

City of Calistoga

Staff Report

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TO: Honorable Mayor and City Councilmembers
FROM: Derek Rayner, Deputy Public Works Director
VIA: Michael Kirn, Public Works Director/City Engineer
DATE: January 17, 2017
SUBJECT: Consideration of Resolutions of Necessity to Acquire Property by Eminent Domain, for Temporary Construction and Public Access Easements Required to Build the Berry Street Replacement Bridge Project at 1328 Berry Street, APN 011-222-001, and 1341 Berry 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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RECOMMENDATION:

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- 1) City staff recommends that the City Council open the hearing on the Resolutions, take testimony, close the hearing;
- 2) Consider adoption of the Resolution of Necessity to acquire Temporary Construction and Public Access Easements (“Easements”) on 1328 Berry Street, APN 011-222-001;
- 3) Consider adoption of the Resolution of Necessity to acquire Temporary Construction and Public Access Easements (“Easements”) on 1341 Berry Street, APN 011-171-010.

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.

35
36 *The Need for Temporary Construction and Public Access Easements:*

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

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

52
53 The Berry Street Bridge Replacement Project Initial Study and Mitigated Negative
54 Declaration (*attached as Exhibit 4*) included a mitigation measure to install a
55 pedestrian bridge during construction to maintain pedestrian access and a safe
56 route to school and to ensure that low income residences are not unduly
57 inconvenienced by the project. The proposed location of the temporary bridge
58 avoids any detouring of pedestrian and bicycle traffic during construction. Without a
59 temporary bridge, the public would have to detour via the Lincoln Avenue Bridge
60 (1/2 mile detour) or through Pioneer Park (1/3 mile detour during the summer).

61 Further, the temporary bridge is also necessary to support temporary utilities (i.e.
62 gas, electric, water, recycled water) that must be maintained during construction. In
63 accordance with California Environmental Quality Act ("CEQA"), the City of
64 Calistoga approved the Berry Street Bridge Initial Study and Mitigated Negative
65 Declaration for the Project on August 12, 2015.

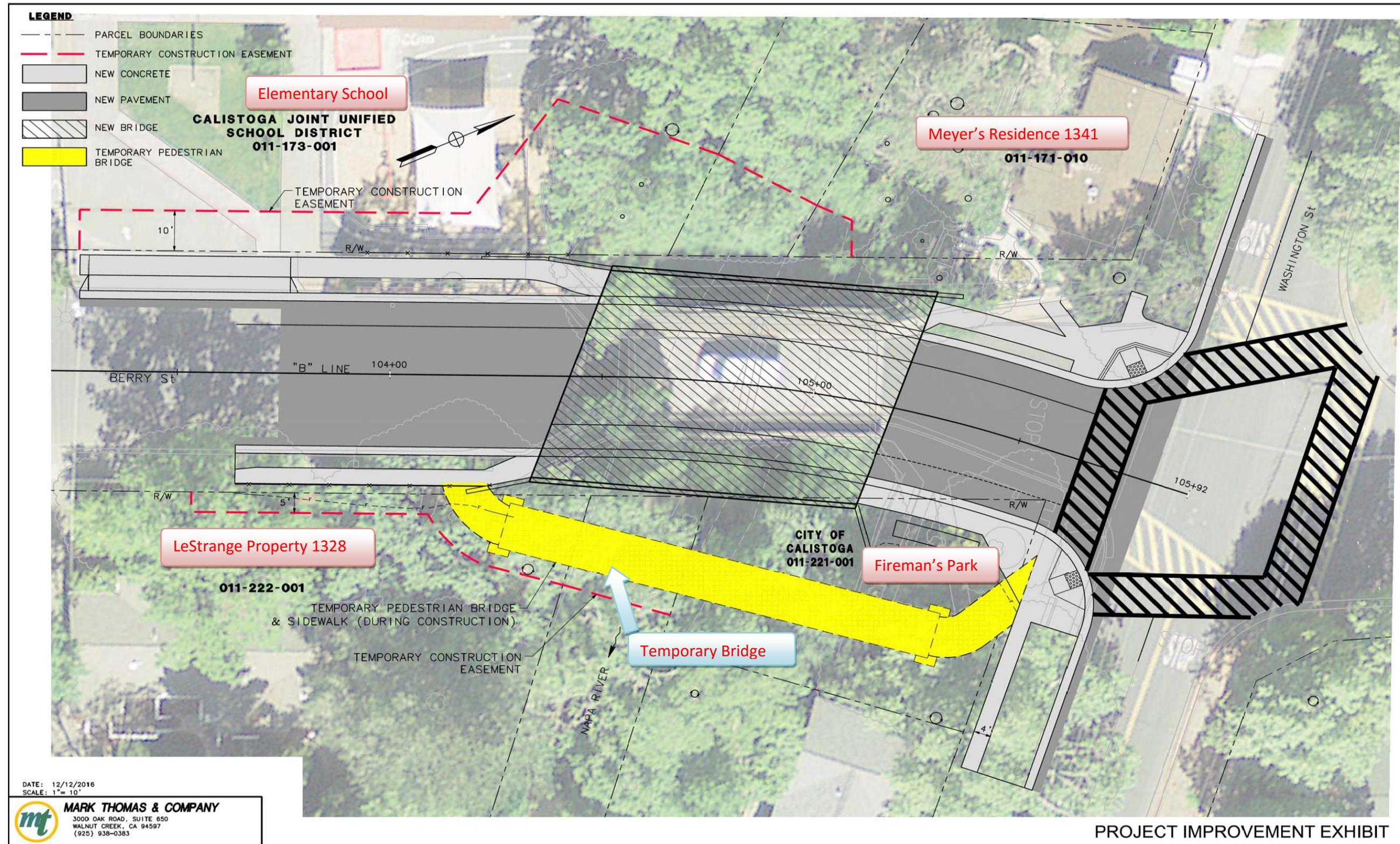
66
67 To ensure the greatest public good and the least private injury, the temporary bridge
68 must to be located on the downstream side of the existing bridge for the following
69 reasons:

- 70
- 71 • City owns property at Fireman's park on downstream side of the bridge.
72 Connecting the temporary bridge to City owned property on one side of the
73 river minimizes costs and Project impacts to private property when compared
74 with the option of constructing the temporary bridge on the upstream side.
 - 75 • The span is longer on the upstream side and there are significant rock
retaining walls on the Meyer property that would be significantly impacted.

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- 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 of the river (LeStrange/School side) must to be used for construction access because of its soft slope. Large construction equipment (e.g. excavators, bobcats, trucks) will need to drive down into the bottom of the Napa River to remove the existing bridge and build the new bridge. A 12-foot wide construction access road has to be built, and be a safe road down the bank to convey construction equipment to the bottom of the River. This is the largest temporary easement needed for the project and the City has been working with the School District for the acquisition of these necessary easement rights.
- 88
- Overhead utilities along the upstream side of bridge prevent the temporary bridge from being installed at that location. The City went through an exhaustive process working with all of the utility companies and determined that the upstream side is the only place the utility companies can place their overhead lines.
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93 Figure 1 and 2 on the following page show the affected properties with improvement
94 limits and proposed Temporary Construction Easements.

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Figure 1 – Proposed Berry Street Bridge Improvements

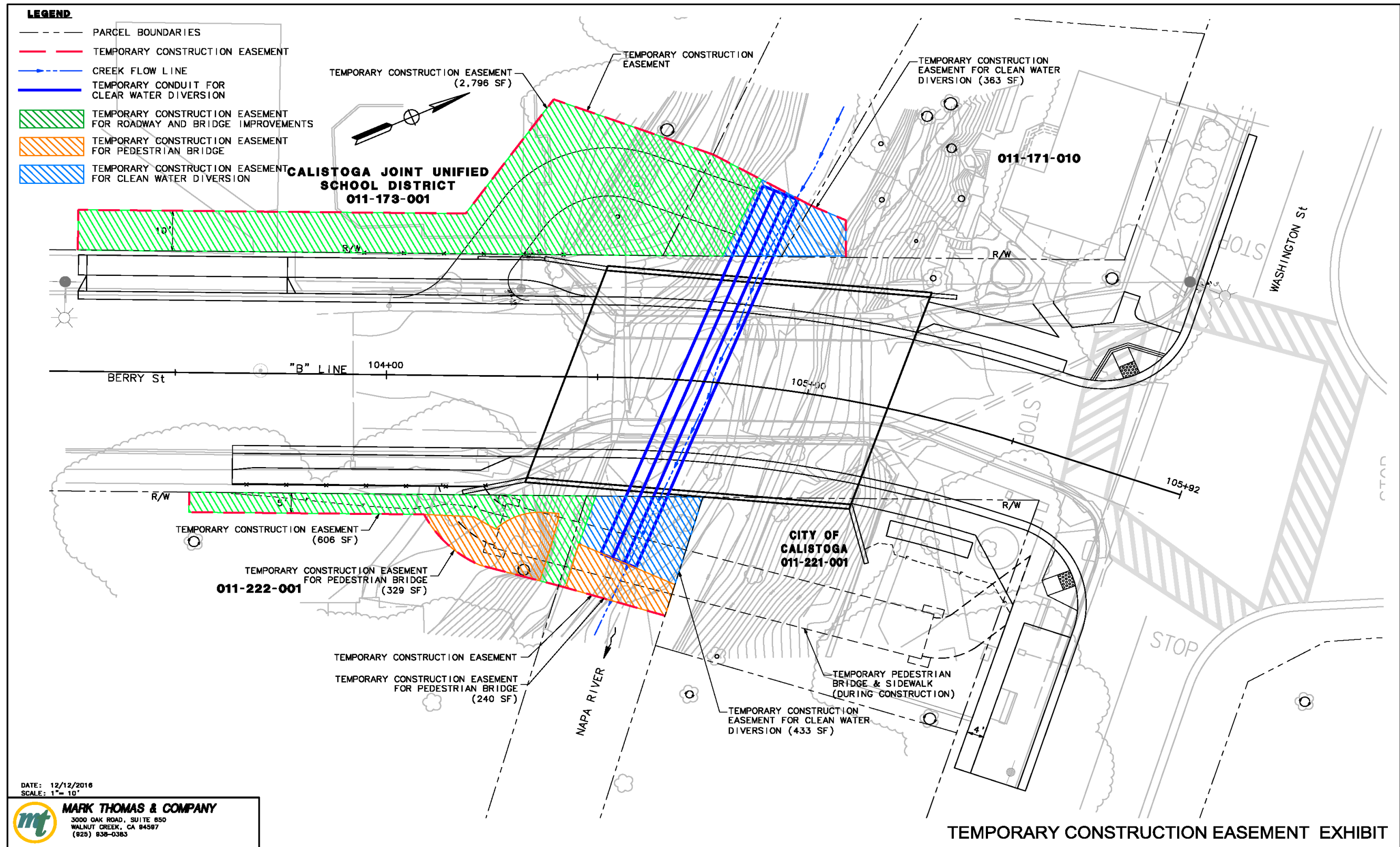


Figure 2 – Temporary Easements Figure

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

109
110 The Property Acquisition process is as follows:

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

122
123 We have completed everything up to the RON. Generally, if the acquisition of an
124 easement is negotiated efficiently, the process can be completed in about 6-months.
125 However, acquisition through the eminent domain process can be double or more than
126 that amount of time (1-yr or more). For this Project, the acquisition process began May
127 2016, and it is critical to stay on schedule for construction next summer.

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

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

146
147 Staff will continue to attempt to negotiate a purchase of the Easements from the
148 LeStranges and Meyers throughout the eminent domain proceedings.

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

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

161
162 The LeStrange appraisal established just compensation of \$19,000 for the
163 approximately 1,750 square feet of temporary construction and pedestrian access
164 easement. The Meyers appraisal established just compensation at \$2,500 for the
165 approximately 50 square foot temporary construction easement. Both property owners
166 received offers based on these appraisals on November 7, 2016 (*see attached Exhibit*
167 *2*).

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

180
181 After the City sent out the appraisals and offer letters for the Easements we received an
182 e-mail from Mr. LeStrange on December 2, 2016 with the following objections:

- 183
184 1. The Public interest and necessity in acquiring the property located
185 on land owned by Scott and Linda Poggi-LeStrange has no public interest
186 or necessity and puts pedestrians and children at possible risk of injury and
187 great bodily harm.
- 188
189 2. The plan is incompatible and will harm pedestrians and destroy the
190 riverbank with irreparable destruction of the existing natural environment.

191

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

196
197 Notice is hereby given to the City of Calistoga that injunctive relief will be
198 pursued by Scott LeStrange and Linda Poggi-LeStrange to prevent the City
199 of Calistoga from acquiring said property.
200

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

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

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

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

240
241 **GENERAL PLAN CONSISTENCY:** This Project is consistent with General Plan Section
242 7 - Infrastructure – Circulation, Part F – Goals, objectives, policies and actions, which
243 provide as follows:

244
245 Goal CIR-1 – Maintain and enhance Calistoga’s street network to serve existing
246 and planned land uses while also maintaining the community’s small-town
247 character.

248
249 Objective CIR-1.1 – Develop Calistoga’s street network of arterials, collectors,
250 and primary local and local streets as discussed in Section C of the Circulation
251 Element.

252
253 **CEQA/NEPA COMPLIANCE:** MTCO and Environmental Science Associates (ESA)
254 completed CEQA and NEPA as required by Federal and State regulations in August
255 2015 and February 2016, respectively.

256
257 **FISCAL IMPACT:** The Project is 100% grant funded between Federal Highway Bridge
258 funds (88.5%) and State Bridge Toll Monies (11.5%, off-system bridge), which are all
259 administered by Caltrans Local Area Assistance Program.

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

268
269 **ATTACHMENTS:**

- 270 1. (a) Draft Resolution – APN 011-222-001
- 271 1. (b) Draft Resolution – APN 011-171-010
- 272 2. City of Calistoga’s November 4, 2016 Government Code Offers
- 273 3. LeStrange/City Correspondence
- 274 4. Initial Study/Mitigated Negative Declaration (Pages 91-95-Transportation/Traffic)
- 275 5. Arborist Report
- 276 6. Correspondence from Jeff Dodd dated 12/20/2016
- 277