

# Napa County

1195 THIRD STREET  
SUITE 310  
NAPA, CA 94559



## Agenda

**Tuesday, September 16, 2025**

**9:00 AM**

**Board of Supervisors Chambers  
1195 Third Street, Third Floor**

### **Flood Control and Water Conservation District**

*Joelle Gallagher, District 1 (Chairperson)*  
*Scott Sedgley, City of Napa (Vice Chairperson)*  
*Liz Alessio, District 2*  
*Anne Cottrell, District 3*  
*Christopher DeNatale, City of Napa*  
*Paul Dohring, City of St. Helena*  
*Irais Lopez-Ortega, City of Calistoga*  
*Amber Manfree, District 4*  
*Marjorie Mohler, Town of Yountville*  
*Belia Ramos, District 5*  
*Pierre Washington, City of American Canyon*

**GENERAL INFORMATION**

The Napa County Flood Control and Water Conservation District meets as specified in its adopted annual calendar in regular session at 1195 Third Street, Suite 305, Napa, California 94559. The meeting room is wheelchair accessible. Assistive listening devices and interpreters are available through the Clerk of the Board of the Napa County Board of Supervisors. Requests for disability related modifications or accommodations, aids or services may be made to the Clerk of the Board's office no less than 72 hours prior to the meeting date by contacting (707) 253-4580.

**The agenda is divided into three sections:**

**CONSENT ITEMS** - These matters may include routine financial or administrative actions, as well as the final adoption of two-reading ordinances and are approved by a single vote.

**PUBLIC HEARINGS** - These items are noticed public hearings pursuant to government code.

**ADMINISTRATIVE ITEMS** - These items include significant policy and administrative actions and are classified by program areas.

All materials relating to an agenda item for an open session of a regular meeting of the Napa County Flood Control and Water Conservation District which are delivered to the Clerk and are provided to a majority or all of the Directors of the Board, staff or the public within 72 hours of but prior to the meeting will be available for public inspection, at the time of such distribution, in the office of the District Secretary, 1195 Third Street, Suite 305, Napa, California 94559, Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m., except for County holidays. Materials distributed to a majority or all of the members of the Board at the meeting will be available for public inspection at the public meeting if prepared by the members of the Board or County staff and after the public meeting if prepared by some other person. Availability of materials related to agenda items for public inspection does not include materials which are exempt from public disclosure under Government Code sections 6253.5, 6254, 6254.3, 6254.7, 6254.15, 6254.16, or 6254.22.

**ANY MEMBER OF THE AUDIENCE DESIRING TO ADDRESS THE BOARD ON A MATTER ON THE AGENDA** please proceed to the podium and, after receiving recognition from the Chairperson, give your name and your comments or questions. In order that all interested parties have an opportunity to speak, please be brief and limit your comments to the specific subject under discussion. Time limitations shall be at the discretion of the Chairperson or Board.

**AGENDA AVAILABLE ONLINE AT [www.countyofnapa.org](http://www.countyofnapa.org) or [www.napaflooddistrict.org](http://www.napaflooddistrict.org)**

**How to Watch or Listen to the Napa County Flood Control and Water Conservation District Meetings**

The Napa County Flood Control and Water Conservation District will continue to meet pursuant to the adopted 2024 calendar available at the following link:

<https://www.countyofnapa.org/1429/Board-of-Supervisors-Special-Districts-C>

The District realizes that not all County residents have the same ways to stay engaged, so several alternatives are offered. Please watch or listen to the Napa County Flood Control and Water Conservation District meeting in one of the following ways:

1. Attend in-person at the Board of Supervisors Chambers, 1195 Third Street, Napa, CA 94559.
2. Watch on Zoom via [www.zoom.us/join](http://www.zoom.us/join) and enter Meeting ID 827-699-932-82 or listen on Zoom by calling 1-669-444-9171 then enter Meeting ID 827-699-932-82.
3. Watch via the Internet – view the Live Stream via Granicus by going to the following link:  
[http://napa.granicus.com/ViewPublisher.php?view\\_id=5](http://napa.granicus.com/ViewPublisher.php?view_id=5)
4. You may submit public comment for any item that appears on the agenda, or general public comment for any item or issue that does not appear on the agenda, as follows:  
Via email: send your comment to the following email address:  
[publiccomment@countyofnapa.org](mailto:publiccomment@countyofnapa.org). EMAILS WILL NOT BE READ ALOUD.

If you have any questions, contact us via telephone at (707) 253-4580 or email [clerkoftheboard@countyofnapa.org](mailto:clerkoftheboard@countyofnapa.org).

**1. CALL TO ORDER; ROLL CALL**

**2. PLEDGE OF ALLEGIANCE**

**3. PRESENTATIONS AND COMMENDATIONS**

**4. CONSENT ITEMS**

- A. Approve and authorize Agreement No. 260130B (FC) with Clover Flat Land Fill, LLC, to fund Construction of the Bale Slough-Bear Creek Restoration Project, Group B, and approve a Budget Amendment. (Fiscal Impact: \$1,550,000 Expense and Revenue; Flood District - Watershed Projects; Not Budgeted; Discretionary) [25-1513](#)  
[4/5 vote]

**Attachments:** [Agreement](#)

- B. Approve Plans and Specifications for Napa River/Napa Creek Flood Protection Project, Floodwalls North of the Bypass, Increment 2 and authorize the advertisement for sealed bids, and opening of the bids at a time, date, and location to be published by the District Manager pursuant to Public Contract Code section 20150.8. (No Fiscal Impact) [25-1528](#)

**Attachments:** [Exhibit A](#)

- C. Adopt a Resolution establishing the Fiscal Year 2025-26 appropriation limit and estimated revenue subject to the limit for the Community Facilities District-Oakville to Oak Knoll Maintenance, Monitoring, and Restoration Project (CFD OVOK) as required by Article XIII B of the California Constitution. (No Fiscal Impact; Mandatory) [25-1537](#)

**Attachments:** [Resolution](#)  
[Memo](#)

- D. Approve minutes from the August 12, 2025 meeting. [25-1671](#)

**Attachments:** [August 12, 2025](#)

**5. DISCUSSION OF ITEMS REMOVED FROM THE CONSENT CALENDAR**

**6. PUBLIC COMMENT**

At this time, anyone may address the Board of the Napa County Flood Control and Water Conservation District regarding any subject not on today's agenda over which the Board has jurisdiction. Individuals will be limited to a three-minute presentation. No action will be taken by the Board of the Napa County Flood Control and Water Conservation District as a result of any item presented at this time.

**7. ADMINISTRATIVE ITEMS**



- A. Approve and authorize Project Partnership Agreement No. 260135B (FC) and Amendment 3 of the Project Cooperation Agreement No. 260149B (FC) between the Department of the Army and the Napa County Flood Control and Water Conservation District for Construction of the Napa River/Napa Creek Flood Protection Project. (Fiscal Impact: \$48,300,000 Revenue; Flood Project Fund; Budgeted; Discretionary) [25-1531](#)

**Attachments:** [Project Partnership Agreement](#)  
[Project Cooperation Agreement](#)  
[Implementation Plan](#)

8. PUBLIC HEARINGS
9. DISTRICT MANAGER'S/ENGINEER'S REPORTS AND ANNOUNCEMENTS
10. BOARD OF DIRECTORS REPORTS AND ANNOUNCEMENTS
11. BOARD OF DIRECTORS FUTURE AGENDA ITEMS
12. CLOSED SESSION
13. ADJOURNMENT

**ADJOURN TO THE NAPA COUNTY FLOOD CONTROL AND WATER  
CONSERVATION DISTRICT REGULAR MEETING, TUESDAY, OCTOBER 14, 2025 AT  
9:00 AM.**

I HEREBY CERTIFY THAT THE AGENDA FOR THE ABOVE STATED MEETING WAS POSTED AT A LOCATION FREELY ACCESSIBLE TO MEMBERS OF THE PUBLIC AT THE NAPA COUNTY ADMINISTRATIVE BUILDING, 1195 THIRD STREET, NAPA, CALIFORNIA ON FRIDAY, SEPTEMBER 12, 2025 BY 5:00 P.M. A HARDCOPY SIGNED VERSION OF THE CERTIFICATE IS ON FILE WITH THE DISTRICT SECRETARY AND AVAILABLE FOR PUBLIC INSPECTION.

Neha Hoskins (By e-signature)

NEHA HOSKINS, District Secretary



# Napa County

## Board Agenda Letter

1195 THIRD STREET  
SUITE 310  
NAPA, CA 94559  
www.countyofnapa.org  
Main: (707) 253-4580

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Flood Control and Water Conservation District **Agenda Date:** 9/16/2025

**File ID #:** 25-1513

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**TO:** Napa County Flood Control and Water Conservation District  
**FROM:** Richard Thomasser - District Manager  
**REPORT BY:** Jeremy Sarrow - Watershed and Flood Control Operations Manager  
**SUBJECT:** Approve Funding Agreement No. 260130B (FC) with Clover Flat Land Fill, LLC

### **RECOMMENDATION**

Approve and authorize Agreement No. 260130B (FC) with Clover Flat Land Fill, LLC, to fund Construction of the Bale Slough-Bear Creek Restoration Project, Group B, and approve a Budget Amendment. (Fiscal Impact: \$1,550,000 Expense and Revenue; Flood District - Watershed Projects; Not Budgeted; Discretionary)  
[4/5 vote]

### **BACKGROUND**

Previously, at the August 13, 2024 Flood Board meeting, the District requested the Flood Board approve an authorize an agreement between the District and Clover Flat Land Fill, LLC (CFLF), allowing CFLF the right of first refusal to fund construction of the Bale Slough - Bear Creek Restoration Project - Group B ("Project"). The Flood Board approved and authorized the right of first refusal agreement at the meeting allowing the District to work with CFLF and other stakeholders to develop the funding agreement that is now before you for consideration for implementation of the Project.

The Bale Slough - Bear Creek Restoration Project will continue restoration activities within the Napa River watershed that were started with the Rutherford Reach Restoration Project and the recently completed Oakville to Oak Knoll Restoration Project. The 1.6-mile Project reach has been divided into three construction groups (A-C), encompassing fourteen (14) distinct restoration sites. The District has completed the environmental review of the Project as required by CEQA, and a Mitigated Negative Declaration was adopted. The project goals include reducing sediment loads and enhancing biological complexity throughout the river channel and riparian corridor. Construction of the Group A restoration sites was completed in 2023 and Group C is currently under construction and will be completed by the fall of 2025. Construction of Group B would be completed in the summer of 2026, dependent on approval of the Funding Agreement that is the subject of this agenda item.

Below are brief descriptions of the three groups in this restoration reach.

Group A (completed in 2023)

Group A consists of restoration sites 1-5, which is the initial construction group. Restoration involved shaping the channel to increase hydraulic diversity and reconnect the stream to its floodplain. The instream habitat

structures, expanded riparian area and erosion protection will allow for a healthier ecosystem without creating additional risk to landowners in the area.

Group B (The subject of this agenda item)

Group B consists of restoration sites 6-11. Restoration actions will be similar to Group A involving reshaping the creek channel and expanding the riparian corridor to create habitat diversity and reconnect the waterway to adjacent floodplains.

Group C (currently under construction)

Group C consists of restoration sites 12-14. Restoration actions are similar to Groups A and B involving reshaping the creek channel to increase habitat diversity, re-connecting the waterway to adjacent floodplains and the addition of an expanded alluvial floodplain/wetland complex just upstream Highway 29.

Requested Actions:

1. Approve and Authorize Funding Agreement No. 260130B (FC) with Clover Flat Land Fill, LLC
2. Approve Budget Amendment for the following:
  - a. Increase Revenue by \$1,550,000 in Subdivision 8000500 Account 47500 - Donations/Contributions
  - b. Increase Appropriations by \$1,550,000 in Subdivision 8000500 Account 52360 - Construction Services

### **FISCAL & STRATEGIC PLAN IMPACT**

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Construction of the Project is consistent with the direction from the Flood Board to accomplish watershed restoration projects of this type.
Is the general fund affected?	No
Future fiscal impact:	The Project would be funded by CFLF and a portion on remaining Measure A funds. Long term maintenance would be funded by the OVOK Community Facilities District that was created and is managed by the District.
Consequences if not approved:	The Project would not be funded by CFLF and the District would seek grant funds for implementation

### **ENVIRONMENTAL IMPACT**

ENVIRONMENTAL DETERMINATION: The project is the subject of a Mitigated Negative Declaration (SCH No. 20211090589), which was adopted by the Napa County Flood Control District on November 15, 2021. According to the Mitigated Negative Declaration, the proposed project would have, if mitigation measures not included, potentially significant environmental impacts in the following areas: Aesthetics, Biological Resources, Transportation/Traffic, Cultural Resources, and Air Quality. This project site is not on any of the lists of hazardous waste sites enumerated under Government Code section 65962.5.



**AGREEMENT TO FUND A PORTION OF THE  
NAPA RIVER RESTORATION PROJECT**

**AGREEMENT NO. 260130B (FC)**

This AGREEMENT TO FUND (“**Agreement**”) is entered into by and between CLOVER FLAT LAND FILL, INC., a California corporation (“**Clover Flat**”) and NAPA FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a special District of the State of California (the “**District**”) as of September, 16 2025, (the “**Execution Date**”). The District and Clover Flat are sometimes referred to as “**Parties**” and may be individually referred to as “**Party**.”

**RECITALS**

**WHEREAS**, Clover Flat intends to mitigate impacts at Clover Flat Landfill, located at 4380 Silverado Trail, Calistoga, in unincorporated Napa County, California, (“**Clover Flat Property**”); and

**WHEREAS**, Clover Flat is required to provide both on-site and off-site mitigation for the impacts to an unnamed drainage referred to as “**Creek 2**,” which lies within the Napa River Watershed; and

**WHEREAS**, on June 4, 2025, the San Francisco Bay Regional Water Quality Control Board (“**RWQCB**”) issued a Notice of Applicability for Enrollment of the Clover Flat Resource Recovery Park under the Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide (Order No. 2022-0048-DWQ) (“**Section 401**”); and

**WHEREAS**, on September 8, 2025, the California Department of Fish and Wildlife (“**CDFW**”) issued a Lake and Streambed Alteration Agreement to Clover Flat for the Clover Flat Resource Recovery Park Restoration (“**LSAA**”); and

**WHEREAS**, the RWQCB and CDFW are referred to collectively as the “**Agencies**”; and

**WHEREAS**, the District will undertake the Bale Slough-Bear Creek Restoration Project, (the “**Project**”), including “Construction Group B,” a project with high aquatic and biological resource values, within the Napa River Watershed; and

**WHEREAS**, Clover Flat, the RWQCB, and CDFW have agreed that Clover Flat’s off-site mitigation requirements can be satisfied, in part, by Clover Flat providing funds to the District for the purpose of supporting the Project; and

**WHEREAS**, the District desires to accept Clover Flat’s contribution to a portion of the funding required for implementation of the Project, through a one-time payment to the District.

## TERMS

NOW, THEREFORE, for valuable consideration, the Parties agree as follows:

1. Effective Date. This Agreement shall become effective upon written approval by the RWQCB and CDFW (the “**Effective Date**”). Clover Flat shall provide written notice of such approval or disapproval of this Agreement to the District within forty-eight (48) hours of receipt of such determination.
2. Funding. Clover Flat shall pay One Million Five Hundred and Fifty Thousand Dollars (\$1,550,000.00) to the District (“**Project Funds**”) for the sole purpose of funding the activities in support of the Project as described in **Exhibit A** (“**Project Description**”) and depicted in **Exhibit A-1** attached hereto and incorporated by this reference.
3. Payment Date. Clover Flat shall pay the Project Funds in full to the District on or before December 1, 2025 (“**Payment Date**”).
4. Permitting and Environmental Review. The District shall be responsible for obtaining all permits, performing the required environmental review, and implementing any required mitigation measures and permit conditions for the Project. The Project will not be constructed until all environmental review compliance is complete and permits are obtained.
5. Obligations to Run with the Land. All rights, privileges, duties, and obligations of Clover Flat under this Agreement shall inure to and shall benefit and burden Clover Flat’s successors and assigns to the ownership of the Clover Flat Property.
6. Restriction on Use of Project Funds. The District shall only use the Project Funds for the purpose of funding District activities in support of the Project in accordance with the Project Description, the Project Funds may not be expended for any other purpose or project.
7. Complete Expenditure Date; Reimbursement of Project Funds. All Project Funds must be expended no later than ten (10) years from the Effective Date (“**Expenditure Date**”). In the event any or all of the Project Funds are not expended on the Project by the Expenditure Date, the District shall turn over the unexpended Project Funds to the Agencies or as otherwise directed by the Agencies at that time (“**Reimbursement**”) and shall provide Clover Flat with notice of the same. The District shall make the Reimbursement within ninety (90) days of any District decision to terminate, suspend, or materially change the nature of the Project (“**Termination Date**”).
8. Accounting. The District shall provide an accounting of the use and allocation of Project Funds on an annual basis no later than July 31 of each year, commencing on July 31, 2026. The District shall provide Clover Flat and the Agencies with a final accounting within thirty (30) days of the earlier of the following: (a) complete expenditure of the Project Funds, (b) the Termination Date, or (c) the Expenditure Date. The annual accounting obligation shall terminate after the District provides the final accounting.

9. **Invoices and Receipts.** The District shall establish and maintain accurate and thorough records with respect to the use of Project Funds. The District shall retain copies of all invoices, bills, demand, payrolls, time records, contract, and other reasonable evidence or substantiation (“**Invoices**”) of the District’s expenditure of Project Funds. Except as otherwise authorized, Invoices shall be maintained for the later of: (a) the period of time prescribed by District’s records retention policies or other applicable law; or (b) three (3) years from the date they were generated, except that records that are the subject of audit findings shall be retained for three (3) years or until such audit findings have been resolved, whichever is later. The District shall provide the Agencies and Clover Flat with a copy of such Invoices no later than thirty (30) days after written request.

10. **Notices.** Any notice or transmittal which any Party may desire to give to the other Party under this Agreement must be in writing and shall be given by certified mail (postage prepaid and return receipt requested), personal delivery, or nationally recognized overnight courier service to the Party to whom the notice is directed at the address of the Party as set forth below, or to such other address as that Party may later designate by written notice to the other Party. A courtesy copy of all notices shall be sent via e-mail.

**To Clover Flat:** Waste Connections  
3 Waterway Square Place, Suite 110  
The Woodlands, TX 77380  
Attn: John Perkey  
Telephone: (832) 442-2240  
Email: johnpe@wcnx.org

*with copy to:* Cox, Castle & Nicholson LLP  
50 California Street, Suite 3200  
San Francisco, CA 94111  
Attn: Arielle Harris  
Telephone: (415) 262-5104  
Email: aharris@coxcastle.com

**To District:** Napa Flood Control and Water Conservation District  
Jeremy Sarrow  
804 1st Street  
Napa , CA 94559  
Telephone: 707-259-8204  
Email: Jeremy.Sarrow@countyofnapa.org

*with copy to:* Shana A. Bagley, *District Counsel*  
1195 Third Street, Suite 301  
Napa, CA 94559  
Telephone: 707-253-4523  
Email: shana.bagley@countyofnapa.org

Any notice shall be deemed received on the date of delivery if delivered by personal service, five (5) days after mailing if sent by certified mail, and on the date of delivery or refused delivery as shown by the records of the overnight courier if sent via nationally recognized overnight courier.

11. Indemnity. The Parties shall indemnify and hold the other harmless from and against any and all claims, losses, costs, damages, expenses, liabilities, liens, actions, and causes of actions, including reasonable attorney's fees and costs (“**Claims**”) asserted against or incurred by either party (an “**Indemnified Party**”) from any cause arising out of or relating directly or indirectly to the performance or breach of this Agreement by the other party (or its agents, contractors, officers, or employees), other than Claims caused by the negligence or willful misconduct of Indemnified Party. However, the District shall not indemnify Clover Flat in any way regarding the sufficiency of the mitigation provided by the Project.

12. Enforcement. If any Party commences an action against the other Party arising out of or in connection with this Agreement, the prevailing Party shall be entitled to recover their reasonable attorney's fees and costs of suit from the losing Party.

13. Third Party Beneficiaries. The Agencies shall be third-party beneficiaries of this Agreement, with the right to receive notices, reports, and other documentation and monitor and enforce this Agreement.

14. Further Assurances. Each Party shall take all actions that may be necessary or proper to achieve the purposes and objectives of this Agreement.

15. Complete Agreement; Amendments. This is the complete and final Agreement between the Parties and supersedes all prior written or oral agreements between the Parties with respect to the subject matter hereof. Any amendments to this Agreement shall be in writing and signed by the Parties.

16. Relationship of Parties. Neither Party is acting as the agent of the other in any respect hereunder and each Party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership or joint venture between the Parties.

17. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.


**[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]**



**IN WITNESS WHEREOF**, this Agreement was executed by the Parties as of the date first above written.

**CLOVER FLAT:**


CLOVER FLAT LAND FILL, INC., a California corporation

By:   
JOHN PERKEY  
Vice President, Deputy General Counsel-  
Compliance and Government Affairs

**DISTRICT:**

NAPA COUNTY FLOOD CONTROL  
AND WATER CONSERVATION  
DISTRICT, a special District of the State  
of California

By: \_\_\_\_\_  
JOELLE GALLAGHER  
Chair of the Board of Directors

<p>APPROVED AS TO FORM Office of District Counsel</p> <p>By: <u></u> Deputy County Counsel</p> <p>Date: <u>September 5, 2025</u></p> <p>PL 135693.4</p>	<p>APPROVED BY THE BOARD OF DIRECTORS OF THE NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT</p> <p>Date: _____ Processed By: _____</p> <p>_____ Deputy Secretary of the District Board</p>	<p>ATTEST: NEHA HOSKINS Secretary of the District Board</p> <p>By: _____</p>
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## **EXHIBIT A**

### **Project Description**

#### **I. Purpose of Funds**

Funds under the Agreement will be applied to the Bale Slough Bear Creek Restoration Project (“**Project**”), including “Construction Group B” as shown on the attached **Exhibit A-1**. The funds will support construction of 4.0 acres of restoration lands for the Project, as described below. Environmental review under the California Environmental Quality Act (“**CEQA**”) and National Environmental Policy Act (“**NEPA**”) has been completed for the Project and applicable regulatory permits have been acquired. The anticipated schedule to advertise the Project for public competitive construction bidding purposes is the spring of 2026 or 2027. Restoration construction would commence in or around June of 2026 following the successful award of a construction contract.

#### **II. Project Description**

The Napa River is one of the few large watersheds in the San Francisco Bay Area which has not been significantly urbanized and supports a wide range of wildlife and habitats. Prior to agriculture and development in the Napa Valley, the Napa River, its floodplain, and riparian corridor supported extensive forest and wetland habitats. Much of this habitat has been reduced over time. Prior to development, the Napa River was a broad, shallow river system with multiple channels. The Napa River is now generally confined to a single channel that is deeply incised by 12-15 ft. in some reaches. Much of the river corridor is bound by flood berms at the top of the river banks to protect neighboring properties from flooding. This confinement keeps the channel zone fairly homogenous in terms of instream complexity features, such as bars, benches, pools, alcoves, etc. This lack of geomorphic complexity results in a less diverse riparian community and reduced quality and quantity of instream habitat for native aquatic species, such as Chinook salmon, steelhead, and California freshwater shrimp. The constricted channel condition has resulted in bank erosion and slumping in several locations resulting in the loss of valuable riparian habitat and vineyard land and infrastructure.

The Project has several design elements that are intended to restore physical and biological processes to the Napa River, including channel widening, floodplain and wetland restoration, biotechnical stabilization, instream habitat structures, managed retreat, and native vegetation enhancement. The overall objective of the Project is to implement the adopted Napa River Sediment TMDL by reducing fine sediment and polluted runoff within the Napa River watershed and to restore habitat and beneficial uses, including spawning and rearing habitat for Chinook salmon and steelhead trout. The Project reach has been divided into three Construction Groups A-C encompassing 14 distinct restoration sites. Construction of the entire Project would create and restore over 15 acres of transitional riparian and aquatic habitat and reduce fine sediment loading from channel erosion, with approximately 4.0 acres of restoration specific to Construction Group B. The goals of this joint public-private Project are to reduce property damage and sediment delivery associated with ongoing bank erosion processes, restore and enhance long-term river and floodplain functioning, and improve the quality and resilience of aquatic and terrestrial riparian habitat.

Group A is constructed and in the maintenance and monitoring phase. Group C is currently in the construction phase and is estimated to be completed in the fall of 2026. Design plans for Group B include the following restoration outputs:

- 4.0 acres total of riparian expansion, restoration, and revegetation
- 3.6 acres of frequently activated new floodplain areas
- 1,645 linear feet biotechnical stabilized stream banks
- 4.0 acres of invasive vegetation management

### **III. Use of Project Funds**

Use of the funds (“**Project Funds**”) provided by Clover Flat Land Fill, Inc. (“**Clover Flat**”) under this Agreement may be used solely to support District staff time, consultant services, supplies, vehicle mileage, permit fees, and other reasonable expenses for the following activities in support of the Project: (a) construction of the “Construction Group B” restoration sites; (b) mitigation monitoring during construction of “Construction Group B” as well as long-term monitoring and maintenance for the Project (described below); (c) Project regulatory compliance, (d) coordination with “Construction Group B” landowners, and (e) community engagement.

### **IV. Permits**

- **CEQA:** The Project is considered a project under CEQA. The District is the lead agency that prepared the CEQA IS-MND. The Project CEQA document was adopted by the Napa Flood District Board of Supervisors on November 15, 2021, (State Clearing House #2021090589).
- **NEPA:** NEPA consistency (ESA Section 7 and NHPA Section 106) is conducted by the United States Army Corps of Engineers (“**USACE**”) through the approval of a Nationwide Permit for each construction phase of the Project. The United States Fish & Wildlife Service (“**USFWS**”) and National Marine Fisheries Service (“**NMFS**”) have completed Biological Opinions (“**BOs**”) for the entire Project.
- **Section 1600:** The California Department of Fish and Wildlife (“**CDFW**”) reviews each construction group of the Project through the Section 1600 Lake or Streambed Alteration Agreement (“**LSAA**”) process. A CDFW LSAA has been issued for the entire Project, Groups A-C (NAP-23604-R3).
- **Section 401:** The San Francisco Bay Regional Water Quality Control Board (“**RWQCB**”) issued Water Quality Certification of Waste Discharge Requirements for the Project in April 2019.

### **V. Construction**

The District intends to construct the Group B phase of the Project according to completed and permitted plans in the summer of 2026 or 2027 in coordination with participating landowners.

## **VI. Monitoring and Maintenance**

The District will be responsible for the long-term monitoring and maintenance of the Project. The *Bale Slough Bear Creek Restoration Project Monitoring Plan* describes the monitoring protocols and frequency of monitoring and maintenance surveys that will be used to evaluate and report on the Project's effectiveness. Monitoring will include Cross Section Transect Surveys, Habitat Assessment, and Vegetation Surveys. Additionally, a maintenance program has been developed to guide adaptive management needs for installed and created restoration features within the Project reach. Monitoring results will be reported to the RWQCB, along with other Project stakeholders, as part of the annual monitoring report by March 31 each year.

**Exhibit A-1**  
**Group B**





Access Route  
Limit Of Work

Bale Slough  
Property Boundary

0 250 500  
Feet



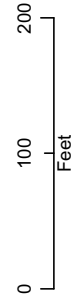
Bale Slough - Bear Creek Restoration Project - Group B  
ACCESS/OVERVIEW





Bale Slough - Bear Creek Restoration Project - Group B  
SITE 6, 7, 8

- Access Route
- Limit Of Work
- Bale Slough
- Property Boundary







Bale Slough - Bear Creek Restoration Project - Group B  
SITE 9

- Access Route
- Limit Of Work
- Bale Slough
- Property Boundary





Access Route  
Limit Of Work

Bale Slough  
Property Boundary

Bale Slough - Bear Creek Restoration Project - Group B  
SITE 10







# Napa County

## Board Agenda Letter

1195 THIRD STREET  
SUITE 310  
NAPA, CA 94559  
www.countyofnapa.org  
Main: (707) 253-4580

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Flood Control and Water Conservation District **Agenda Date:** 9/16/2025

**File ID #:** 25-1528

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**TO:** Napa County Flood Control and Water Conservation District

**FROM:** Richard Thomasser, PG - District Manager

**REPORT BY:** Andrew Butler, PE - District Engineer

**SUBJECT:** Approval of Plans and Specifications and Authorization to Advertise for Bids for Napa River/Napa Creek Flood Protection Project, Floodwalls North of the Bypass, Increment 2

### **RECOMMENDATION**

Approve Plans and Specifications for Napa River/Napa Creek Flood Protection Project, Floodwalls North of the Bypass, Increment 2 and authorize the advertisement for sealed bids, and opening of the bids at a time, date, and location to be published by the District Manager pursuant to Public Contract Code section 20150.8. (No Fiscal Impact)

### **BACKGROUND**

In 2023, the Napa County Flood Control and Water Conservation District (NCFCWCD) and United States Army Corps of Engineers (USACE) entered into a Memorandum of Understanding (MOU) for design work prior to execution of a 204 Project Partnership Agreement for the Project. The Flood Control Acts of 1965 (P.L. 89-298), Sec. 204, and 1976 (P.L. 94-587), Sec. 136(a), authorized the Project. The total project costs based on FY 2023 price levels are estimated to be \$515M. The Project received Federal funding in the amount of \$48.3M with the non-Federal sponsor responsible for all other costs to complete the Project. Section 204(b) of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2232), authorizes non-Federal interests to construct certain water resources development projects, with potential credit or reimbursement of the Federal share of that construction.

The NCFCWCD was engaged in the task of completing the final design of Increment 2, now called the Floodwalls North of the Bypass Project. These floodwalls extend between the Napa River Bypass to just south of the Elks Lodge along the west bank of the Napa River in the City of Napa. The project will also complete the floodwalls at the bypass channel by closing two “gaps” that were left to allow for overland flows that could exist during flood events in the interim situation. With the completion of the rest of the Floodwalls North of the Bypass Project improvements, these gaps will no longer be necessary.

The final design for the Napa River/Napa Creek Flood Protection Project, Floodwalls North of the Bypass, Increment 2, was completed in 2025. The engineers estimate for constructing the project is \$34,671,833 and

the attached map, Exhibit A, shows the location of the entire Napa River/Napa Creek Flood Protection Project including the subject project Floodwalls North of the Bypass, Increment 2.

**Requested Actions:**

1. Approve plans and specifications for the Napa River/Napa Creek Flood Protection Project, Floodwalls North of the Bypass, Increment 2
2. Authorize advertisement for sealed bids for the project and opening of the bids at a time, date, and location to be published by the District Manager pursuant to Public Contract Code section 20150.8.

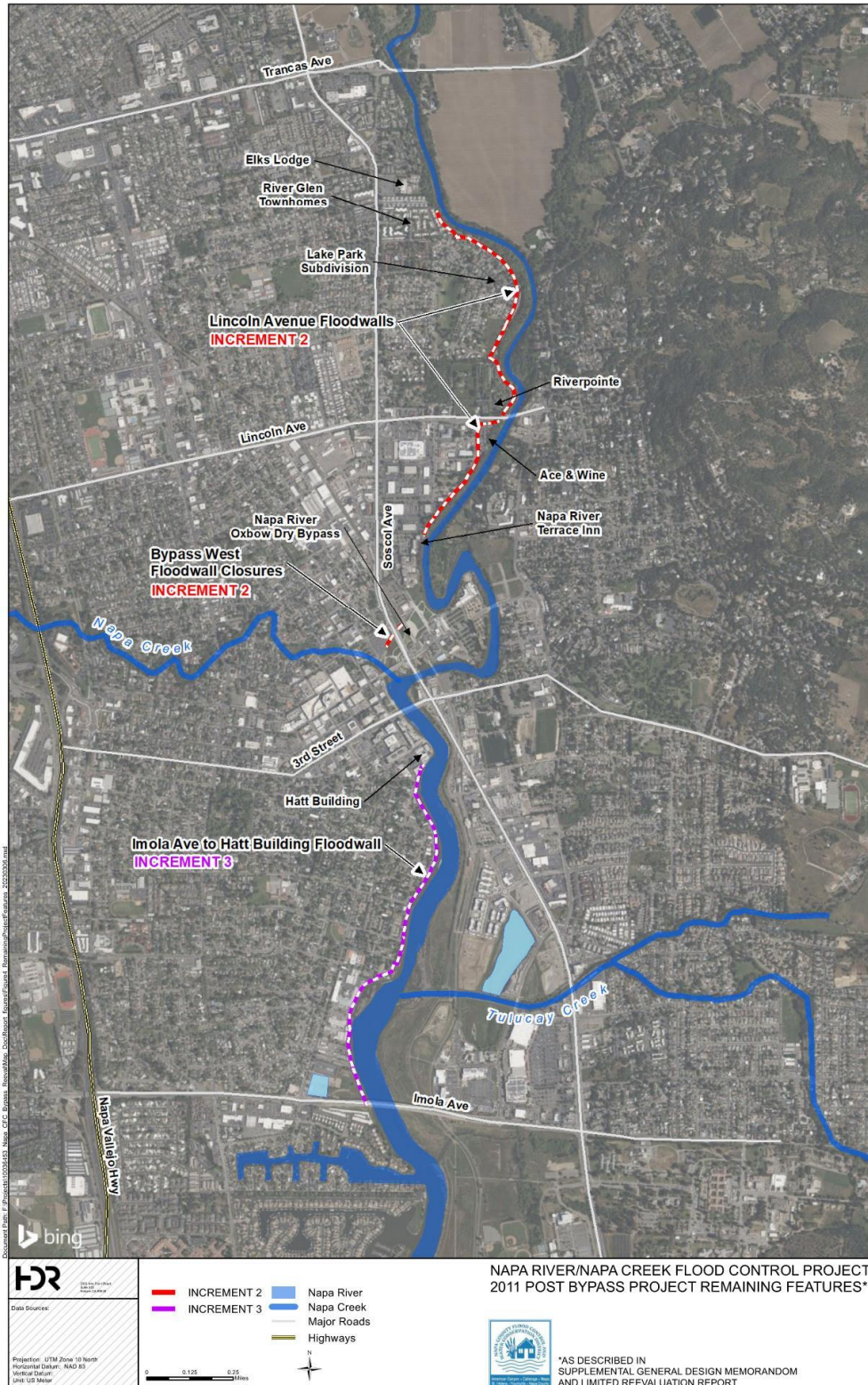
**FISCAL & STRATEGIC PLAN IMPACT**

Is there a Fiscal Impact?	No
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Without construction of the floodwall, the District will be unable to complete the Napa River/Napa Creek Flood Protection Project.
Is the general fund affected?	No
Consequences if not approved:	The District will be unable to complete construction of the project. Without construction of the floodwall, the City of Napa will be susceptible to riverine flooding as it is today, and the District will not be able to request reimbursement from the USACE.

**ENVIRONMENTAL IMPACT**

ENVIRONMENTAL DETERMINATION: The Floodwalls North of the Bypass Project (FNBP), Increment 2 of the Napa River/Napa Creek Flood Protection Project, was included in the final Environmental Impact Report (FEIR) for the Project that was certified by the District on May 4, 1999, for which a Notice of Determination was filed on May 7, 1999. The Final Supplemental Impact Statement (FEIS) for the Project was certified by the USACE in its Record of Decision filed on June 9, 1999. On March 25, 2025, after a 45-day public review and response to comments, the District Board certified the Final Subsequent Environmental Impact Report for the FNBP which addressed changes to the original design in some areas within the footprint of that project. The U.S. Army Corps of Engineers circulated a Draft Supplemental Environmental Assessment/ Finding of No Significant Impact for the FNBP during a 30-day review period May 22, 2025, to June 20, 2025. After the public and agency review period, the U.S. Army Corps of Engineers responded to comments and prepared the Final Supplemental Environmental Assessment/ Finding of No Significant Impact.

# EXHIBIT A





# Napa County

## Board Agenda Letter

1195 THIRD STREET  
SUITE 310  
NAPA, CA 94559  
www.countyofnapa.org  
Main: (707) 253-4580

Flood Control and Water Conservation District **Agenda Date:** 9/16/2025

**File ID #:** 25-1537

**TO:** Napa County Flood Control and Water Conservation District  
**FROM:** Tracy Schulze - Auditor-Controller  
**REPORT BY:** Georgina Panganiban - Deputy Auditor-Controller  
**SUBJECT:** 2025-26 Appropriation Limit for Community Facilities District-Oakville to Oak Knoll Maintenance, Monitoring, and Restoration Project

### **RECOMMENDATION**

Adopt a Resolution establishing the Fiscal Year 2025-26 appropriation limit and estimated revenue subject to the limit for the Community Facilities District-Oakville to Oak Knoll Maintenance, Monitoring, and Restoration Project (CFD OVOK) as required by Article XIII B of the California Constitution. (No Fiscal Impact; Mandatory)

### **BACKGROUND**

The annual appropriation limit is calculated in accordance with Article XIII B of the California Constitution and is the amount the District could spend that is funded by certain taxes and State subventions, while the revenue subject to that limit is the amount of revenue from those sources the District anticipates receiving in the fiscal year. In certain instances when the revenue subject to the limit exceed the appropriation limit, tax revenues are required to be returned to local taxpayers.

On January 6, 2015, the property owners of Napa Flood Control and Water Conservation District Community District No. 2014-01 approved the formation of Napa County Flood Control and Water Conservation Community Facilities District (for the Oakville to Oak Knoll Maintenance, Monitoring, and Restoration Project ("Community Facilities District") setting the appropriation limit for the District at \$2,000,000 per fiscal year.

Requested Action:

Adopt a resolution establishing the appropriation limit for fiscal year 2025-26 at \$2,000,000, with estimated revenue subject to that limit of \$120,010.

### **FISCAL IMPACT**

Is there a Fiscal Impact?	No
Is it currently budgeted?	Yes
Where is it budgeted?	The estimated appropriation limit is considered when preparing the requested budget.
Is it Mandatory or Discretionary?	Mandatory

Is the general fund affected?	No
Future fiscal impact:	The appropriation limit is required to be approved each fiscal year.
Consequences if not approved:	Failing to establish an appropriation limit each fiscal year would put the District in violation of the State Constitution.

### **ENVIRONMENTAL IMPACT**

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.



**RESOLUTION NO. \_\_\_\_\_(CFD OVOK)**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE NAPA COUNTY  
FLOOD CONTROL AND WATER CONSERVATION DISTRICT  
REGARDING COMMUNITY FACILITIES DISTRICT NO. 2014-01  
ESTABLISHING THE APPROPRIATION LIMIT  
FOR FISCAL YEAR 2025-2026**

**(Oakville - Oak Knoll Maintenance, Monitoring, and Restoration Project)**

**WHEREAS**, California Constitution Article XIII B requires each entity of local government to annually establish an appropriation limit; and

**WHEREAS**, on September 23, 2014, the Board of Directors (the “Board”) of the Napa County Flood Control and Water Conservation District (the “District”), State of California, adopted its “Resolution of the Board of Directors of the Napa County Flood Control and Water Conservation District Regarding Formation of Community Facilities District” (“Formation Resolution”) establishing the Napa County Flood Control and Water Conservation District Community Facilities District No. 2014-01 (Oakville - Oak Knoll Maintenance, Monitoring and Restoration Project) and a future annexation area designated Napa County Flood Control and Water Conservation District Community Facilities District No. 2014-01 (Oakville - Oak Knoll Maintenance, Monitoring and Restoration Project) Future Annexation Area (collectively, the “Community Facilities District”) pursuant to the Mello-Roos Community Facilities Act of 1982 for the purpose of funding certain public services; and

**WHEREAS**, on January 6, 2015, pursuant to voter approval, the District approved the formation of the Community Facilities District and set the appropriation limit for the Community Facilities District at \$2,000,000 per fiscal year; and

**NOW, THEREFORE, BE IT RESOLVED** that the Board does set the appropriation limit and estimated revenue subject to the limit for the Community Facilities District for fiscal year 2025-2026 as follows:

	<u>Appropriation Limit</u>	<u>Revenue Subject to Limit</u>
Community Facilities District No. 2014-01 (Oakville-Oak Knoll Maintenance, Monitoring and Restoration Project)	<b>\$2,000,000</b>	<b>\$120,010</b>

**BE IT FURTHER RESOLVED**, the Board finds that the 2025-26 appropriation limit was determined pursuant to the Formation Resolution.

**THE FOREGOING RESOLUTION WAS PASSED AND ADOPTED** by the Board of Directors of the Napa County Flood Control and Water Conservation District at a regular meeting thereof held on September 16, 2025, by the following vote, with the number following each Director's name indicating the number of votes cast by that Director:

AYES: DIRECTORS \_\_\_\_\_

NOES: DIRECTORS \_\_\_\_\_

ABSENT: DIRECTORS \_\_\_\_\_

NAPA COUNTY FLOOD CONTROL AND  
WATER CONSERVATION DISTRICT, a special  
district of the State of California

By: \_\_\_\_\_  
JOELLE GALLAGHER, Chair of the Board of Directors

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: _Shana A. Bagley_</p> <p>Date: _August 27, 2025_</p> <p>[PL NO 137735]</p>	<p>APPROVED BY THE BOARD OF DIRECTORS OF THE NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT</p> <p>Date: _____</p> <p>Processed By: _____</p> <p>_____ Deputy Secretary of the District Board</p>	<p>ATTEST: NEHA HOSKINS Secretary of the District Board</p> <p>By: _____</p>
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A Tradition of Stewardship  
A Commitment to Service

# AUDITOR-CONTROLLER INTER-OFFICE MEMO

Date: September 16, 2025

To: Napa County Flood and Water Conservation District Board of Directors

From: Tracy A. Schulze   
Auditor-Controller

Subject: **2025-2026 Appropriation Limit for Community Facilities District No. 2014-01  
(Oakville to Oak Knoll Maintenance, Monitoring, and Restoration Project)**

Each year, Article XIII B of the California Constitution requires the Community Facilities District to establish an appropriation limit. On June 5, 1990, the voters of California passed Proposition 111 that amended Article XIII B of the State's Constitution relating to the calculation of a jurisdiction's appropriation limit.

One of the changes to Article XIII B requires the District to select one of two methodologies to determine the cost-of-living factor used in calculating the appropriation limit. The District may select one of the following:

- The percentage change in California per capita personal income from the preceding year; or
- The percentage change in the local assessment roll from the preceding year due to the addition of local non-residential new construction.

Typically the Auditor-Controller's Office calculates the appropriation limit using both factors and recommends to the Board the factor that is most beneficial to the District. However, the District previously approved an annual appropriation limit not to exceed \$2,000,000, pursuant in the Resolution of Formation.

## **Recommended Board Action**

Adopt the attached resolution establishing the appropriation limit for the Community Facilities District using the appropriation limit approved by the District Board. The appropriation limit and revenue subject to the limit are as follows:

**Community Facilities District No. 2014-01 (Oakville-Oak Knoll Maintenance, Monitoring and Restoration Project)**

Appropriation Limit
<hr/>
\$2,000,000

Revenue Subject To Limit
<hr/>
\$120,010



# Napa County

## Board Agenda Letter

1195 THIRD STREET  
SUITE 310  
NAPA, CA 94559  
www.countyofnapa.org  
Main: (707) 253-4580

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Flood Control and Water Conservation District **Agenda Date:** 9/16/2025

**File ID #:** 25-1671

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**TO:** Napa County Flood Control and Water Conservation District  
**FROM:** Neha Hoskins, Clerk of the Board/Secretary of the District Board  
**REPORT BY:** Paulette Cooper, Deputy Clerk of the Board II  
**SUBJECT:** Approval of Minutes

### **RECOMMENDATION**

Approve minutes from the August 12, 2025 meeting.

### **BACKGROUND**

Clerk of the Board/Secretary of the District Board requests approval of minutes from the August 12, 2025 meeting.

### **FISCAL & STRATEGIC PLAN IMPACT**

Is there a Fiscal Impact? No

### **ENVIRONMENTAL IMPACT**

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQUA is not applicable).



## Meeting Minutes

### Napa County Flood Control and Water Conservation District

Joelle Gallagher, District 1 (Chairperson)  
Scott Sedgley, City of Napa (Vice Chairperson)  
Liz Alessio, District 2  
Anne Cottrell, District 3  
Christopher DeNatale, City of Napa  
Paul Dohring, City of St. Helena  
Irais Lopez-Ortega, City of Calistoga  
Amber Manfree, District 4  
Marjorie Mohler, Town of Yountville  
Belia Ramos, District 5  
Pierre Washington, City of American Canyon

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**Tuesday, August 12, 2025**

**9:00 AM**

**Board of Supervisors Chambers  
1195 Third Street, Third Floor**

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1. CALL TO ORDER; ROLL CALL

**Present: Chairperson Joelle Gallagher, Vice-Chairperson Scott Sedgley, Directors Christopher DeNatale, Paul Dohring, Irais Lopez-Ortega, Amber Manfree, Marjorie Mohler, Belia Ramos, and Pierre Washington. Director Anne Cottrell was excused. Director Liz Alessio joined the meeting during the Consent Calendar. The meeting was called to order by Chairperson Joelle Gallagher.**

2. PLEDGE OF ALLEGIANCE

**Director Belia Ramos led the assembly in the Pledge of Allegiance.**

3. APPROVAL OF MINUTES

A. Approve minutes from the July 15, 2025 meeting.

[25-956](#)

**Motion Text: Approve the Minutes.**

**Voting Yes: Sedgley, Washington, DeNatale, Dohring, Lopez-Ortega, Manfree, Mohler, Ramos, and Gallagher**

**Voting No: None**

**Recusals: None**

**Excused: Alessio, and Cottrell**

**Result: Passed**

4. PRESENTATIONS AND COMMENDATIONS

**None**

## 5. CONSENT ITEMS

**Motion Text:** Approve the Consent Calendar.

**Voting Yes:** DeNatale, Ramos, Alessio, Dohring, Lopez-Ortega, Manfree, Mohler, Sedgley, Washington, and Gallagher

**Voting No:** None

**Recusals:** None

**Excused:** Cottrell

**Result:** Passed

- A. Approve and authorize Purchase and Sale Agreement No. 250245B (FC) for the acquisition of one Partial Fee Simple Interest, one Flood Protection Levee Easement, one Public Water Utility Easement and one Temporary Construction Easement on property located in Napa, California (APN 044-320-059), owned by River Glen Homeowners Association, a Non-profit corporation, at a price of \$120,000 and authorize the District Manager or District Engineer to sign related real estate documents on behalf of the District. (Fiscal Impact: \$120,000 Expense; Flood Project; Budgeted; Discretionary) [25-674](#)

**Enactment No:** A-250245B (FC)

- B. Approve and authorize Agreement No. 260062B (FC) with the California Conservation Corps for Fiscal Years 2026 through 2028, at an annual cost of \$83,328, for a total maximum amount of \$249,984 for ongoing stream maintenance and restoration projects throughout Napa County. (Fiscal Impact: \$249,984 Expense; Flood District Fund; Budgeted; Discretionary) [25-1247](#)

**Enactment No:** A-260062B (FC)

## 6. DISCUSSION OF ITEMS REMOVED FROM THE CONSENT CALENDAR

None

## 7. PUBLIC COMMENT

None

## 8. ADMINISTRATIVE ITEMS

- A. Adopt a resolution of intent to sell the real property located at 1317 McKinstry Street, Napa; APN 044-260-004 (No Fiscal Impact, Discretionary) [25-1333](#)

**District Engineering Technician II Joseph Panchesson made a presentation.**

**Discussion held.**

**Motion Text:** Adopt the Resolution.

**Voting Yes:** Lopez-Ortega, Ramos, Alessio, DeNatale, Dohring, Manfree, Mohler, Sedgley, Washington, and Gallagher

**Voting No:** None

**Recusals:** None

**Excused:** Cottrell

**Result:** Passed

**Enactment No:** R-2025-13 (FC)

- B. Approve and authorize Amendment No. 5 to Agreement No. 220223B (FC) with HDR Engineering, Inc., increasing the maximum from \$10,862,062 to a new total of \$17,846,772 (Fiscal Impact: \$6,984,710 Expense, Flood Project; Budgeted; Discretionary) [25-1390](#)

**District Engineer Andrew Butler made presentation.**

**Discussion held.**

**Motion Text:** Approve the requested action.

**Voting Yes:** Manfree, Ramos, Alessio, DeNatale, Dohring, Lopez-Ortega, Mohler, Sedgley, Washington, and Gallagher

**Voting No:** None

**Recusals:** None

**Excused:** Cottrell

**Result:** Passed

**Enactment No:** A-220223B (FC) Amend. 5

## 9. PUBLIC HEARINGS

None

**10. DISTRICT MANAGER'S/ENGINEER'S REPORTS AND ANNOUNCEMENTS**

**Watershed & Flood Control District Manager Richard Thomasser reported the District is on track to sign the U.S. Army Corps of Engineers Project Partnership Agreement at the next meeting on September 16, 2025. Details for the signing of the agreement with a site visit after the meeting are still being discussed. The Directors will be informed of the final determination.**

**Engineering Manager Chris Silke reported on the on-going litigation case against the Department of Water Resources in relation to the area of origin dispute that has been ongoing since 2021. Silke will be attending a meeting this afternoon with Special Water Counsel, City of Yuba and Solano County Water Agency staff to make a decision on whether they should continue with settlement negotiations or proceed to trial, which is scheduled to be heard in October. The Directors will be notified which pathway is in the best interest of all three bodies.**

**Silke also reported on an item related to Article 56 carry over, that is water storage the District has on paper in the San Luis Reservoir. Silke met with the city leaders that oversee the utilities, and they approved a sale of 6,000-acre feet of water to Kern County Water Agency West Side Districts, which will take delivery in the ensuing months. Silke advised that the three cities will realize a substantial revenue boost this year. With about a year and half worth of carry over storage supply, the District would have good storage even if there was a multiple, critical dry year.**

**11. BOARD OF DIRECTORS REPORTS AND ANNOUNCEMENTS**

**Director Sedgley with Watershed and Flood Control Operations Manager Jeremy Sarrow visited the newly acquired wetlands property located off Highway 29. The area is planned to be a new public biking and walking path with restored natural wetlands.**

**12. BOARD OF DIRECTORS FUTURE AGENDA ITEMS**

**None**

## 13. CLOSED SESSION

A. CONFERENCE WITH REAL PROPERTY NEGOTIATOR [25-1334](#)

(Government Code section 54956.8)

Properties: APN 044-301-026

Negotiating Party: Richard Thomasser, Flood District Manager,  
Gracia, David T. & Leslie Ann

Under Negotiation: Price/Terms/Conditions of Payment

## CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

(Government Code section 54956.9(d)(1))

Napa County Flood Control and Water Conservation District v.

Gracia, David T. & Leslie Ann

Napa Superior Court Case No. 25CV000993

**Closed Session held. No reportable action.**

B. CONFERENCE WITH REAL PROPERTY NEGOTIATOR [25-1336](#)

(Government Code Section 54956.8)

Properties: APN 044-204-003

Negotiating Party: Richard Thomasser, Flood District Manager, California  
Vacation Holdings Group, LLC Under Negotiation: Price/Terms/Conditions  
of Payment

AND

## CONFERENCE WITH LEGAL COUNSEL- EXISTING LITIGATION

(Government Code Section 54956.9(d)(1))

Name of case: California Vacation Club, a California nonprofit mutual  
benefit corporation, v. Napa County Flood Control and Water Conservation  
District and California Vacation Holdings Group, LLC, a Florida limited  
liability company, and DOES 1 through 10, inclusive. Case No.  
24CV001395. First Amended Verified Complaint for: (1) Breach of  
Governing Documents, (2) Preliminary and Permanent Injunctions, and (3)  
Declaratory Relief.

AND

## CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

(Government Code Section 54956.9(d)(1))

Name of Case: Napa County Flood Control and Water Conservation District  
v. California Vacation Holdings Group LLC, et al. Napa Superior Court  
Case No. 25CV000695

**Closed Session held. No reportable action.**

C. CONFERENCE WITH REAL PROPERTY NEGOTIATOR [25-1337](#)

(Government Code section 54956.8)

Properties: APN 044-220-004

Negotiating Party: Richard Thomasser, Flood District Manager, Suzanne E Murray et al.

Under Negotiation: Price/Terms/Conditions of Payment

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

(Government Code section 54956.9(d)(1))

Napa County Flood Control and Water Conservation District v.

Suzanne E Murray et al.

Napa Superior Court Case No. 24CV002128

**Closed Session held. No reportable action.**

D. CONFERENCE WITH REAL PROPERTY NEGOTIATOR [25-1338](#)

(Government Code section 54956.8)

Properties: APN 044-220-008

Negotiating Party: Richard Thomasser, Flood District Manager, 505 Lincoln Avenue Napa LLC

Under Negotiation: Price/Terms/Conditions of Payment

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

(Government Code section 54956.9(d)(1))

Napa County Flood Control and Water Conservation District v.

505 Lincoln Avenue Napa LLC

Napa Superior Court Case No. 24CV002125

**Closed Session held. No reportable action.**

E. CONFERENCE WITH REAL PROPERTY NEGOTIATOR [25-1339](#)

(Government Code section 54956.8)

Properties: APN 044-230-006

Negotiating Party: Richard Thomasser, Flood District Manager  
Mark Anthony Grassi & Jami Lee Tr

Under Negotiation: Price/Terms/Conditions of Payment

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

(Government Code section 54956.9(d)(1))

Napa County Flood Control and Water Conservation District v. Mark

Anthony Grassi and Jami Lee Grassi, Trustees Of The 1992 Grassi F et al

Napa Superior Court Case No. 24CV002146

**Closed Session held. No reportable action.**



14. ADJOURNMENT

**ADJOURN TO THE NAPA COUNTY FLOOD CONTROL AND WATER  
CONSERVATION DISTRICT REGULAR MEETING, TUESDAY, SEPTEMBER 16,  
2025 AT 9:00 AM.**

Neha Hoskins (By e-signature)

NEHA HOSKINS, District Secretary



# Napa County

## Board Agenda Letter

1195 THIRD STREET  
SUITE 310  
NAPA, CA 94559  
www.countyofnapa.org  
Main: (707) 253-4580

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Flood Control and Water Conservation District **Agenda Date:** 9/16/2025

**File ID #:** 25-1531

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**TO:** Napa County Flood Control and Water Conservation District

**FROM:** Richard Thomasser - District Manger

**REPORT BY:** Andrew Butler - District Engineer

**SUBJECT:** Approval of Project Partnership Agreement No. 260135B (FC) and Amendment 3 to the Project Cooperation Agreement No. 260149B (FC) (Formerly No. 66 (FC)) between the Department of the Army and the Napa County Flood Control and Water Conservation District for Construction for the Napa River/Napa Creek Flood Protection Project

### **RECOMMENDATION**

Approve and authorize Project Partnership Agreement No. 260135B (FC) and Amendment 3 of the Project Cooperation Agreement No. 260149B (FC) between the Department of the Army and the Napa County Flood Control and Water Conservation District for Construction of the Napa River/Napa Creek Flood Protection Project. (Fiscal Impact: \$48,300,000 Revenue; Flood Project Fund; Budgeted; Discretionary)

### **BACKGROUND**

The Napa River/Napa Creek Flood Protection Project is a long-term effort to reduce flood risk to the City of Napa while incorporating environmental restoration and recreational enhancements. The Project, authorized by Congress and implemented in partnership with the U.S. Army Corps of Engineers (USACE), combines engineered flood protection measures with environmental sustainability and community improvements.

The District serves as the local sponsor responsible for coordinating with USACE, securing required local cost-share contributions, and ensuring compliance with applicable federal and state requirements. The Project is partially funded by federal appropriations with matching local contributions from the District and other local sources.

The Project Partnership Agreement (PPA) between the Department of the Army and the Napa County Flood Control and Water Conservation District outlines the responsibilities, cost-sharing arrangements, and commitments required to advance the next construction phase of the Napa River/Napa Creek Flood Protection Project. This next phase consists of Increment 2, Floodwalls North of the Bypass, and Increment 3, Imola to Hatt Floodwalls. Each increment consists of building approximately one mile of floodwall on the western bank of the Napa River, the construction of new trails to tie into existing trails within the City of Napa, and riverbank

restoration and rehabilitation.

The Project Cooperation Agreement (PCA) between the Department of the Army and the Napa County Flood Control and Water Conservation District is the original agreement addressing the authorization of the overall Flood Project. It also outlines the responsibilities of the USACE, as the Federal partner and the District, as the Non-federal Sponsor. This Amendment 3 closes out the PCA, stating that its terms apply to previously constructed portions of the Flood Project whereas the PPA will apply to the two future phases of the project. The final agreements are attached as provided by the Department of the Army. Once the Assistant Secretary of the Army has determined the signatory on the Government's behalf they will provide the signature-ready version for the District Board Chairperson to sign. District Counsel has reviewed and approved these documents to form and will confirm no substantive changes in the finalized Agreements for signature.

**Requested Items:**

1. Approve and authorize PPA No. 260135B (FC) between the Department of the Army and the Napa County Flood Control and Water Conservation District for Construction of the Napa River/Napa Creek Flood Protection Project.
2. Approve and authorize Amendment 3 of the PCA No. 260149B (FC), formerly No. 66 (FC), between the Department of the Army and the Napa County Flood Control and Water Conservation District for Construction of the Napa River/Napa Creek Flood Protection Project.

### **FISCAL & STRATEGIC PLAN IMPACT**

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	To secure federal funding, maintaining momentum of construction so there are no costly delays, and to protect the community from flood risks.
Is the general fund affected?	No
Future fiscal impact:	Project construction of Increments 2 and 3 will occur from Fiscal Year 25-26 through 29-30.
Consequences if not approved:	The District would be unable to access federal funding which would delay construction of flood protection for the City of Napa.

### **ENVIRONMENTAL IMPACT**

ENVIRONMENTAL DETERMINATION: The Floodwalls North of the Bypass, Increment 2 contract of the Napa River/Napa Creek Flood Protection Project was included in the final Environmental Impact Report (FEIR) for the Project that was certified by the District on May 4, 1999, for which a Notice of Determination was filed on May 7, 1999. The Final Supplemental Impact Statement (FEIS) for the Project was certified by the USACE in its Record of Decision filed on June 9, 1999. On March 25, 2025, after a 45-day public review and response to comments, the District Board certified the Final Subsequent Environmental Impact Report for the Floodwalls North of the Bypass Project which addressed changes to the original design in some areas within the footprint of that Project. The U.S. Army Corps of Engineers circulated a Draft Supplemental Environmental Assessment/ Finding of No Significant Impact for a 30-day review May 22, 2025 to June 20, 2025. After the

public and agency review period, the U.S. Army Corps of Engineers responded to comments and prepared the Final Supplemental Environmental Assessment/ Finding of No Significant Impact.

AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT  
FOR  
CONSTRUCTION  
OF INCREMENTS 2 AND 3 OF  
THE NAPA RIVER//NAPA CREEK FLOOD PROTECTION PROJECT, CALIFORNIA

THIS AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Department of the Army (hereinafter the “Government”), represented by the Assistant Secretary of the Army (Civil Works) and the Napa County Flood Control and Water Conservation District (hereinafter the “Non-Federal Sponsor”), represented by the Chairperson of the Board of Directors.

WITNESSETH, THAT:

WHEREAS, construction of the Napa River/Napa Creek Flood Protection Project in Napa County, California (hereinafter the “Authorized Project”) was authorized by Section 204 of the Flood Control Act of 1965 (Pub. L. No. 89-298, 79 Stat. 1073, 1084 (October 27, 1965)) for the purposes of flood control and recreation substantially in accordance with the 1965 Chief of Engineers Report for the Napa River Basin (H. Doc. 89-222), and modified by Section 136 of the Water Resources Development Act of 1976 (Pub. L. No. 94-587, 90 Stat. 2917, 2929 (October 22, 1976));

WHEREAS, certain features of the Authorized Project were constructed pursuant to the Project Cooperation Agreement between the Government and the Non-Federal Sponsor entered into on February 1, 2000, as modified by Amendment Number 1 entered into on April 5, 2007, and Amendment Number 2 entered into on August 8, 2016;

WHEREAS, on the effective date of this Agreement, the Government and the Non-Federal Sponsor are also entering into Amendment Number 3 to the Project Cooperation Agreement to limit the terms thereof to those Authorized Project features already constructed as of the date of that Amendment;

WHEREAS, the Non-Federal Sponsor intends to construct Increments 2 and 3, the Lincoln Avenue Floodwalls separable element and the Imola Avenue to Hatt Street Floodwalls separable element of the Authorized Project, (hereinafter the “Project”, as defined in Article I.A. of this Agreement), pursuant to Section 204 of WRDA 1986, as amended (33 U.S.C. 2232) (hereinafter “Section 204”), with eligible reimbursement of the Federal share of the Project, or separable element thereof, provided by the Government in accordance with Section 204(d);

WHEREAS, the Government and the Non-Federal Sponsor entered into a Memorandum of Understanding (hereinafter the “MOU”) on April 19, 2023, setting out the procedures for the

Government's review of the Project's design, plans, and detailed implementation information that the Non-Federal Sponsor will provide for the Assistant Secretary of the Army (Civil Works) or his designee to approve;

WHEREAS, the Assistant Secretary of the Army (Civil Works) on [Month Day, Year] approved the *Napa River Increments 2 and 3 Implementation Plan* for the Project, attached hereto as Exhibit A (Implementation Plan), which specifies the procedures that must be followed by the Government and the Non-Federal Sponsor to support future consideration by the Assistant Secretary of the Army (Civil Works) or his designee that the Project, including any changes in design, is technically feasible, economically justified, and environmentally acceptable;

WHEREAS, construction by the Non-Federal Sponsor shall not commence until such time as the Assistant Secretary of the Army (Civil Works) or his designee approves the plans and detailed information for implementation of the Project, including any changes in design, and the notification in 33 U.S.C. 2232(e) is provided;

WHEREAS, the Non-Federal Sponsor shall not commence the construction of a separable element until the Government completes its environmental compliance for the increment to be constructed;

WHEREAS, on \_\_\_\_\_, the Assistant Secretary of the Army (Civil Works) granted a policy waiver for the Government to complete its environmental compliance for Increment 3 after execution of this Agreement;

WHEREAS, the Non-Federal Sponsor is acquiring all real property interests for construction of Increment 2 and Increment 3, but recognizes that the Government's induced flooding analysis for both Increments, which the Government is scheduled to prepare during design of Increment 3, may require further acquisition of real property interests by the Non-Federal Sponsor;

WHEREAS, Section 103 of WRDA 1986, as amended (33 U.S.C. 2213), specifies the cost-sharing requirements applicable to the Project;

WHEREAS, placement area improvements, as defined in Article I.I. of this Agreement, are limited to that required for the flood risk management features and provided by the Non-Federal Sponsor in accordance with 33 U.S.C. 2213;

WHEREAS, the total amount of Federal funds available for the Federal share of Project costs is \$48,300,000, and by letter dated December 9, 2022, the Non-Federal Sponsor stated its intent to cover all costs above \$48,300,000 for the Project; and

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement and acknowledge that Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b), provides that this Agreement shall be enforceable in the appropriate district court of the United States.

NOW, THEREFORE, the parties agree as follows:

#### ARTICLE I - DEFINITIONS

A. The term “Project” shall mean construction of Increment 2, the West Bank/North of Oxbow - Lincoln Avenue Floodwalls separable element on the west bank of the Napa River north of the Oxbow and completing work on Oxbow Dry Bypass floodwalls, and Increment 3, the West Bank/South of Oxbow - Imola Avenue to Hatt Street Floodwalls separable element on the west bank of the Napa River, south of the Oxbow, of the Authorized Project, as generally described in the 13 December 2019 Federal Interest Determination, Supplemental General Design Memorandum, dated October 1998, and associated National Environmental Policy Act (NEPA) documentation, dated March 1999, approved by the Deputy Director of Civil Works on May 24, 1999; and as further described in future design recommendation documentation, its corresponding supplemental NEPA documentation, and the approved Implementation Plan approved by the Assistant Secretary of the Army (Civil Works) or his designee.

B. The term “discrete segment” means a physical portion of a separable element of the Project that the Non-Federal Sponsor can operate and maintain, independently and without creating a hazard, in advance of final completion of the separable element. The discrete segments associated with each separable element for the Project are further described in the approved Implementation Plan. For Increment 2, the Lincoln Avenue Floodwalls separable element on the west bank of the Napa River north of the Oxbow (the only increment with discrete segments), the discrete segments are:

1. Segment 1: North of Lincoln Avenue - 4,080 linear feet of floodwall and three closure structures will be constructed on the top of the west bank from the Lincoln Avenue bridge headed north through the RiverPointe development, Lake Park subdivision and River Glenn town homes and terminating into high ground just south of Elks Lodge. The three closure structures include three pedestrian access gates with one providing emergency vehicle and pedestrian water side trail access at the northern trail head at Lincoln Avenue and two in the Lake Park.

2. Segment 2: South of Lincoln Avenue - 2,377 linear feet of floodwall and three closure structures will be constructed starting from the Lincoln Avenue bridge headed around the Ace & Vine project area and extending south along the top of the west bank of the river terminating into high ground just north of the Napa Terrace Inn. Two closure structures will be constructed along Lincoln Avenue to provide access to the Ace & Vine project area and one closure structure will be provided just south of Wall Street providing emergency and pedestrian access to the waterside of the wall.

3. Segment 3: Northwest side of the Napa Oxbow Dry Bypass - 230 linear feet of floodwall to be constructed on 130 linear feet of floodwall west of Soscol Avenue bridge and 100 linear feet of floodwall east of Soscol Avenue bridge will be constructed in gaps intentionally left in the existing northwest floodwall of the Napa Oxbow Dry Bypass floodwall. Part of the 100 linear feet of floodwall east of Soscol Avenue will consist of a drainage outfall

structure allowing a 72-inch drain to discharge into bifurcated outlets (42-inch and 48-inch drains) and housing two sluice gates, one for each outlet respectively.

C. The term “timeframe for completion” means the scheduled completion date for Increment 2, the Lincoln Avenue Floodwall separable element on the west bank of the Napa River north of the Oxbow, which is presently estimated to be 31 December 2035. The timeframe for completion of Increment 3 is 31 December 2040. Completion of a separable element is assumed to occur when the Non-Federal Sponsor provides written notification to the Government of such completion in accordance with Article II.B.

D. The term “pre-Agreement design work” means the design work that the Non-Federal Sponsor initiated prior to the effective date of this Agreement that the Government determines was accomplished in a satisfactory manner, is integral to and necessary for design of the Project, was designed in accordance with applicable permits and approvals, and was accomplished in accordance with Government design standards.

E. The term “HTRW” means hazardous, toxic, and radioactive wastes, which includes any material listed as a “hazardous substance” (42 U.S.C. 9601(14)) regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter “CERCLA”) (42 U.S.C. 9601-9675) and any other regulated material in accordance with applicable laws and regulations.

F. The term “project costs” means all costs incurred by the Government and the Non-Federal Sponsor in accordance with the terms of this Agreement that are directly related to design and construction of the Project and cost shared. The term includes the Government’s costs for review and approval of design work, appraisals, and reimbursement requests; developing Project performance metrics; environmental review and oversight; permit evaluations; agreement development and negotiation; construction monitoring and oversight; inspections; certifications; preparing periodic financial reports; conducting final accountings; and other costs incurred by the Government pursuant to the provisions of this Agreement. The term includes the Non-Federal Sponsor’s eligible costs for pre-Agreement design work, post Agreement design and construction work, including HTRW investigations pursuant to Article IV.A., permit work, and supervision and administration; and providing real property interests, relocations, and placement area improvements in accordance with Article V.B.1-3. The costs of historic preservation activities except for data recovery for historic properties, if any, are also included in this term. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement; HTRW cleanup and response; dispute resolution; participation by the Government and the Non-Federal Sponsor in the Project Coordination Team to discuss significant issues and actions; audits; betterments; or the Non-Federal Sponsor’s cost to negotiate this Agreement. The term also does not include any costs for technical assistance provided by the Government pursuant to Article II.L.

G. The term “real property interests” means lands, easements, and rights-of-way, including those required for relocations and borrow and dredged material placement areas. Acquisition of real property interests may require the performance of relocations.



H. The term “relocation” means the provision of a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad (excluding existing railroad bridges and approaches thereto for the flood risk management features), or public facility when such action is required by applicable legal principles of just compensation. Providing a functionally equivalent facility may include the alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

I. The term “placement area improvements” means the improvements required on real property interests to enable the ancillary placement of material that has been dredged or excavated during construction, operation, and maintenance of the Project, including, but not limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and dewatering pumps and pipes.

J. The term “total Federal funds amount” means the \$48,300,000 appropriations representing the total of the Government’s financial participation in design and construction in the remainder of the Authorized Project.

K. The term “betterment” means a difference in the design or construction of an element of the Project that results from applying standards that the Government determines exceed those that the Government would otherwise apply to design or construction of that element.

## ARTICLE II - OBLIGATIONS OF THE PARTIES

A. The Non-Federal Sponsor shall design and construct the Project in accordance with all requirements of applicable Federal laws and implementing regulations, including but not limited to, if applicable, Section 601 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto, and the following:

1. The Non-Federal Sponsor is responsible for a minimum of 25 percent, but not to exceed 50 percent, of total Project costs allocated by the Government to flood risk management, and 50 percent of Project costs allocated by the Government to recreation. The Government will reimburse the Non-Federal Sponsor for the Federal share of the eligible project costs it incurs pursuant to Articles II.D., V., and VI.C.

2. In accordance with Article III, the Non-Federal Sponsor shall provide the real property interests, relocations, and placement area improvements required for construction and operation, maintenance, repair, rehabilitation, and replacement of the Project. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for the purpose of performing inspections pursuant to Article II.B. and any other activities covered by this Agreement.

3. Prior to the Non-Federal Sponsor initiating construction under this Agreement, the design work for such construction, including relevant plans and specifications and arrangements for carrying out that work under a contract, must be reviewed and approved by the Assistant Secretary of the Army (Civil Works) or his designee as meeting the Government's current criteria, design standards, and review processes. Any proposed substantive changes to the approved design work must also be reviewed and approved by the Assistant Secretary of the Army (Civil Works) or his designee in advance of such construction. Upon completion of the design, the Non-Federal Sponsor shall furnish the Government with copies of the completed design. The Non-Federal Sponsor shall not award the first construction contract for a discrete segment or separable element until the Government completes its environmental compliance for the separable element proposed for construction.

4. The Non-Federal Sponsor shall comply with the same legal and technical requirements that would apply if the Project was carried out by the Government, including all mitigation required to offset environmental impacts of the Project as determined by the Government. The Non-Federal Sponsor shall obtain any permits or approvals required for the Project under Federal or state law, except that the Non-Federal Sponsor shall not be required to obtain any Federal permits or approvals that would not be required if the Government carried out the Project or separable element unless significant new circumstances or information relevant to environmental concerns or compliance have arisen since development of the project recommendation.

B. The Government shall perform periodic inspections to verify the progress of construction and that work is being performed in a satisfactory manner. Upon completion of construction of each separable element, or discrete segment, the Non-Federal Sponsor shall provide written notification to the Government of such completion. For each separable element, the Non-Federal Sponsor shall provide as-built drawings for the completed work. Completed work is subject to onsite inspections and a determination by the Government that the work was accomplished in a satisfactory manner and in accordance with Government design and construction standards.

C. At the written request of the Non-Federal Sponsor, the Government shall provide to the Non-Federal Sponsor all relevant non-proprietary data and documentation under the control of the Government with respect to the Project, except for information that the Government may withhold under applicable law. The District Commander shall provide this non-proprietary data and documentation not later than 90 calendar days after the Non-Federal Sponsor requests the data and documentation.

D. Reimbursement of eligible project costs incurred by the Non-Federal Sponsor for pre-Agreement design work, post-Agreement design and construction work, and associated permit work after completion of a discrete segment or separable element will be provided in accordance with this paragraph.

1. After the effective date of this Agreement, and upon completion of construction for each discrete segment of Increment 2, the Lincoln Avenue Floodwalls separable element on the west bank of the Napa River north of the Oxbow and completion of each

separable element for which construction was initiated following Assistant Secretary of the Army (Civil Works) or his designee's approval of corresponding Design Recommendation Reports, the Non-Federal Sponsor shall submit an invoice to the Government that documents the costs that it incurred for such design and construction work and associated permit work, with such costs allocated by project purpose. In addition, for any pre-Agreement design work that the Government determines to be eligible for reimbursement, the costs for that design work shall be included in the initial invoice for that separable element.

2. The Government shall review each invoice provided by the Non-Federal Sponsor and, based on the procedures, requirements, and conditions provided in Article V, shall determine the costs, or portion thereof, allocated by project purpose that are eligible for inclusion in project costs and reimbursement of the Federal share. The Government shall provide a written explanation to the Non-Federal Sponsor for any costs it determines are not eligible for inclusion in project costs and reimbursement of the Federal share. To the maximum extent practicable, within 60 calendar days of receipt of each invoice for a completed discrete segment or separable element, the Government, after considering the estimated amount of credit that will be afforded to the Non-Federal Sponsor for real property interests, relocations, and placement area improvements for each separable element by project purpose and subject to the availability of Federal funds, shall reimburse the Non-Federal Sponsor for the Federal share of the eligible costs it incurred for pre-Agreement design work, design and construction work, and permit work. For each discrete segment identified in Article I.B., above, the Government shall estimate Government project costs and estimated costs for real property interests, relocations, and placement area improvements to be applied to project costs for the Lincoln Avenue Floodwalls by project purpose.

3. The Government will initially retain 5 percent of the total Federal funds amount to pay the Government's costs incurred for oversight, review, and other contingencies. The Government will use its best efforts to adhere to this percentage, but may increase the amount retained above this percentage if warranted by expenditures related to oversight, review, and other contingencies.

4. If the Non-Federal Sponsor fails to complete Increment 2 within its timeframe for completion as provided in Article I.C., the Non-Federal Sponsor shall remit to the Government any reimbursements it previously received under Article II.D. for completed discrete segments within Increment 2, the Lincoln Avenue Floodwalls separable element on the West Bank north of the Oxbow by delivering a check payable to "FAO, USAED, Sacramento (L2)" to the District Commander, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government.

5. As a part of the final accounting for each separable element pursuant to Article VI.C., the Government will ensure that the Non-Federal Sponsor has met its cost-sharing requirements by project purpose consistent with 33 U.S.C. 2213.

E. The Government, as it determines necessary, to ensure compliance with the National Historic Preservation Act (NHPA) of 1966, as amended (54 U.S.C. 300101-307108), shall

undertake actions or direct the Non-Federal Sponsor to undertake actions associated with historic preservation, including, the identification and treatment of historic properties as those properties are defined in NHPA. All costs incurred by the Government and Non-Federal Sponsor for such work (including the mitigation of adverse effects other than data recovery) shall be included in project costs and shared in accordance with the provisions of this Agreement. If historic properties are discovered during construction and the effect(s) of construction are determined to be adverse, strategies shall be developed to avoid, minimize, or mitigate these adverse effects. In accordance with 54 U.S.C. 312507, up to 1 percent of the total amount authorized to be appropriated for the Project may be applied toward data recovery of historic properties and such costs shall be borne entirely by the Government. In the event that costs associated with data recovery of historic properties exceed 1 percent of the total amount authorized to be appropriated for the Project, in accordance with 54 U.S.C. 312508, the Government will seek a waiver from the 1 percent limitation under 54 U.S.C. 312507 and upon receiving the waiver, will proceed with data recovery at full Federal expense. Nothing in this Agreement shall limit or otherwise prevent the Non-Federal Sponsor from voluntarily contributing costs associated with data recovery that exceed 1 percent.

F. For each separable element, the Non-Federal Sponsor shall prepare an Operation, Maintenance, Repair, Rehabilitation and Replacement Manual (hereinafter the “OMRR&R Manual”) for approval by the Government. The Non-Federal Sponsor, at no cost to the Government, shall operate, maintain, repair, rehabilitate, and replace the Project in a manner compatible with the authorized purposes of the Project in accordance with applicable Federal laws and the OMRR&R Manual. For each separable element, the Non-Federal Sponsor shall provide an updated OMRR&R Manual for approval by the Government with updated as-built drawings, as necessary, based on the cost shared monitoring and adaptive management. If the Government determines that the Non-Federal Sponsor is failing to perform its responsibilities under this Agreement and the Non-Federal Sponsor does not correct such failures within a reasonable time after notification by the Government, the Government may undertake any operation, maintenance, repair, rehabilitation, or replacement of the Project. No operation, maintenance, repair, rehabilitation, or replacement by the Government shall relieve the Non-Federal Sponsor of its responsibilities under this Agreement or preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

G. The Non-Federal Sponsor shall not use Federal program funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the Project. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share for such work.

H. In accordance with Section 402 of WRDA 1986, as amended (33 U.S.C. 701b-12), the Non-Federal Sponsor shall prepare a floodplain management plan for the Project within one year after the effective date of this Agreement and shall implement such plan no later than one year after completion of construction of the Project. The Non-Federal Sponsor may execute agreements with other non-Federal entities to ensure such preparation and implementation. The plan shall be designed to reduce the impacts of future flood events in the project area, including

but not limited to, addressing those measures to be undertaken by non-Federal interests to preserve the level of flood risk reduction provided by such work. The Non-Federal Sponsor shall provide an information copy of the plan to the Government.

I. The Non-Federal Sponsor shall ensure publication of floodplain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in adopting regulations, or taking other actions, to prevent unwise future development and to ensure compatibility with the Project. The Non-Federal Sponsor may execute agreements with other non-Federal entities to ensure such publication and provision.

J. The Non-Federal Sponsor shall prevent obstructions or encroachments on the Project (including prescribing and enforcing regulations to prevent such obstructions or encroachments) that might reduce the level of flood risk reduction the Project affords, hinder operation and maintenance of the Project, or interfere with the Project's proper function.

K. In addition to the ongoing, regular discussions between the parties regarding Project delivery, the Government and the Non-Federal Sponsor may establish a Project Coordination Team to discuss significant issues or actions. The Government's costs for participation on the Project Coordination Team shall not be included in project costs that are cost shared but shall be included in calculating the Maximum Cost Limit. The Non-Federal Sponsor's costs for participation on the Project Coordination Team shall not be included in project costs that are cost shared and shall be paid solely by the Non-Federal Sponsor without reimbursement by the Government.

L. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall be responsible for all costs in excess of the total Federal funds amount.

M. The Non-Federal Sponsor shall keep the recreation features, access roads, parking areas, and other associated public use facilities, open and available to all on equal terms.

N. If the Non-Federal Sponsor elects to include betterments in the Project design or construction, the Non-Federal Sponsor shall notify the Government in writing and describe the betterments it intends to implement for Project design and construction. The Non-Federal Sponsor shall be solely responsible for all betterments costs, including costs associated with obtaining permits for such work, without reimbursement by the Government.

O. The Non-Federal Sponsor may request in writing that the Government perform technical assistance on the Non-Federal Sponsor's behalf. If the Government agrees to such request, the Non-Federal Sponsor, in accordance with Article VI.D., must provide funds sufficient to cover the costs of such work in advance of the Government performing the work or the cost of such work can be deducted from any reimbursements provided pursuant to Article II.D. and such costs may not be reimbursed.

### ARTICLE III - REAL PROPERTY INTERESTS AND RELOCATIONS



A. The Non-Federal Sponsor shall notify the Government of the real property interests required for construction, operation, and maintenance of the Project, and the Non-Federal Sponsor shall provide the Government with general written descriptions, including maps as appropriate, of such real property interests based on approved designs pursuant to Article II.A.3. The Government shall review the written descriptions, including estates, and maps provided by the Non-Federal Sponsor to ensure the real property interests are sufficient and provide to the Non-Federal Sponsor a written notice of any deficiency. If the Government determines that the real property interests are insufficient, the Non-Federal Sponsor shall acquire the real estate interests that the Government determines are necessary for construction, operation, and maintenance of the Project as described in the written notice. The Non-Federal Sponsor shall, in accordance with Article IV.A., investigate to ensure that HTRW does not exist in, on, or under the real property interests to be acquired. The Non-Federal Sponsor shall notify the Government in writing when such interests have been acquired and ensure that such real property interests are retained in public ownership.

B. The Non-Federal Sponsor shall notify the Government of the relocations and placement area improvements required for construction, operation, and maintenance of the Project, and the Non-Federal Sponsor shall provide the Government with general written descriptions, including maps and plans and specifications, and attorney opinions of compensability as appropriate, for such relocations and placement area improvements based on approved designs pursuant to Article II.A.3. The Government shall review the written descriptions, including maps and plans and specifications, provided by the Non-Federal Sponsor to ensure the relocations and placement area improvements are sufficient and provide to the Non-Federal Sponsor a written notice of any deficiency. If the Government determines that the relocations and placement area improvements are insufficient, the Non-Federal Sponsor shall perform the relocations and construct the placement area improvements that the Government determines are necessary for construction, operation, and maintenance of the Project as described in the written notice. The Non-Federal Sponsor shall notify the Government in writing when such work has been accomplished.

C. In acquiring the real property interests for the Project, the Non-Federal Sponsor assures the Government that it will comply with the following:

(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under 42 U.S.C. 4622, 4623 and 4624;

(2) relocation assistance programs offering the services described in 42 U.S.C. 4625 shall be provided to such displaced persons;

(3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with 42 U.S.C. 4625(c)(3);

(4) in acquiring real property, the Non-Federal Sponsor will be guided, to the greatest extent practicable under State law, by the land acquisition policies in 42 U.S.C. 4651 and the provisions of 42 U.S.C. 4652; and

(5) property owners will be paid or reimbursed for necessary expenses as specified in 42 U.S.C. 4653 and 4654.

#### ARTICLE IV - HTRW

A. The Non-Federal Sponsor shall be responsible for undertaking any investigations to identify the existence and extent of any HTRW regulated under applicable law, that may exist in, on, or under real property interests required for construction, operation, and maintenance of the Project.

B. In the event the Non-Federal Sponsor discovers that HTRW exists in, on, or under any of the real property interests needed for construction, operation, and maintenance of the Project, the Non-Federal Sponsor shall provide written notice to the Government within 15 calendar days of such discovery, in addition to providing any other notice required by applicable law. If HTRW is discovered prior to acquisition, the Non-Federal Sponsor shall not proceed with the acquisition of such real property interests until the parties agree that the Non-Federal Sponsor should proceed. If HTRW is discovered in, on, or under real property interests that the Non-Federal Sponsor currently owns or controls or after acquisition of the real property interests, no further Project activities within the contaminated area shall proceed until the parties agree on an appropriate course of action.

1. If the Non-Federal Sponsor initiates or continues construction, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the performance and costs of HTRW cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. The Non-Federal Sponsor shall pay such costs without reimbursement by the Government.

2. In the event the Non-Federal Sponsor fails to discharge its responsibilities under this Article, the Government may suspend or terminate future performance under this Agreement, including reimbursements pursuant to Article II.D.

C. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the owner and operator of the Project for purposes of CERCLA liability or other applicable law.

D. Any decision made pursuant to this Article shall not relieve any third party from any HTRW liability that may arise under applicable law.

#### ARTICLE V - DETERMINATION OF ELIGIBLE NON-FEDERAL SPONSOR COSTS



A. The Government and the Non-Federal Sponsor agree that the Non-Federal Sponsor's costs that are eligible for inclusion in project costs shall be determined in accordance with the following procedures, requirements, and conditions and subject to audit in accordance with Article X.B. to determine reasonableness, allocability, and allowability of costs.

1. The Non-Federal Sponsor's eligible costs for and value of real property interests, relocations, and placement area improvements will be included in project costs during the final accounting of each separable element for cost-sharing purposes. To the maximum extent practicable, no less frequently than on a semi-annual basis, the Non-Federal Sponsor should provide the Government with documentation sufficient for the Government to determine the amount of eligible costs for and value of real property interests, relocations, and placement area improvements in accordance with paragraphs B.1., B.2., B.3., and B.6. of this Article.

2. The Non-Federal Sponsor's eligible costs for pre-Agreement design work, post-Agreement design and construction work, and associated permit work will be reimbursed as the discrete segments or separable elements for such work are completed and invoiced by the Non-Federal Sponsor. Each invoice provided by the Non-Federal Sponsor pursuant to Article II.D. should include documentation sufficient for the Government to determine the amount of reimbursement to be provided in accordance with paragraphs B.4., B.5., and B.6. of this Article.

3. The amount eligible for reimbursement is further limited to the total Federal funds amount less the retained amount required by Article II.D.3..

B. The Non-Federal Sponsor's costs eligible for reimbursement will be determined as follows:

1. Real Property Interests.

a. General Procedure. For each real property interest, the Non-Federal Sponsor shall obtain an appraisal of the fair market value of such interest that is prepared by a qualified appraiser who is acceptable to the parties. Subject to valid jurisdictional exceptions, the appraisal shall conform to the Uniform Standards of Professional Appraisal Practice. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government.

(1) Date of Valuation. For any real property interests owned by the Non-Federal Sponsor on the effective date of this Agreement and required for the Project, the date the Non-Federal Sponsor initiates construction shall be used to determine the fair market value. The fair market value of real property interests acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

(2) Except for real property interests not eligible to be included in projects costs, the Non-Federal Sponsor shall obtain an appraisal for each real property interest required for the Project and provide the Government a copy of such appraisal in accordance with the schedule in Article V.A.1.

(3) After the Government reviews and approves the appraisals for reasonableness and compliance with applicable laws and regulations, the Government shall include the appraised amount in project costs during the final accounting of each separable element for cost-sharing purposes. If the Government determines that the amount paid by the Non-Federal Sponsor exceeds the approved appraised amount, the Government, at the Non-Federal Sponsor's request, shall consider all factors relevant to determining fair market value to be included in project costs and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing a greater amount to be included in project costs. If the Government determines that the amount paid by the Non-Federal Sponsor does not comply with applicable laws and regulations, the Government shall notify the Non-Federal Sponsor of the deficiency, and, within 30 calendar days of receipt of such notice, the Non-Federal Sponsor shall provide the Government with a plan to correct the deficiency.

b. Eminent Domain Procedure. For real property interests acquired by eminent domain proceedings instituted after the effective date of this Agreement, the fair market value to be included in project costs shall be either the amount of the court award for the real property interests taken or the amount of any stipulated settlement, with such value included in project costs during the final accounting of each separable element for cost-sharing purposes.

c. Waiver of Appraisal. Except as required by paragraph B.1.b. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if, in accordance with 49 C.F.R. Section 24.102(c)(2):

(1) the owner is donating the real property interest to the Non-Federal Sponsor and releases the Non-Federal Sponsor in writing from its obligation to appraise the real property interest, and the Non-Federal Sponsor submits to the Government a copy of the owner's written release; or

(2) the Non-Federal Sponsor determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the real property interest proposed for acquisition is estimated at \$15,000 or less, based on a review of available data. When the Non-Federal Sponsor determines that an appraisal is unnecessary, the Non-Federal Sponsor shall prepare the written waiver valuation required by 49 C.F.R. Section 24.102(c)(2) and submit a copy thereof to the Government for approval. The Government may approve exceeding the \$15,000 threshold, up to an amount of \$35,000, if the Non-Federal Sponsor offers the owner the option of having the Non-Federal Sponsor appraise the real property interest.

(3) if the Non-Federal Sponsor determines that the acquisition is uncomplicated, has a low fair market value, and the Non-Federal Sponsor offers the owner the option to have the property appraised, the Non-Federal Sponsor may request in writing approval to use a waiver valuation for properties with estimated values of more than \$35,000 and up to \$50,000. If use of a waiver valuation is approved by the Government, the Non-Federal Sponsor shall provide a report measuring the cost and time benefits, condemnation rate, settlement rate,

and other relevant metric to document the administrative savings, accuracy, and efficacy of the use of the waiver valuation.

d. Incidental Costs. The Government shall include in project costs the incidental costs the Non-Federal Sponsor incurred in acquiring any real property interests required pursuant to Article III for the Project within a five-year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, that are documented to the satisfaction of the Government, during the final accounting of each separable element for cost-sharing purposes. Such incidental costs shall include closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.C., and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest pursuant to Article III.

2. Relocations. The Government shall include in project costs the value of any relocations required for an applicable separable element during the final accounting of each separable element for cost-sharing purposes.

a. For a relocation other than a highway, eligible costs shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

b. For a relocation of a highway, which is any highway, roadway, or street, including any bridge thereof, that is owned by a public entity, eligible costs shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of California would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

c. Relocation costs include actual costs of performing the relocation; engineering and design costs; and supervision and administration costs documented to the satisfaction of the Government. Relocation costs do not include any costs associated with betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available.

3. Placement Area Improvements. The Government shall include in project costs the value of placement area improvements required for an applicable separable element during the final accounting of each separable element for cost-sharing purposes. The value of the placement area improvements shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred to provide such placement area improvements. Such costs include actual costs of constructing the improvements; engineering and design costs; and supervision and administration costs, but shall not include any costs associated with betterments, as determined by the Government.

4. Post-Agreement Design and Construction Work and pre-Agreement Design Work. The Government shall include in project costs the costs of design and construction work performed by the Non-Federal Sponsor after the effective date of this Agreement and the pre-Agreement design work performed by the Non-Federal Sponsor after the effective date of the MOU, that are eligible for reimbursement. Such costs may include engineering and design, including HTRW investigations pursuant to Article IV.A.; construction; and supervision and administration, but shall not include any costs associated with betterments, as determined by the Government. Eligible costs will be reimbursed to the Non-Federal Sponsor pursuant to Article II.D. as discrete segments or separable elements, as applicable, are completed.

a. The Non-Federal Sponsor shall provide documentation, satisfactory to the Government, for the Government to determine the amount of eligible costs. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees. Where the Non-Federal Sponsor's cost for completed pre-Agreement design work is expressed as fixed costs plus a percentage of project costs, the Non-Federal Sponsor shall calculate such costs based on actual costs.

b. The following costs are not eligible for inclusion in project costs: interest charges, or any adjustment to reflect changes in price levels after completion of the design or construction work; costs that exceed the Government's estimate of the cost for such post-Agreement design and construction work or pre-Agreement design work if such work had been accomplished by the Government; the costs of physical construction work under a contract awarded with notice to proceed prior to the effective date of this Agreement; and the costs of post-Agreement design and construction work or pre-Agreement design work obtained at no cost to the Non-Federal Sponsor.

5. Permit Work. The Government shall include in project costs the costs of permit work, which includes the Non-Federal Sponsor's costs for obtaining all required Federal and state permits, licenses, and approvals necessary for design, construction, and operation and maintenance of the Project, or separable elements thereof, after the effective date of this Agreement, that are eligible for reimbursement. Such costs will be reimbursed to the Non-Federal Sponsor pursuant to Article II.D. as discrete segments or separable elements, as applicable, are completed. Eligible costs shall be equivalent to the direct costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurs in obtaining all permits and licenses necessary for design, construction, and operation and maintenance of the Project. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees involved in obtaining such permits. Failure to comply with these permits and licenses may result in the Government denying, in whole or part, inclusion of the Non-Federal Sponsor's costs for effected design and construction work in project costs for cost-sharing purposes.

6. Compliance with Federal Labor Laws. In undertaking construction and relocations, the Non-Federal Sponsor shall comply with applicable Federal labor laws covering non-Federal construction and relocations, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act). The Non-Federal

Sponsor's failure to comply with these laws may result in the Government denying, in whole or part, inclusion of the Non-Federal Sponsor's costs for relocations and construction of the Project in project costs.

C. Notwithstanding any other provision of this Agreement, real property interests that were previously provided as an item of local cooperation for another Federal project shall not be included in project costs.

## ARTICLE VI - ACCOUNTING

A. As of the effective date of this Agreement, total project costs based on 100 percent design of Increment 2 and updated design costs for Increment 3 are projected to be \$106,262,000, with the Government's share of such costs projected to be \$75,064,750 and the Non-Federal Sponsor's share of such costs projected to be \$31,197,250. Costs for technical assistance provided by the Government pursuant to Article II.L. are projected to be \$0. All costs shown in paragraph A. of this Article are estimates only that are subject to adjustment and are not to be construed as the total financial responsibilities of the Government and Non-Federal Sponsor. The total project cost will be updated upon finalization of design. Notwithstanding the foregoing, the Federal share of total project costs for all eligible reimbursements will be limited to the total Federal funds amount, less the retained amount required by Article II.D.3.

1. For Increment 2, the Lincoln Avenue Floodwalls separable element on the west bank of the Napa River north of the Oxbow the Lincoln Avenue Floodwalls separable element, the project costs are projected to be \$69,701,000, with the Government's share projected to be \$47,645,000 and the Non-Federal Sponsor's share projected to be \$22,057,000. Eligible pre-Agreement design work costs are projected to be \$8,198,000, eligible real property interest and relocation costs are projected to be \$10,021,000.

2. For Increment 3, the Imola Avenue to Hatt Street Floodwalls separable element on the west bank of the Napa River south of the Oxbow, the project costs are projected to be \$36,561,000, with the Government's share projected to be \$27,420,750 and the Non-Federal Sponsor's share projected to be \$9,140,250. Eligible pre-Agreement design work projected to be \$99,000, eligible real property interest, relocation, and placement area improvement costs projected to be \$6,877,000.

B. The Government shall provide the Non-Federal Sponsor with quarterly financial reports setting forth the estimated project costs and the Government's and Non-Federal Sponsor's estimated shares of such costs; costs incurred by the Government to date; costs incurred by the Non-Federal Sponsor to date; the total amount of reimbursements made to the Non-Federal Sponsor to date; estimated project costs for real property interests, relocations, and placement area improvements; and the balance of the Federal funds available for the Project.

C. Upon completion of construction of each separable element, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the written results of such final accounting. During each final accounting, the Government shall consider the project costs that the Government incurred and all of the project costs the Non-Federal Sponsor incurred that



are eligible for reimbursement, to ensure that the Non-Federal Sponsor met its cost-sharing requirements for project purpose as follows: for structural flood risk management, a minimum of 25 percent, up to a maximum of 50 percent, of project costs, depending on the eligible value of the real property interests, relocations, and placement area improvements, plus a minimum amount equal to 5 percent of project costs allocated to structural flood risk management and any additional amount necessary to ensure the Non-Federal Sponsor's cost share is not less than 25 percent of project costs allocated to structural flood risk management; and for recreation 50 percent of project costs. The Government will determine the total reimbursable amount for each separable element by project purpose by totaling the Non-Federal Sponsor's contributions towards project costs and subtracting from it the required non-Federal cost share.

Reimbursements under this Agreement shall not exceed the total Federal funds amount as that term is defined in Article I.J., above, minus the retained amount required by Article II.D.3., except if any of the retained amount is unexpended upon completion of the Project, it shall be available for reimbursement purposes. If the Government determines that funds in excess of the total reimbursable amount have been reimbursed to the Non-Federal Sponsor, the Non-Federal Sponsor, within 60 calendar days of receipt of written notice from the Government, shall provide the Government with the full amount of such excess funds by delivering a check payable to "FAO, USAED, Sacramento (L2)", or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. Should the final accounting determine that the reimbursements provided to the Non-Federal Sponsor are less than the total reimbursable amount, then subject to the limitations in Article V.A.3 and the availability of Federal funds, the Government shall reimburse the Non-Federal Sponsor for the amount equal to such difference.

D. If the Government agrees to provide technical assistance on the Non-Federal Sponsor's behalf, the Government shall provide written notice to the Non-Federal Sponsor of the amount of funds required to cover such costs. No later than 60 calendar days of receipt of such written notice, the Non-Federal Sponsor shall make the full amount of such required funds available to the Government through either payment method specified in Article VI.C. If at any time the Government determines that additional funds are required to cover such costs, the Non-Federal Sponsor shall provide those funds within 30 calendar days from receipt of written notice from the Government. If the Government determines that funds provided by the Non-Federal Sponsor exceed the amount that was required for the Government to complete such work, the Government shall refund any remaining unobligated amount.

## ARTICLE VII - TERMINATION OR SUSPENSION

If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Government may suspend or terminate this Agreement. If the Government determines that the Federal funds available for the Project will be exhausted prior to completion of the Project, the Government shall notify the Non-Federal Sponsor and the Non-Federal Sponsor may continue with design and construction of the Project with future reimbursements subject to the availability of Federal funds.

## ARTICLE VIII - HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from design, construction, operation, maintenance, repair, rehabilitation, and replacement of the Project, except for damages due to the fault or negligence of the Government or its contractors.

## ARTICLE IX - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

## ARTICLE X - MAINTENANCE OF RECORDS AND AUDITS

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsor of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsor shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits shall not be included in project costs, but shall be included in calculation of the Maximum Cost Limit.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsor to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the Non-Federal Sponsor's request, provide to the Non-Federal Sponsor or independent auditors any such information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The Non-Federal Sponsor shall pay the costs of non-Federal audits without reimbursement by the Government.

## ARTICLE XI - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.



## ARTICLE XII - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by registered or certified mail, with return receipt, as follows:

If to the Non-Federal Sponsor:

Chairperson of the Board of Directors  
Napa County Flood Control and Water Conservation District  
804 First Street  
Napa, California 94559

If to the Government:

District Commander  
U.S. Army Corps of Engineers, Sacramento District  
1325 J Street  
Sacramento, California 95814-2922

B. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

## ARTICLE XIII - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

## ARTICLE XIV - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Assistant Secretary of the Army (Civil Works) or his designee.

DEPARTMENT OF THE ARMY

BY: \_\_\_\_\_

ADAM R. TELLE  
Assistant Secretary of the  
Army (Civil Works)

DATE: \_\_\_\_\_

NAPA COUNTY FLOOD CONTROL AND  
WATER CONSERVATION DISTRICT

BY: \_\_\_\_\_

JOELLE GALLAGHER  
Chairperson of the Board of Directors  
of the Napa County Flood Control and Water  
Conservation District

DATE: \_\_\_\_\_

APPROVED AS TO FORM  
Napa County Counsel

By: \_\_\_\_\_

Date: \_\_\_\_\_

Doc Title: \_\_\_\_\_

260149 BCF)

AMENDMENT NUMBER 3  
TO THE PROJECT COOPERATION AGREEMENT BETWEEN  
THE DEPARTMENT OF THE ARMY AND  
THE NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT  
FOR  
CONSTRUCTION OF THE NAPA RIVER, CALIFORNIA PROJECT

THIS AMENDMENT is entered into this \_\_\_ day of \_\_\_\_\_, 2025, by and between the Department of the Army (hereinafter the "Government"), represented by the Assistant Secretary of the Army (Civil Works) and the Napa County Flood Control and Water Conservation District (hereinafter the "Non-Federal Sponsor"), represented by the Chairperson of the Board of Directors.

WITNESSETH, THAT:

WHEREAS, construction of the Napa River/Napa Creek Flood Protection Project in Napa County, California (hereinafter the "Authorized Project") was authorized by Section 204 of the Flood Control Act of 1965 (Pub. L. No. 89-298, 79 Stat. 1073, 1084 (October 27, 1965)) for the purposes of flood control and recreation substantially in accordance with the 1965 Chief of Engineers Report for the Napa River Basin (H. Doc. 89-222), and modified by Section 136 of the Water Resources Development Act of 1976 (Pub. L. No. 94-587, 90 Stat. 2917, 2929 (October 22, 1976));

WHEREAS, the Government and the Non-Federal Sponsor entered into a Project Cooperation Agreement to construct the Authorized Project on February 1, 2000, amended by Amendment Number 1 entered into on April 5, 2007, and Amendment Number 2 entered into on August 8, 2016, pursuant to which certain features of the Authorized Project were constructed;

WHEREAS, the Government and the Non-Federal Sponsor are entering into an Agreement pursuant to Section 204 of WRDA 1986, as amended (33 U.S.C. 2232) under which the Non-Federal Sponsor will construct Increments 2 and 3, the Lincoln Avenue Floodwalls separable element and the Imola Avenue to Hatt Street Floodwalls separable element of the Authorized Project, as those increments are described in the required design implementation and environmental decision documentation, with eligible reimbursement of such construction provided by the Government in accordance with Section 204(d);

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into this Amendment Number 3 to the Project Cooperation Agreement, to limit the terms of the Project Cooperation Agreement, as amended, to those Authorized Project features already constructed as of the date of this Amendment which are those flood control improvements from Highway 29 to Trancas Street on the Napa River and from the mouth of Napa Creek to Earl Street, and recreation features along the Napa River from Kennedy Park to Trancas Street, including but

not limited to: the Napa Creek Project, the Pedestrian Bridge, the Bypass Excavation and Floodwalls, the Railroad Bridges over River and Bypass Channel, the Maxwell Bridge Replacement, the Railroad Realignment Kennedy Park to 8<sup>th</sup> Street, all as generally described in paragraph 1. of this Amendment Number 3; and

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to enter into this Amendment.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree to further amend the Project Cooperation Agreement as follows:

1. Replace Article I.A. in its entirety with the following:

“A. The term “Project” shall mean the construction of those flood control improvements from Highway 29 to Trancas Street on the Napa River and from the mouth of Napa Creek to Earl Street, and recreation features along the Napa River from Kennedy Park to Trancas Street, that have been constructed as of the effective date of Amendment Number 3 to this Agreement, including but not limited to: the Napa Creek Project, the Pedestrian Bridge, the Bypass Excavation and Floodwalls, the Railroad Bridges over River and Bypass Channel, the Maxwell Bridge Replacement, the Railroad Realignment Kennedy Park to 8<sup>th</sup> Street, as generally described in the Supplemental General Design Memorandum dated October 1998, associated National Environmental Policy Act (42 U.S.C. 4321 et seq.) documentation, dated March 1999, approved by the Deputy Director of Civil Works on May 24, 1999, as supplemented, and subsequent project engineering implementation documentation.”

All other terms and conditions of the Project Cooperation Agreement, as amended, remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment Number 3 to the Project Cooperation Agreement, which shall become effective upon the date it is signed by the District Commander.

DEPARTMENT OF THE ARMY

NAPA COUNTY FLOOD CONTROL AND  
WATER CONSERVATION DISTRICT

BY: \_\_\_\_\_

BY: \_\_\_\_\_

JOELLE GALLAGHER  
Chairperson of the Board of Directors  
of the Napa County Flood Control and  
Water Conservation District

DATE: \_\_\_\_\_

APPROVED AS TO FORM  
Napa County Counsel

By: \_\_\_\_\_

Date: \_\_\_\_\_

Doc Title: \_\_\_\_\_

09/10/2025

PCA A#3



## The Napa River Increments 2 & 3 Project Implementation Plan September 2025

### 1) PURPOSE

The purpose of this Implementation Plan is to document the approach that will be followed by the Napa County Flood Control and Water Conservation District, the non-Federal sponsor (NFS) and the U.S. Army Corps of Engineers (USACE), for implementing design and construction of Napa River Increments 2 (West Bank/North of Oxbow) – Lincoln Avenue Floodwalls separable element on the west bank of the Napa River, north of the Oxbow, and Increment 3 (the West Bank/South of Oxbow) - Imola Avenue to Hatt Street Floodwalls separable element on the west bank of the Napa River, south of the Oxbow of the Napa River/Napa Creek Flood Protection Project under authority of Section 204 of the Water Resources Development Act 1986, as amended (33 U.S.C. § 2232) (Project).<sup>1</sup> As indicated in the Overview section below, this approach was developed pursuant to the request of the NFS, as documented in letters to the Congressional authorizing Committees, and is consistent with the requirements contained in the following documents. On October 3, 2019, the NFS offered to limit the remaining Federal share of the cost of the Authorized Project<sup>2</sup> to \$48,300,000 and said that it would be responsible for any and all work and all of the associated costs in excess of this amount. In response, the Army allocated \$48,300,000 to the Authorized Project in its Fiscal Year 2021 Work Plan. Initial amount of \$100,000 received by SPK 18 April 2022.

- A) Memorandum of Understanding Between the Department of the Army and the Napa County Flood Control and Water Conservation District for Design Work Prior to Execution of a 204 Project Partnership Agreement for the Napa River/Napa Creek Flood Protection Project, dated 19 April 2023 (Section 204 MOU).
- B) U.S. Army Corps of Engineers, Engineering Regulation (ER) No. 1165-2-504 (12 July 2017), Construction of Water Resource Development Projects by Non-Federal Interests (Ref. 1).
- C) CECW-P Memo, Subject: Revised Implementation Guidance for Section 1153 of the Water Resources Development Act (WRDA) of 1986, Construction of Water Resources Development Projects by Non-Federal Interests, dated 17 April 2019 (Ref. 2).
- D) Letter to The Honorable R.D. James from the Napa County Flood Control and Water Conservation District, dated October 3, 2019.

### 2) IMPLEMENTATION PLAN STRATEGY

<sup>1</sup> For purposes of this Implementation Plan and the Section 204 Project Partnership Agreement, the term "Project" shall mean construction of Increment 2, the West Bank/North of Oxbow – Lincoln Avenue Floodwalls separable element on the west bank of the Napa River, north of the Oxbow, and Increment 3, the West Bank/South of Oxbow - Imola Avenue to Hatt Street Floodwalls separable element on the west bank of the Napa River, south of the Oxbow, of the Authorized Project, as generally described in the 13 December 2019 Federal Interest Determination, the Supplemental General Design Memorandum, dated October 1998, and associated NEPA documentation, dated March 1999, approved by the Deputy Director of Civil Works on May 24, 1999. See Art. I.A. of the Section 204 Construction Agreement (Section 204 PPA).

<sup>2</sup> Construction of the Napa River/Napa Creek Flood Protection Project in Napa County, California (hereinafter the "Authorized Project") was authorized by Section 204 of the Flood Control Act of 1965 (Pub. L. No. 89-298, 79 Stat. 1073, 1084 (October 27, 1965)) for the purposes of flood control and recreation substantially in accordance with the 1965 Chief of Engineers Report for the Napa River Basin (H. Doc. 89-222), and modified by Section 136 of the Water Resources Development Act of 1976 (Pub. L. No. 94-587, 90 Stat. 2917, 2929 (October 22, 1976)).

The Implementation Plan strategy requests the Assistant Secretary of the Army (Civil Works)'s (ASA(CW)) approval to execute the Project Partnership Agreement (PPA) in advance of approval of project designs and complete environmental compliance. Justification for this request is associated with the NFS goal of efficient and streamlined project delivery through initiation of construction for Increment 2 prior to the end of calendar year 2025. As the timeframe for processing the Increment 2 Design Recommendations Report (DRR) to the ASA(CW) contains some uncertainty, execution of the PPA in advance of DRR approval will position the NFS and the Project for success in meeting this goal. Sequencing the PPA approval to execute after the DRR approval will add significant risk to the construction schedule.

This Implementation Plan includes the following major actions by USACE and the NFS as outlined below:

- A) Develop and execute a Memorandum of Understanding (MOU) to establish a common understanding of the Project and allow the NFS to commence with fieldwork, real estate acquisitions, permitting, and design related activities. This action was completed in April 2023.
- B) Develop one Project Implementation Plan to lay out the process for USACE coordination and execution of Project-related activities under the Section 204 authority to include design approvals and construction support for both increments 2 and 3.
- C) USACE and the Non-Federal Sponsor will negotiate the terms of a PPA and execute a PPA for construction of the Project. Environmental compliance for Increment 2 is scheduled for completion prior to execution of the PPA. Approval of the DRR for Increment 2, execution of the FONSI supporting Increment 2, the preparation and approval of a DRR for Increment 3, and environmental compliance for Increment 3, will follow execution of the PPA. The purpose of the Implementation Plan is to support the following: approval of and execution of the PPA prior to the approval of design for both increments and the completion of environmental compliance for Increment 3; documentation of the steps to be taken for the preparation and approval of a DRR for each increment by the ASA(CW); any other steps necessary for the approval of design and clearance of the NFS to initiate construction for each increment.
- D) Design reviews will be conducted in accordance with the USACE Final Approved Design Review Plan (Attachment A). USACE Sacramento District (SPK) will document the design review conducted for each Increment in a Design Recommendation Report (DRR) that will be submitted through the vertical chain for ASA(CW) approval.
- E) USACE, SPK in partnership with the NFS will prepare a DRR for each increment of the Project documenting the manner in which a determination was made by the District Commander that the Project design conforms to Federal standards and requirements and is ready to proceed to construction. The Implementation Plan and the attached Review Plan shall be utilized as guides in making that determination.
- F) The ASA(CW) will consider for approval and approve the DRR for each increment of the Project upon their consecutive submission, and issue conditions of approval, if any, the ASA(CW) deems appropriate pursuant to 33 U.S.C. § 2232(b)(1)(B).



- G) Construction of any Project increment, including but not limited to contract award by the NFS, will not commence until the ASA(CW) has approved the DRR for the applicable increment..
- H) Following ASA(CW) approval , the District Commander will inform the NFS that construction of Increment 2 may proceed.
- I) The DRR for Increment 3 of the Project will be submitted through the vertical chain for approval by the ASA(CW). It is estimated that the Increment 3 DRR will be submitted approximately 24 months after the submittal of the DRR for Increment 2 per the Project schedule in paragraph 10..
- J) Upon receipt of information from the District Commander that requisite approvals have been received, the NFS moves forward with construction of Increment 3 in accordance with the ASA(CW) approved design; USACE monitors construction.
- K) The NFS shall document its costs and submit reimbursement claims upon completion of discrete segments within Increment 2 and the completion of Increment 3 in accordance with the terms and conditions of the Section 204 PPA, USACE regulations, policies, and the approved design documented in the Project authority and each DRR. The NFS will submit invoices and supporting documentation to the Sacramento District.

### 3) OVERVIEW

- A) Construction of the Authorized Project was authorized by Section 204 of the Flood Control Act of 1965 (Pub. L. No. 89-298, § 204, 79 Stat. 1074,1084 (October 27, 1965)) for the purposes of flood control and recreation substantially in accordance with the 1965 Chief of Engineers Report for the Napa River Basin (H. Doc. 89-222), and modified by Section 136 of the Flood Control Act of 1976 (Pub. L. No. 94-587, § 136, 90 Stat. 2917, 2929 (October 22, 1976)). The total project costs based on FY 2022 price levels are estimated to be \$515,000,000. FY 21 Work Plan provided \$48,300,000 to “(f)ully fund the Federal cost share of the remaining features of the project”, per the arrangement requested by the NFS described below. ) The NFS will be responsible for all costs above \$48,300,000 (less Federal review/oversight) to complete the Authorized Project. Based on FY 2022 price levels, the estimated total project costs for construction of Increments 2 and 3 (the Project) are \$46,100,000 and \$30,300,000, respectively. Based upon FY 2025 price levels, the total project costs for Increments 2 and 3 are \$69,701,000 and \$36,561,000, respectively.
- B) The Authorized Project, as described in the Project Cooperation Agreement (PCA) dated February 1, 2000, is the construction of flood control improvements from Highway 29 to Trancas Street on the Napa River and from mouth of Napa Creek to Earl Street, and recreation features along the Napa River from Kennedy Park to Trancas Street as generally described in the Supplemental General Design Memorandum (hereinafter the SGDM) dated October 1998, and associated National Environmental Policy Act (NEPA) documentation, dated March 1999, and approved by the Deputy Director of Civil Works on May 24, 1999. The Authorized Project was further described as “increments” in the Federal Interest Determination dated 13 December 2019. By letter dated October 3, 2019, the NFS offered to limit the remaining Federal share of the Authorized Project to \$48,300,000 and be responsible for all costs above this amount to complete the Authorized Project. Federal appropriations of \$48,300,000 were provided in FY 21 Work Plan for this purpose. Simultaneously with the execution of the PPA, an Amendment to

the PCA will be executed limiting the terms of that document to project features already constructed.

- C) Section 204 of WRDA 1986, as amended (33 U.S.C. § 2232) authorizes non-Federal interests to carry out Federally authorized water resources development projects in accordance with the plan approved by the Secretary of the Army and subject to any conditions the Secretary may require, with potential credit or reimbursement to the non-Federal interest for the costs of the Federal share of any work carried out on the project; provided further that specific requirements are met as outlined in the statute, the Section 204 PPA, and applicable implementing regulations and policies. As required by Section 204, by letters dated February 2, 2024, the ASA(CW) notified the Senate Committee on Environment and Public Works and the House Committee on Transportation and Infrastructure of the House of Representatives of the NFS's intent to construct Increments 2 and 3 of the Authorized Project under a Section 204 PPA with USACE. USACE would reimburse the NFS up to the allocated \$48,300,000. All costs above that amount to finish construction of the Authorized Project would be non-Federal.
- D) As described in the 2012 Limited Reevaluation Report prepared for the Authorized Project, Increments 2 and 3 lie along approximately 3.6 miles of the Napa River and include floodwalls and closure structures. The Post Bypass Value Engineering and Incremental Analysis Report Revised for Napa River / Napa Creek Flood Protection Project 2017 Post dated September 27, 2017, recommended removing the Bypass Pump Station from the Project. The work south of Imola Avenue and along Napa Creek is complete.
- E) Construction of Increments 2 and 3 of the Project for flood risk management purposes include the two increments as shown on Figure 1. Increment 2 (West Bank/North of Oxbow) consists of construction of the Lincoln Avenue Floodwalls separable element on the west bank of the Napa River north of the Oxbow Bypass. Increment 3 (West Bank/South of Oxbow) consists of construction of the Imola Avenue to Hatt Street Floodwalls separable element on the west bank of the Napa River, south of the Oxbow Bypass.
- F) As noted above, although the non-Federal cost share is a minimum of 25 percent, up to a maximum of 50 percent, of Authorized Project costs allocated to flood risk management, and 50 percent of Authorized Project costs allocated to recreation, the remaining Federal share of Authorized Project costs is the \$48,300,000 in Construction funds received by USACE in the FY21 Work Plan. The NFS has agreed that all costs above that amount to finish construction of the Authorized Project would be non-Federal.
- G) USACE, the NFS, and the NFS' selected Architect-Engineering (AE) firm HDR form a Project Delivery Team (PDT) to carry out the design and construction of the Project as follows:
  - i) USACE is responsible for Project oversight, preparation of Project DRRs for ASA(CW) approval, review of documentation produced including, but not limited to, design plans and specifications, real estate documentation, environmental compliance, including with NEPA and the California Environmental Quality Act (CEQA), and review and approval of invoices and construction documents for reimbursement.

- ii) The NFS is responsible for acquiring all lands, easements, rights of way, relocations, and disposal sites (LERRDS) in accordance with the terms of the Section 204 PPA. The NFS is responsible to direct its AE firm to produce the required plans and specifications suitable for construction. The NFS will coordinate with USACE for environmental and cultural resources compliance. The NFS is responsible for the collection of technical data to assist in the development of design features, namely: geotechnical borings, hydrology and hydraulic analysis, surveys, etc.
- iii) The AE firm is under contract by the NFS and is responsible to produce a set of plans and specifications that meet Federal standards and is suitable for construction. This includes risk analyses appropriate to the scope specified by the USACE team according agency standards. The AE firm also produces the project management plan, the quality management plan, and the detailed schedule.
- iv) The PDT meets weekly to review action items and upcoming activities on the schedule. Other meetings as needed to resolve issues may be convened on an ad-hoc basis. These routine meetings are facilitated by the NFS. Higher level meetings with agency management may be called by any party.

Figure 1 – Napa Project Increments

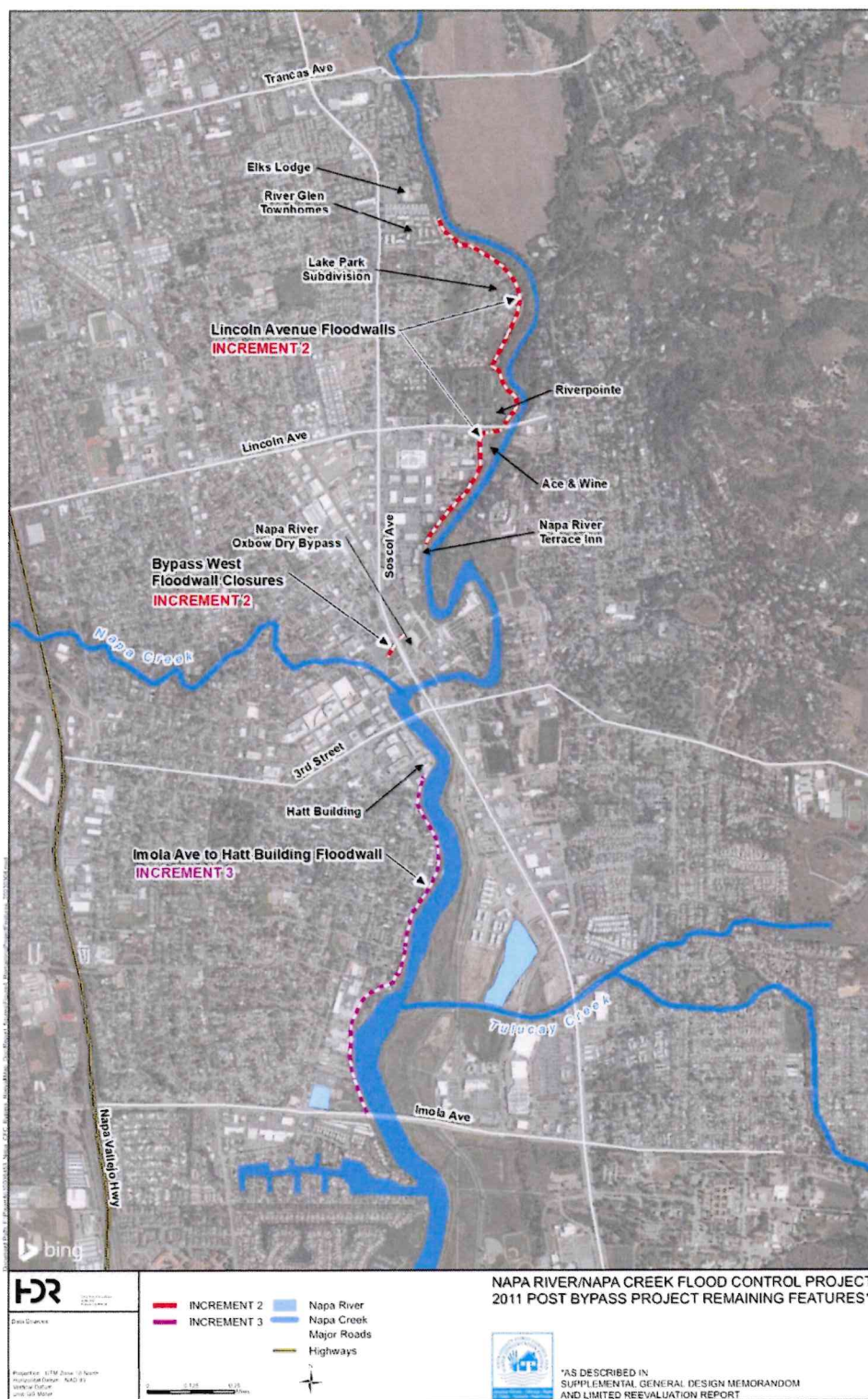
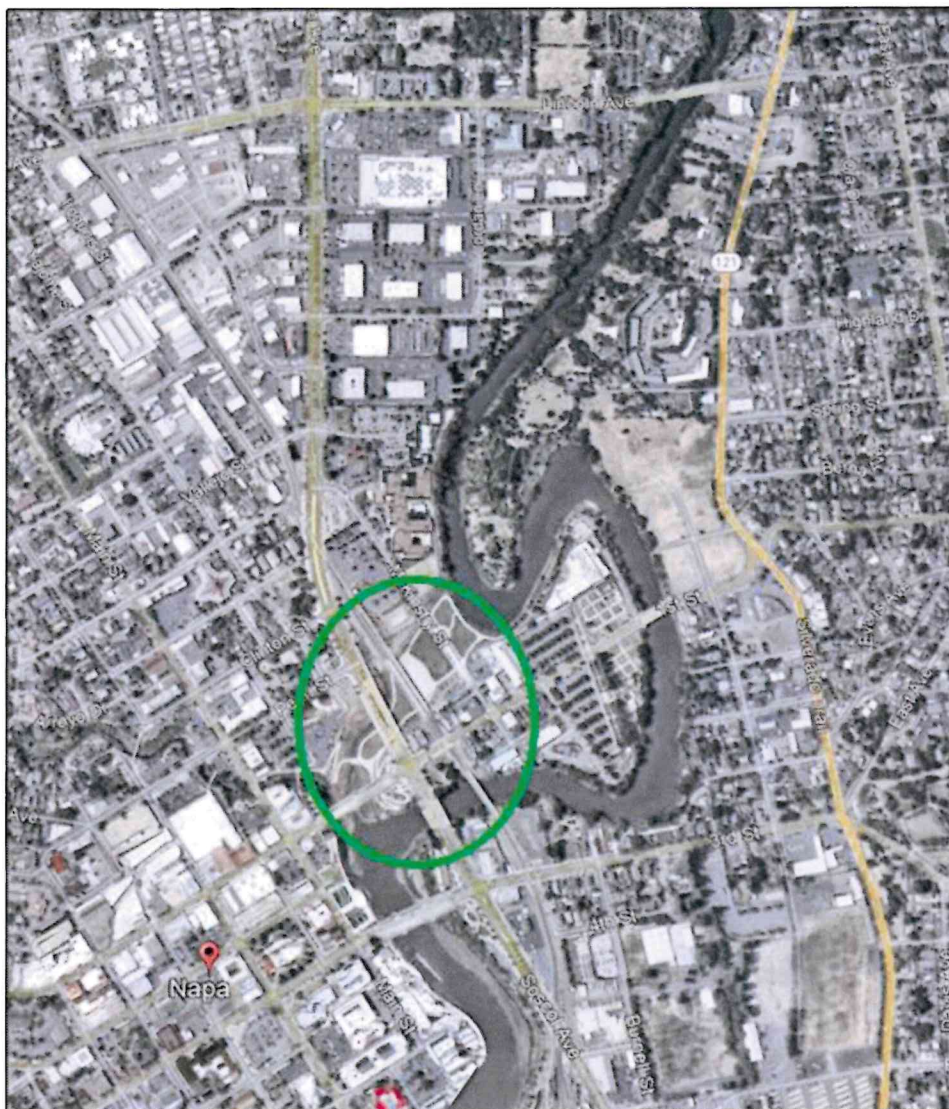




Figure 2 – Napa Oxbow Bypass



#### 4) AUTHORIZED PROJECT FEATURES

- A) Increment 2 – West Bank/North of Oxbow - Lincoln Avenue Floodwalls: this is a separable element on the west bank of the Napa River, north of the Oxbow Bypass.: This increment consists of the design and construction of floodwall and closure structures for the western bank of the Napa River between river stations 828+00 to 893+00, as well as completion of the floodwalls on the north bank of the Napa Oxbow Dry Bypass Channel. Floodwalls designed as part of this Project include reinforced concrete T-walls and steel sheet pile I-walls. Increment 2 includes 6,457 linear feet of floodwall and closure structures along the west bank of the river from the Napa Terrace Inn to Elks Lodge, bisected by Lincoln Avenue, into two defined areas: North and South of Lincoln Avenue.



Discrete segments within Increment 2 are:

Segment 1 - North of Lincoln Avenue, 4,080 linear feet of floodwall and three closure structures will be constructed on the top of the west bank from the Lincoln Avenue bridge headed north through the RiverPointe development, Lake Park subdivision and River Glenn town homes and terminating into high ground just south of Elks Lodge. The three closure structures include three pedestrian access gates with one providing emergency vehicle and pedestrian water side trail access at the northern trail head at Lincoln Avenue and two in the Lake Park.

Segment 2 - South of Lincoln Avenue, 2,377 linear feet of floodwall and three closure structures will be constructed starting from the Lincoln Avenue bridge headed around the Ace & Vine project area and extending south along the top of the west bank of the river terminating into high ground just north of the Napa Terrace Inn. Two closure structures will be constructed along Lincoln Avenue to provide access to the Ace & Vine project area and one closure structure will be provided just south of Wall Street providing emergency and pedestrian access to the waterside of the wall.

Segment 3: northwest side of the Napa Oxbow Dry Bypass - 230 linear feet of floodwall to be constructed consisting of 130 linear feet of floodwall west of Soscol Avenue bridge and 100 linear feet of floodwall east of Soscol Avenue bridge to be constructed in gaps intentionally left in the existing northwest floodwall of the Napa Oxbow Dry Bypass floodwall. Part of the 100 linear feet of floodwall east of Soscol Avenue will consist of a drainage outfall structure allowing a 72-inch drain to discharge into bifurcated outlets (42-inch and 48-inch drains) and housing two sluice gates, one for each outlet respectively.

- B) Increment 3 – West Bank/South of Oxbow - Imola Avenue to Hatt Street Floodwalls: this is a separable element on the west bank of the Napa River south of the Oxbow Bypass. This increment includes 5,932 linear feet of floodwall and four closure structures along the west bank of the Napa River from Imola Avenue to the Hatt Building. The floodwall will tie into the existing floodwall adjacent to the Hatt building and extent southward along the waterside of Riverside Road encompassing floodwall landside of two private docks and continuing south along the top west bank of the Napa River waterside of the parcels east of South Coombs Street and eventually tying into the existing Imola Avenue bridge western abutment. There are no discrete segments within Increment 3.

## 5) DESIGN PHASE REVIEW AND APPROVAL PROCESS

- A) USACE and NFS has developed a Review Plan (attached) for endorsement by the Risk Management Center and approval by the MSC. This Review Plan provides the method by which a determination will be made relative to the Project designs meeting Federal standards.
- B) NFS' AE firm progresses design development to a mutually agreeable completion milestone for final pricing. Design development and pricing may be completed on portions of the Project on a phased basis.
- C) As noted above, the design and construction of Increment 2 will be completed first. The design of Increment 3 will run in parallel with the construction of Increment 2. The construction of Increment 3 will commence after completion of Increment 2. No

construction by the NFS may commence, including contract award by the NFS, until such time as environmental compliance for that increment has been completed and the ASA(CW) has approved the DRR for that increment. The anticipated schedule for project implementation is found below.

- D) NFS' AE firm will complete risk assessment/risk-informed design. The assessment will be scaled to fit within the constraints of the Project schedule and budget. The assessment will be largely qualitative and aimed at addressing specific design related issues rather than quantifying life safety risks.
- E) The NFS' AE firm will support the NFS in submitting the design packages to USACE for the District Quality Assurance (DQA) and Agency Technical Review (ATR). The NFS' AE firm will present material and respond to review comments. The NFS will lead the effort to establish the Board of Senior Consultants, who will be responsible for providing the Safety Assurance Review. The NFS' AE firm will present material and respond to comments. The NFS and its AE firm will certify the quality and accuracy of the technical analyses and cost estimate. This will include documentation of the QA/QC process.
- F) The District has completed a Supplemental Environmental Assessment and a Finding of No Significant Impact (FONSI) for Increment 2 for ASA(CW) review and approval (or delegation of FONSI approval to the District Commander) prior to execution of the PPA. When designs for proposed construction by the NFS of Increment 3 of the Project are available, the need for additional NEPA documentation will be assessed and prepared to disclose and evaluate the reasonably foreseeable environmental effects of design modifications associated with Increment 3. If required, USACE will issue the draft NEPA document for public review and finalize the document through signing of a Record of Decision (ROD) or FONSI, as applicable, depending upon environmental effects of the proposed action. USACE would also complete Section 7 (Endangered Species Act) consultations with the United States Fish and Wildlife Services (USFWS) as well as Section 106 National Historic Preservation Act compliance, if required.
- G) The NFS has prepared a detailed Real Estate Acquisition Plan laying out the process and timeframes for determining real estate interests needed for the Project, coordination of the NFS's acquisitions, and appropriate valuation of the real estate acquisition in accordance with the terms and conditions in the PPA. The Real Estate Acquisition Plan is attached to this Implementation Plan (Attachment B).
- H) NFS develops strategy for procurement, identifies Project delivery method(s), procurement documents and contracting documents that include the performance criteria, as applicable, and compliance with all statutory, and USACE regulation requirements.
- I) NFS' AE firm will coordinate with USACE regarding documentation that the requirements of the NEPA and CEQA and all other applicable laws and regulations, including but not limited to, environmental statutes have been satisfied. USACE will complete Section 106 and tribal consultations.
- J) NFS submits designs (plans and specifications) and supporting documents of each respective increment for review and approval to the Sacramento District Commander to preliminarily determine that the design is technically feasible, environmentally acceptable, and in compliance with applicable laws and regulations, including Section 204. The DRR for each increment, including Sacramento District Commander

concurrence, shall be developed and routed through the vertical team for (ASA(CW)) approval.

- K) The NFS will finalize the design-bid-build selection process, terms, and costs for design and construction services and, if applicable, have the ability to exercise off-ramp provisions and procure construction services via another contract mechanism. Construction contract solicitation by the NFS shall not commence until such time as the NFS has been informed that ASA(CW) approval has been obtained.

## **6) PRE-CONSTRUCTION PHASE**

- A) The Project will be implemented sequentially, using a design-bid-build method selected by the NFS for delivery of the Project. This allows for construction of Increment 2, while design is underway for Increment 3. Reimbursing the NFS for completed discrete segments, consistent with statutory requirements and terms and conditions set forth in the Section 204 PPA, will allow a predictable funding stream as the NFS completes components of each separable element.
- B) The project will comply with requirements as set forth in the National Environmental Policy Act, National Historic Preservation Act, and the California Environmental Quality Act as well as all other Federal, State, and Local statutes in force at time of project execution.

## **7) CONSTRUCTION PHASE**

- A) NFS implements construction of the Project increments in accordance with the approved design and oversees its contractor(s) to ensure work is being carried out in accordance with the terms of the Section 204 PPA, and Federal laws, regulations, and policies required by 33 U.S.C. § 2232 and the Section 204 PPA.
- B) Sacramento District Commander monitors construction to ensure compliance with Section 204 and the terms of the Section 204 PPA.

## **8) INVOICING AND REIMBURSEMENT**

- A) Section 204 allows for reimbursement in accordance with 33 U.S.C. 2232, the Section 204 PPA, and USACE regulations and policies.
- B) The discrete segment geographical limits will be used to support submittal of invoices and supporting documentation. The invoices will be reimbursed after USACE review. The frequency of invoicing will allow a predictable funding stream as the remaining segments are completed. The discrete segments for Increment 2 are:
  - i) Segment 1 - north of Lincoln Avenue
  - ii) Segment 2 - south of Lincoln Avenue
  - iii) Segment 3 - northwest side of the Napa Oxbow Dry Bypass
- C) NFS submits invoices with supporting documentation and requests reimbursement of the Federal share of each completed, discrete segment.

- i) USACE determines all NFS costs submitted are reasonable, allocable, and allowable for the Project in accordance with the Section 204 PPA, and applicable regulations and USACE policies.
  - ii) USACE determines the applicable discrete segment has been completed consistent with the authorization of the Project, or separable element thereof, and the approved design work plans.
  - iii) USACE determines the discrete segment was carried out in compliance with all Federal laws and regulations applicable to the construction of a water resources development project, including Section 204 and the terms and conditions of the Agreement; and
  - iv) USACE certifies that the discrete segment has been constructed in accordance with all applicable permits or approvals and Section 204.
- D) Sacramento District Commander authorizes reimbursement to the NFS.
- i) The Sacramento District will retain 5% of the total reimbursement amount of \$48,300,000, to compensate for the costs incurred by the Government for oversight, review, and other contingencies. USACE may increase the amount retained above this percentage if warranted by expenditures related to oversight, review, and other contingencies.

## **9) FINAL ACCOUNTING AND CLOSEOUT OF EACH SEPARABLE ELEMENT**

- A) Upon completion of a separable element, the District will conduct a final accounting of the separable element in accordance with Article VI of the Agreement to confirm proper cost share allocations for the separable element have been met and the need for either further reimbursement to the NFS, including payment of retention, subject to available funds, or return of any funds previously provided to the NFS for completion of a discrete segment, making the same determinations and certification provided above for each completed separable element.

## **10) PROJECT SCHEDULE**

- A) The Project currently reflects the following milestones:
  - i) ASA(CW) Approval of Implementation Plan – Sep 2025
  - ii) ASA(CW) Approval to execute PPA - Sep 2025
  - iii) PPA execution – Sep 2025
  - iv) Increment 2 Design Recommendation Report (DRR) submittal to SPD – Aug 2025
  - v) Increment 2 NEPA documentation complete – Aug 2025
  - vi) Increment 2 DRR Approval by ASA(CW) and signing of FONSI – Oct 2025
  - vii) Increment 2 Construction Contract Solicitation (NFS) – Oct 2025
  - viii) Increment 2 Construction Contract Award – Dec 2025
  - ix) Increment 2 Segment 2 construction completion – Aug 2027
  - x) Increment 2 Segment 1 Construction Completion – Sep 2028
  - xi) Increment 2 Segment 3 Construction Completion – Sep 2028
  - xii) Increment 2 - Physical Construction Completion – Dec 2028

- xiii) Increment 3 – DRR Submittal to the MSC -- Mar 2027
- xiv) Increment 3 DRR Approval by ASA(CW) – Aug 2027
- xv) Increment 3 NEPA documentation and environmental compliance complete - Aug 2027
- xvi) Increment 3 Construction Contract Solicitation – Sep 2027
- xvii) Increment 3 Construction Contract Award – Nov 2027
- xviii) Increment 3 Physical Construction Completion – Dec 2030
- xix) Project Fiscal Closeout – Apr 2031