



# Napa County

1195 THIRD STREET  
SUITE 310  
NAPA, CA 94559  
www.countyofnapa.org

Main: (707) 253-4580

## Legislation Text

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**File #:** 24-1144, **Version:** 1

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**TO:** Napa County Flood Control and Water Conservation District  
**FROM:** Richard Thomasser - District Manager  
**REPORT BY:** Andrew Butler - District Engineer  
**SUBJECT:** Hearing to Consider Adoption of a Resolution of Necessity to Authorize the Initiation of Eminent Domain Proceedings to Acquire Portions of Certain Property owned by Jose Cruz Calderon and Maximino Ballines

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### **RECOMMENDATION**

PUBLIC HEARING - Napa River/Napa Creek Flood Control Project, Flood Walls North of the Bypass

Open Public Hearing and adopt a Resolution of Necessity with respect to portions of certain property owned by Jose Cruz Calderon and Maximino Ballines (No Fiscal Impact; Discretionary)

### **BACKGROUND**

#### THE PROJECT:

The Napa River/Napa Creek Flood Control Project (Project) covers approximately 6.9 miles of Napa River and approximately one mile of Napa Creek. Components of the Project include widening the channel, creation of both marsh plain and floodplain terraces adjacent to the Napa River, replacing a series of bridges, and creation of a bypass channel through downtown Napa. The Floodwalls North of the Bypass contract, a component of the Project, includes the construction of a setback floodwall from River Terrace Inn to the Elks Grove Townhomes, the closure of the openings in the Bypass, the relocation of a water main in the Lake Park reach, Lincoln Ave Bridge scour protection, construction of a new trail south of Lincoln Ave on the water side of the wall, and a trail crossing at Lincoln Ave. to connect the new trail south to the existing trail north.

#### THE PROPERTY:

The property proposed for acquisition, portions of APNs 044-230-002 and 044-230-003, is located at 1114 Jordan Lane in Napa. The property is a 93,924 square feet (sf) site with approximately 18,448 sf below top of bank. The property owner is also the fee owner to the centerline of the Napa River. The property is currently undeveloped, vacant land. The project requires the following property interests:

Estate: 004-230-002  
Fee: 14,298 sf

Flood Protection Levee Easement: 1,222 sf  
Temporary Construction Easement: 816 sf

Estate: 044-230-003  
Fee: 14,841 sf  
Flood Protection Levee Easement: 1,627 sf  
Temporary Construction Easement: 1,137 sf

Improvements in the usable area proposed for acquisition include fencing. These items will be removed as part of the Project.

#### THE PROJECT SCHEDULE:

Timely acquisition of properties necessary for the Floodwalls North of the Bypass Project, part of the larger Napa River/Napa Creek Flood Protection Project, is crucial as the District is currently scheduled to award a construction contract for the Floodwalls North of the Bypass Project in August of 2025. In January of 2021, the US Army Corps of Engineers was allocated approximately \$48.3 Million for the construction of the Floodwalls North of the Bypass and the Hatt to Imola Floodwalls Projects. The District is designing and constructing the project under the Section 204 process. The District will be responsible for all costs typically attributed to the federal share of the Project for these two contracts above and beyond the \$48.3 Million. In order to award the Floodwalls North of the Bypass contract, the District must be able to certify that it has possession of the property interests.

#### STATUS OF NEGOTIATIONS:

To take legal possession of the property in a timely manner, the District must consider initiating eminent domain proceedings. At this juncture, negotiations are at an impasse since the parties have been unable to reach an agreement; therefore, staff recommends proceeding with the hearing, adopting a Resolution of Necessity, and authorizing commencement of the eminent domain proceedings.

A licensed and certified appraiser has completed the appraisal for the fee simple interest, the permanent easements and the temporary easements proposed for acquisition. On November 03, 2023, the value of the property rights for acquisition, as determined through the appraisal process and approved by the District, was offered to the owner(s) of record and/or their representative(s). Since then, the District and its representatives have negotiated with the owner(s) in good faith in an attempt to reach an equitable settlement.

The owner(s) of record have been notified by first class mail, as required by Code of Civil Procedures section 1245.235, that they have the right to address the Board at this hearing. The Hearing for Resolution of Necessity is not related to just compensation (i.e. the amount offered for the required property rights). The issue of just compensation will be addressed through negotiations or litigation. Neither adopting this Resolution nor filing the eminent domain action precludes continuing negotiations with the owner(s). If the District and the owner(s) agree on a purchase price during these proceedings, the sale can be completed through a conventional real estate closing or by means of a stipulated judgement without further litigation. Without an agreement, the amount of just compensation will be determined in Superior Court.

After the Public Hearing, the District Board is to consider adoption of a Resolution of Necessity. In this Resolution, the District Board must make four findings:

1. The Public interest and necessity require the proposed project.
2. The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
3. The property rights described in the Resolution are necessary for the proposed project.
4. The offer required by section 7267.2 of the Government Code has been made to the owner of record.

#### PROCEDURAL REQUIREMENTS:

1. Staff reports
2. Open Public Hearing
3. Call interested parties
4. Close Public Hearing
5. Make any findings
6. Adopt Resolution of Necessity if the four findings are met

#### DISCUSSION AND FINDINGS:

##### A. The Public Interest and Necessity Require the Proposed Project.

The goal of the Napa River/Napa Creek Flood Protection Project is to provide 100-year flood protection to most of the City of Napa. The Project is designed to provide an economically feasible and environmentally sensitive method of flood protection. Records of damaging floods in Napa date back to 1862. The Environmental Impact Statement/Report documented 27 significant floods with a major flood in 1955 and the most extensive recorded flood in 1986 when three people died, 7,000 were evacuated, and 245 homes and 120 businesses were damaged. Estimates of property damage were over \$100 million. More recent flooding occurred in December 2002 and December 2005. The community found the Project to be necessary by a 68% vote to impose a sales tax in order to move forward with the Project.

##### B. The Proposed Project is Planned or Located in the Manner that will be Most Compatible with the Greatest Public Good and the Least Private Injury.

The Project has extensive community involvement in the planning. Since the federal government's first involvement with the Napa River in 1938, numerous flood control designs have been proposed and discarded. The area needed for conveyance of floodwaters was originally modeled by the Corps on the 100-year flood, but the required work on the channel would have resulted in adverse impacts to wetlands and fish and wildlife habitat. Environmental laws require replacement of lost wetlands and other habitat beyond a 1:1 ratio. The specific ratio varies according to agency and species or wetland replacement. The formation of a community-wide coalition, with an unprecedented number of people and interest groups participating, resulted in the current design and the success of a ballot measure to approve this Project. The Coalition's stated purpose was to maximize flood protection, minimize taking of property, and achieve a healthy river that would provide habitat for fish and wildlife and recreational amenities for the people of Napa. The District staff has shared the details of the major design items at public meetings throughout the design process, including requests for public comments and feedback.

##### C. The Property Rights Described in this Resolution are Necessary for the Proposed Project.

The Floodwalls North of the Bypass Project requires the construction of a setback concrete floodwall from the River Terrace Inn on the south end to the Elks Grove Townhomes on the north. The proposed land areas

described in this Resolution of Necessity are required for the construction of the floodwall south of Lincoln Ave in accordance with the current plans and specifications for the Floodwalls North of the Bypass contract. The floodwall alignment and public trail will be constructed within the fee area, and excavation and construction will affect as few riparian trees as possible. The permanent easement will extend 15' on the land side of the floodwall. The Temporary Construction Easement will be used for construction of the floodwall for a 12-month period with the option to extend another 12 months. The District will occupy this temporary easement only as long as necessary to complete the project improvements, after which the encumbrance will be removed.

D. The Offer of Just Compensation has been Made to the Owner of Record.

A licensed and certified appraiser has completed an appraisal for the fee simple interest, the permanent easements, and the temporary easements proposed for acquisition. The owner has been offered the amount found through the District-approved appraisal to be just compensation. This initial offer was made on November 3, 2023. The District will continue to negotiate with the affected property owner toward a mutually acceptable settlement for the property concurrent with any eminent domain action.

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

Is there a Fiscal Impact?	Yes
Is it Mandatory or Discretionary?	Discretionary
Is the general fund affected?	No
Future fiscal impact:	All property acquisitions are part of the Napa River/Napa Creek Flood Protection Project's annual budget.
Consequences if not approved:	The District must have possession of this property in order to award the contract in August 2025. Failure to acquire possession would jeopardize the award of the Floodwalls North of the Bypass contract and risk losing the funding allocated by the federal government.

### **ENVIRONMENTAL IMPACT**

ENVIRONMENTAL DETERMINATION: The Floodwalls North of the Bypass 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 Corps in its Record of Decision filed on June 9, 1999.