

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:** January 10, 2017

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

13 **APPROVAL FOR FORWARDING:**



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 Dylan Feik, City Manager

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

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22 **RECOMMENDATION:**

- 23 1) City staff recommends that the City Council open the hearing on the
 24 Resolutions, take testimony, close the hearing;
- 25 2) Consider adoption of the Resolution of Necessity to acquire Temporary
 26 Construction and Public Access Easements (“Easements”) on 1328 Berry
 27 Street, APN 011-222-001;
- 28 3) Consider adoption of the Resolution of Necessity to acquire Temporary
 29 Construction and Public Access Easements (“Easements”) on 1341 Berry
 30 Street, APN 011-171-010.
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32 **BACKGROUND:** Berry Street Bridge crosses the Napa River just south of the
33 Washington/Berry/3rd Street intersection, in the City of Calistoga. This bridge is over
34 97 years old and structurally and seismically deficient and needs to be replaced.
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The Need for Temporary Construction and Public Access Easements:

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

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

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

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

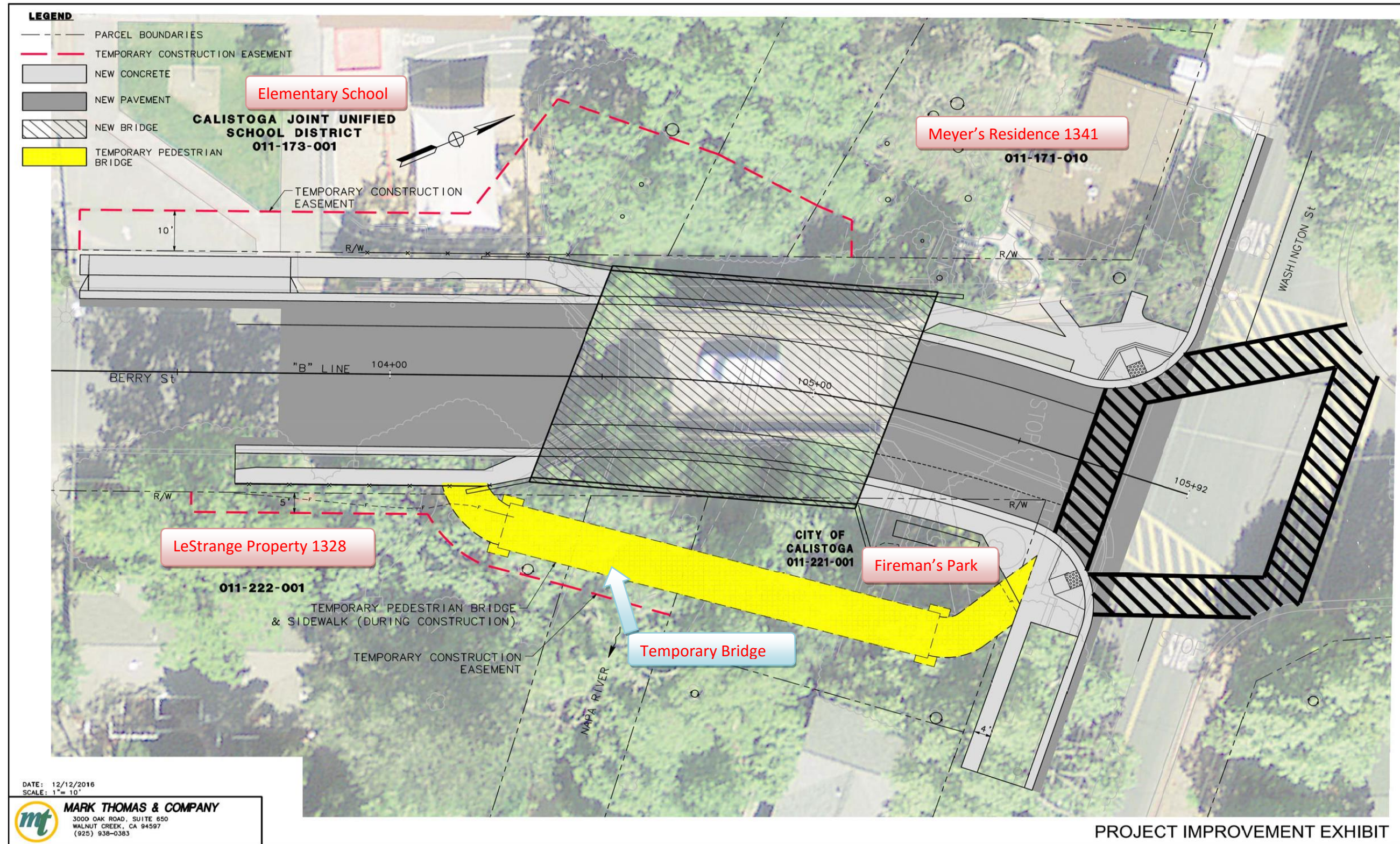
- City owns property at Fireman’s park on downstream side of the bridge. Connecting the temporary bridge to City owned property on one side of the river minimizes costs and Project impacts to private property when compared with the option of constructing the temporary bridge on the upstream side.
- The span is longer on the upstream side and there are significant rock retaining walls on the Meyer property that would be significantly impacted.
- Construction access – Construction access on the north bank is not feasible since it is extremely steep, and both the Meyer/Fireman’s Park properties have existing retaining walls supporting this bank. Therefore, the south bank

80 of the river (LeStrange/School side) must to be used for construction access
81 because of its soft slope. Large construction equipment (e.g. excavators,
82 bobcats, trucks) will need to drive down into the bottom of the Napa River to
83 remove the existing bridge and build the new bridge. A 12-foot wide
84 construction access road has to be built, and be a safe road down the bank
85 to convey construction equipment to the bottom of the River. This is the
86 largest temporary easement needed for the project and the City has been
87 working with the School District for the acquisition of these necessary
88 easement rights.

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

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

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Figure 1 – Proposed Berry Street Bridge Improvements

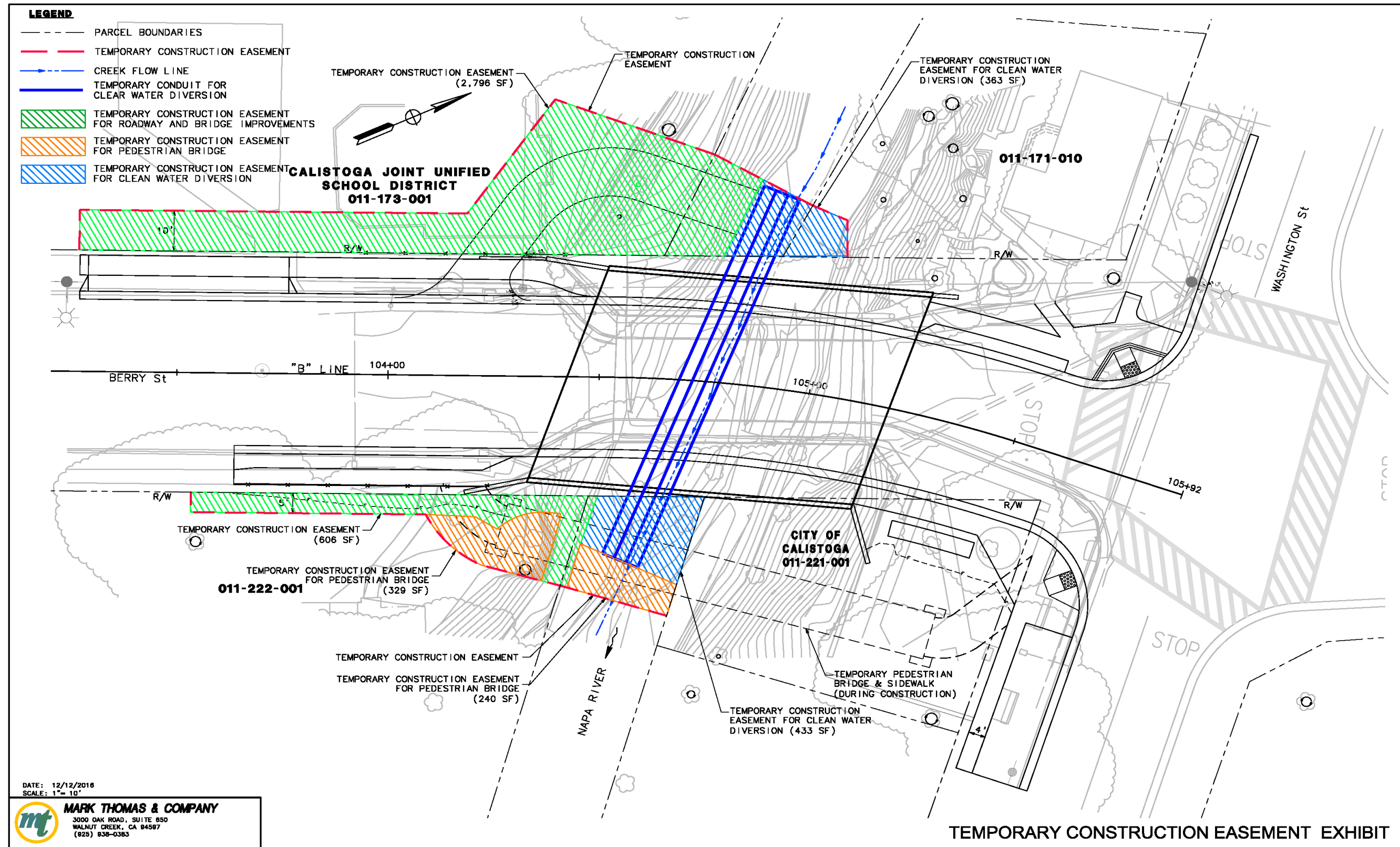


Figure 2 – Temporary Easements Figure

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Where Staff is in the Process:

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

The Property Acquisition process is as follows:

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

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

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

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

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148 Staff will continue to attempt to negotiate a purchase of the Easements from the
149 LeStranges and Meyers throughout the eminent domain proceedings.

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151 Staff is requesting that the City Council authorize acquisition, by eminent domain, of the
152 Easements over a portion of the real property located at 1328 Berry Street, APN 011-
153 222-001 ("LeStrange") for the construction of a temporary pedestrian bridge across the
154 Napa River during construction of the new Berry Street Replacement Bridge Project and
155 a portion of the real property located at 1341 Berry Street, APN 011-171-010 ("Meyer")
156 for temporary construction access.

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

162
163 The LeStrange appraisal established just compensation of \$19,000 for the
164 approximately 1,750 square feet of temporary construction and pedestrian access
165 easement. The Meyers appraisal established just compensation at \$2,500 for the
166 approximately 50 square foot temporary construction easement. Both property owners
167 received offers based on these appraisals on November 7, 2016 (*see attached Exhibit*
168 *2*).

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

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

- 184
- 185 1. The Public interest and necessity in acquiring the property located
186 on land owned by Scott and Linda Poggi-LeStrange has no public interest
187 or necessity and puts pedestrians and children at possible risk of injury and
188 great bodily harm.
 - 189 2. The plan is incompatible and will harm pedestrians and destroy the
190 riverbank with irreparable destruction of the existing natural environment.
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193 3. Interest in the property is not necessary for the Project. There are
194 multiple options including (but not limited to) rerouting pedestrian traffic
195 through relocating the pedestrian walkway further downstream to its
196 eventual relocation site now instead of after this Project is complete.

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

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

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

232
233 The Resolutions of Necessity will authorize the City Attorney to commence an action in
234 eminent domain to acquire the proposed Easements on the LeStrange property and
235 Meyer property and to seek an Order of Possession for the Easements in accordance
236 with the Eminent Domain Law.

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

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242 **GENERAL PLAN CONSISTENCY:** This Project is consistent with General Plan Section
243 7 - Infrastructure – Circulation, Part F – Goals, objectives, policies and actions, which
244 provide as follows:

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

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

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254 **CEQA/NEPA COMPLIANCE:** MTCO and Environmental Science Associates (ESA)
255 completed CEQA and NEPA as required by Federal and State regulations in August
256 2015 and February 2016, respectively.

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

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

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270 **ATTACHMENTS:**

- 271 1. (a) Draft Resolution – APN 011-222-001
- 272 1. (b) Draft Resolution – APN 011-171-010
- 273 2. City of Calistoga’s November 4, 2016 Government Code Offers
- 274 3. LeStrange/City Correspondence
- 275 4. Initial Study/Mitigated Negative Declaration (Pages 91-95 –
- 276 Transportation/Traffic)
- 277 5. Arborist Report
- 278