

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

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

**RESOLUTION T-17720  
January 14, 2021**

**RESOLUTION**

**Resolution T-17720:** Approval of funding for the grant application of DigitalPath, Inc. (U-1151-C) from the California Advanced Services Fund up to the amount of \$415,438 for the Sutter Placer Project located in Sutter and Placer Counties.

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**SUMMARY**

This Resolution approves up to \$415,438 in funding from the California Advanced Services Fund (CASF) for the grant application of DigitalPath, Inc. (DigitalPath) to construct the Sutter Placer Project. DigitalPath proposes to deploy middle-mile and last-mile fixed wireless infrastructure to enable high-speed Internet service to 279 unserved households in Sutter and Placer Counties. The proposed project will enable broadband access at speeds of up to 50 Megabits per second (Mbps) download and 10 Mbps upload.

**BACKGROUND**

The CASF Infrastructure Grant Account (CASF Infrastructure) provides grant funding to Internet service providers to build or upgrade broadband infrastructure in areas that are unserved by existing broadband providers. The CASF program was initiated in 2008, after the program was first adopted by the Commission in Decision (D.) 07-12-054 and enacted into statute pursuant to Senate Bill 1193.

On October 15, 2017, Governor Brown signed Assembly Bill (AB) 1665 (Garcia)<sup>1</sup> into law. That legislation amended the statute governing the CASF program, Public Utilities Code § 281. The Commission issued D.18-12-018 adopting the programmatic changes

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<sup>1</sup> AB 1665 is codified at Public Utilities (Pub. Util.) Code § 281.

to the CASF. Appendix 1 of D.18-12-018 set forth the rules, application requirements and guidelines for the CASF Infrastructure.<sup>2</sup>

On June 29, 2020, Governor Newsom signed AB 82 into law, amending Public Utilities Code § 281 to authorize leveraging of CASF Infrastructure grant funding to supplement the costs of broadband infrastructure already funded, in whole or in part, by the federal Rural Digital Opportunity Fund (RDOF).<sup>3</sup> In an effort to effectively utilize state and federal funding toward meeting the CASF program goals, Staff has recommended project applications that include areas eligible to receive RDOF may be deferred for approval until after the results of the RDOF Phase I (Auction 904) have been published.<sup>4</sup>

**On May 4, 2020, DigitalPath submitted a CASF Infrastructure application for its proposed Sutter Placer Counties project, requesting funding of \$415,438 to deploy fixed wireless last-mile broadband access to 279 unserved households in areas of Sutter and Placer Counties.** The CASF grant funding request would cover 100 percent of the project deployment costs of the Sutter Placer Project.

DigitalPath is a wireless Internet and digital voice service provider headquartered in Chico, California.<sup>5</sup> Formed in 2005, DigitalPath serves rural areas of California, including 22 counties, by providing residential and business customers with high-speed broadband access and voice services. DigitalPath utilizes and invests in patented, innovative technology and wireless infrastructure for delivering high-speed broadband service. The company's latest technology supports download speeds up to 50 Mbps.

## **NOTICE**

On May 18, 2020, Staff posted the proposed project area map, census blocks, and zip codes for the Sutter Placer Project on the Commission's CASF webpage<sup>6</sup> under "CASF Application Project Summaries" and sent notice regarding the project to the CASF Distribution List.<sup>7</sup>

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<sup>2</sup> The Commission extended the CASF Infrastructure application deadline from April 1 to May 4, 2020, and all subsequent deadlines are moved back by five weeks due to COVID-19 public health emergency. See Executive Director Letter to CASF Distribution and Service Lists, Postponement of the 2020 CASF Infrastructure Application Deadlines, March 20, 2020.

<sup>3</sup> See Public Utilities Code § 281(b)(1)(B)(ii).

<sup>4</sup> See Staff Proposal on State-Federal Broadband Infrastructure Funds Leveraging Rulemaking (R.)20-08-021, October 1, 2020, which is pending Commission decision.

<sup>5</sup> On December 27, 2011, Communications Division issued DigitalPath Inc. its VoIP utility number U-1151-C.

<sup>6</sup> <https://www.cpuc.ca.gov/General.aspx?id=1040>

<sup>7</sup> <https://www.cpuc.ca.gov/General.aspx?id=8246>

## **PROTEST/CHALLENGES**

No protests or challenges were received.<sup>8</sup>

## **DISCUSSION**

The Commission delegates to Communications Division Staff the authority to approve applications, including the determination of funding, that meet the following criteria:

- Applicant meets the program eligibility requirements.
- The application is not challenged, or Staff has determined the project area is unserved.
- The grant does not exceed \$10,000,000.
- The project is California Environmental Quality Act (CEQA) exempt.
- There must be no competing applications for the same project area.
- For fixed wireless projects, the proposed project costs are \$1,500 per household or less.

DigitalPath's application for the Sutter Placer Project meets the criteria for Ministerial Review and Approval; however, Staff recommends a Commission resolution to consider the project based on: (1) the Affordability performance criteria; (2) DigitalPath's proposed broadband infrastructure; (3) broadband pricing plans; and (4) DigitalPath's challenge of RDOF locations as served (removing the locations from the RDOF auction)—a topic of public interest.

While the metrics for Affordability are not defined in the CASF program guidelines, Staff recognizes DigitalPath's pricing plans do not provide reasonable accommodation for the rural, typically low-income communities it primarily serves. The Sutter Placer Project would contribute to the CASF program goal to serve 98 percent of households per consortia region; however, the goal is not consequential if affordability is a barrier to adoption.

Additionally, DigitalPath challenged the highest number of RDOF locations in the United States.<sup>9</sup> While the Federal Communications Commission (FCC)

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<sup>8</sup> Succeed, Inc. (Succeed) submitted a letter requesting Staff to decline CASF Infrastructure funding for DigitalPath's Butte/Yuba, Glenn County, and Sutter/Placer applications. Succeed attests to serving these areas but did not provide the required information to support a challenge.

<sup>9</sup> The FCC allowed incumbents to challenge RDOF eligible census blocks if they attested to currently providing broadband at speeds of at least 25 Mbps downstream and 3 Mbps upstream, along with voice

disqualified a significant number of those, DigitalPath still had a high number of challenges sustained by the FCC, and those areas were subsequently removed from RDOF eligibility. Although the Sutter Placer Project has no RDOF overlap, DigitalPath submitted ten other CASF Infrastructure applications proposing projects that had RDOF overlapping census blocks,<sup>10</sup> of which six projects no longer have RDOF overlap because of DigitalPath's challenges.<sup>11</sup> Removing RDOF-eligible blocks from a CASF project means the provider claims it already offers at least 25/3 Mbps service to the census block, which calls into question the need for CASF funding. It also means state CASF funds would be used in lieu of potential federal RDOF funds. For these reasons, Staff recommends Commission consideration by Resolution.

In compliance with D.18-12-018, Staff determined DigitalPath's Sutter Placer Project is eligible to receive up to \$415,438 in CASF Infrastructure grant funding. Details of Staff analysis are explained in the following sections:

- I. Project Area Eligibility
- II. Minimum Performance Criteria
- III. Funding Determination
- IV. Safety and Community Support
- V. Compliance Requirements
- VI. Payments to CASF Recipients

Key project information and maps are shown in Appendix A and B.

### **I. Project Area Eligibility**

No provider filed a "right-of-first-refusal" submission for DigitalPath's proposed project areas by January 15, 2020, nor do the proposed project areas include census blocks identified by the FCC's Connect America Fund Phase II program.<sup>12</sup> Additionally,

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service, to at least part of those census blocks. For more on Digital Path's challenges, see <https://www.telecompetitor.com/fcc-receives-over-180-rdof-eligible-area-challenges-including-some-big-ones-from-wisps/>.

<sup>10</sup> Based on FCC Auction 904: RDOF Preliminary List of Eligible Areas, released on March 17, 2020.

<sup>11</sup> Based on FCC Auction 904: RDOF Final List of Eligible Areas, released on October 8, 2020. The removed RDOF census blocks correspond with DigitalPath's challenge.

<sup>12</sup> Pub. Util. Code 281(f)(4)(A)(ii) prohibits the Commission from awarding CASF funding to a project applicant if the existing facility-based broadband provider demonstrates, in response to the Commission's annual offer, that it will deploy broadband or upgrade existing broadband service throughout the proposed project area within 180 days.

the proposed project areas do not include census blocks identified by the FCC as eligible to receive RDOF as part of Phase I (Auction 904).<sup>13</sup>

**Staff determined that DigitalPath’s Sutter Placer Project is eligible for a CASF Infrastructure grant.** There are no existing facilities-based wireline or fixed wireless broadband service providers in the project area. According to the California Interactive Broadband Map, the area is unserved, with only access to dial-up service.<sup>14</sup> Thus, the Sutter Placer Project is eligible for CASF Infrastructure grant funding.

**Middle-Mile infrastructure is eligible for a CASF Infrastructure grant.** DigitalPath proposed to deploy wireless middle-mile infrastructure to provide the critical backhaul required to deliver the last-mile service. The middle-mile infrastructure consists of licensed, point-to-point microwave links over existing towers to an accessible fiber location where an Internet point of presence (POP) can be established. DigitalPath is unable to deliver last-mile service without building the middle-mile fiber infrastructure, as evidenced by the lack of broadband services in the area. Therefore, Staff determined the middle-mile infrastructure is indispensable to serve the proposed communities and thus eligible for CASF funding, pursuant to Pub. Util. Code § 281(f)(5)(B). The middle-mile microwave network will be made available for wholesale access to other potential CASF grantees at reasonable rates and terms. These reasonable rates will be at cost.

## **II. Minimum Performance Criteria**

Based on Staff’s review, the Sutter Placer Project meets the minimum performance criteria pursuant to D.18-12-018, Appendix 1, Section 6, as summarized in Table 1.

**Table 1: Minimum Performance Criteria**

|                           | <b>CASF Performance Criteria</b>   | <b>Proposed Project</b>        |
|---------------------------|--|--------------------------------|
| <b>Project Completion</b> | CEQA-exempt projects must be completed within 12 months, and all other projects shall be completed within 24 months after receiving authorization to construct | Within 12 months (CEQA Exempt) |
| <b>Pricing</b>            | Price commitment for two years after completion of the project   | 2 Years                        |
| <b>Speed</b>              | At least 10/1 Mbps   | Up to 50/10 Mbps               |
| <b>Latency</b>            | Maximum of 100 ms of latency   | < 100 ms                       |
| <b>Data Caps</b>          | Minimum of 190 GBs per month   | 190 GB                         |

<sup>13</sup> See <https://www.broadbandmap.ca.gov/federal/funding/>

<sup>14</sup> Dial-up provides speed less than 200 Kbps downstream and 200 Kbps upstream.

|                      |                            |              |
|----------------------|----------------------------|--------------|
| <b>Affordability</b> | Must offer low-income plan | \$39 monthly |
|----------------------|----------------------------|--------------|

**DigitalPath’s Sutter Placer Project is categorically exempt from California Environmental Quality Act (CEQA) review.** The Commission must review all CASF projects in accordance with CEQA requirements unless the project is statutorily or categorically exempt pursuant to CEQA guidelines.

In its application, DigitalPath requested categorical exemption from CEQA and provided the Commission with its plan to use existing infrastructures such as towers, structures, and buildings for the installation of point-to-point microwave links and fixed wireless network. All the proposed construction will take place at existing communication tower sites. Wireless equipment will be installed on existing towers and will interconnect to network switching equipment to be installed within existing facilities. In locations that lack existing building facilities, DigitalPath will install a communications cabinet to house the network switching equipment and backup power units. All cabling will be run overhead on existing cable bridges where possible.

If required, ground disturbance will be minimal and restricted to the confines of the existing tower site. Any ground disturbance will be limited to trenching for the installation of cabinet footings and conduit and cabling to provide power from the meter location within the compound to the cabinet location. Underground construction will consist of raking back the existing gravel base and hand digging a trench with a shovel. The dirt will be placed on tarps over plywood to prevent contamination of the gravel. Following the installation of underground facilities and cabling, the site will be returned to its original condition. No ground disturbance is anticipated at the customer locations. All customer equipment and wiring will be installed on existing structures.

Based on the above information, Energy Division has confirmed that the project is categorically exempt from CEQA review. This project meets the criteria of the CEQA categorical exemptions for CEQA Guidelines, 14 C.C.R. § 15301 (Existing Facilities) and § 15303 (New Construction or Conversion of Small Structures). Therefore, the entirety of the Sutter Placer Project is categorically exempt from CEQA review.

**DigitalPath’s broadband service offering and pricing meet CASF minimum performance criteria.** DigitalPath commits to fixed residential and low-income broadband pricing plans for two years starting from the beginning date of service. DigitalPath will waive installation and equipment charges during the pricing commitment period. Customers will be required to commit to a 1-year contract and allow DigitalPath to re-claim the equipment if service is terminated. After the

commitment period ends, new customers and customers not under contract will be offered then-current pricing options and current installation charges. DigitalPath's current broadband pricing plans are provided below in Table 2.

**Table 2: DigitalPath Broadband Pricing Plans**

| <b>Plan Name</b>   | <b>Download Speed (Mbps)</b> | <b>Upload Speed (Mbps)</b> | <b>Data Cap GBs/mo.</b> | <b>Monthly Pricing</b> |
|--------------------|------------------------------|----------------------------|-------------------------|------------------------|
| Low-Income 10      | 10                           | 2                          | 190                     | \$ 39.00               |
| 2020 Rural 25      | 25                           | 5                          | 250                     | \$ 78.00               |
| 2020 Rural 50 Lite | 50                           | 10                         | 350                     | \$ 93.00               |
| 2020 Rural 50      | 50                           | 10                         | 500                     | \$ 103.00              |

Customers may qualify for the low-income plan based on the Commission's California Alternate Rates for Energy (CARE) program standard for a family of 4 or participation in a public benefit program, such as LifeLine, SNAP, WIC, etc. Staff notes, however, that DigitalPath's low-income plan of \$39 per month is more than double the CASF funding criteria recommendation of \$15 per month. Further, the high cost of DigitalPath's service offerings are likely to hinder broadband adoption given income and broadband costs are the main barriers to adoption.<sup>15</sup>

The proposed speed offerings (minimum of 10 Mbps download and 2 Mbps upload and up to 50 Mbps download and 10 Mbps upload) and data cap limits (up to 500 GB per month) exceed the CASF minimum performance requirement. Additional broadband packages and data plans are available to customers for additional fees; however, the standard broadband plans are provided in Table 2. DigitalPath also offers interconnected voice services with long-distance calling as an add-on to broadband service, for \$35 per month. Voice service will not be available as a stand-alone service.

### **III. Funding Determination**

**DigitalPath is eligible to receive 100 percent funding to cover the costs for its Sutter Placer Project.** AB 1665 authorizes the Commission to award grants to fund all or a portion of projects and requires that it determine, on a case-by-case basis, the level of funding to be provided. Staff considered the statutory factors to determine the grant funding level, as described by Pub. Util. Code § 281(f)(12) and 281(b)(2)(B)(i), and CASF program rules adopted in D.18-12-018. Based on those factors, Staff determined DigitalPath's request of 100 percent funding level is appropriate, and thereby awards a CASF Infrastructure grant of up to \$415,438 for the Sutter Placer Project. Table 3 below summarizes the funding level determination for the project.

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<sup>15</sup> See Broadband Adoption Gap Analysis, California Public Utilities Commission, Issued June 2019

**Table 3: Criteria for Project Funding Level**

| <b>Funding Criteria</b>   | <b>Funding Level</b> |
|---|----------------------|
| Baseline for Eligible Project (60%)   | 60%                  |
| Service Level Preference: Only Dial-up or No Internet Connectivity (40%)  | 25%                  |
| Low Income - up to 40% <ul style="list-style-type: none"> <li>Median Household Income for community is less than CARE standard for family of 4, which is currently \$52,400 (30%)</li> <li>Applicant serves low-income customers for no more than \$15/month (10%)</li> </ul> | 0%<br><br>0%         |
| Others: PU Code Sec 281(f)(12) Criteria - up to 20% <ul style="list-style-type: none"> <li>Inaccessible Location (10%)</li> <li>Uses Existing Infrastructure (10%)</li> <li>Makes a Significant Contribution to the Program Goal (10%)</li> </ul>                             | 0%<br>10%<br>10%     |
| <b>Total Funding Level<sup>16</sup></b>   | <b>100%</b>          |

Details of the appropriate funding level are described below.

**Baseline for an Eligible Project qualifies for 60 percent funding.** The CASF program is intended to finance capital costs of broadband deployment in unserved areas of California. The identified communities in Sutter and Placer Counties meet all the eligibility criteria, as previously described in the Project Area Eligibility section.

**Service Level Preference qualifies for an additional 25 percent funding.** Pub. Util. Code § 281(b)(2)(B)(i) encourages the Commission to give preference to projects in areas with no Internet connectivity or where Internet connectivity is available only through dial-up service and not served by any form of wireline or wireless facility-based broadband service. According to the California Interactive Broadband Map, 11 of the 58 census blocks in the project area have broadband access, although at unserved speeds, and thus do not qualify for additional funding. The remaining 47 census blocks qualify for additional funding based on the Service Level Preference criteria.

The maximum additional funding for the Service Level Preference is 40 percent. Staff calculated the percentage of additional funding in proportion to the percentage of households in the project area. The 47 census blocks identified

<sup>16</sup> Maximum funding level is 100 percent. See D.18-12-018, Table 1. Summary of Funding Level Determinations.

include 174 of 279 CASF-eligible households; this represents 62 percent of the households in the project area. Therefore, this project should receive 62 percent of the 40 percent Service Level Preference, which equates to an additional 25 percent funding for this criterion.

**Low Income considerations do not qualify for additional funding.** The median household income of the census block group in the proposed project area is \$78,551, which is well above the \$52,400 threshold of the Commission's CARE program and does not qualify the project for an additional 30 percent funding.

DigitalPath has not committed to offer discounted broadband plans at \$14.99 per month and is therefore not eligible for an additional 10 percent funding.

**Other Factor considerations qualify for an additional 20 percent funding.** The Sutter Placer Project meets two of the three criteria defined in Pub. Util. Code § 281(f)(12) and qualifies for the additional 20 percent funding.

Staff determined the proposed project does not meet the inaccessible location criteria and is not eligible for an additional 10 percent funding. The project area is primarily flat, dominated by farming related operations and rural communities. The Sutter Buttes rise out of the valley floor in the northern portion of the project area but should not be an impediment. There is access to highways, public utilities, and community health and educational resources, thus the project area is not considered to be an inaccessible location.

Staff determined that the proposed project will primarily leverage existing infrastructure and is eligible for an additional 10 percent funding. DigitalPath proposes to install point-to-point microwave links and fixed wireless network equipment on existing communication towers and utilize existing facilities to house network switching equipment. Thus, this project qualifies for additional funding under the "Uses Existing Infrastructure" criteria.

Staff determined the project qualifies for an additional 10 percent funding for contributing to the program goal because it will bring the Connected Capital Area Broadband Consortium closer to meeting the CASF goal of 98% broadband deployment. The Connected Capital Area Broadband Consortium is currently at 97.4 percent served.<sup>17</sup>

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<sup>17</sup> See 2019 Annual Report on the CASF Program, California Public Utilities Commission, Issued April 2020, Page 13, Table 7: Remaining Unserved Households in Each Consortia Region.

#### **IV. Community Support**

The CASF program encourages the deployment of broadband throughout the State to enable the public to access Internet-based safety applications, telehealth services, emergency services, and to allow first responders to communicate with each other and collaborate during emergencies.

No letters of support were submitted with the application.

#### **V. Compliance Requirements**

DigitalPath is required to comply with all the guidelines, requirements, and conditions associated with the grant of CASF funds as specified in D. 18-12-018. Such compliance includes, but is not limited to, the items noted below.

##### **A. Deployment Schedule**

The Commission expects DigitalPath to complete the project within 12 months from the start date (whereby the applicants have secured CEQA approval from the Commission and all required permits), and the applicant has committed to do so. If DigitalPath is unable to complete the proposed project within the 12-month timeframe, it must notify the Director of the Communications Division as soon as DigitalPath becomes aware of this possibility. If such notice is not provided, the Commission may reduce payment for failure to satisfy the requirement of timely notification to the Director.

##### **B. Execution and Performance**

Staff and DigitalPath shall determine a project start date after the CASF grant recipient has obtained all approvals. The Commission may terminate the grant should DigitalPath or any contractor it retains fail to commence work by the designated date, upon five days written notice to DigitalPath. In the event that DigitalPath fails to complete the project in accordance with the terms of the Commission's approval as set forth in this Letter, DigitalPath shall reimburse some or all of the CASF funds received. DigitalPath must complete all construction covered by the grant on or before the grant's termination date.

##### **C. Letter of Credit**

DigitalPath is required to provide a letter of credit during the construction phase of the Sutter Placer Project. The letter of credit must be irrevocable and permit the Commission to immediately reclaim any funds provided in the event of non-

compliance with the Commission's rules or requirements. DigitalPath must provide a letter of credit covering the full CASF grant amount, issued to the Director of the Communications Division within five business days after the project start date. The letter of credit must be valid throughout its entire 12-month construction period.

#### D. Project Audit

The Commission has the right to conduct any necessary audit, verification, and discovery during project implementation/construction to ensure that CASF funds are spent in accordance with Commission approval. Any of the DigitalPath invoices submitted for payment will be subject to a financial audit by the Commission at any time within three years of completion of the work.

#### E. Providing Voice Service

DigitalPath has certified that its fixed interconnected Voice over IP (VoIP) service meets the FCC standards for E-911 service and battery backup.

#### F. Reporting

All grantees must submit biannual progress reports on the status of the project, irrespective of whether grantees request reimbursement or payment. These reports are due semi-annually, in March and September, until the project is completely built and operational. Progress reports shall use the schedule for deployment, major construction milestones and costs submitted in the proposal; indicate the actual date of completion of each task/milestone as well as problems and issues encountered, and the actions taken to resolve these problems and issues during project implementation and construction; and identify future risks to the project.

Before full payment is made, DigitalPath must submit a project completion report. DigitalPath shall also include test results on the download and upload speeds by census block in the final completion report. DigitalPath must certify that each progress report is true and correct under penalty of perjury.

#### G. Submission of Form 477

The FCC currently requires broadband providers to semiannually submit Form 477, which includes speed data. While there is an imperfect match between the data that is reported in Form 477 and data relevant to the CASF program, the Form 477 data will be useful in documenting CASF deployment for the service provider's new service. Pursuant to CASF rules, service providers in California must submit a copy of their

Form 477 data directly to the Commission, concurrent with their submission of the same data to the FCC, for a five-year period after completion of the project.<sup>18</sup>

#### H. Prevailing Wage

Section 1720 of the California Labor Code specifies that CASF-subsidized projects are subject to prevailing wage requirements. DigitalPath has committed to follow state prevailing wage requirements with regards to this project.

#### VI. Payments to CASF Recipients

The Commission may reimburse DigitalPath's expense in accordance with Pub. Util. Code § 281(f)(11). Details of reimbursable expenses are in Appendix C.

### COMMENTS ON DRAFT RESOLUTION

In compliance with Public Utilities Code § 311(g), a notice letter was e-mailed on November 13, 2020, informing all parties on the CASF Distribution List of the availability of the draft of this resolution and of the opportunity to comment, at the Commission's website at <http://www.cpuc.ca.gov/PUC/documents/>. This letter also informed parties that the final conformed Resolution adopted by the Commission will be posted and available at this same website.

Comments were submitted by the California Cable and Telecommunications Association (CCTA) on December 7, 2020. Reply comments were submitted by the Public Advocates Office (Cal Advocates) on December 11, 2020.

#### **CCTA's Comments**

CCTA asserts that Pub. Util. Code § 281 does not permit the Commission to impose an open access mandate on CASF grant recipients proposing middle-mile facilities and that the existing CASF rules for infrastructure grants do not include open access requirements. Further, CCTA states that the imposition of open access obligations, to the extent not voluntarily agreed to by the applicant, would be impermissible given that the CASF rules in place at the time of the application –and to date– do not provide notice that such access must be provided by grant recipients.

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<sup>18</sup> Approval of the California Advanced Services Fund (CASF) Application Requirements and Scoring Criteria for Awarding CASF Funds (2008) Cal. P.U.C. Res. No. T-17143 at 4.

### **Cal Advocates Reply Comments**

Cal Advocates states that the Commission should reject CCTA's arguments because (1) the Commission has the authority to impose open access requirements to middle-mile infrastructure that is publicly funded by ratepayer funds; (2) open access requirements will provide benefits that will help the state reach CASF program goals; (3) and the grant applicant did not raise any concerns with the Draft Resolution. Cal Advocates asserts the Commission can impose (and has previously imposed) open access requirements on CASF broadband infrastructure grant recipients. Pub. Util. Code § 281 contains no discussion of open access and does not preclude the Commission from imposing open access condition or any other type of condition on CASF grant recipients. The Commission has previously approved CASF grants that required open access, including Resolution T-17418 for the KRRBI Project, with the exact same language included in this Draft Resolution.<sup>19</sup> Additionally, Resolution T-17429 approved a CASF broadband infrastructure grant application which conditioned additional funding on access to applicants' middle-mile network at reasonable prices.<sup>20</sup>

Cal Advocates asserts that requiring open access on middle-mile portions of CASF projects will provide benefits that will help the state reach the goals described in Pub. Util. Code § 281. Cal Advocates states that building and connecting more open access middle-mile infrastructure will encourage deployment of high-quality advanced communication services. Further, Benton Institute for Broadband and Society found that "an open access, middle-mile model promotes private investment and competition in last-mile service by reducing capital expenditures required to build last-mile connections."<sup>21</sup> Cal Advocates asserts that requiring middle-mile open access will ensure publicly funded infrastructure maximizes the benefit to Californians; it is reasonable that middle-mile infrastructure funded in whole (100 percent) by the public be used by Internet service providers to facilitate last-mile broadband deployment to the public.

Cal Advocates disagrees with CCTA's comments that the imposition of open access obligations would be impermissible given that the CASF rules in place at the time of the application do not provide notice that such access be provided by grant recipients. Cal

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<sup>19</sup> See Resolution T-17418, page 8.

<sup>20</sup> See Resolution T-17429, page 12. See also T-17295, page 9. "The Commission shall award funding of \$6,659,967 from the California Advanced Services Fund to Central Valley Independent Networks, LLC and Corporation for Educational Network Initiative in California (CVIN) for its middle-mile which will provide open access network capabilities to 18 Central Valley counties."

<sup>21</sup> Arnold, Jordan & Sallet, Jonathan. "If We Build It, Will They Come? Lessons from Open-Access, Middle-Mile Networks." Benton Institute for Broadband & Society.

[https://www.benton.org/sites/default/files/OAMM\\_networks.pdf](https://www.benton.org/sites/default/files/OAMM_networks.pdf) at page 4. Accessed 12/9/2020

Advocates recognizes that none of the infrastructure grant recipients raised concerns with the Draft Resolution. Cal Advocates states that CCTA's comments are not relevant as none of the grant recipients are CCTA members.

### **Staff's Response to Comments and Reply Comments**

Staff rejects CCTA's comments that the statute does not permit the Commission to impose open access requirements on CASF grant recipients proposing middle-mile infrastructure. Staff agrees with Cal Advocates that requiring open access on CASF funded middle-mile infrastructure will provide benefits to Californians and help the state reach CASF program goals. Staff finds it reasonable that middle-mile infrastructure funded by the public be used by Internet service providers to facilitate equitable and affordable broadband access. Staff also recognizes that none of the CASF applicants raised concerns with the open access requirements.

### **FINDINGS**

1. DigitalPath, Inc. (DigitalPath) submitted an application for CASF funding for its Sutter Placer Project on May 4, 2020. The proposed project would deploy middle-mile and last-mile fixed wireless infrastructure that will enable high-speed Internet service with speeds of up to 50 Mbps download and 10 Mbps upload to 279 households in Sutter and Placer Counties.
2. On May 18, 2020, Staff posted a summary of the proposed project, including a listing of the census blocks and zip codes covered, and the proposed project area map. The project summary was posted on the "CASF Applications Project Summaries" webpage, which may be found on the Commission's CASF website.
3. Staff received no challenges to DigitalPath's Sutter Placer Project.
4. Based on its review, Staff determined that the project qualifies for funding pursuant to CASF guidelines and requirements found in D. 18-12-018 and its Appendix 1. Staff recommends that the Commission approve CASF funding for DigitalPath's Sutter Placer Project.
5. The Commission has determined that the project is categorically exempt from CEQA review, pursuant to CEQA guidelines at 14 C.C.R § 15301 regarding Existing Facilities and § 15303 regarding New Construction or Conversion of Small Structures.
6. A notice letter was e-mailed on November 13, 2020, informing all applicants filing for CASF funding and parties on the CASF distribution list of the

availability of the draft of this Resolution and of the opportunity for comment, at the Commission's website <http://www.cpuc.ca.gov/PUC/documents/>.

**THEREFORE, IT IS ORDERED that:**

1. The Commission shall award up to \$415,438 to DigitalPath for the Sutter Placer Project as described herein and summarized in Appendix A of this Resolution, which shall be paid out of the CASF Infrastructure Grant Account in accordance with the guidelines adopted in D. 18-12-018 and its Appendix 1, and with the process defined in Appendix C "Payments to CASF Recipients" of this Resolution.
2. DigitalPath shall comply with all guidelines, requirements and conditions associated with a CASF award, as specified in D. 18-12-018 and its Appendix 1, and all requirements for this project included in this resolution, and must submit FCC Form 477 to the Commission, as specified in Resolution T-17143.
3. If DigitalPath fails to complete the project in accordance with the CASF guidelines and requirements outlined in D.18-12-018 and its Appendix 1, and the terms in this Resolution, DigitalPath must reimburse some or all of the CASF funds that it has received.
4. DigitalPath must complete and execute the consent form (to be sent to the Grantee after this Resolution is adopted) agreeing to the conditions set forth in this Resolution and return it the CASF Staff within 30 calendar days from the date of the adoption of this Resolution. Failure to submit the consent form within 30 calendar days from the adoption date of this Resolution may result in the Commission voiding the grant award.
5. The DigitalPath Sutter Placer middle-mile network shall be made available for wholesale access to other potential CASF grantees at reasonable rates and terms. These reasonable rates shall be at cost.

Resolution T-17720  
CD/JSC

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on January 14, 2021. The following Commissioners approved it:

/s/ RACHEL PETERSON

Rachel Peterson  
Executive Director

MARYBEL BATJER

President

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

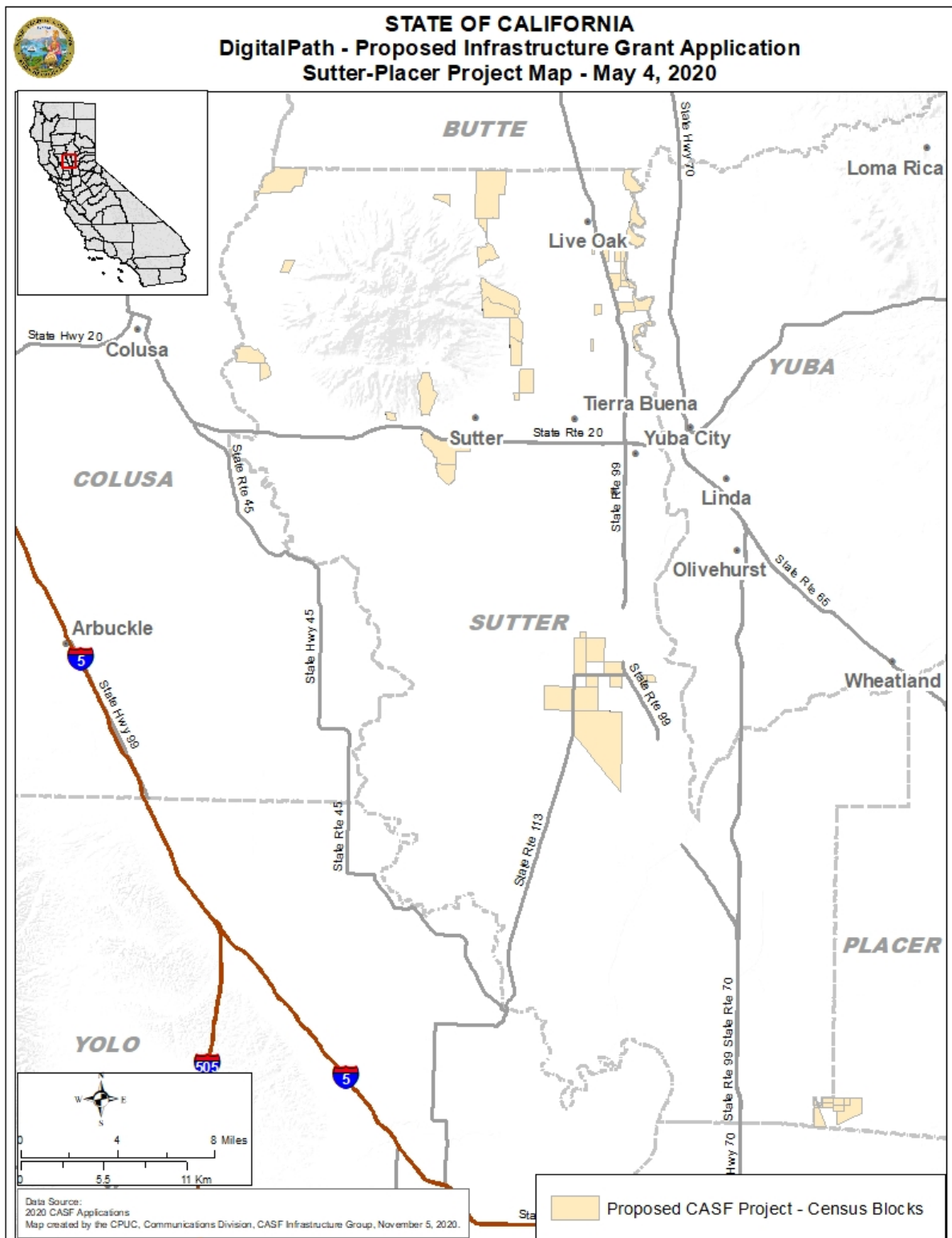
Commissioners

**APPENDIX A**  
**DigitalPath Communications Sutter Placer Counties Project**  
**CASF Applicant Key Information**

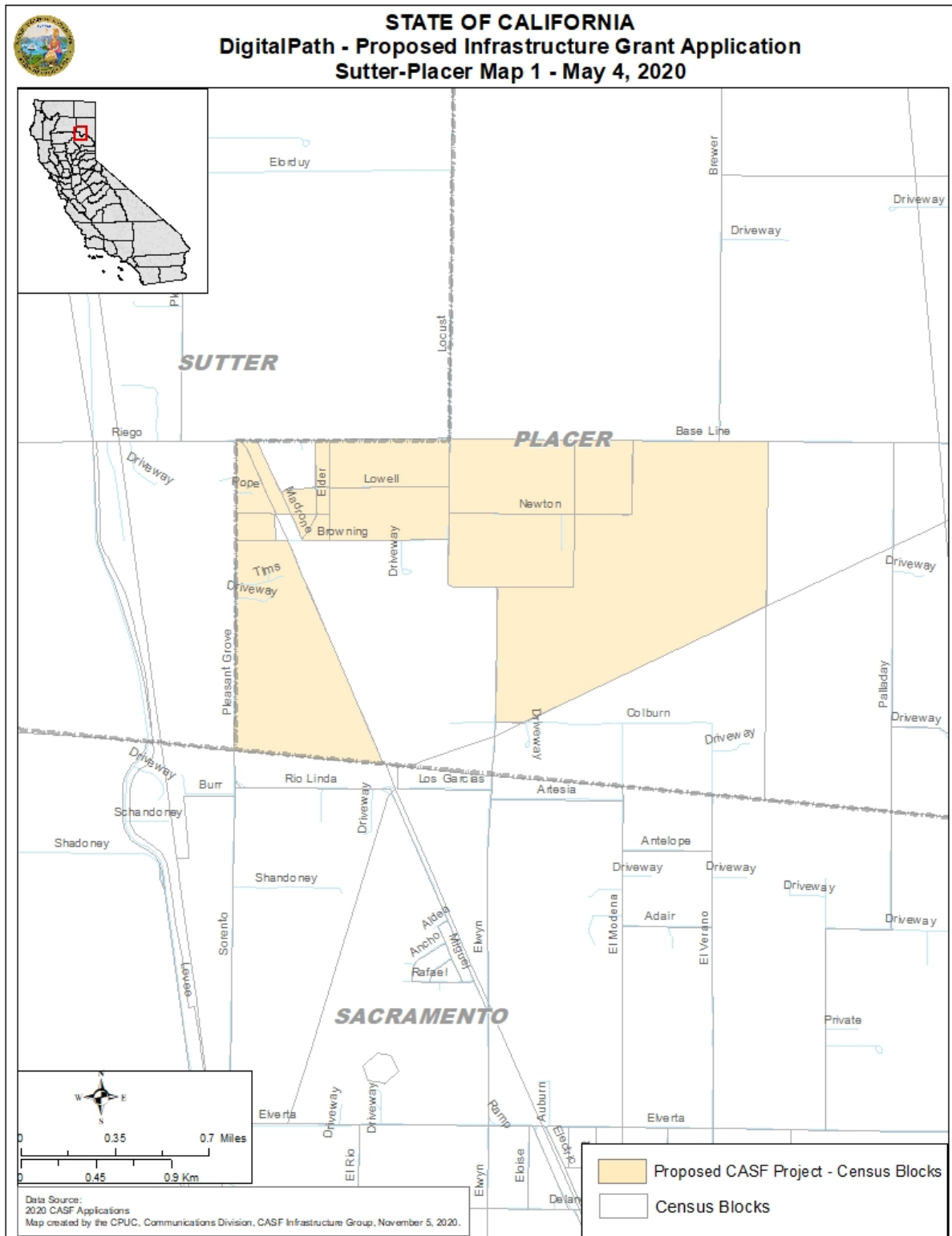
| <i>Project Name</i>                                    | <b>Sutter Placer Project</b>   |  |  |
|--|--|--|--|
| <i>Project Plan</i>                                    | The project proposed to deploy middle-mile and last-mile fixed wireless infrastructure to enable broadband access to 279 CASF-eligible households. The project also includes a licensed microwave middle-mile component critical to accessing the last-mile infrastructure.  |  |  |
| <i>Project Size</i>                                    | 26.25 square miles   |  |  |
| <i>Download/Upload speed</i>                           | 50 Mbps / 10 Mbps  |  |  |
| <i>Location</i>  | Sutter County, Placer County   |  |  |
| <i>Community Names</i>                                 | Sutter, Live Oak, Counsman   |  |  |
| <i>Census Blocks</i>                                   | 060610213222127<br>060610213222128<br>060610213222129<br>060610213222131<br>060610213222132<br>060610213222133<br>060610213222134<br>060610213222135<br>060610213222136<br>060610213222137<br>060610213222138<br>060610213222140<br>060610213222142<br>060610213222143<br>060610213222144<br>061010507011001<br>061010507011039<br>061010507011040<br>061010507011042<br>061010507021042 | 061010507022033<br>061010507022035<br>061010507022036<br>061010507022041<br>061010507022054<br>061010507022059<br>061010507022068<br>061010507023002<br>061010507023015<br>061010507023016<br>061010507023034<br>061010508001003<br>061010508001005<br>061010508001008<br>061010508001055<br>061010508001062<br>061010508001065<br>061010508001071<br>061010508001080<br>061010508001114 | 061010508001129<br>061010508001183<br>061010508001208<br>061010508001210<br>061010509001001<br>061010509001006<br>061010501001044<br>061010501001051<br>061010501001052<br>061010501001054<br>061010501001056<br>061010501001058<br>061010501002003<br>061010501002080<br>061010501002097<br>061010501002109<br>061010501002111<br>061010501002115 |
| <i>Median Household Income (by Census Block Group)</i> | \$78,551   |  |  |
| <i>Estimated potential subscriber size</i>             | 279 households   |  |  |
| <i>Applicant expectations</i>                          | 97 households (47% take rate)  |  |  |

| <i>Project Name</i>  | <b>Sutter Placer Project</b>   |
|--|--|
| <i>Pricing Plan (Monthly)</i>                              | 25 Mbps / 5 Mbps for \$78.00 (250 Mbps cap)<br>50 Mbps / 10 Mbps for \$93.00 (350 Mbps cap)<br>50 Mbps / 10 Mbps for \$103.00 (500 Mbps cap) |
| <i>Deployment Schedule<br/>(from permit approval date)</i> | 300 days   |
| <i>Proposed Project Budget<br/>(Total)</i>                 | \$ 415,438   |
| <i>Grant Requested Amount<br/>(100 percent)</i>            | \$ 415,438   |
| <i>CASF Grant Amount<br/>(100 percent)</i>                 | \$ 415,438   |
| <i>Recommended Grant per<br/>household passed</i>          | \$ 1,489   |

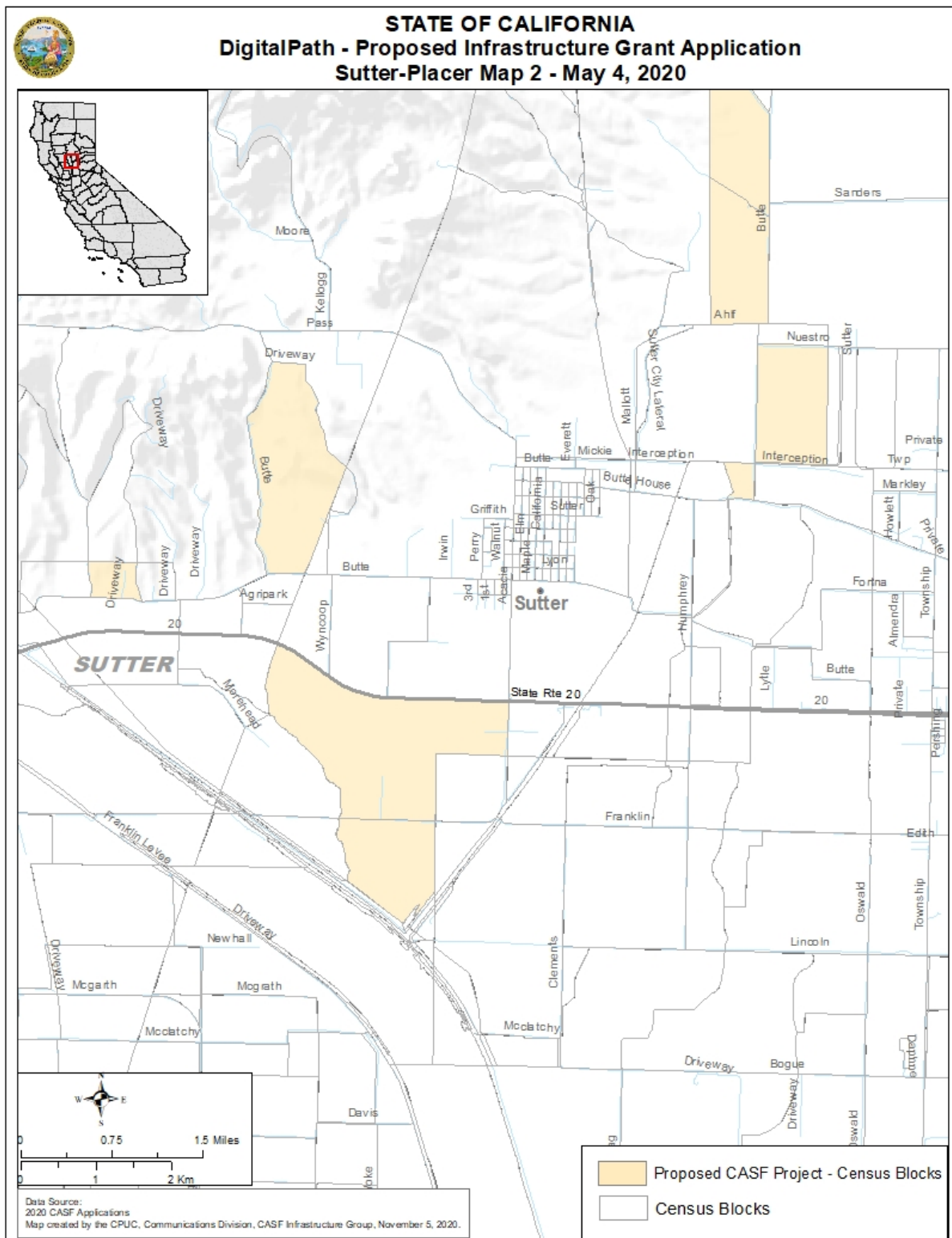
**APPENDIX B**  
**DigitalPath Communications – Sutter Placer Counties Project**  
**Project Location Maps**



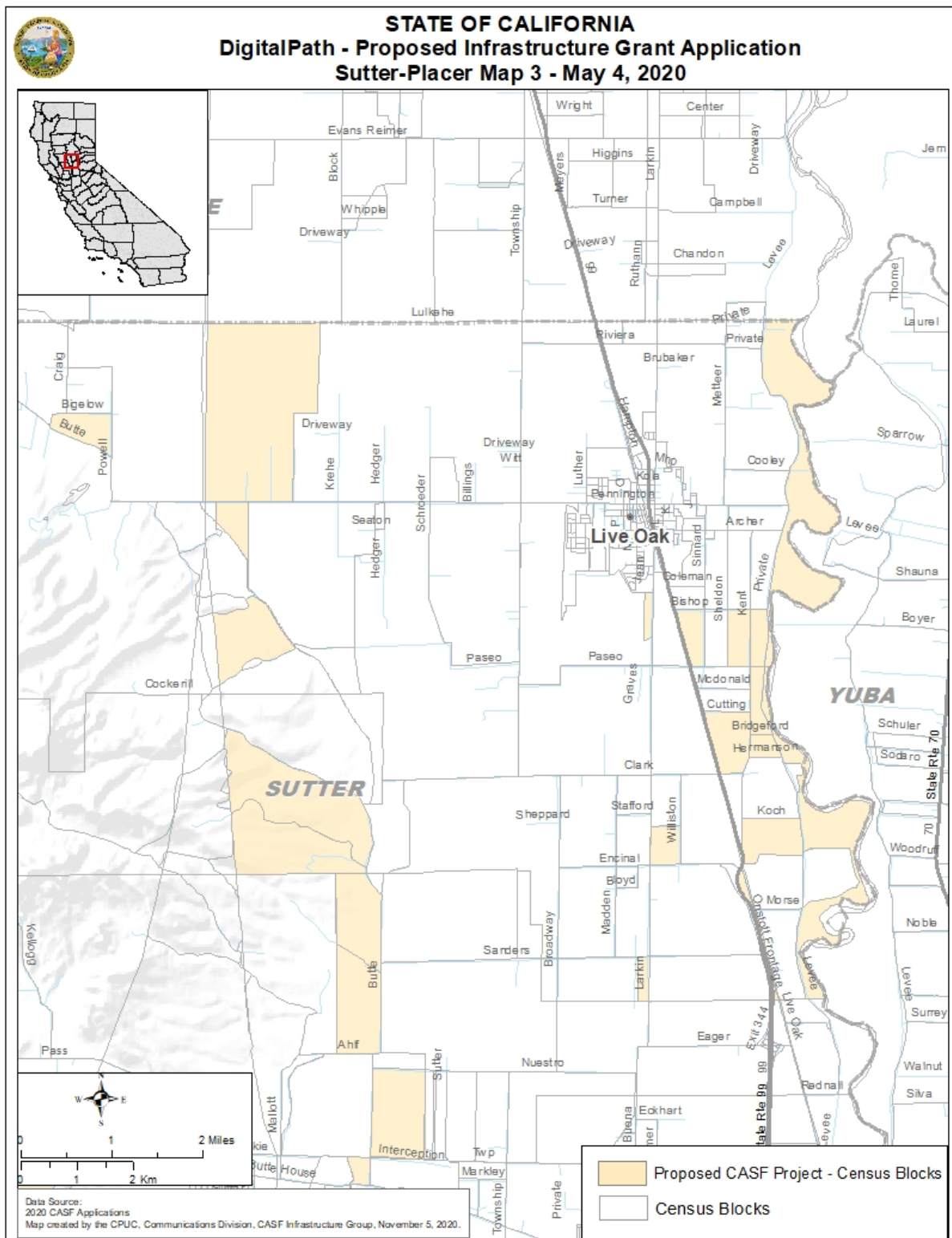
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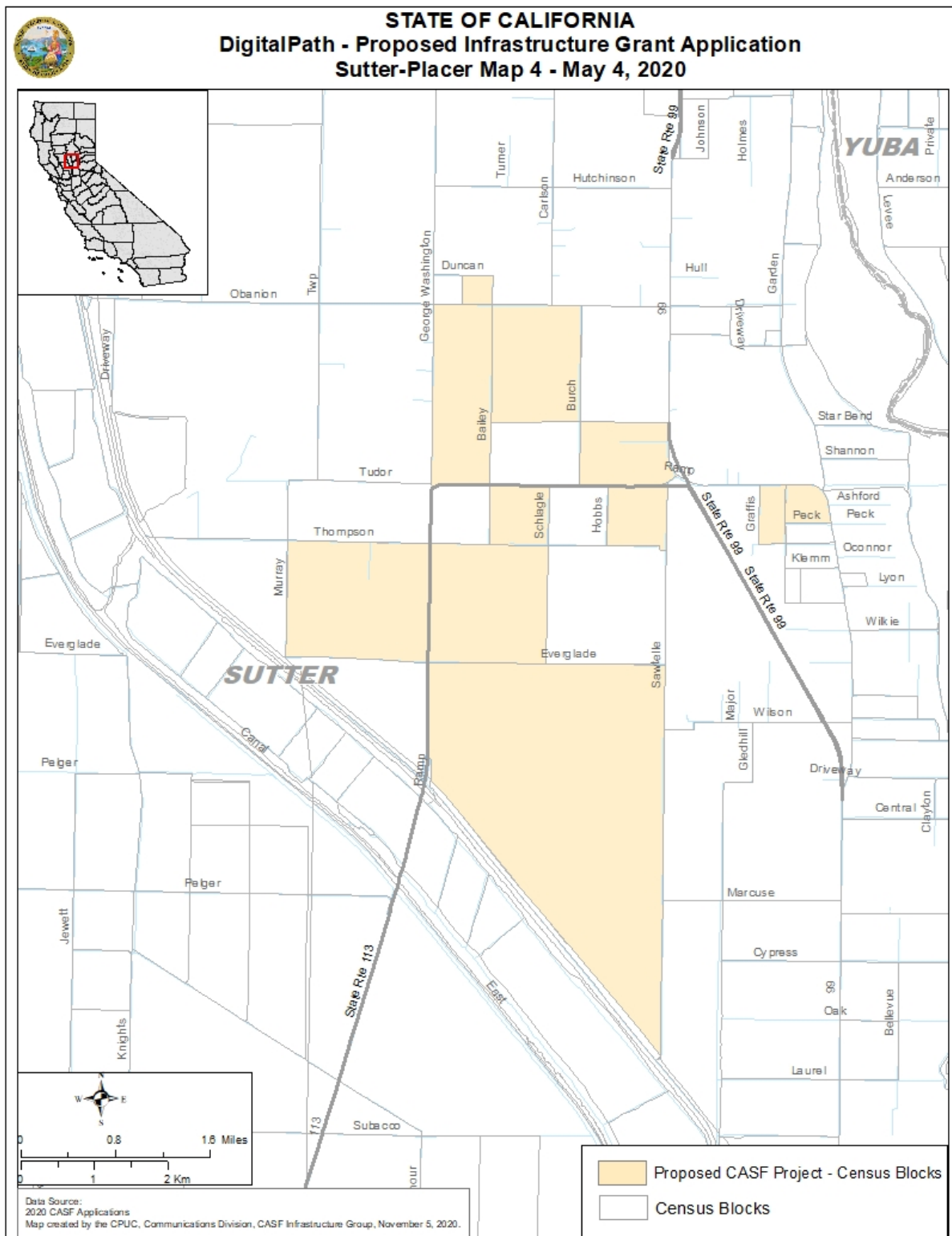
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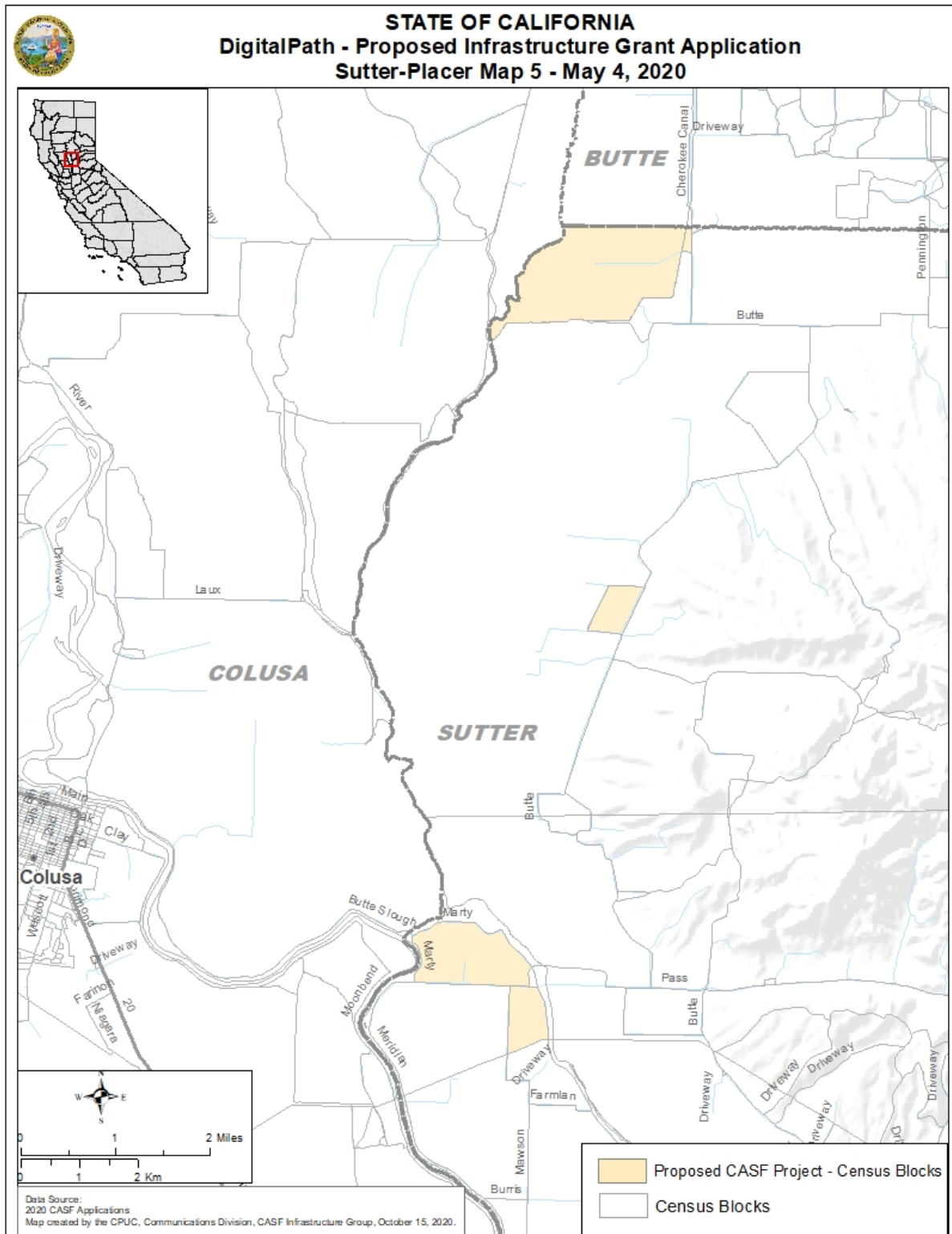
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**APPENDIX C**  
**Resolution T-17720: DigitalPath Sutter Placer Project**  
**Payments to CASF Recipients**

Pub. Util. Code § 281(f)(11) defines the costs the Commission may reimburse as follows:

- Costs directly related to the deployment of infrastructure;
- Costs to lease access to property or for Internet backhaul services for a period not to exceed five years; and
- Costs incurred by an existing facility-based broadband provider to upgrade its existing facilities to provide for interconnection.

Additionally, D. 18-12-018 (Appendix 1, Section 7) caps administrative expenses directly related to the project at 15 percent of the grant amount.<sup>22</sup>

The grantee may submit reimbursement requests at the following intervals:

- 10 percent completion;
- 35 percent completion;
- 60 percent completion;
- 85 percent completion; and
- 100 percent completion.

The final 15 percent payment request (from 85 to 100 percent) will not be paid without an approved completion report. Payments are based on submitted receipts, invoices and other supporting documentation showing expenditures incurred for the project in accordance with the approved CASF funding budget included in the CASF grantee's application.

Payment to grantees shall follow the process adopted for funds created under Public Utilities Code § 270. The Commission generally processes payments within 20-25 business days, including Communications Division and Administrative Services review time. The State Controller's Office (SCO) requires an additional 14- 21 days to issue payment from the day that requests are received by SCO from Administrative Services.

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<sup>22</sup> Administrative costs are defined as "indirect overhead costs attributable to a project, per generally accepted accounting principles (GAAP), and the direct cost of complying with Commission administrative and regulatory requirements related to the grant itself." Applicants seeking additional funds will require a Commission exemption included in a draft resolution.