

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Broadband, Video, and Market Branch**

**RESOLUTION T- 17603
April 26, 2018**

RESOLUTION

Resolution T-17603: Authorizing the release of California Advanced Services Fund grant monies to Cal.net, Inc. (U-1340-C) to construct the El Dorado North broadband project; and approving the Initial Study/Mitigated Negative Declaration prepared in compliance with the California Environmental Quality Act for the El Dorado North broadband project.

I. SUMMARY

This Resolution authorizes the release of California Advanced Services Fund (CASF) grant funding to Cal.net, Inc. (Cal.Net) to construct the El Dorado North broadband project. This Resolution also approves the Initial Study/Mitigated Negative Declaration (IS/MND) prepared in compliance with the California Environmental Quality Act (CEQA) for Cal.net's El Dorado North broadband project, and finds that the project will have no significant effects on the environment with the incorporation of mitigation measures identified and listed in the Mitigation Monitoring and Reporting Plan (MMRP). The IS/MND correctly identifies the potential impacts and includes the appropriate mitigation measures to minimize the impacts of the project.

II. BACKGROUND

On January 14, 2016, the Commission adopted Resolution T- 17497, conditionally authorizing a CASF grant of \$1,139,755 to Cal.Net to construct the El Dorado North broadband project, subject to the Commission's completion of CEQA review. The grant represented 60 percent of the total estimated project cost of \$1,899,591.

III. ENVIRONMENTAL COMPLIANCE DISCUSSION

Cal.net will construct a last-mile fixed-wireless infrastructure project to provide broadband Internet and Voice over Internet Protocol (VoIP) telephony services to underserved rural communities of the northern regions of El Dorado County. The El Dorado North broadband project will provide improved high speed internet service in the region. The current lack of broadband infrastructure places the county at a substantial economic disadvantage. The project seeks to provide broadband internet and VoIP telephony service to the following underserved communities:

- Quintette (zip code 95634);
- Buckeye (zip code 95634);
- Volcanoville (zip code 95634);
- Fornis (zip code 95634);
- Greenwood (zip code 95635);
- Meadowbrook (zip code 95633); and
- Garden Valley (zip code 95633)

As the lead agency under CEQA, the Planning and Building Department of El Dorado County, prepared an IS/MND for the El Dorado North broadband project. On October 26, 2017, the County of El Dorado approved the IS/MND. Along with Conditional Use Permit S17-0005, the County submitted the IS/MND to the Commission's CEQA Unit on February 2, 2018. The IS/MND includes measures to reduce the environmental impacts of the Cal.net El Dorado North broadband project.

The IS/MND evaluates potential environmental impacts associated with the construction of new tower facilities at 10 sites in Northern El Dorado County. The project will consist of fixed-wireless technology deployed on towers either constructed by Cal.net or leased from owners of existing towers. The County has determined that the colocation portion of the project is categorically-exempt from further review under CEQA. California Public Resources Code Section 21081.6 and California Code of Regulations Title 14, Chapter 3, Section 15097 require public agencies to adopt MMRPs when they approve projects under an IS/MND. The reporting and monitoring plans must be adopted when a public agency makes its findings pursuant to CEQA so that the mitigation requirements can be made conditions of Project approval. The MMRP is attached as Appendix A to the Cal.net El Dorado North broadband project IS/MND, and contains the following impacts and associated monitoring or reporting measures:

A. BIOLOGICAL RESOURCES¹

Impact (a): Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service.

Birds of Prey and Birds Listed by the Migratory Bird Treaty Act

The Project sites provide potential nesting habitat for birds of prey and birds listed by the Migratory Bird Treaty Act (MBTA) of 1918 (16 U.S.C. 703-711). BIO-1 will be implemented to avoid impacts to birds of prey and birds listed by the MBTA.

Measure BIO-1

Under the MBTA, nests that contain eggs or unfledged young are not to be disturbed during the breeding season. Nesting or attempted nesting by migratory birds and birds-of-prey is anticipated from 15 February to 31 August. The following measures are recommended:

- *Tree and vegetation removal shall occur outside of the nesting season (February 15 through August 31 annually). All tree removal shall occur between September 1 and February 14, which is outside of nesting season for MBTA and Fish and Game Code protected birds. If work occurs outside the nesting season, there will be no need to conduct a preconstruction survey for active nests.*
- *If project work occurs during the nesting season, a qualified biologist shall conduct a preconstruction survey for nesting birds of prey and other birds protected by the MBTA and Fish and Game Code within 30 days prior to the start of construction. The survey area shall cover the Project, a 500 ft radius for nesting raptors, and a 100 ft radius for all other MBTA and Fish and Game Code protected birds. If no active nest of a bird of prey, MBTA bird, or other CDFW-protected bird is found, then no further mitigation measures are necessary.*
- *Should an active nest of a protected bird be identified, an exclusion zone of 500 feet shall be established around the nest if it is a bird of prey, and 100 feet if it is a protected bird other than a bird of prey. Buffer sizes may be adjusted at the discretion of the biologist depending on the species of bird, the location of the nest relative to the project, the existing level of disturbance, and other site specific conditions. No work will be allowed in the exclusion zone until the biologist determines that the nest is no longer active, or unless monitoring determines that a*

¹ IS/MND at Section 4.2.4, p. 21.

smaller ESA will protect the active nest. Tree and vegetation removal should occur during the non-breeding season of 1 September and 14 February. If work occurs during the nesting season, a qualified biologist shall conduct a preconstruction survey for active nests within two weeks prior to the start of construction. The survey area shall cover the Project, a 500 ft radius for nesting raptors, and a 100 ft radius for all other MBTA and Fish and Game Code-protected birds.

Implementation: The County will implement the measures as described above.

Effectiveness Criteria: The County will prepare and keep on file documentation verifying the implementation of the above-referenced measures.

B. CULTURAL RESOURCES²

Impact (b): Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?

AND

Impact d) Disturb any human remains, including those interred outside of formal cemeteries?

There is the possibility of accidental discoveries of human remains during construction-related ground-disturbing activities. To reduce potential impacts related to accidental discoveries the County will implement measure CULT-1.

Measure CULT-1

- *Implement State Health and Safety Code Section 7050.5. If human remains are discovered, State Health and Safety Code Section 7050.5 states that further disturbances and activities shall cease in any area or nearby area suspected to overlie remains, and the County Coroner contacted.*
- *Implement Public Resources Code Section 5097.9 et seq. Pursuant to Public Resources Code Section 5097.98, if the remains are thought to be Native American, the coroner will notify the Native American Heritage Commission (NAHC) who will then notify the Most Likely Descendent (MLD). Further provisions of PRC 5097.9 et seq. are to be followed as applicable.*
- *Implement Public Resources Code Section 5097.5 et seq. Pursuant to Public Resources Code Section 5097.5 no person shall knowingly and willfully excavate*

² IS/MND at Section 4.2.5, p. 28.

upon, or remove, destroy, injure, or deface, any historic or prehistoric ruins, burial grounds, archaeological or vertebrate paleontological site, including fossilized footprints, inscriptions made by human agency, rock art, or any other archaeological, paleontological or historical feature, situated on public lands, except with the express permission of the public agency having jurisdiction over the lands.

Implementation: The County will implement the measures as described above.

Effectiveness Criteria: The County will prepare and keep on file documentation verifying the implementation of the above-referenced measures.

CEQA Guidelines Section 15096(h) states: “The Responsible Agency shall make the findings required by § 15091 for each significant effect of the project...” Guidelines § 15096, states: “A Responsible Agency complies with CEQA by considering the EIR or Negative Declaration prepared by the Lead Agency and by reaching its own conclusions on whether and how to approve the project involved.” (Guidelines, § 15096(a).)

The CEQA Unit has reviewed the El Dorado North IS/MND and finds that the project will have no significant effects on the environment with the incorporation of mitigation measures identified and listed in the MMRP. The Cal.net El Dorado North IS/MND correctly identifies the potential impacts and includes the appropriate mitigation measures to minimize the impacts of the project. The County will implement the measures contained in the MMRP and have adopted a system to document and verify their implementation.

IV. RELEASE OF CASF FUNDS

Resolution T-17495 awarded Cal.net a CASF grant of \$1,139,755 to construct the El Dorado North broadband project contingent on compliance with applicable environmental requirements.³ Given the CEQA Unit’s conclusion as discussed in the prior section, Cal.net has satisfied the CEQA Compliance Requirements stated in Resolution T-17495. Therefore, the Commission shall authorize CASF grant funds to be released for the construction of the El Dorado North broadband project, in accordance with the scope and budget specifications provided in Resolution T-17495.

³ Resolution T-17495, p. 11.

V. SAFETY IMPACT

The El Dorado North broadband project is located in northern El Dorado County in the vicinity of the communities of Cool, Greenwood, Georgetown, Garden Valley, Meadow Brook, and Volcanoville. Cal.net proposes to extend their service availability to the Garden Valley Fire Protection District, Georgetown Fire Department, Station 61, Georgetown Fire Department, Station 62, Georgetown Fire Department, Station 63, Georgetown Fire Department, Station 64 and Georgetown Fire Department, Station 65. Cal.net currently offers free service to all fire stations and will continue to do so for the El Dorado North project areas.

VI. COMMENTS ON DRAFT RESOLUTION

In compliance with Public Utilities Code, §311(g), a notice letter was emailed on March 19, 2018, informing all parties on the CASF Distribution List of the availability of the draft of this Resolution for public comments at the Commission's documents website at <http://www.cpuc.ca.gov/documents/>. This letter also informed parties that the final conformed Resolution adopted by the Commission will be posted and available at the same website. No comments were filed.

VII. FINDINGS

1. Resolution T-17495 (adopted January 14, 2016) conditionally authorized a CASF grant of \$1,139,755 to Cal.net, Inc., to construct the El Dorado North broadband project, subject to the Commission's completion of CEQA review.
2. As the lead agency under CEQA, the Planning and Building Department of El Dorado County, prepared an IS/MND for the El Dorado North broadband project.
3. The County of El Dorado approved the IS/MND on October 26, 2017, and submitted the IS/MND to the Commission's CEQA Unit on February 2, 2018.
4. The Cal.net El Dorado North IS/MND has been completed in compliance with CEQA and the CEQA unit determined that it is adequate for the Commission's decision making purposes.
5. The CEQA Unit determined that the proposed project would have no significant effects on the environment with the incorporation of mitigation measures identified and listed in the MMRP.

6. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effects to biological and cultural resources as identified and described above.
7. The County of El Dorado will implement the measures contained in the MMRP and have adopted a system to document and verify their implementation.
8. The IS/MND reflects the Commission's independent judgment and analysis on the issues addressed by the IS/MND.
9. With the adoption of this Resolution, Cal.net, Inc., has satisfied the environmental conditions required to release funds for the construction of the El Dorado North broadband project, as set forth in Resolution T-17495.
10. Cal.net, Inc. is required to comply with all provisions in Resolutions T-17495 and T-17603.
11. A notice letter was e-mailed on March 19, 2018, informing all parties on the CASF distribution list of the availability of the draft of this Resolution for public comments at the Commission's website <http://www.cpuc.ca.gov/documents/>. This letter also informed parties that the final confirmed Resolution adopted by the Commission will be posted and available at this same website. No comments were filed.

THEREFORE IT IS ORDERED THAT:

1. The Commission authorizes \$1,139,755 in CASF grant funds to be released for the construction of the El Dorado North broadband project, in accordance with the scope, budget specifications, and payment guidelines provided in Resolution T-17495.
2. Cal.net, Inc. shall comply with all guidelines, requirements, and conditions associated with the CASF funds award as specified in D.12-02-015, Resolutions T-17495 and T-17603.
3. In the event that Cal.net, Inc., fails to complete the project in accordance with the terms of approval granted by the Commission in Resolutions T-17495 and T-17603, Cal.net, Inc., must reimburse some or all of the CASF funds that it has received.

Resolution T- 17603
CD/AYY

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on April 26, 2018. The following Commissioners approved it:

/s/ Alice Stebbins

ALICE STEBBINS
Executive Director

MICHAEL PICKER

President

CARLA J. PETERMAN

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

Commissioners