*attached as Exhibit 4*) included a mitigation measure to install a  
51 pedestrian bridge during construction to maintain pedestrian access and a safe  
52 route to school and to ensure that low income residences are not unduly  
53 inconvenienced by the project. The proposed location of the temporary bridge  
54 avoids any detouring of pedestrian and bicycle traffic during construction. Without a  
55 temporary bridge, the public would have to detour via the Lincoln Avenue Bridge  
56 (1/2 mile detour) or through Pioneer Park (1/3 mile detour during the summer).  
57 Further, the temporary bridge is also necessary to support temporary utilities (i.e.  
58 gas, electric, water, recycled water) that must be maintained during construction. In  
59 accordance with California Environmental Quality Act (“CEQA”), the City of  
60 Calistoga approved the Berry Street Bridge Initial Study and Mitigated Negative  
61 Declaration for the Project on August 12, 2015.

62  
63 To ensure the greatest public good and the least private injury, the temporary bridge  
64 must to be located on the downstream side of the existing bridge for the following  
65 reasons:

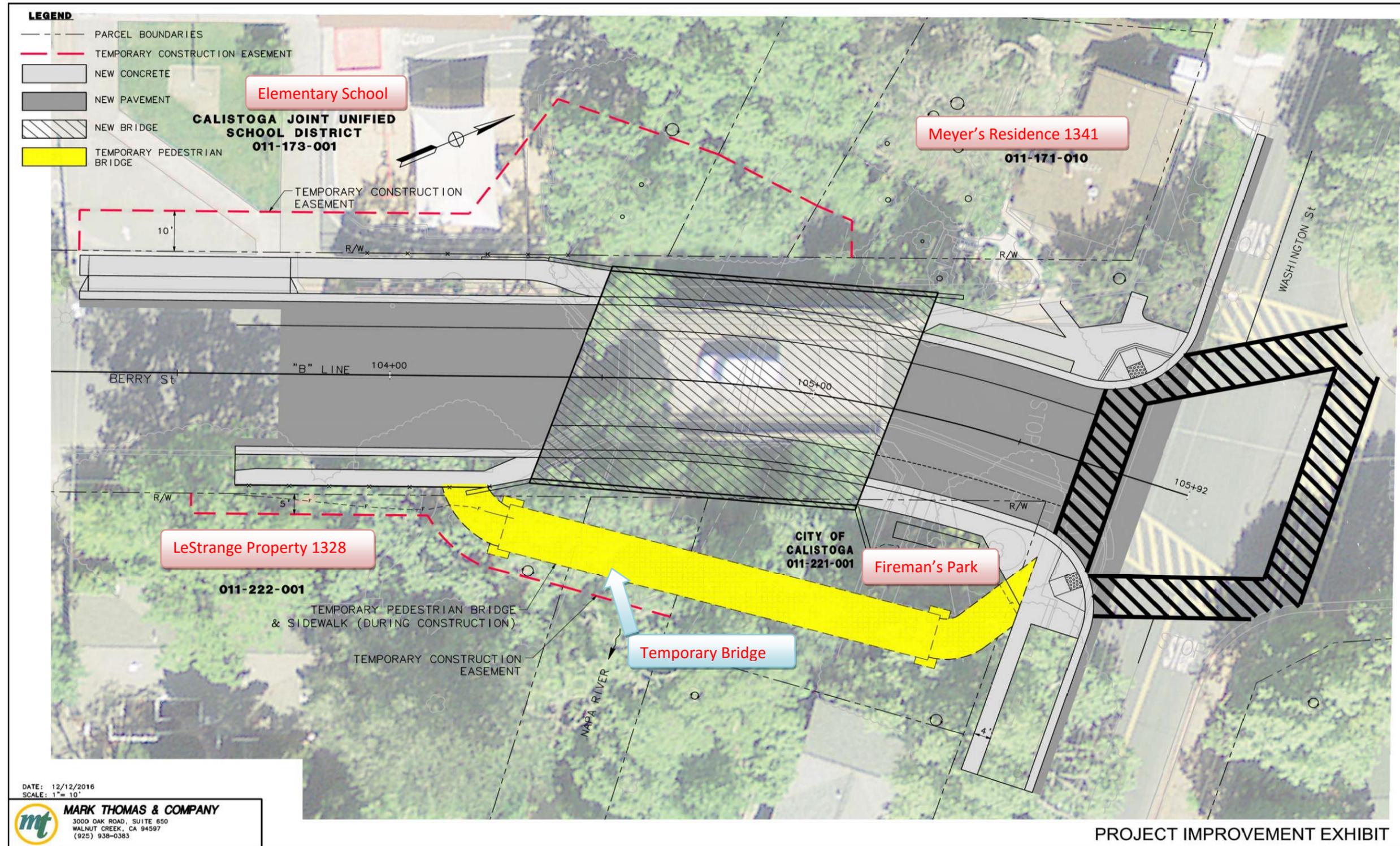
- 66 • City owns property at Fireman’s park on downstream side of the bridge.  
67 Connecting the temporary bridge to City owned property on one side of the  
68 river minimizes costs and Project impacts to private property when compared  
69 with the option of constructing the temporary bridge on the upstream side.
- 70 • The span is longer on the upstream side and there are significant rock  
71 retaining walls on the Meyer property that would be significantly impacted.
- 72 • Construction access – Construction access on the north bank is not feasible  
73 since it is extremely steep, and both the Meyer/Fireman’s Park properties  
74 have existing retaining walls supporting this bank. Therefore, the south bank  
75 of the river (LeStrange/School side) must to be used for construction access  
76 because of its soft slope. Large construction equipment (e.g. excavators,

77 bobcats, trucks) will need to drive down into the bottom of the Napa River to  
78 remove the existing bridge and build the new bridge. A 12-foot wide  
79 construction access road has to be built, and be a safe road down the bank  
80 to convey construction equipment to the bottom of the River. This is the  
81 largest temporary easement needed for the project and the City has been  
82 working with the School District for the acquisition of these necessary  
83 easement rights.

- 84 • Overhead utilities along the upstream side of bridge prevent the temporary  
85 bridge from being installed at that location. The City went through an  
86 exhaustive process working with all of the utility companies and determined  
87 that the upstream side is the only place the utility companies can place their  
88 overhead lines.

89 Figure 1 and 2 on the following page show the affected properties with improvement  
90 limits and proposed Temporary Construction Easements.

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 93  
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Figure 1 – Proposed Berry Street Bridge Improvements

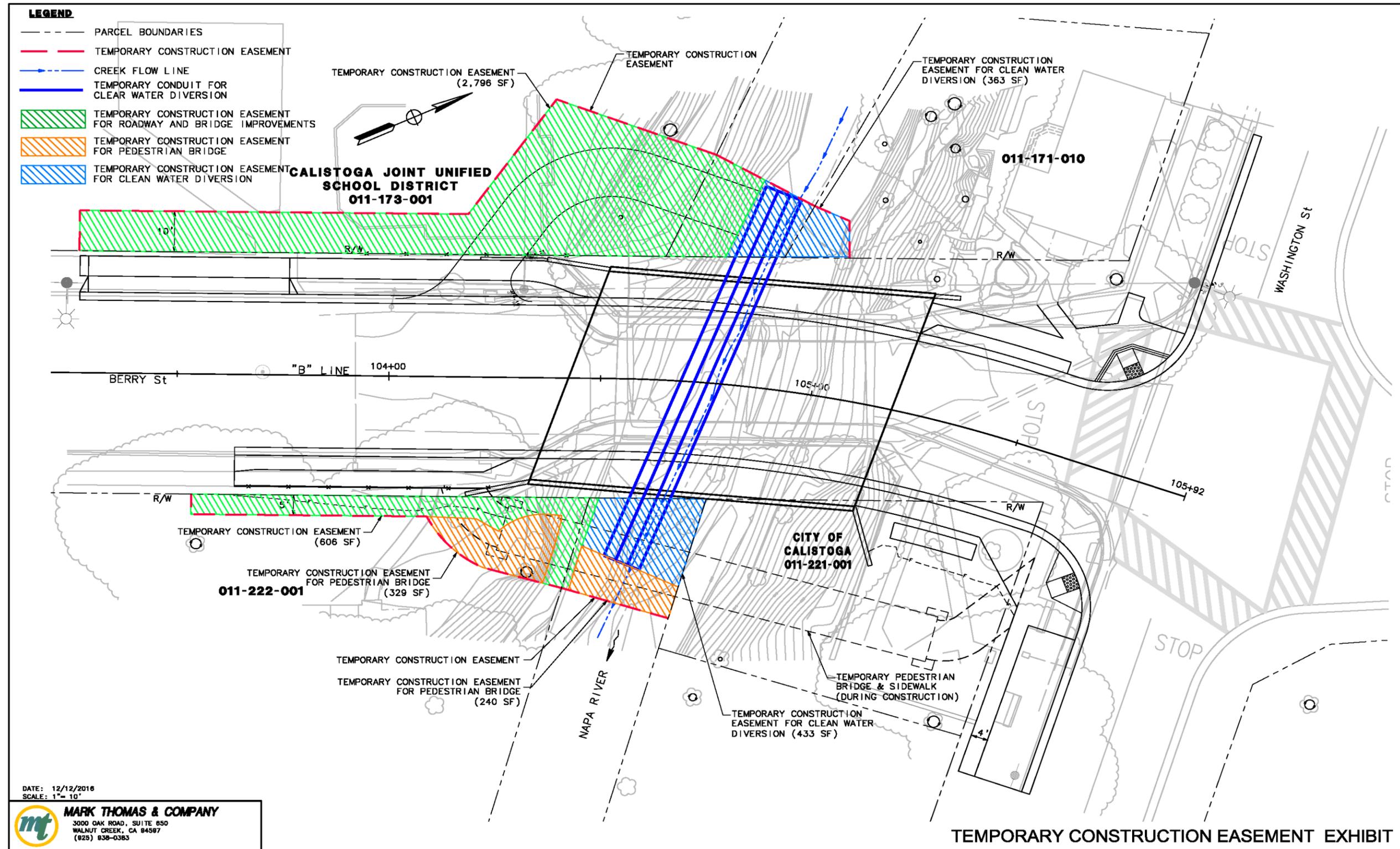


Figure 2 – Temporary Easements Figure

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98 Where Staff is in the Process:

99 City consultants and staff are currently working on the Property Acquisitions phase of  
100 work, in parallel with 100% design completion and final permits. Design and permitting  
101 is anticipated to be completed the first part of 2017. Permits will limit the contractor's  
102 access to the Napa River between June through October, so it is critical that the City  
103 acquire the Easements in time to build the bridge in the summer/fall of 2017, with an  
104 anticipated 5-month construction period for the Project.

105

106 The Property Acquisition process is as follows:

- 107 • Caltrans Grant Obligation of Funds to begin Property acquisition phase (E76)
- 108 • Obtain Title Reports
- 109 • Identify limits necessary for any permanent or temporary easements
- 110 • Develop Plats and Descriptions
- 111 • Complete Property Appraisals
- 112 • Send Offer Letter to Property Owners
- 113 • Negotiate or Proceed with Eminent Domain
- 114 • Notice of Intent (NOI, if unnegotiable)
- 115 • Resolution of Necessity (RON) Hearing
- 116 • Superior Court Filing
- 117 • Motion For and Order of Possession

118

119 We have completed everything up to the RON. Generally, if the acquisition of an  
120 easement is negotiated efficiently, the process can be completed in about 6-months.  
121 However, acquisition through the eminent domain process can be double or more than  
122 that amount of time (1-yr or more). For this Project, the acquisition process began May  
123 2016, and it is critical to stay on schedule for construction next summer.

124

125 City staff met with Mr. LeStrange on 8-6-2014 and 4-17-2015 to discuss the Project  
126 improvements, including the temporary bridge and approximate limits of impacts to his  
127 property. Mr. and Mrs. LeStrange notified City staff that they would not grant the  
128 Easements or access to their property to construct the Project (*see attached letters,*  
129 *Exhibit 3*). Our consultant team has also reached out in an attempt set up meetings and  
130 make contact with Mr. and Mrs. LeStrange, but phone calls from the consultant have not  
131 been returned by Mr. and Mrs. LeStrange.

132

133 City staff met and discussed the Project with both Mr. and Mrs. Meyer, on multiple  
134 occasions. To date, the Meyers have not yet indicated whether they will enter into a  
135 negotiated agreement for the purchase of the Easement. The Meyers have been  
136 helpful by allowing our team of consultants to access the Napa River via their property  
137 to perform many of the biological, cultural, and environmental studies required to  
138 complete designs and permitting for the Project. Staff is hopeful the Meyers will  
139 continue to work with the City; however, because time is of the essence, staff proposes  
140 to concurrently undertake the process of acquisition by eminent domain, of which the  
141 adoption of the Resolutions of Necessity is the next step.

142  
143 Staff will continue to attempt to negotiate a purchase of the Easements from the  
144 LeStranges and Meyers throughout the eminent domain proceedings.  
145

146 Staff is requesting that the City Council authorize acquisition, by eminent domain, of the  
147 Easements over a portion of the real property located at 1328 Berry Street, APN 011-  
148 222-001 ("LeStrange") for the construction of a temporary pedestrian bridge across the  
149 Napa River during construction of the new Berry Street Replacement Bridge Project and  
150 a portion of the real property located at 1341 Berry Street, APN 011-171-010 ("Meyer")  
151 for temporary construction access.  
152

153 **DISCUSSION:** As part of the Property Acquisition phase, the City's sub-consultant,  
154 Associated Right of Way Services, Inc., a highly-qualified professional real estate  
155 appraisal firm, appraised the properties to determine an appropriate amount of just  
156 compensation for the Easements the City is seeking to acquire.  
157

158 The LeStrange appraisal established just compensation of \$19,000 for the  
159 approximately 1,750 square feet of temporary construction and pedestrian access  
160 easement. The Meyers appraisal established just compensation at \$2,500 for the  
161 approximately 50 square foot temporary construction easement. Both property owners  
162 received offers based on these appraisals on November 7, 2016 (*see attached Exhibit*  
163 *2*).  
164

165 The Project will require the removal of trees from the LeStrange and Meyer properties.  
166 The most significant tree removal will be to the LeStrange property. There is a 52"  
167 Valley Oak tree on the LeStrange property that has to be removed due to its proximity to  
168 the new bridge footing excavation. The existing tree trunk is less than 2-feet away from  
169 temporary utility relocations and about 8-feet away from a 20+ foot excavation for the  
170 new bridge footing. The lead consulting firm, Mark Thomas (MTCO), hired Pacific Tree  
171 Care to prepare an arborist report for the Project (*see attached Exhibit 5*). The arborist  
172 report identified this 52" Valley Oak as having heavy dieback and bark beetle attack  
173 present. Pacific Tree Care is recommending removal of this tree within the next two  
174 years because of its condition and because several other trees in this location have  
175 been removed by the LeStranges due to the same fungal attack.  
176

177 After the City sent out the appraisals and offer letters for the Easements we received an  
178 e-mail from Mr. LeStrange on December 2, 2016 with the following objections:  
179

- 180 1. The Public interest and necessity in acquiring the property located  
181 on land owned by Scott and Linda Poggi-LeStrange has no public interest  
182 or necessity and puts pedestrians and children at possible risk of injury and  
183 great bodily harm.  
184
- 185 2. The plan is incompatible and will harm pedestrians and destroy the  
186 riverbank with irreparable destruction of the existing natural environment.  
187

188 3. Interest in the property is not necessary for the Project. There are  
189 multiple options including (but not limited to) rerouting pedestrian traffic  
190 through relocating the pedestrian walkway further downstream to its  
191 eventual relocation site now instead of after this Project is complete.

192  
193 Notice is hereby given to the City of Calistoga that injunctive relief will be  
194 pursued by Scott LeStrange and Linda Poggi-LeStrange to prevent the City  
195 of Calistoga from acquiring said property.

196  
197 Mr. and Mrs. LeStrange continue to be concerned about safety and liability issues  
198 associated with a temporary bridge on their property. The City previously responded to  
199 these safety and liability issues in a letter dated 7/13/2016, and made them aware that  
200 they are indemnified and protected from any liability associated with the Project. Our  
201 team of consultants has significant design experience with bridges and temporary  
202 structures that keep the public safe during construction. Our sub-consultant  
203 Environmental Science Associates (ESA) has also recently designed, permitted, and  
204 observed construction for the Napa River Restoration Project in Yountville and Oakville  
205 Cross Road. For this Project, they have designed the bank stabilization and channel  
206 restoration improvements that will be more environmentally friendly than the current  
207 conditions (e.g. removal of invasive species and making a more natural riverbed for  
208 aquatic life, etc.). Thus, the Project will not destroy the riverbank or the existing natural  
209 environment. Moreover, as noted below, the City has completed the CEQA and NEPA  
210 process.

211  
212 As described above, construction of a temporary bridge at a different location would  
213 cause greater private injury than what is currently being proposed. Because the City  
214 already owns property on the downstream side of the bridge across from LeStrange  
215 property, construction of the temporary bridge between the City property and the  
216 LeStrange property will cost less and result in the least private injury when compared  
217 with construction of the temporary bridge at other locations. Further, putting the  
218 temporary bridge in the planned location is necessary for public safety and  
219 convenience. Without a temporary bridge, pedestrians and bicyclists (many of whom  
220 are school children commuting to and from school) would be required to travel  
221 significantly out of their way to cross the river. A temporary bridge in the planned  
222 location will ensure that school children and other pedestrians and bicyclists continue to  
223 have safe and convenient access across the river. Lastly, without a temporary structure  
224 across the river at the planned location, there would have to be an alternate I-beam  
225 structure designed to carry the utilities such as power, water, recycle water, and gas  
226 across the river, to not cause injury to the public.

227  
228 The Resolutions of Necessity will authorize the City Attorney to commence an action in  
229 eminent domain to acquire the proposed Easements on the LeStrange property and  
230 Meyer property and to seek an Order of Possession for the Easements in accordance  
231 with the Eminent Domain Law.

232

233 The Resolutions of Necessity (*see attached Exhibit 1*) are effective only if adopted by an  
234 affirmative vote of two-thirds or more of the City Council members. This means that  
235 approval requires a minimum of 4 affirmative votes.

236  
237 **GENERAL PLAN CONSISTENCY:** This Project is consistent with General Plan Section  
238 7 - Infrastructure – Circulation, Part F – Goals, objectives, policies and actions, which  
239 provide as follows:

240  
241         Goal CIR-1 – Maintain and enhance Calistoga’s street network to serve existing  
242 and planned land uses while also maintaining the community’s small-town  
243 character.

244  
245         Objective CIR-1.1 – Develop Calistoga’s street network of arterials, collectors,  
246 and primary local and local streets as discussed in Section C of the Circulation  
247 Element.

248  
249 **CEQA/NEPA COMPLIANCE:** MTCO and Environmental Science Associates (ESA)  
250 completed CEQA and NEPA as required by Federal and State regulations in August  
251 2015 and February 2016, respectively.

252  
253 **FISCAL IMPACT:** The Project is 100% grant funded between Federal Highway Bridge  
254 funds (88.5%) and State Bridge Toll Monies (11.5%, off-system bridge), which are all  
255 administered by Caltrans Local Area Assistance Program.

256  
257 The eminent domain acquisition process requires an immediate deposit of the probable  
258 amount of just compensation for the properties with the State of California. The  
259 probable amount of compensation is determined by the appraised fair market value as  
260 previously described. Upon adoption of the Resolutions of Necessity and filing of the  
261 complaints in eminent domain, the City will need to deposit \$21,500 (\$19,000 for the  
262 LeStrange property and \$2,500 for the Meyers property) with the State. The initial  
263 source of these funds will be from the available cash in the Streets Capital fund.

- 264  
265 **ATTACHMENTS:**
- 266         1. Resolutions
  - 267         2. City of Calistoga’s November 4, 2016 Government Code Offers
  - 268         3. LeStrange/City Correspondence
  - 269         4. Initial Study/Mitigated Negative Declaration (Pages 91-95 –
  - 270                 Transportation/Traffic)
  - 271         5. Arborist Report
  - 272