



ADVANCE MITIGATION PROGRAM
Final Formal Guidelines
Version 1.0

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LIST OF ACRONYMS

A Glossary of Key Terms is included as Appendix A.

Act	The Road Repair and Accountability Act of 2017; Chapter 5, Section 35, Statutes of 2017. Also known as “Senate Bill 1” or “SB 1”.
AMA	Advance Mitigation Account
AMP	Advance Mitigation Program
BLM	United States Department of Interior, Bureau of Land Management
Budget Act	Senate Bill 103, Chapter 95, Sections 10 – 15, Statutes of 2017
CalSTA	California State Transportation Agency
Caltrans	California Department of Transportation
CDFW	California Department of Fish and Wildlife
CEQA	California Environmental Quality Act
CESA	California Endangered Species Act
CTC	California Transportation Commission
ESA	Federal Endangered Species Act of 1973
Fast Act	The Fixing America’s Surface Transportation Act of 2015
FHWA	Federal Highway Administration
FY	Fiscal Year
HCP	Habitat Conservation Plan
ITS-Davis	Institute of Transportation Studies at the University of California, Davis
MAP-21	The Moving Ahead for Progress in the 21st Century Act of 2012
MCA	Mitigation Credit Agreement
MOU	Memoranda of Understanding or Memorandum of Understanding
MPO	Metropolitan Planning Organization

NAAC	Native American Advisory Committee
NCCP	Natural Community Conservation Plan
NEPA	National Environmental Policy Act
NOAA Fisheries Service	United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service
RAMNA	Regional Advance Mitigation Needs Assessment
RAMP	Regional Advance Mitigation Planning
RCIS	Regional Conservation Investment Strategy
RIBITS	Regulatory In-Lieu Fee and Bank Information Tracking System
RTPA	Regional Transportation Planning Agency
RWQCB	California Regional Water Quality Control Board
SAMI	Statewide Advance Mitigation Initiative
SAMNA	Statewide Advance Mitigation Needs Assessment
SB 1	California Senate Bill 1: The Road Repair and Accountability Act of 2017
SHC	California Streets and Highway Code
SHOPP	State Highway Operation and Protection Program
STIP	State Transportation Improvement Program
SWRCB	California State Water Resources Control Board
TEA-21	1998 Transportation Equity Act for the 21 st Century
UC Davis	University of California, Davis
USACE	United States Department of Defense, United States Army Corps of Engineers
USEPA	United States Environmental Protection Agency
USFWS	United States Department of Interior, United States Fish and Wildlife Service

1 INTRODUCTION

The Road Repair and Accountability Act of 2017 (“Act”), also known as “Senate Bill 1” or “SB 1”^{1,2} (Chapter 5, Section 35, Statutes of 2017) established the Advance Mitigation Program (“AMP” or “Program”) within the California Department of Transportation (“Caltrans”) to oversee the program administration, planning, programming, implementation, delivery, and tracking of Caltrans advance mitigation projects. SB 1 was signed by Governor Edmund G. Brown Jr. on April 28, 2017; amended by 2017’s Committee on Budget and Fiscal Review, Transportation (“Budget Act”) (Senate Bill 103, Chapter 95, Sections 10 – 15, Statutes of 2017); and codified in California Streets and Highway Code (“SHC”) §800 et. seq., provided in Appendix B.

1.1 Purpose of the Guidelines

These Advance Mitigation Program Guidelines (“Guidelines”) outline the policies and processes Caltrans will undertake to meet the statutory objectives and requirements of the Act (SHC §800 et. seq.).

1.2 Document Organization

This document is organized as follows:

- SECTION 1** — Introduction. Introduces the Guidelines.
- SECTION 2** — Background Information. Provides background information. Explains that compensatory mitigation is a requirement of some transportation project environmental permits. Lists the natural resource regulatory agencies’ authorities to require compensatory mitigation in a transportation project’s environmental permit. Provides a brief history of Caltrans advance mitigation initiatives.
- SECTION 3** — Advance Mitigation Program. Provides a Program overview, i.e., its purpose, objectives, and statutory requirements. Identifies the types of Caltrans advance mitigation projects authorized by the Act. Identifies the roles and responsibilities of Caltrans Headquarters, Caltrans Districts, and California Department of Fish and Wildlife (CDFW). Provides the schedule for integrating the Program into Caltrans management operations. Provides the schedule for planning advance mitigation and delivering advance mitigation projects consistent with SHC§800 et. seq.
- SECTION 4** — Funding. Describes Caltrans Advance Mitigation Account, a revolving fund created by the Act.
- SECTION 5** — Advance Mitigation Planning. Describes Caltrans process for justifying, proposing, and scoping advance mitigation projects in the AMP prior to securing internal funding

¹ The Road Repair and Accountability Act of 2017 provides over \$50 billion in new transportation funding over the next decade to repair highways, bridges, and local roads; to make strategic investments in congested commute and freight corridors; and to improve transit service. Mitigation of the individual transportation projects’ environmental effects is funded, as well.

² Article 19, Section 2(a) of California’s Constitution authorizes revenues from motor vehicle taxes to be spent on “...construction, improvement, maintenance, and operation of public streets and highways...including the mitigation of their environmental effects.”

approval from the Director of Transportation to further develop advance mitigation project scopes.

- SECTION 6** — Advance Mitigation Project Programming. Describes Caltrans advance mitigation project programming process.
- SECTION 7** — Coordination. Provides an overview of how the Program will coordinate with agencies with jurisdiction over natural resources. Describes how Caltrans will coordinate with the Federal Highway Administration, other transportation agencies (metropolitan planning organizations, regional transportation planning agencies, and other public agencies that implement transportation improvements), Native American Tribes, interested parties, and the public.
- SECTION 8** — Eligibility. Defines the types of Caltrans advance mitigation projects eligible to be funded by the Program and which transportation projects are eligible to use mitigation funded by the Program.
- SECTION 9** — Advance Mitigation Project Delivery. Provides general description of the steps Caltrans will take to achieve an advance mitigation project's scope and quality objectives within a budget approved by the Caltrans Director of Transportation.
- SECTION 10** — Advance Mitigation Credit Management. Provides a general description of how Caltrans advance mitigation will be tracked, estimated, and reimbursed.
- SECTION 11** — Use of Mitigation Credits or Values by Transportation Projects. Describes how future transportation projects may access the Program's mitigation.
- SECTION 12** — Reporting. Describes how Caltrans and CDFW will report on the Program to the Legislature and/or California Transportation Commission as required by the Act.
- SECTION 13** — Communications Plan. Describes the Program's plans for outreach and communication.
- SECTION 14** — Risk Management. Describes how Caltrans has addressed advance mitigation Program-related and project-related risks.
- SECTION 15** — Efficiencies. Defines Program-level efficiency expectations.
- APPENDICES** — Three appendices support the document: Appendix A—A Glossary of Key Terms; Appendix B—Streets and Highway Code. Division 1. Chapter 4. Article 2.5. Advance Mitigation Program; and Appendix C—Revision Log.

1.3 Distribution and Updates

This document will be posted on <http://www.advancemitigation.dot.ca.gov>. If revisions are required, the update will be noted in the revision log and the updated document posted on <http://www.advancemitigation.dot.ca.gov>. The revision log is provided in Appendix C.

2 BACKGROUND INFORMATION

Compensatory mitigation³ is a mitigation strategy that is preferentially applied only after it has been determined that there will be unavoidable impacts and efforts to avoid, minimize, rectify, and reduce the impact have been incorporated, to the extent practicable, in the transportation project's design^{4,5} and delivery. Traditionally, this determination comes late in the transportation project delivery process, prompted by natural resource regulatory agency permits, at which time the compensatory mitigation action is both funded and implemented concurrently with the transportation project (Figure 1, located at the end of this section). Advance mitigation shifts this traditional business practice of mitigation planning and implementation to before transportation project permitting and impacts occur and decouples the compensatory mitigation's purchase or establishment from the delivery of any one specific transportation project. Subsequently, when advance mitigation credits are available to a transportation project, transportation project-related internal and external mitigation planning, implementation, administration, and coordination tasks are substantially reduced (Figure 2, located at the end of this section).

Examples of compensatory mitigation include 1) payment into an established conservation fund or bank; 2) preservation via acquisition or conservation easement of existing habitat; and 3) restoration, establishment, or enhancement of a degraded or a former habitat or natural resource.

Advance mitigation under the AMP anticipates that unavoidable impacts will be identified in the future and consists of having compensatory mitigation available before planned transportation projects are completely funded, designed, and permitted. When compensatory mitigation is purchased or established independent of transportation project delivery timelines and funding, there is an opportunity to 1) consolidate the anticipated compensatory mitigation from multiple transportation projects, such that the compensatory mitigation provides higher ecological value; and, 2) improve the chances that securing a transportation project's compensatory mitigation for its environmental permit will not negatively or

³ The term "mitigation" refers to all of the following: (1) avoiding an environmental impact altogether by not taking a certain action or parts of an action; (2) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (3) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and (5) compensating for the impact by replacing or providing substitute resources or environments (40 CFR 1508.20; CEQA Guidelines Section 15370).

⁴ Caltrans transportation project management guidance incorporates these mitigation measures, as a sequence, in order of priority: avoidance, minimization, compensation. See http://www.dot.ca.gov/ser/vol3/Ch5/vol3_ch5.pdf. The Federal Highway Administration (FHWA) describes this sequencing approach to mitigation alternatives in its National Environmental Policy Act (NEPA) toolkit, as well. <https://www.environment.fhwa.dot.gov/projdev/tdmmitig2.asp>.

⁵ The Clean Water Act (CWA) articulates this sequencing. The [CWA Section 404\(b\)\(1\) Guidelines](#) of Subparts A through F at 40 C.F.R. part 230, and [1990 Memorandum of Agreement between the Environmental Protection Agency and the Department of Army](#), and the [Mitigation Rule](#) at 33 C.F.R. part 332.1(c) establish a mitigation sequence to help guide mitigation decisions and determine the type and amount of mitigation required for Department of the Army permits evaluated under Section 404 of the CWA: (1) Avoidance ([40 C.F.R. part 230.10\[a\]](#)) - Adverse impacts to aquatic resources are to be avoided and no discharge shall be permitted if there is a practicable alternative with less adverse impact. (2) Minimization ([40 C.F.R. part 230.10\[d\]](#)) - If impacts cannot be avoided, appropriate and practicable steps to minimize adverse impacts must be taken. (3) Compensation ([33 C.F.R. part 332](#), [40 C.F.R. part 230.93](#)) - Appropriate and practicable compensatory mitigation is required for unavoidable adverse impacts which remain after all appropriate and practicable minimization has been required. The amount and quality of compensatory mitigation may not substitute for avoiding and minimizing impacts.

unpredictably impact the transportation project’s schedule or costs. Further, when compensatory mitigation is in place prior to actual environmental impacts occurring, there is no temporary loss of biological or ecological functions and values prior to construction, supporting a case for lower mitigation ratios.

Figure 1: Traditional Transportation Project Delivery Process

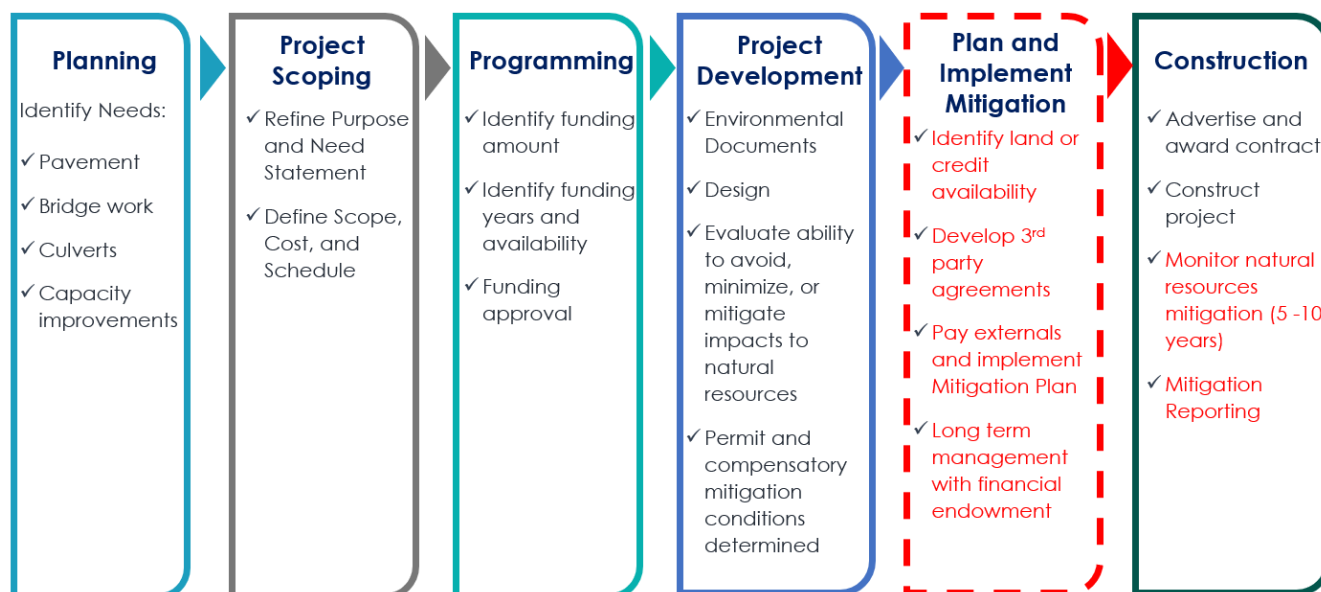
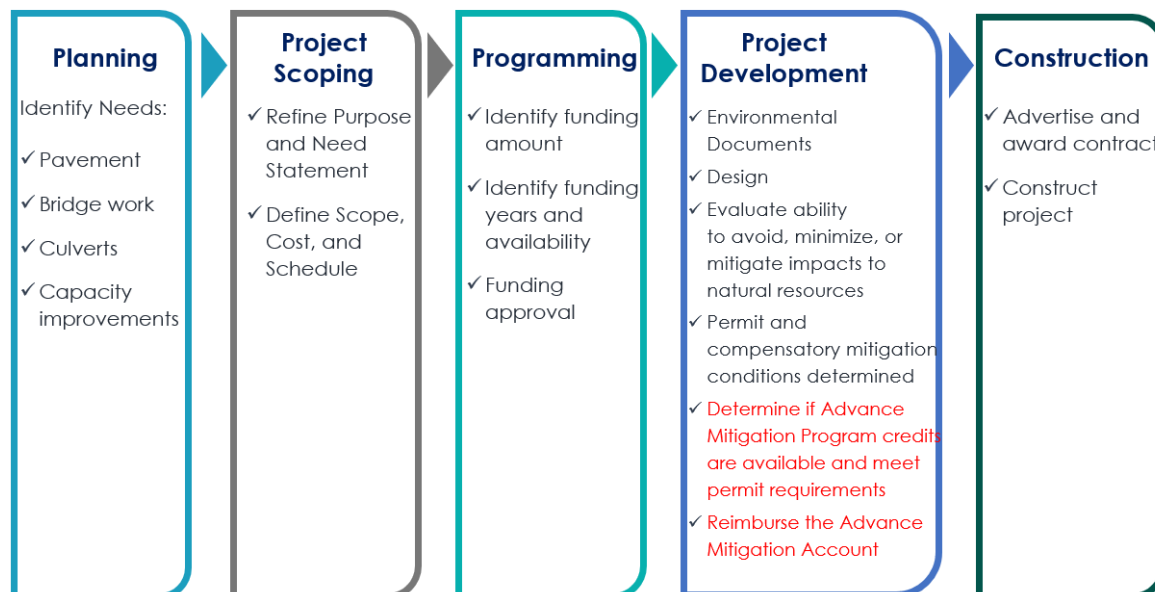


Figure 2: Transportation Project Delivery Where Advance Mitigation is Available



2.1 Authorities for Advance Mitigation

Unavoidable natural resource impacts of transportation projects are defined under environmental laws and regulations including, but not limited to:

- California Environmental Quality Act (“CEQA”) (P.R.C. 21000 et seq.)
- National Environmental Policy Act (“NEPA”) (42 U.S.C. 4321 et seq.)
- Federal Endangered Species Act of 1973 (“ESA”) (16 U.S.C. 1531-1543) as Amended
- California Endangered Species Act (“CESA”) (Fish and Game Code 2050 et seq.)
- Federal Clean Water Act, Sections 401 and 404 (33 U.S.C. 1251-1376)
- Porter-Cologne Water Quality Control Act (California Water Code, § 13000, *et seq.*)
- California Fish and Game Code, Section 1600 et seq.
- Federal Coastal Zone Management Act of 1972 (16 U.S.C. 1451-1464) as Amended
- California Coastal Act of 1976
- McAteer-Petris Act (GC Sections 66650-66661)

In California, agencies with jurisdiction over natural resources that could be impacted by transportation projects include, but are not limited to, 1) United States Department of Interior, Fish and Wildlife Service (“USFWS”); 2) United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (“NOAA Fisheries Service”); 3) California Department of Fish and Wildlife (“CDFW”); 4) the State Water Resources Control Board (“SWRCB”) and Regional Water Quality Control Boards (“RWQCB”); 5) the US Army Corps of Engineers (“USACE”); and, 6) the California Coastal Commission.

2.2 History

Advance mitigation for infrastructure has been encouraged via regulation and agreements since the 1990s. In 2001, the Federal Highway Administration (“FHWA”) revised its regulations to conform to the wetland and natural habitat mitigation provisions in the 1998 Transportation Equity Act for the 21st Century (“TEA-21”), which state the requirements for the use of natural habitat and wetlands mitigation banks and other forms of compensatory mitigation to offset impacts associated with Federal-aid highway projects, including eligibility requirements, and technical and administrative guidance.

In 2006, the FHWA, the United States Bureau of Land Management (“BLM”), the United States Environmental Protection Agency (“USEPA”), NOAA Fisheries Service, the National Park Service, USACE, the United States Department of Agriculture, Forest Service, and USFWS, along with several states’ Departments of Transportation, with others, published *Eco-Logical, An Ecosystem Approach to Developing Infrastructure Projects*, in which the FHWA and its federal partners documented their commitment to an ecosystem approach to infrastructure project mitigation.

Since 2006, under the direction of the California Business Transportation and Housing Agency (“BTHA”) and California State Transportation Agency (“CalSTA”) secretaries, Caltrans has sought new ways to improve the efficiency and effectiveness of mitigation in relation to its infrastructure projects. Advance mitigation was identified as a strategy to improve efficiencies and effectiveness.

Since 2007, Caltrans was delegated and has performed federal responsibilities for environmental decisions and approvals under NEPA for highway projects in California that are funded by FHWA. These responsibilities have been assigned to Caltrans by FHWA pursuant to two Memoranda of Understanding (“MOU”) under 23 U.S.C 326 and 327 as amended by the Moving Ahead for Progress in the 21st Century Act (P.L. 112-141) (“MAP-21”) and the Fixing America’s Surface Transportation Act (“FAST Act”). MAP-21 and the Fast Act require Caltrans, pursuant to its assigned authority, to integrate transportation planning and environmental review processes in accordance with natural resource regulatory agencies.

In 2008, Caltrans joined a coalition of infrastructure and natural resource regulatory agencies, nongovernmental organizations, and academic researchers focused on developing a more comprehensive, holistic approach to mitigating unavoidable biological resource impacts potentially caused by state infrastructure projects, such as roads and levees. This approach, called Regional Advance Mitigation Planning (“RAMP”), allows for prioritized natural resources to be protected or restored as compensatory mitigation before infrastructure projects are constructed, often years in advance. In 2009, leadership of the various agencies signed or supported a Memorandum of Understanding (“MOU”) including: the California Department of Water Resources, Caltrans, USEPA, USFWS, USACE, NOAA Fisheries Service, CDFW, California Wildlife Conservation Board, Natural Resources Agency, and the California Business, Transportation & Housing Agency.

In 2011, Caltrans signed an MOU with CDFW, USACE, USEPA, USFWS, and NOAA Fisheries Service to establish the Statewide Advance Mitigation Initiative (“SAMI”). In the SAMI MOU, Caltrans and CDFW agree to work together with the federal regulatory agencies in developing a statewide advance mitigation initiative, including committing staff resources, identifying mitigation locations, and exploring all appropriate compensatory mitigation solutions consistent with applicable laws, regulations, policies and guidance. The SAMI MOU provided the basis for establishing the AMP in the State Highway Operation and Protection Program (“SHOPP”) Roadside Restoration and Protection Program (“SHOPP 240”) in 2013, for delivering advance mitigation projects in the 2016 SHOPP.

In 2015, Caltrans contracted with the Institute of Transportation Studies at the University of California, Davis (“ITS-Davis”) to research the status of advance mitigation policy and procedure in the United States and write three reports. In “Setting the Stage for Statewide Advance Mitigation in California,”⁶ ITS-Davis provided an overview of advance mitigation; analyzed experiences with advance mitigation to date, in California and across the United States, highlighting the financial approaches used; and discussed the national and state policy context in which advance mitigation efforts were embedded at that time. In “The Business Case for Advance Mitigation in California,”⁷ ITS-Davis outlined the potential benefits and costs associated with an advance mitigation approach. The group found that available evidence suggested that advance mitigation could lead to financial and staff time savings to Caltrans, via mitigation costs avoided, economies of scale in necessary mitigation expenditures, and avoided procedural costs and

⁶ Sciarra, Gian-Claudia, Jacquelyn Bjorkman, Jaimee Lederman, James H. Thorne, Melanie Schlotterbeck, Martin Wachs. 2015. Task 2 Report: Setting the Stage for Statewide Advance Mitigation in California. Institute of Transportation Studies, University of California, Davis, Research Report UCD-ITS-RR-15-02

⁷ Sciarra, Gian-Claudia, Elizabeth Stryjewski, Jacquelyn Bjorkman, James H. Thorne, Melanie Schlotterbeck. 2015. Task 3 Report: The Business Case for Advance Mitigation in California. Institute of Transportation Studies, University of California, Davis, Research Report UCD-ITS-RR-15-03.

project delays. In “Funding and Financial Mechanisms to Support Advance Mitigation,”⁸ ITS-Davis addressed the funding and financing of advance mitigation and demonstrated that the State would require both new sources of revenue and creative methods of financing to accomplish advance mitigation on a substantial scale.

Also, in 2015, Caltrans contracted with University of California, Davis (“UC Davis”) to perform original research: In “A Reference Manual for Caltrans Staff on Regional Advance Mitigation Impact Assessment Methods,”⁹ UC Davis provided a method for forecasting natural resource impacts from multiple infrastructure projects. In “2015 Mitigation Needs Assessment for Transportation Projects for the Sacramento Valley Pilot Project for Regional Advance Mitigation Planning,”¹⁰ using historical information, UC Davis piloted its method to an area of the Sacramento Valley. In “A Review of Lessons Learned through the RAMP Working Group, an Addendum to the Draft Statewide Framework,”¹¹ UC Davis compiled insights and lessons learned since 2012 from the impact analysis pilot project; from a series of interviews with agency personnel; from a project developed for the Transportation Research Board by UC Davis; and from ongoing discussions in RAMP’s multi-agency working group.

Since 2015, Caltrans has been verifying and updating the UC Davis forecasting approach.

In 2016, Caltrans renewed the SAMI MOU with CDFW, SWRCB, USACE, USEPA, USFWS, and NOAA Fisheries Service to continue the SAMI, in which the signatory agencies agree to develop a process to implement SAMI. Hence, pursuant to the 2016 SAMI MOU, Caltrans is working with the signatory agencies to develop a master process agreement to establish a mutually agreed-upon process for managing and reducing some of the financial, technical, and strategic risks associated with making these early investments in advance mitigation planning and advance mitigation project delivery and improving the probability that the mitigation will be approved for use.

The 2016 SHOPP, with California Transportation Commission (“CTC”) approval, released the first funds used to program Caltrans advance mitigation projects in several Districts. The projects were programmed against the \$40 million reserve created in the 2016 SHOPP for advance mitigation projects. Twelve advance mitigation projects were programmed in the SHOPP and are underway.

As stated above, in July 2017, SB 1 and SB 103 established the AMP, which is the subject of these Guidelines.

⁸ Lederman, Jaimee, Martin Wachs, Melanie Schlotterbeck, Gian-Claudia Sciara. 2015. Task 4 Report: Funding and Financial Mechanisms to Support Advance Mitigation. Institute of Transportation Studies, University of California, Davis, Research Report UCD-ITS-RR-15-04

⁹ James H. Thorne, Jacquelyn Bjorkman, and Patrick R. Huber. 2015. A Reference Manual for Caltrans Staff on Regional Advance Mitigation Impact Assessment Methods. UC Davis: Information Center for the Environment.

¹⁰ James H. Thorne, Jacquelyn Bjorkman, Ryan M. Boynton, and Patrick R. Huber. 2015. 2015 Mitigation Needs Assessment for Transportation Projects for the Sacramento Valley Pilot Project for Regional Advance Mitigation Planning. UC Davis.

¹¹ James H. Thorne, Jacquelyn Bjorkman, and Patrick R. Huber. 2015. A Review of Lessons Learned through the RAMP Working Group, an Addendum to the Draft Statewide Framework. UC Davis.

3 ADVANCE MITIGATION PROGRAM

Located within Caltrans, the AMP oversees administration, planning,¹² programming, implementation, delivery, and tracking of Caltrans' advance mitigation projects, credits, and values.

3.1 Program Purpose

The AMP was formed to meet the requirements of the Act, as amended by SB 103, and codified in SHC §800 et. seq. The Act directs the following:

- Caltrans shall create and develop a new program for planning and implementing advance mitigation projects¹³ (SHC §800(b)).
- The Director of Finance shall direct the State Controller to deposit no less than \$30 million annually for a period of four years into an Advance Mitigation Account (“AMA”), for implementing advance mitigation projects, commencing with the 2017–18 fiscal year (“FY”) (SHC §800(b) and (c)).
- Caltrans shall operate the AMA as a self-sustaining revolving account. State Transportation Improvement Program (“STIP”) and SHOPP transportation projects using AMA-funded mitigation will reimburse the AMA at the time a planned transportation project is constructed (SHC §800.7).

The Act also directs Caltrans to consult with the CDFW on all AMP activities (SHC §800[a]) and for CDFW and Caltrans to regularly report to the California State Legislature on the improved quality and effectiveness of Caltrans' AMP habitat mitigation and transportation project acceleration, respectively (SHC §800.6(f) and (g)).

3.2 Program Objectives and Statutory Requirements

Consistent with SHC §800et seq., the AMP seeks to (Figure 3):

- Support the acceleration of transportation project delivery (SHC §800(a)).
- Enhance communications between Caltrans and stakeholders,¹⁴ to protect natural resources through project mitigation, to meet or exceed applicable environmental requirements, to mitigate, to the maximum extent required by law, environmental impacts from transportation infrastructure projects (SHC §800(a)).
- Consult on all activities pursuant to this article with the CDFW, including activities pursuant to Chapter 9 (commencing with Section 1850) of Division 2 of the Fish and Game Code (SHC §800(a)).

¹² Advance mitigation planning is Caltrans' process for justifying, proposing, and scoping advance mitigation projects towards securing internal funding approval from the Director of Transportation. See Section 5.0.

¹³ The Act defines “advance mitigation” as “mitigation implemented before, and in anticipation of, environmental effects of planned transportation improvements (SHC §800.5[c]).”

¹⁴ “Stakeholders” are individuals or organizations who are actively involved in an advance mitigation project or whose interests may be affected as a result of advance mitigation project execution or successful advance mitigation project completion.

- Ensure the AMA operates as a self-sustaining fund (SHC §800.7).

Figure 3: Advance Mitigation Program Objectives



The AMP will accomplish these objectives by implementing advance mitigation projects designed to supply high-quality compensatory mitigation that will be available to satisfy future transportation project natural resources mitigation as required by applicable laws, regulations, permits, and agreements.

3.3 Advance Mitigation Project Types

Under the Road Repair and Accountability Act of 2017 (SHC §800 *et seq.*), Caltrans advance mitigation projects can consist of authorized activities pursuant to SHC §800.6(a), if Caltrans determines that the activity would provide appropriate compensatory mitigation of the anticipated potential impacts of planned transportation improvements. Authorized activities are:

1. Purchase, or fund the purchase of, credits from an existing mitigation bank, conservation bank, or in-lieu fee program approved by one or more regulatory agencies.
2. Establish or fund the establishment of, credits by establishing a mitigation bank, conservation bank, or in-lieu fee program in accordance with applicable state and federal standards.
3. Pay, or fund payment of, mitigation fees or other costs or payments associated with coverage of Caltrans or other transportation agency’s projects under a Natural Community Conservation Plan (“NCCP”)¹⁵ or a Habitat Conservation Plan (“HCP”).
4. Where a Regional Conservation Investment Strategy (“RCIS”) has been approved by CDFW pursuant to Fish and Game Code sections 1850-1861 and the Regional Conservation Investment Strategies Program Guidelines,¹⁶ Caltrans may:
 - Enter into, or fund the preparation of, a Mitigation Credit Agreement (“MCA”) with CDFW; purchase credits from an established MCA; or implement, or fund the implementation of,

¹⁵ When Caltrans is a permittee under the NCCP, or if Caltrans qualifies as a Participating Special Entity and the project is a covered activity in the NCCP.

¹⁶ <https://www.wildlife.ca.gov/Conservation/Planning/Regional-Conservation>

- conservation actions and habitat enhancement actions^{17,18} as needed to generate mitigation credits pursuant to an MCA.
- Acquire, restore, manage, monitor, enhance, and preserve lands, waterways, aquatic resources, or fisheries, or fund the acquisition, restoration, management, monitoring, enhancement, and preservation of lands, waterways, aquatic resources, or fisheries that would measurably advance a conservation objective specified in an RCIS.
5. Pursuant to SHC §800.6, subd. (a)(3), Caltrans may prepare, or fund the preparation of, a RCIS with AMA funds in conjunction with undertaking the advance mitigation project types described above in (4) and the Caltrans Director of Transportation’s approval.
 6. If it is demonstrated that the authorized activities of (1) through (5), above, are not feasible, implement or fund other forms of advance mitigation, including advance permittee responsible mitigation, in accordance with a programmatic mitigation plan¹⁹ pursuant to SHC §800.9.^{20,21} The programmatic mitigation plans shall include, to the maximum extent practicable, the information required for a RCIS (SHC § 800.9.)

3.4 Program Roles and Responsibilities

AMP administration, project planning, and implementation are a joint effort between Caltrans Headquarters and Caltrans’ 12 Districts. CDFW also has defined responsibilities per the legislation. Their respective responsibilities are described below:

3.4.1 Caltrans Headquarters Responsibilities

- Administer the AMP. Coordinate with Caltrans Divisions, such as transportation planning, budgets, accounting, project management, right of way, environmental analysis, and others.
- Manage the AMA.

¹⁷ “Conservation action” means an action identified in an RCIS whose implementation through an MCA would create credits to be used as compensatory mitigation. Actions would preserve or restore ecological resources, including habitat, natural communities, ecological processes, and wildlife corridors, to protect those resources permanently, and would provide for their perpetual management so as to help to achieve one or more goals and objectives for one or more focal species or other conservation elements. “Habitat enhancement action” means an action identified in an RCIS that is intended to improve the quality of wildlife habitat, or to address risks or stressors to wildlife. It would have long-term durability but would not involve acquiring land or permanently protecting habitat. Examples of habitat enhancement actions include improving in-stream flows to benefit fish species, enhancing habitat connectivity, and controlling or eradicating invasive species. A habitat enhancement action that is implemented through an MCA would create credits to be used as compensatory mitigation. See <https://www.wildlife.ca.gov/Conservation/Planning/Regional-Conservation>.

¹⁸ Under specific conditions, fish passage and wildlife crossing structures may qualify as enhancement actions under an RCIS per Fish and Game Code §§ 1850 – 1861.

¹⁹ A programmatic mitigation plan is defined in 23 U.S.C. 169.

²⁰ No more than 25 percent of the funds in the Advance Mitigation Account may be allocated for this purpose over a four-year period.

²¹ Note the authority for Caltrans to enter into cooperative agreements with public entities such as CDFW is under SHC 114 and SHC 130.

- Provide accurate AMA accounting to the California Transportation Commission (“CTC”) annually.
- Develop, maintain and monitor AMP and other associated guidelines and procedures.
- Coordinate with natural resource regulatory agencies on processes and statewide agreements to support the AMP (23 U.S.C. 169; See Section 7.1).
- Consult with CDFW on all AMP activities, as required by SHC §800(a).
- Engage with CDFW’s RCIS program. Specifically:
 - Review and comment upon the Regional Conservation Investment Strategies Program Guidelines²² and other RCIS Program-level documents and products.
 - Provide Districts with direction and technical assistance related to consistent RCIS-related engagement.
 - Provide Districts with direction and technical assistance with respect to a District’s RCIS development and the AMA.
- Assist Districts with advance mitigation planning and advance mitigation project programming.
 - Work with Caltrans Districts, Division of Transportation Planning, and Division of Budgets to resource the advance mitigation planning and advance mitigation projects appropriately.
 - Develop tools and procedures for Caltrans Headquarters and Districts to manage financial, technical, and strategic risks associated with undertaking advance mitigation.
 - Review and prioritize advance mitigation candidate projects submitted by Districts.
 - Nominate and prioritize advance mitigation projects for the Director of Transportation’s approval and funding.
- Assist Districts with advance mitigation project implementation and delivery.
- Manage advance mitigation credits and values.
 - Track the usage of compensatory mitigation purchased or established by advance mitigation projects.
 - Review District and other transportation agency requests for advance mitigation use and assign credits/values to transportation projects.
 - Determine, with Districts, when credits may be transferred to another transportation agency.²³
- Report biennially to the Legislature, as required by SHC §800.6(f).

²² <https://www.wildlife.ca.gov/Conservation/Planning/Regional-Conservation>

²³ “Transportation agency” means [Caltrans], a metropolitan planning organization, a regional transportation planning agency, or another public agency that implements transportation improvements (SHC §800(5)(m)).

- Measure efficiencies.
- Conduct outreach and provide information to FHWA, other transportation agencies (metropolitan planning organizations (“MPO”), regional transportation planning agencies (“RTPA”), and other public agencies that implement transportation improvements), Native American Tribes, interested parties, and the public about the AMP.
- Maintain internal and external communication tools and content, such as the Program web-site.
- Seek partnering opportunities with Districts and local advance mitigation programs.

3.4.2 Caltrans Districts Responsibilities

- Adhere to and implement the AMP’s guidelines and procedures.
 - Plan, scope, program, implement, and deliver advance mitigation projects authorized under the Act (See Section 8.1) that meet forecasted SHOPP and STIP eligible transportation project mitigation needs.
 - Budget and program compensatory mitigation costs into transportation projects, if environmental studies for the transportation project identify that it is potentially needed after all appropriate and practicable avoidance and minimization has been performed, in order to reimburse the AMA or implement mitigation through typical methods as part of the transportation project scope.
 - Use AMP credits and values for District transportation projects and reimburse the AMP, as appropriate.
- Assign a project manager to each advance mitigation project.
 - Manage advance mitigation project allocation, scope and schedule for successful advance mitigation project delivery.
 - Prepare an advance mitigation project-specific communication plan (See Section 9.3).
- Coordinate with MPOs RTPAs, and other public agencies that implement transportation improvements.
 - Contact regional transportation partners to request specific information about their planned STIP transportation projects to inform the advance mitigation planning process.
 - Serve as the point of contact regarding the potential availability and use of Program credits and values by MPOs, RTPAs, and other public agencies that implement transportation improvements for STIP eligible projects.
- Coordinate with local advance mitigation programs.
- Coordinate with relevant natural resource regulatory agencies during advance mitigation planning, implementation, delivery, and tracking, as appropriate.
 - Coordinate with Headquarters when consulting with natural resource agencies on advance mitigation planning, and/or advance mitigation project implementation, delivery, and tracking.

- Engage with CDFW’s RCIS program, consistent with Chapter 9 (commencing with Section 1850) of Division 2 of the Fish and Game Code, Regional Conservation Investment Strategies Program Guidelines,²⁴ and SHC §800.6(j).
 - Participate in RCIS development through Steering Committees and other modes of engagement.
 - Provide letters, signed by the District Director, to sponsor RCIS development, provide transportation agency support for RCIS development,²⁵ provide comments on Draft RCISs, or other letters, as appropriate.
 - Should participating in RCIS activities require fiscal support, budget for RCIS fiscal support or capital costs through annual budget requests and AMA programming requests.
 - When funding or preparing an RCIS is part of an advance mitigation project scope of work, include in scoping document’s cost estimate.
- Coordinate with Headquarters on advance mitigation planning tasks.
 - With Headquarters, select geographic areas for advance mitigation planning.
 - Coordinate on budget needs for support costs annually.
 - Participate in nomination process of advance mitigation for programming consideration.
- Scope advance mitigation projects that:
 - Address the compensatory mitigation needs of future transportation projects and would accelerate their delivery.
 - Contribute to natural resources protection goals and/or objectives.
 - Yield credits or values in standard units or terms recognized within the regulations by a natural resource regulatory agency with the authority to require compensatory mitigation.
- Coordinate with Headquarters on advance mitigation tracking tasks and reporting requirements.
 - Follow Headquarters established procedures for credit use and maintain credit ledgers or otherwise track the usage of compensatory mitigation purchased or established by advance mitigation projects.
 - With Headquarters, determine when credits or values may be available for transfer to another transportation agency.
 - Track and capture transportation project efficiencies.

²⁴ <https://www.wildlife.ca.gov/Conservation/Planning/Regional-Conservation>

²⁵ Any state water or transportation infrastructure agency that requests approval of a RCIS pursuant to subdivision (a) of Section 1852 of the Fish and Game Code that may be used to facilitate mitigation for an infrastructure project shall not be subject to the limitation on the number of regional conservation investment strategies set in Section 1861 of the Fish and Game Code ." 800.6(j).

- Provide Headquarters AMP documentation of compliance with CEQA/NEPA and all other applicable environmental laws.

3.4.3 CDFW Responsibilities

- Actively engage as Caltrans consults with CDFW on the AMP and associated AMP project-level implementation and applying credits to future transportation projects, per SHC §800(a).
- Provide feedback to Caltrans during advance mitigation planning and advance mitigation project delivery in the AMP.
- Report biennially to the Legislature, as required by SHC §800.6(g).

3.5 Program Schedule

The following schedule lists the major milestones for the AMP’s integration into Caltrans management operations, as well as the major milestones for AMP administration, advance mitigation planning, and advance mitigation project implementation, delivery, and mitigation tracking.

Milestone	Date
Integrate AMP into Caltrans management operations: coordinate with Caltrans Divisions, such as transportation planning, budgets, accounting, project management, environmental analysis, and others	Begin August 2017
Form Advance Mitigation Account	September 8, 2017
CDFW reports to Legislature on quality and effectiveness of advance mitigation ^{1,2}	July 2018 and biennially thereafter
Publish AMP Formal Guidelines	Summer 2019
Caltrans reports to Legislature on transportation project acceleration due to advance mitigation ^{1,3}	July 1, 2019, and biennially thereafter
Caltrans reports Advance Mitigation Account activity to the California Transportation Commission (SHC §800.7) ^{1,4}	Annually; no later than October meeting
Advance mitigation planning <ul style="list-style-type: none"> • Forecast Caltrans statewide need for compensatory mitigation, through the State Advance Mitigation Needs Assessment • For selected areas, document the case for advance mitigation in Regional Advance Mitigation Needs Assessment.^{1,5} <ul style="list-style-type: none"> ○ Provide to natural resource regulatory agencies, FHWA, other transportation agencies (MPOs, RTPAs, and other public agencies that implement transportation improvements), Native American Tribes, interested parties, and the public review and comment (23 U.S.C. 169). ○ Request natural resource regulatory agencies, FHWA, other transportation agencies (MPOs, RTPAs, and other public agencies that implement transportation improvements), Native American Tribes, interested parties, and the public provide relevant information that will inform the assessment 	Begin Fall 2018 and every two years thereafter Begin Fall 2019 and as funds are allocated, thereafter

Milestone	Date
Advance mitigation project scoping	Begin Spring 2020 and no less than annually thereafter
AMP reviews list of advance mitigation project candidate scoping documents prepared by the Districts and nominates advance mitigation projects for approval by the Director of Transportation	Begin Summer 2020 and no less than annually thereafter
Director of Transportation makes determination and justification that proposed expenditure is likely to accelerate transportation project delivery.	Summer 2020 and no less than annually thereafter
Advance mitigation project programming	Summer 2020 and no less than annually thereafter
Advance mitigation project delivery	Fall 2020 and as programmed thereafter
Advance Mitigation Account reimbursement	As transportation projects use credits/values
Advance Mitigation Credit Status Report ^{1,5}	No less than annually

SHC =Streets and Highway Code

¹ Reports are publicly available.

² CDFW biennial reports to the Legislature are provided here <https://www.wildlife.ca.gov/Conservation/Planning/Regional-Advance-Mitigation>.

³ Caltrans AMP biennial reports to the Legislature are provided here <http://www.dot.ca.gov/legislative/reports-legislature.html>.

⁴ Caltrans AMP annual reports on AMA activity to the CTC are provided here <http://catc.ca.gov>.

⁵ Document will be posted on the Program web site: <http://www.advancemitigation.dot.ca.gov>.

4 FUNDING

As directed by SHC §800 and §800.7, commencing with the FY 2017–18, and continuing for a period of four years, the Director of Finance will direct the State Controller to deposit no less than \$30 million into the AMA, a revolving fund established within the State Transportation Fund on September 8, 2017. Funds will be used by Caltrans Districts to implement advance mitigation projects to purchase and/or establish mitigation credits and values in accordance with SHC §800.6(a).

4.1 Revolving Fund

AMA expenditures will be reimbursed from transportation project funding available at the time a planned transportation project is constructed (SHC §800.7).

- As required by law, Caltrans transportation projects budget for and undertake activities required for environmental compliance, permitting, and mitigation of transportation projects. If unavoidable adverse impacts remain after all appropriate and practicable avoidance and minimization has been performed, appropriate and practicable compensatory mitigation may be required as an environmental permit condition. When jurisdictional agencies agree, and the correct type and quantity of AMP credits or values are available, future SHOPP and STIP transportation projects may purchase AMP mitigation credits or values to use to satisfy legal environmental compensatory mitigation requirements, thereby reimbursing the AMA. Therefore, funds used to reimburse the AMA will come from programmed mitigation funds of future Caltrans SHOPP and STIP transportation projects. Costs of compensatory mitigation required for transportation projects are typically federally reimbursable.
- When jurisdictional agencies agree, and Caltrans has determined the correct type and quantity of AMP credits or values are available for local transportation use, Caltrans is authorized to transfer mitigation to a MPO, RTPA, or another public agency that implements transportation improvements to fulfill their planned STIP transportation improvement mitigation requirements, if the transportation agency reimburses the Program for all costs of purchasing or creating the mitigation, as determined by Caltrans (800(6)(b)).

Caltrans accounting, finance, and credit tracking policies and procedures ensure the AMA is maintained such that it is fully reimbursed at the time a transportation project purchases credits or values from the AMA. The annual Budget Act and subsequent legislation may establish additional provisions and requirements for the Program (SHC §800[d]).

5 ADVANCE MITIGATION PLANNING

Advance mitigation planning is Caltrans’ process for *justifying, proposing, scoping* advance mitigation in the AMP prior to securing internal funding approval from the Director of Transportation to further develop advance mitigation project scopes. The advance mitigation planning process is not intended to provide transportation project-level assessment of environmental impacts for the purposes of scoping transportation projects, providing environmental analysis of transportation projects, or permitting transportation projects. Caltrans transportation projects will still proceed under standard environmental and permitting processes and must demonstrate avoidance and minimization of environmental impacts prior to considering the use of compensatory mitigation.

Advance mitigation planning follows a process similar to transportation planning,²⁶ but customized to fit the unique needs of advance mitigation. The advance mitigation planning phase, broadly described, consists of four steps, followed by the Director’s Approval (Figure 4). First, a statewide assessment of the estimated potential compensatory mitigation²⁷ need is performed, through the SAMNA process (Section 5.1). Next, regions or “geographic areas of interest” within a District are identified that have the potential to provide advance mitigation opportunities (Section 5.2). Then, for the geographic area of interest, a regional assessment of opportunities and constraints to meeting the Program objectives described under Section 3.1 above and provide for the best use of Program funds is performed through a process referred to as the Regional Advance Mitigation Needs Assessment (“RAMNA”) (Section 5.3). Last, candidate advance mitigation projects are scoped, initiated, and nominated at the District level for possible funding through the AMA (Section 5.4). A brief description of each step is provided below. Caltrans Director of Transportation’s approval is described in Section 6.

Figure 4. Advance Mitigation Program Planning Phase



5.1 Statewide Advance Mitigation Needs Assessment (Step 1)

To get an idea of the type and quantity of transportation project compensatory mitigation that may be required for California, Caltrans will perform a SAMNA every two years. Using transparent and

²⁶ For an overview of Caltrans transportation project planning and delivery process, see “How Caltrans Builds Projects” http://www.dot.ca.gov/hq/opd/proj_book/HCBP_2011a-9-13-11.pdf

²⁷ Laws and regulations that govern compensatory mitigation can be found in Caltrans Standard Environmental Reference Volume 3 –Biological Resources: <http://www.dot.ca.gov/ser/vol3/vol3.htm> and [5—Biological Mitigation http://www.dot.ca.gov/ser/vol3/Ch5/vol3_ch5.pdf](http://www.dot.ca.gov/ser/vol3/Ch5/vol3_ch5.pdf)

reproducible methods developed for the AMP, the SAMNA will be used to forecast potential habitat, species, and/or resource-level impacts from multiple transportation projects. Results will be spatially organized by Caltrans Districts and by watershed and/or ecoregion for the future time interval defined by the specified long-term transportation plans (for example, 10 years) used for the analysis.

SAMNA information and SAMNA-related reports are or will be available on the Program web site, <http://www.advancemitigation.dot.ca.gov>. Needs are based on Caltrans anticipated SHOPP projects, regional and local STIP-eligible projects, and their estimated potential compensatory mitigation. At this time, SHOPP transportation project needs are forecasted quantitatively using a Geographic Information System (“GIS”) overlay model developed for the AMP and STIP-eligible needs are assessed qualitatively, through District, MPO, RTPA, and other transportation agency coordination.

5.2 Geographic Area of Interest Selection (Step 2)

Once an overall estimate of potential compensatory mitigation need is identified for the State, the AMP and the Districts will coordinate to identify geographic areas of interest(s)²⁸ for RAMNA development that will optimize the investment of AMA funds toward meeting the AMP goals defined in Section 3.1 above. At a minimum, a geographic area of interest will be selected by Caltrans Districts and Headquarters based on the forecasted compensatory mitigation need from the SAMNA, results of District coordination with other transportation agencies²⁹, professional judgment and experience with respect to compensatory mitigation opportunities (or lack thereof), and acceleration priorities for Caltrans planned transportation projects.

5.3 Regional Advance Mitigation Needs Assessment (Step 3)

For each geographic area of interest, Caltrans will prepare a RAMNA, an advance mitigation planning document, to document its consideration of mitigation opportunities and constraints when identifying its need for advance mitigation for the specific geographic area of interest. The RAMNA will:

- a. Identify transportation projects in long-range planning documents used to justify performing the needs assessment.
- b. Document Caltrans’ rationale for selecting the geographic area of interest.
- c. Document Caltrans’ predicted compensatory mitigation need, as forecasted in the SAMNA for Caltrans and other transportation agencies.
- d. Summarize relevant information about potentially benefiting transportation projects, including scheduling considerations and constraints.
- e. Document the potentially benefiting transportation projects’ acceleration priorities.

²⁸ Caltrans anticipates that a geographic area of interest will be smaller than a District and be consistent with ecoregion or watershed units.

²⁹ STIP-eligible projects that are on the fiscally constrained Regional Transportation Plan lists are identified and screened in coordination with the Districts, and the Districts will coordinate with their regional and local transportation agencies to refine the project list and consider in the GAI selection.

- f. Summarize Caltrans' understanding of natural resource regulatory agency conservation goals and objectives³⁰ related to the natural resources forecasted to be impacted.
- g. Document existing land use, as available in readily available land-use datasets, including existing protected lands.
- h. Describe existing compensatory mitigation opportunities, including existing mitigation and conservation banks, in-lieu fee programs, NCCPs/HCPs, MCA-eligible RCISs, credits developed under a CDFW-approved MCA, and mitigation developed in accordance with a programmatic mitigation plan pursuant to SHC §800.9.
- i. Describe the difference between the forecasted need for compensatory mitigation and existing supply.
- j. Propose options, i.e. "conceptual proposals," for authorized activities under SHC §800.6(a) for purchasing or establishing compensatory mitigation that has a high probability of successfully meeting advance mitigation goals and objectives in the geographic area of interest.
- k. When applicable, provide an explanation of whether and to what extent a conceptual proposal would be consistent with any approved NCCP or approved regional federal HCP, any overlapping state or federal recovery plan, or other state-approved or federal-approved conservation strategy (SHC 800.6(d)).

Before the RAMNA³¹ will be used to support advance mitigation planning, Caltrans will, per 23 U.S.C. 169:

- Consult with each natural resource regulatory agency with jurisdiction over the environmental resources considered in the RAMNA.
- Make a draft of the RAMNA available for review and comment by natural resource regulatory agencies, FHWA, other transportation agencies (MPOs, RTPAs, and other public agencies that implement transportation improvements), Native American Tribes, interested parties, and the public.
- Request that, along with their review and comments, natural resource regulatory agencies, FHWA, other transportation agencies (MPOs, RTPAs, and other public agencies that implement transportation improvements), Native American Tribes, interested

Through the RAMNA review process, Caltrans seeks to ensure the natural resources related information used for the assessment reflects the best available science and is valid, usable, of appropriate scale, and appropriately applied, as well as learn if there is any additional relevant information that should be included in the assessment.

³⁰ For the purposes of the AMP, conservation priorities defined as a broad set of regional natural resource sustainability goals and objectives that are consistent with both regulatory requirements and conservation science. For the AMP, conservation priorities address natural resource regulatory agencies' overlapping jurisdictions, available conservation plans and planning information, and landscape level concerns, such as climate vulnerability.

³¹ The RAMNA is intended to meet the requirements of 23 USC 169 and the information presented in the RAMNA, to the maximum extent practicable, is intended to meet RCIS information requirements.

parties, and the public provide Caltrans any additional information relevant to and appropriate for the RAMNA.

- Consider any comments and information received from natural resource regulatory agencies, FHWA, other transportation agencies (MPOs, RTPAs, and other public agencies that implement transportation improvements), Native American Tribes, interested parties, and the public on the draft RAMNA.
- Incorporate information and address such comments in the final RAMNA as appropriate.

The review process will take place between planning milestones. Comments and feedback received will be used to inform Caltrans understanding of transportation advance mitigation needs in the geographic area of interest and contextualize how Caltrans could strategically implement advance mitigation to optimize natural resources protection, for Caltrans' consideration for the next planning step and future advance mitigation project delivery.

5.4 Advance Mitigation Project Scoping, Initiation and Nomination Process (Step 4)

Advance mitigation projects will be scoped and initiated by Caltrans Districts using a process similar to transportation projects,³² but customized and streamlined to fit the unique needs of advance mitigation projects.³³

The scoping, initiation and nomination process is an involved, detailed process with multiple review and decision points. The highlights of the process are summarized here.

- Caltrans District staff assigned to scope and propose the candidate advance mitigation project use the information in the RAMNA, RAMNA Agency Partner reviews, other transportation agency, Native American Tribes, interested parties, and the public RAMNA feedback, and any applicable meeting notes, to develop an advance mitigation project Purpose and Need.
- Based on a Purpose and Need, District staff develop a preliminary cost, scope, and schedule for candidate advance mitigation project(s).
- Next, District staff develop an advance mitigation scoping document, further refining the scope, cost, and schedule.
- The scoping document is submitted to the AMP Program Manager to be nominated for funding (programming) consideration.
- No less than annually, the AMP Program Manager prioritizes the advance mitigation projects based on the information in the scoping documents and submits the nominated project list for review and approval by Executive Staff, including the Chief Financial Officer and Chief Engineer,

³² For an overview of Caltrans transportation project planning and delivery process, see "How Caltrans Builds Projects" http://www.dot.ca.gov/hq/oppd/proj_book/HCBP_2011a-9-13-11.pdf

³³ As part of customization and streamlining, scoping and initiation forms and templates have been adapted or created to suit advance mitigation project and AMP information needs.

and other committees, prior to submitting the nominated project list to the Director for their consideration for programming approval.

See Section 6.0 for more information on the Director's programming approval.

5.4.1 Prioritization

In the event the cost of implementing all Caltrans candidate advance mitigation projects would exceed available AMP funding, their nomination will be prioritized based on pre-established prioritization criteria. When prioritizing candidate advance mitigation projects for nomination, at a minimum, Caltrans will consider the following factors:

- The anticipated schedule the candidate advance mitigation project would have compensatory mitigation credits or values ready for purchase by transportation projects, thereby reimbursing the AMA.
- The anticipated number of transportation projects whose delivery could be accelerated because of the resulting advance mitigation.
- The anticipated contribution of the advance mitigation to conservation goals and objectives.
- Degree of confidence in the cost estimate.
- Reasonableness of project delivery.

The number of prioritization criteria may vary from cycle to cycle and the importance placed on an individual prioritization criterion may fluctuate depending on Caltrans priorities at the time. Candidate advance mitigation projects that do not rank high enough to make the nomination list due to prioritization will be considered for programming during the next cycle.

6 ADVANCE MITIGATION PROJECT PROGRAMMING

Advance mitigation project programming is the act of committing AMA funds to an approved advance mitigation project for an identified number of years.

Allowable expenditures from the AMA are defined in SHC §800.6 (a) and no expenditures can be made from the AMA until the Director of Transportation makes the determination and justification that the expenditure will likely accelerate the delivery of transportation projects per SHC §800.6 (i) (“Director’s Approval”). The Director’s Approval signifies the adoption of specific nominated advance mitigation projects into the AMP and begins the programming process for new advance mitigation projects. To obtain the Director’s Approval, Caltrans has established an advance mitigation project initiation and nomination process, which includes multiple levels of review to ensure the most beneficial advance mitigation projects are being funded (see Section 5.4). Caltrans has also established a programming process, which is summarized in this Section. Approving the most beneficial advance mitigation projects and managing the AMA funds through proper programming, which includes the forecasting of future revenues received when transportation projects purchase mitigation, are critical to the long-term success of the AMP. Failure to identify the best advance mitigation projects and improper programming can lead to developing compensatory mitigation that doesn’t fulfill the identified needs and over- or under- spending the Program. This section provides a summary of the main components of the programming process.

Advance mitigation projects will be programmed no less than annually. The cycles may be adjusted in the future should new information show that a different cycle is more suitable.

6.1 Director’s Approval

To obtain the Director’s Approval, first, a candidate advance mitigation project will have had to pass multiple committee reviews, consisting of subject matter experts from across Caltrans Divisions, as described in Section 5.4. Only after an advance mitigation project has completed the nomination process, will it be recommended to the Director for approval. The Director decides, based on the recommendation of the Chief Financial Officer and Chief Engineer, which advance mitigation projects will be funded through the AMP. The Director will consider whether each nominated advance mitigation project will likely accelerate the delivery of specific transportation projects and if adequate justification is provided. When there are more nominated advance mitigation projects than the Program can fund, the Director also will consider the information prepared by Program Manager as informed by Section 5.4.1. Once approved, the advance mitigation project’s scoping document serves as the record of agreement between a District Director and the Caltrans Director for the scope, cost, and schedule, and the advance mitigation project is considered adopted into the Program. At this point, Districts are required to deliver the advance mitigation projects within their scope, cost, and schedule. The Director’s Approval will be formally documented and the new advance mitigation projects, along with the delivery information (cost, scope, schedule, etc.) will be added to internal databases for tracking purposes.

The Director, or a designee, also will be involved in other decisions related to the management of AMP programmed funds, including funding allocations, and Program and advance mitigation project level changes that affect scope, cost, and schedule.

6.2 Programming

An important factor in programming is to know how much money each advance mitigation project needs and when it needs it. This requires communication between each Caltrans District and Headquarters personnel, including but not limited to the District project manager responsible for delivering the advance mitigation project, Headquarters Division of Project Management, the AMP Program Manager, and the Division of Budgets. As part of the scoping document developed during the advance mitigation project initiation and nomination process, the District estimates how much money the advance mitigation project will need per fiscal year to complete advance mitigation project delivery. This information aids Caltrans' staff in making programming decisions, including how many nominated advance mitigation projects can be adopted into the Program each year, approving fund allocations, and whether an advance mitigation project can make certain changes to scope, cost and/or schedule.

6.3 Allocation of Funds

Before a programmed advance mitigation project can begin expending funds, it must receive an allocation in accordance with the funding amount and fiscal timing it originally committed to. A formal process is used by the Districts to request an allocation and for Headquarters to verify the requested funds are in line with what was programmed for the advance mitigation project. The AMP Program Manager and the Division of Budgets work closely to ensure funds are being allocated within an advance mitigation project's programming constraints. It is the responsibility of the Division of Budgets to verify the funds are available before the District can begin charging against the advance mitigation project.

6.4 Amendments

As an advance mitigation project progresses through project delivery, the early estimates for funding and fiscal timing may change because of design refinements, increases or decreases in labor or materials costs, changing regulations, unexpected or new information, or other reasons. Such changes in funding amounts and timing have a ripple effect on the Program and must be managed carefully. Changes at the advance mitigation project level are handled through a project change process outlined in Caltrans' Project Changes Handbook. The process involves the District formally documenting the requested change in a project change request ("PCR") form and submitting it to the Headquarters Division of Project Management. It is then reviewed by the PCR Committee, made up of representatives from multiple areas of expertise. In some cases, it may be elevated to the Executive PCR committee. If approved, advance mitigation project PCRs are submitted to the Director, or a designee, for final approval. Approved project level changes may require amendments at the Program level, in which case those changes will be made. For instance, changes in the timing of allocations for one advance mitigation project may allow for a contingency advance mitigation project to be adopted into the Program or could allow acceleration or cause delay in delivery of currently programmed advance mitigation projects. By having processes for handling changes, calculated decisions can be made to protect the viability of the AMP and ensure successful delivery of quality mitigation.

7 COORDINATION

7.1 Natural Resource Regulatory Agencies

Federal and state natural resource regulatory agencies have a significant responsibility in advance mitigation efforts since Program goals can be reached only with agency assistance for both (1) the long-range planning and delivery of advance mitigation and (2) their future approvals of advance mitigation use for a transportation project.

Regulatory agencies with jurisdiction over natural resources and their authorities are provided in Section 2.1. The Act specifically directs Caltrans to consult with CDFW on all activities pursuant to the AMP (SHC §800[a]). Caltrans and CDFW accomplish the required consultation through a number of regularly scheduled and routine interactions, including but not limited to, biweekly staff working meetings, quarterly management meetings, casual review of intermediate-level work products related to mitigation and advance mitigation, and other interactions. In addition, Caltrans funds a full-time CDFW liaison whose responsibilities specifically include support of Caltrans SAMI and other Caltrans-related advance mitigation endeavors.

Consistent with the Act and 23 U.S.C. 169, Caltrans also regularly consults with CDFW, the California SWRCB, the USACE, South Pacific Division; the EPA, USFWS, the National Marine Fisheries Service and the California Coastal Commission ("Agency Partners") on how to apply the U.S. Department of Transportation, FHWA's Eco-Logical vision for how infrastructure development and ecosystem conservation can be integrated to harmonize economic, environmental, and social needs and objectives.

To this end, in 2016, Agency Partners renewed a 2009 MOU Regarding the Development and Implementation of the SAMI for Caltrans Projects Throughout the State of California ("2016 SAMI MOU"), with the following objectives: (1) improve Caltrans' transportation project delivery outcomes; (2) improve environmental outcomes by aligning compensatory mitigation needs to address conservation priorities;³⁴ and, (3) efficiently plan and deliver successful and compliant advance mitigation projects.

The passage of SB 1 and the AMP's formal creation required no modifications to the 2016 SAMI MOU. Should other agencies choose, the 2016 SAMI MOU allows for future signatories to participate. As agreed to within the 2016 SAMI MOU, Agency Partners are committed to develop a formal agreement and mutually agreeable process for implementing advance mitigation projects and establish a framework for incorporating required Agency Partner review and technical guidance into planning, development, advancement and tracking of Caltrans' advance mitigation. As described in Section 5.0, Caltrans will regularly check in with Agency Partners during the advance mitigation planning process, by consulting with each agency with jurisdiction over the environmental resources considered in the RAMNA. This early communication is expected to lead to high-quality advance mitigation projects because Caltrans will consider any comments received from such agencies and use them to inform and contextualize Caltrans understanding of its advance mitigation needs. When Caltrans is scoping and/or delivering one of the authorized activities pursuant to SHC 800.6(a) (Section 3.3), Caltrans will apply and use existing advance

³⁴ For the purposes of the AMP, "conservation priorities" have the same definition as "conservation goals and objectives," that is, they are defined as a broad set of regional natural resource sustainability goals and objectives that are consistent with both regulatory requirements and conservation science.

mitigation laws, policies, procedures, templates, and guidance to purchase or establish mitigation (See authorities in Section 2.1). Using established regulatory processes is expected to efficiently utilize agency staff time and reduce or eliminate Caltrans long-term liability associated with mitigation, as well as yield usable compensatory mitigation.

7.2 Metropolitan Planning Organizations, Regional Transportation Planning Agencies, and Other Public Agencies that Implement Transportation Improvements

Caltrans meets regularly with MPOs, RTPAs, and other public agencies that implement transportation improvements. Caltrans briefs and updates its fellow transportation agencies during these meetings, which include relevant AMP and advance mitigation planning and advance mitigation project information, as appropriate. Also, during long-range advance mitigation planning for specific geographic areas, Caltrans will contact MPOs, RTPAs, and other public agencies that implement transportation improvements, to request specific information about their planned STIP transportation projects, to help inform the potential demand for compensatory mitigation in that area. Next, during long-range planning, Caltrans will specifically invite MPOs, RTPAs, and other public agencies that implement transportation improvements to comment on the RAMNA and provide information to inform Caltrans advance mitigation planning. Further, for advance mitigation project delivery, when another transportation agency is a stakeholder, the natural resource regulatory agencies and Caltrans will engage the transportation agency as required by the advance mitigation project type and its associated laws, policies, procedures, templates, and guidance. Further, if Caltrans determines that credits or values may be available for use by another transportation agency, Caltrans will notify them. It is a Caltrans District responsibility to determine the availability of credits or values for another transportation agency's use. Locally sponsored STIP projects with an environmental document or permits requiring compensatory mitigation will be prioritized for use of credits or values upon full reimbursement. Subsequently, when permissible by laws applicable to the specific mitigation type and instrument, and agreed to by the jurisdictional agency, Caltrans will enter into an agreement for credits with another transportation agency, allowing replenishment of the AMA.

7.3 Native American Tribes

The Caltrans Native American Advisory Committee³⁵ ("NAAC"), established in 1996, consists of a minimum of twelve tribal members from throughout the state, each of which is considered an "at large" advocate for the interests of all the tribes in the geographic area of the state (north, central, or southern) in which his or her tribe is located. The NAAC meets quarterly to ensure that Caltrans management receives direct advice from the Indian community on issues pertaining to tribal transportation planning and funding sources for all modes of transportation in California. Before legislation created the Program, Caltrans briefed the NAAC on Caltrans advance mitigation planning efforts and Caltrans will continue to brief and update the NAAC on the Program during NAAC meetings, as appropriate. In addition, as part of the advance mitigation planning effort, Caltrans will specifically invite local, culturally-affiliated Tribes to review and comment on the RAMNA, described in Section 5.2, to solicit information and feedback on

³⁵ http://www.dot.ca.gov/hg/tpp/offices/ocp/nalb/naac_files/Charter_NAAC.pdf

tribal concerns that may be relevant to the planning effort. Further, as advance mitigation projects will be scoped and initiated using a process similar to that of transportation projects, Caltrans and resource agencies will also conduct tribal outreach and consultation for advance mitigation project delivery efforts in accordance with all applicable laws, policies, procedures, templates, and guidance to ensure that tribes are informed early and throughout the environmental review process and have an opportunity to participate and provide input.

7.4 Interested Parties, the Public, and Stakeholders

Interested parties and the public may have insight and information that will help the Program meet the objectives described under Section 3.1. During long-range planning, Caltrans will (1) invite interested parties and the public to comment on the RAMNA; and (2) request information from interested parties and the public that could inform the RAMNA and/or Caltrans advance mitigation planning and advance mitigation project delivery processes. Caltrans anticipates that interested parties will include potential advance mitigation project stakeholders, such as conservation organizations, local advance mitigation programs, conservation and mitigation bankers, and natural lands managers. During advance mitigation project delivery, Caltrans will engage stakeholders, as well as interested parties and the public, as required by and as appropriate for, the advance mitigation project type and its associated laws, policies, procedures, templates, and guidance.

8 ELIGIBILITY

Caltrans Districts will implement advance mitigation projects funded through the AMA.

8.1 Eligible Advance Mitigation Projects

An advance mitigation project eligible for AMA funding will, at a minimum, exhibit the following attributes:

- It is likely to provide needed compensatory mitigation for planned transportation improvements.
- It is likely to accelerate the delivery of Caltrans planned SHOPP or STIP transportation projects.
- It is an authorized activity pursuant to SHC §800.6(a) that will: [Section 3.3]
 - 1) Purchase, or fund the purchase of, credits from an existing mitigation bank, conservation bank, or in-lieu fee program approved by one or more regulatory agencies.
 - 2) Establish, or fund the establishment of, credits by establishing a mitigation bank, conservation bank, or in-lieu fee program in accordance with applicable state and federal standards.
 - 3) Pay, or fund the payment of, mitigation fees or other costs or payments associated with coverage of transportation projects under NCCPs or HCPs.
 - 4) Allow Caltrans to do any of the following, where an RCIS has been approved by CDFW pursuant to Fish and Game Code sections 1850-1861 and the Regional Conservation Investment Strategies Program Guidelines:³⁶
 - Enter into, or fund the preparation of, MCAs with CDFW.
 - Purchase credits from an established MCA.
 - Implement, or fund the implementation of, conservation actions and habitat enhancement actions^{37,38,39} as needed to generate mitigation credits pursuant to an MCA.

³⁶ <https://www.wildlife.ca.gov/Conservation/Planning/Regional-Conservation>

³⁷ “Conservation action” means an action identified in an RCIS whose implementation through an MCA would create credits to be used as compensatory mitigation. Actions would preserve or restore ecological resources including habitat, natural communities, ecological processes, and wildlife corridors to protect those resources permanently, and would provide for their perpetual management to help achieve one or more goals and objectives for one or more focal species or other conservation elements (California Department of Fish and Wildlife. 2017. Regional Conservation Investment Strategies Program Guidelines. June 5. Sacramento, CA).

³⁸ “Habitat enhancement action” means an action identified in an RCIS that is intended to improve the quality of wildlife habitat, or to address risks or stressors to wildlife. It would have long-term durability but would not involve acquiring land or permanently protecting habitat. Examples of habitat enhancement actions include improving instream flows to benefit fish species, enhancing habitat connectivity, and controlling or eradicating invasive species. A habitat enhancement action that is implemented through an MCA would create credits to be used as compensatory mitigation (California Department of Fish and Wildlife. 2017. Regional Conservation Investment Strategies Program Guidelines. June 5. Sacramento, CA).

³⁹ Under specific conditions, fish passage and wildlife crossing structures may qualify as enhancement actions under an RCIS pursuant to Fish and Game Code §§ 1850 – 1861. These conditions are under development.

- Implement, or fund the implementation of, habitat enhancement actions^{9, 10} that would measurably advance a conservation objective specified in an RCIS, while offsetting anticipated transportation improvement impacts.
- 5) Pursuant to SHC §800.6, subd. (a)(3), Caltrans may prepare, or fund the preparation of, a RCIS with AMA funds in conjunction with undertaking the advance mitigation project types described above in (4) and the Caltrans Director of Transportation’s approval.
- 6) Be developed in accordance with a programmatic mitigation plan⁴⁰ pursuant to SHC §800.9,⁴¹ if it is demonstrated that the he authorized activities of (1) through (5), above, are not feasible. The programmatic mitigation plans shall include, to the maximum extent practicable, the information required for a RCIS. (SHC § 800.9.)
 - It is anticipated that the AMA will be fully reimbursed (SHC§800.6[b]).⁴²

A Caltrans advance mitigation project with the above attributes is not guaranteed programming and funding (Section 6.0). Pursuant to SHC §800.6(i), an advance mitigation project must receive Caltrans Director of Transportation approval prior to having AMA funding allocated.

8.2 Transportation Projects Eligible to Use Advance Mitigation

As required by law, transportation agencies, including Caltrans, budget for and undertake activities required for environmental compliance, permitting, and mitigation of individual transportation projects. If unavoidable adverse impacts remain after all appropriate and practicable avoidance and minimization has been achieved, compensatory mitigation may be a requirement of natural resource regulatory agencies with jurisdiction over the resource. When jurisdictional agencies agree, and the correct type and quantity of AMP credits or values are available, Caltrans advance mitigation purchased or established using AMA funds may only be used for transportation improvements funded by the SHOPP or STIP (SHC §800[b]), provided that those transportation projects fully reimburse the AMA (SHC §800.6[b]).

In addition, when in compliance with SHC §800.6(b) and permissible by laws applicable to the specific mitigation type, SHC §800.6(b) allows for credits or values to be used by another transportation agency upon full reimbursement of the Caltrans AMA (See Section 4.1 and Section 11.2). The process for assigning credits or values to STIP projects upon AMA reimbursement is described in Section 11.2.

Per SHC §800.5(i), projects associated with or interacting with the high-speed rail program are not eligible to use credits or values funded by the AMA.

⁴⁰ A programmatic mitigation plan is defined in 23 U.S.C. 169.

⁴¹ No more than 25 percent of the funds in the AMA may be allocated for this purpose.

⁴² For more information on AMA reimbursement see Section 10 and Section 11.

9 ADVANCE MITIGATION PROJECT DELIVERY

Natural resource regulatory agency authorities to require compensatory mitigation are presented in Section 2.1. Natural resource regulatory agencies also have the authority to recognize the use of credits or values established through existing advance mitigation sources, instruments, and other formal agreements by transportation projects, to meet compensatory mitigation requirements.

Advance mitigation projects will be undertaken to supply compensatory mitigation for potential use by future transportation projects. The advance mitigation project delivery phase will consist of a process similar to transportation project delivery, but customized and streamlined to fit the unique requirements of compensatory mitigation projects and the scheduling needs of advance mitigation (Figure 5).

Figure 5: Advance Mitigation Project Delivery Phase



9.1 Advance Mitigation Project Approach

Like transportation projects, a project manager will be assigned to each advance mitigation project. Advance mitigation project delivery timelines, natural resource regulatory agencies, stakeholders, contracting requirements, and processes will differ based on the type of compensatory mitigation purchased or established (See Section 3.3 for advance mitigation project types authorized by the Act). Caltrans Districts may contract out aspects of project delivery (including design, environmental approval, credit and service area approval, permitting, and construction) or may elect to do work in-house depending on the complexity of the project, staff expertise and availability, or other factors. It is the Districts' discretion, on a project-by-project basis, to determine the contracting level. Third-party entities experienced in managing lands for mitigation and/or conservation, however, should be sought out to act as long-term managers, endowment managers, and holders of fee title when applicable. Further, all advance mitigation projects will comply with applicable contracting laws and Caltrans' contracting procedures relevant to the AMP.

Caltrans will utilize existing advance mitigation sources, instruments, and other formal agreements to purchase or establish mitigation. When establishing advance mitigation, Caltrans or a qualified third-party under contract to Caltrans, will submit a prospectus or other document to the appropriate natural resource regulatory agency in accordance with State and Federal laws, regulations, policies, procedures,

and standards, e.g., a mitigation bank prospectus. In accordance with their own procedures, each natural resource regulatory agency will review and respond to Caltrans or a qualified third-party sponsor submission of prospectus or other document in accordance with the appropriate State and Federal laws, regulations, policies, procedures, and standards.

9.2 Advance Mitigation Project Environmental Compliance Considerations

Appropriate CEQA- and NEPA-related documents and responsibilities for advance mitigation projects will be determined on a project-by-project basis and will be confirmed during advance mitigation project scoping.

Caltrans is the CEQA lead agency for its advance mitigation projects. As SHC §800.8 states,

“The [AMP] is intended to improve the efficiency and efficacy of mitigation only and is not intended to supplant the requirements of CEQA ...or any other environmental law.”⁴³ The identification of planned transportation projects and of [planned advance] mitigation projects or measures for planned transportation projects under this article does not imply or require approval of those projects for purposes of [CEQA] or any other environmental law.”

Accordingly, nothing in the AMP is intended to be used as a substitute for or to preempt any requirements to conduct detailed advance mitigation project-level environmental scoping and analysis to inform the environmental approval of individual advance mitigation projects, or to preclude the requirements of CEQA and NEPA for environmental analysis and permitting for transportation projects.

Currently, Caltrans does not expect to seek Federal reimbursement for advance mitigation projects, so it is unlikely that Caltrans would be the NEPA lead agency on advance mitigation projects. It is possible that NEPA will apply to some advance mitigation projects, however. For example, an advance mitigation project that establishes a wetland bank will follow the procedures outlined in USACE regulations for bank proposal and approval and would likely result in the USACE becoming the NEPA lead agency due to its responsibility to approve the bank under the Clean Water Act.

9.3 Advance Mitigation Project Stakeholder Engagement

One of the Program’s objectives is to enhance communication between Caltrans and stakeholders (Section 1.2, above; SHC §800(a)). Both Program-level (Section 13) and advance mitigation project-level communication will address this objective. With respect to project-level communication, during advance mitigation project scoping (Section 5.4), the Caltrans District will scope and budget for a communication plan to guide communications throughout the advance mitigation project’s life cycle. If the advance mitigation project is programmed, the communication plan will be developed further. The communication plan will:

- identify the internal and external stakeholders for the advance mitigation project.
- guide the project team in providing and receiving consistent and timely information to and from all advance mitigation project stakeholders.

⁴³ Caltrans notes that some environmental laws related to mitigation restrict credit transfer.

- define the processes required to ensure timely and appropriate generation, collection, dissemination and storage of project information.

The communication plan's contents will vary on a project-by-project basis based on advance mitigation project type and complexity. The Caltrans project manager is responsible for leading the advance mitigation project-specific communication plan's development.

9.4 Advance Mitigation Project Deliverables

Advance mitigation projects will result in an asset, in the form of compensatory mitigation credits or values. Quantification of credits and values, resource types, and service areas for future use will be identified and formalized with the natural resource regulatory agencies.

10 ADVANCE MITIGATION CREDIT MANAGEMENT

In accordance with SHC §800.6 (c), Caltrans will track advance mitigation purchased or established by the Program to use as credits for transportation project environmental mitigation. Reporting is described in Section 12.

Caltrans will track all advance mitigation whether created, available, reserved, or debited (purchased and no longer available). Existing databases that are used by Caltrans project management and for environmental milestone monitoring will be adapted for tracking credits. Caltrans Districts will be responsible for entering purchased or established credits into the database. Caltrans Districts will also be responsible for reserving and requesting advance mitigation in the database. Caltrans Headquarters will maintain and monitor the database, respond to Districts' request for concurrence to use credits, track advance mitigation, and organize information for Program reporting, accounting, and communication purposes. Third-party managed mitigation, such as in-lieu fee programs, banks, and HCP/NCCPs, will have redundant ledgers for their own tracking purposes, e.g., USACE's Regulatory In-Lieu Fee and Bank Information Tracking System ("RIBITS"). Caltrans anticipates regular check-ins between Headquarters, Districts, and/or third parties to verify consistency among ledgers.

10.1 Calculating the Quantity of Mitigation Credits or Values

Caltrans will undertake advance mitigation projects to purchase or establish mitigation credits or values of specified units to meet Caltrans' forecasted compensatory mitigation needs identified through Caltrans' planning process. For a direct purchase of existing credits or payment of fees, the quantity of mitigation will be known. However, when an advance mitigation project consists of establishing mitigation, the advance mitigation project proponent and the approving agency(ies) will determine the actual number of credits or values established by an advance mitigation project, in accordance with existing laws, policies, procedures, templates, and guidance.

10.2 Reimbursement: Calculating the Cost of a Mitigation Unit

The revolving AMA is described in Section 4.1. Pursuant to SHC §800.6(b), reimbursement costs shall be calculated using total cost accounting⁴⁴ and shall include the following, as applicable: land acquisition or conservation easement costs; monitoring and enforcement costs; restoration, transaction, administrative, and contingency costs; and land management, monitoring, and protection costs. Preparation of regional conservation assessments and RCISs are allowable expenditures, to be included in the compensatory mitigation unit cost of their associated advance mitigation projects. Caltrans will calculate the appropriate cost per unit for AMP-funded mitigation.

⁴⁴ "Total cost accounting" represents the reimbursement of the cost of credit purchase or establishment.

11 USE OF MITIGATION CREDITS OR VALUES BY TRANSPORTATION PROJECTS

Both SHC §800(b) and SHC §800.6(b) govern the use of credits by eligible transportation projects.

11.1 Use by Caltrans: Programming and Payment into the Revolving Fund and Account

As required by law, Caltrans transportation projects budget for and undertake activities required for environmental compliance, permitting, and mitigation. When jurisdictional agencies agree, and the correct type and quantity of AMP credits are available, Caltrans advance mitigation purchased or established using AMP funds may only be used to satisfy compensatory mitigation requirements for transportation improvements funded by the SHOPP or STIP (SHC §800[b]). Caltrans project managers can check on the availability of advance mitigation in the standard project management database and apply for advance mitigation credits using standard forms. The individual transportation project seeking credits must reimburse the AMA at a pre-determined credit value, thereby replenishing the AMA (Section 10.1).

The transaction will be recorded for the purposes of transparent accounting and reporting to the legislature as required by SHC §800.6(f) and to the CTC pursuant to SHC §800.7.

11.2 Use by other Transportation Agencies: Payment into the Revolving Fund and Account

SHC §800.6(b) allows for credits or values purchased or established by the Caltrans AMP to be used by another transportation agency upon full reimbursement of the Caltrans AMA (See Section 4.1). When permissible by laws applicable to the specific mitigation type and instrument, agreed to by the jurisdictional agency, and upon reimbursement, Caltrans may transfer credits or values purchased/created by the AMP to another transportation agency for off-setting environmental impacts of transportation projects.

Caltrans will make the determination when credits or values are available for transfer to a local transportation agency. Caltrans AMP credit-tracking policies and procedures include notifying local transportation agencies when credits are available in their area. Locally sponsored STIP projects with an environmental document or permits requiring compensatory mitigation will be prioritized for credits or values determined available for transfer. A written request to the District Director to use and purchase the advance mitigation from the Program will be required. The individual transportation project seeking credits must reimburse the AMA at a pre-determined credit value that reflects its total development cost to Caltrans (Section 10.2). Should multiple transportation agencies request credits or values to be transferred, Caltrans Headquarters and District management will coordinate with the requesting local agencies regarding which projects shall be prioritized for credit or value transfer. The transaction will be recorded for the purposes of transparent accounting and reporting to the legislature as required by SHC §800.6(f) and to the CTC pursuant to SHC §800.7.

Per SHC §800.5(i), projects associated with or interacting with the high-speed rail program are not eligible to use credits or values funded by the AMA.

12 REPORTING

Both Caltrans and CDFW are required to submit biennial reports to the Legislature (SHC §800.6[f] and [g]). The reports will alternate years, with Caltrans reports due in odd-numbered years (See Section 12.1 and Section 12.2, respectively). Caltrans will also report AMA activity to the CTC (SHC §800.7) and regulatory agencies (See Section 12.3 and Section 12.4, respectively). Tracking information will also be made available on the Program's web site (See Section 12.5).

12.1 Caltrans Reports to Legislature

Consistent with SHC §800.6(f), Caltrans will submit a report to the Legislature by July 1, 2019, and biennially thereafter. The report will:

- Provide an accounting of the AMA funds.
- Identify expected state and federal natural resource regulatory agency compensatory mitigation requirements for transportation projects utilizing the AMP.
- Discuss the extent to which those requirements are satisfied using advance mitigation credits.
- Disclose the extent to which funds were used to prepare, or to fund the preparation of, regional conservation assessments and RCISs.

The report shall also make recommendations for maximizing the ability of the AMP to satisfy state and federal compensatory mitigation requirements. Caltrans reports to the legislature are posted on the Legislative Affairs web site: <http://www.dot.ca.gov/legislative/reports-legislature.html>.

12.2 CDFW Reports to Legislature

Consistent with SHC §800.6(g), CDFW will submit a report to the Legislature by July 1, 2018, or one year after the initial AMP investments have begun, whichever is earlier, and biennially thereafter. The report will, (a) describe the extent to which the AMP has improved the quality and effectiveness of habitat mitigation provided by Caltrans for transportation projects; and, (b) make recommendations for maximizing the quality and effectiveness of habitat mitigation developed pursuant to the AMP in the future. The report shall also include recommendations on how to maximize the quality and effectiveness of habitat mitigation developed pursuant to the AMP. CDFW reports to the legislature are posted on CDFW's Advance Mitigation web site: <https://www.wildlife.ca.gov/Conservation/Planning/Regional-Advance-Mitigation>.

12.3 Caltrans Reports to the California Transportation Commission

Consistent with SHC §800.7, Caltrans will annually report AMA activity to the CTC. AMA activity will be submitted to the CTC no later than October annually. The report will include money deposited and expended from the account, a list of transportation projects that purchased advance mitigation from the AMP, and the number of credits established and sold by the AMP. Caltrans reports to the CTC will be posted on the CTC's web site: <http://catc.ca.gov>.

12.4 Caltrans Reports to Natural Resource Regulatory Agencies

Caltrans' Statewide AMP Program-level mitigation ledger will be provided to natural resource regulatory agencies biennially, in conjunction with its Legislative report. The first report will be submitted in July 2021. The report will be extracted from the database described in Section 10. At a minimum, the report will provide the name, location, quantity, and type of advance mitigation developed through Caltrans' AMP. The status of any purchased or established mitigation will also be provided, as well as the name of any transportation project using the advance mitigation, if applicable. The report will be posted on <http://www.advancemitigation.dot.ca.gov>.

12.5 Advance Mitigation Credit Status Report

Advance mitigation tracking is described in Section 10. No less than annually, Caltrans' Statewide AMP program-level mitigation ledger be posted on <http://www.advancemitigation.dot.ca.gov>.

13 COMMUNICATIONS PLAN

The objective of the Program communications plan (SHC §800[a]) is to create a roadmap that identifies the communication tools and activities that will be used and/or implemented by Caltrans and when they should occur. The goal of the plan is to build awareness and support among the different interested parties and the public, and to guide communication throughout the Program's administration, advance mitigation planning and delivery of advance mitigation projects. The plan will be treated as a living document that may evolve as the Program moves forward.

13.1 Communication Tools and Activities

Caltrans headquarters will establish and maintain internal and external communication processes, tools, and content. Important aspects of the Program communications plan include the following:

- **Identification of Target Audiences:** Central to the plan is identification and maintenance of a contact database that contains a diverse group of natural resource regulatory agencies, FHWA, other transportation agencies (MPOs, RPTAs, and other public agencies that implement transportation improvements), Native American Tribes, interested parties and the public who may be impacted by or be influential to the Program.
- **Market Research/Surveys:** Caltrans will solicit initial input from key target audiences to understand current perception of the Program, concerns or issues, and identify best options for engagement, including clear articulation of Program information. Following initial input, ongoing monitoring and check-ins with key target audiences will occur to ensure the AMP is communicating effectively.
- **Creation of Interactive Internal/External Web sites:** Caltrans will establish an internal web page/database housed within its existing intranet site to act as the main resource of information for all Districts to access. The existing Program web page will be enhanced as a repository of information displayed in an interactive and engaging way. The external, public-facing Caltrans web site will have information similar to the internal intranet site but will be targeted to the needs and interests of the natural resource regulatory resource agencies, other transportation agencies, Native American Tribes, interested parties and the public. The web site <http://www.advancemitigation.dot.ca.gov> will be prominently promoted via all Program informational materials as well as through email blasts, social media, and through discussions directly with FHWA, natural resource regulatory resource agencies, other transportation agencies, Native American Tribes, interested parties, and the public.
- **Production of informational materials** including fact sheets, frequently asked questions documents, and other materials as appropriate for specific outreach purposes.
- **Utilization of in-person meetings/briefings/workshops/webinars** as needed and appropriate to convey information to various groups.
- **Annual Advance Mitigation Program Meeting** – In an effort to partner and provide broader engagement opportunities with interested parties, other transportation agencies, other advance mitigation programs, local and regional conservation partners, and the public, the Program will

hold an annual meeting to mutually share information related to advance mitigation in California, assist with identifying partnering efforts, and provide an opportunity for dialogue related to transportation related advance mitigation needs.

13.2 Opportunities for Communication, Engagement, and Feedback

Caltrans will maintain regular contact with natural regulatory agencies regarding Program activities; will participate in existing forums to engage internal and external groups; and facilitate an annual meeting for interested parties. Engagement will be solicited both in advance mitigation planning and advance mitigation project delivery. Caltrans will contact its local and regional transportation partners (i.e., MPOs, RPTAs, and other public agencies that implement transportation improvements) to request specific information about their planned STIP transportation projects in order to identify additional potential demand for Program advance mitigation. Caltrans will circulate RAMNAs for natural resource regulatory agency, FHWA, other transportation agency, Native American Tribe, interested party, and public comment and to solicit any other information that may be relevant to their planning effort. During project delivery of advance mitigation projects, engagement points with natural resource regulatory agencies, FHWA, other transportation agencies, Native American Tribes, interested parties, the public, and stakeholders, will be consistent with the advance mitigation project type. For example, existing advance mitigation instruments include natural resource regulatory agency participation when the advance mitigation project consists of establishing a mitigation bank, establishing an in-lieu fee program, developing an RCIS/MCA,⁴⁵ or developing an MCA. Internal coordination overseeing delivery of advance mitigation projects will be conducted via quarterly meetings with the Districts who have active advance mitigation projects. Important information related to the AMP will also be communicated to various boards within Caltrans as appropriate.

⁴⁵ An advance mitigation project's scope of work may include Caltrans first entering or funding the preparation of a RCIS and/or an MCA. Preparation of an RCIS and an MCA would include the required outreach and engagement. <https://www.wildlife.ca.gov/Conservation/Planning/Regional-Conservation>

14 RISK MANAGEMENT

Inherent in the objectives of the AMP, as identified in Section 1.2 of this document and SHC §800(a), is Caltrans' stewardship responsibilities toward both the environment and public resources, as exemplified in Caltrans' stewardship and sustainability goals. To that end, it is standard practice that Caltrans manages risks associated with its activities and expenditures.

Hence, in accordance with Caltrans risk management standards, a risk management plan has been developed, and a risk management team composed of Caltrans subject matter experts has been assigned to identify, evaluate, and respond to risks associated with establishing the AMP and its ongoing operation, as well as provide guidance for managing risks associated with delivering individual advance mitigation projects. Risk management for an advance mitigation project is the responsibility of the District assigned to the advance mitigation project and will be given the same level of effort as would be given to a transportation project.

15 EFFICIENCIES

As described in SHC §800, one purpose of the AMP is to accelerate delivery of transportation projects. Accelerated delivery is expected to result in efficiencies to Caltrans. The resulting efficiencies can be used to help Caltrans reach a department-wide goal to generate at least \$100,000,000 per year in savings to invest back into the highway system.

Potential AMP-specific efficiencies are anticipated to come in three forms:

- Reduced capital expenditures for necessary compensatory mitigation, potentially through economies of scale or reduced mitigation ratios, as compared to ratios required by concurrent transportation project permits.
- Calendar days saved by streamlining certain mitigation processes and developing better communication and partnerships with permitting agencies (accelerated delivery).
- Staff hours saved by streamlining certain mitigation-related internal processes (reduced staff support costs per transportation project).

Caltrans will track and document discernable efficiencies stemming from the AMP and will report them to the CTC as part of the department-wide \$100,000,000-per-year efficiencies, as appropriate.

APPENDIXES

Appendix A:Glossary of Key Terms

Appendix B:Streets and Highway Code. Division 1. Chapter 4. Article 2.5. Advance Mitigation Program

Appendix C:Revision Log

APPENDIX A

Glossary of Key Terms

For the purposes of these Guidelines, the following terms have the following meanings:

<p>2016 Statewide Advance Mitigation Initiative Memorandum of Understanding (“2016 SAMI MOU”)</p>	<p>The 2016 SAMI MOU is the following document: Memorandum of Understanding Regarding the Development and Implementation of the Statewide Advance Mitigation Initiative for California Department of Transportation Projects throughout the State of California,” which was signed by the CDFW, SWRCB, U.S. Army Corps of Engineers, South Pacific Division, the EPA, USFWS, and NMFS effective June 20, 2016. It is a non-binding memorandum establishing collaborative support for Caltrans’ AMP.</p>
<p>advance mitigation</p>	<p>Advance mitigation means mitigation implemented before, and in anticipation of, environmental effects of planned transportation improvements.</p> <p>Caltrans’ expenditures on advance mitigation are allowable when consistent with article 19, section 2, subdivision (a) of the California Constitution, which authorizes the use of revenues from taxes imposed by the state on motor vehicle fuels to be used for the mitigation of environmental effects resulting from the construction, improvement, maintenance, and operation of public streets and highways.</p>
<p>Advance Mitigation Program (“AMP” or “Program”)</p>	<p>Caltrans’ AMP administers the planning and implementation of Caltrans’ advance mitigation projects. The AMP was initiated in the State Highway Operations and Protection Program in 2013 and formally created by the Road Repair and Accountability Act of 2017. (SHC § 800 et seq.)</p>
<p>advance mitigation project</p>	<p>“Advance mitigation” means mitigation implemented before, and in anticipation of, environmental effects of planned transportation improvements (SHC § 800(5)(c)).</p> <p>An advance mitigation project is a programmed and funded endeavor undertaken by Caltrans to establish compensatory mitigation or purchase mitigation or values so that it is available for consideration and/or use by qualified future transportation projects.</p> <p>Advance mitigation projects consist of the authorized activities set forth in SHC §800.6(a), provided in Appendix B.</p>
<p>advance mitigation planning</p>	<p>Advance mitigation planning is Caltrans’ process for justifying, proposing, and scoping advance mitigation projects, as well as securing internal funding approval from the Director of Transportation.</p>
<p>advance mitigation project delivery</p>	<p>Advance mitigation project delivery consists of the steps Caltrans takes to achieve an advance mitigation project’s scope and quality objectives within a budget approved by the Caltrans Director of Transportation.</p>

Agency Partners	“Agency Partners” refers to the resource agency signatories to the SAMI MOU, which include CDFW, Corps, EPA, USFWS, SWRCB, NMFS, and any future signatories that would like to participate.
candidate project	Caltrans Districts select candidate projects from the suite of advance mitigation project conceptual proposals for scoping document development.
conceptual proposal	A conceptual proposal is a proposal for creating, purchasing, or obtaining compensatory mitigation that has a high probability of successfully meeting SAMI’s goals and objectives. Conceptual proposals are envisioned in a Regional Advance Mitigation Needs Assessment.
compensatory mitigation	<p>Compensatory mitigation requirements may be included by an Agency Partner as a future transportation project permit condition. Hence, for the purposes of this Process Agreement, the term compensatory mitigation is defined in each Agency Partner’s regulation and policy, including but not limited to 33 C.F.R. § 332.2, 40 C.F.R. § 230.92, 40 C.F.R. § 1508.20, and 14 C.C.R. § 15370. Further, as a lead agency under the California Environmental Quality Act and National Environmental Policy Act, Caltrans may also determine compensatory mitigation is required.</p> <p>Compensatory mitigation is typically achieved through the restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources, habitat, or other resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.</p>
conservation goals and objectives	Conservation goals and objectives are a broad set of regional natural resource sustainability goals and objectives that are consistent with both regulatory requirements and conservation science.
Director’s Approval	Allowable expenditures from the Advance Mitigation Account (AMA) are defined in SHC §800.6 (a) and no expenditures can be made from the AMA until the Director of Transportation makes the determination and justification that the expenditure will likely accelerate the delivery of transportation projects per SHC §800.6 (i).
long-term transportation planning	Caltrans performs long-term transportation planning on 10- and 20-year horizons. This planning is performed under Caltrans’s various programs, which have different funding sources and financial constraints. Long-term transportation plans document the need for Caltrans to improve the State Highway System, as well as correct maintenance and other deficiencies in the State Highway System. Anticipated compensatory mitigation requirements for future transportation projects can be forecasted using information from Caltrans’ long-term plans. Transportation projects envisioned in long-term planning documents are conceptual and have not gone through the environmental and permitting process.

Mitigation Credit Agreement	“Mitigation credit agreement” means a mitigation credit agreement pursuant to Chapter 9 (commencing with Section 1850) of Division 2 of the Fish and Game Code (SHC § 800(5)(g)).
nominated project	A nominated project is an advance mitigation project that is under Caltrans’ consideration for programming. Nominated projects are selected by Caltrans from the suite of candidate advance mitigation projects that have scoping documents.
planned transportation improvement	“Planned transportation improvement” means a transportation project that a transportation agency has identified in a regional transportation plan, an interregional transportation plan, a capital improvement program, or other approved transportation planning document, excluding any project that is associated with or interacting with the high-speed rail program. A planned transportation improvement may include, but is not limited to, a transportation project that has been planned, programmed, proposed for approval, or that has been approved (SHC § 800(5)(i)).
programming	The term “programming” refers to the process Caltrans employs to set priorities for funding advance mitigation projects at the Caltrans District/project level. Through programming, Caltrans commits revenues over multi-year periods for specific advance mitigation projects.
Regional Advance Mitigation Needs Assessment (“RAMNA”)	A RAMNA documents Caltrans’ analysis of its forecasted compensatory mitigation needs for a geographic area and specific time frame and identifies Caltrans options to meet those needs. The assessment is informed by the preliminary transportation project list and other data contained in a Statewide Advance Mitigation Needs Assessment. Local expertise and knowledge, Agency Partner input, and existing compensatory mitigation opportunities in the covered region also contribute to the assessment.
Regional Conservation Investment Strategy (“RCIS”)	“Regional conservation investment strategy” means a regional conservation investment strategy approved by the Department of Fish and Wildlife pursuant to Chapter 9 (commencing with Section 1850) of Division 2 of the Fish and Game Code (SHC § 800(5)(k)) .
regulatory agency	“Regulatory agency” means a state or federal natural resource protection agency with regulatory authority over planned transportation improvements. A regulatory agency includes, but is not limited to, the Natural Resources Agency, the Department of Fish and Wildlife, [the California SWRCB], California regional water quality control boards, the United States Fish and Wildlife Service, the National Marine Fisheries Service, the United States Environmental Protection Agency, and the United States Army Corps of Engineers (SHC § 800(5)(l)) .

<p>scoping document</p>	<p>An advance mitigation project scoping document identifies the purpose, need and feasibility of a candidate advance mitigation project at the Caltrans District/project level. Scoping documents are internal Caltrans documents. If the candidate project is nominated for programming, the scoping document serves as a record of agreement between a District’s Director and Caltrans’ Director of Transportation on the now “nominated” advance mitigation project’s cost, scope, and schedule.</p>
<p>Stakeholders</p>	<p>“Stakeholders” are individuals or organizations who are actively involved in the advance mitigation project or whose interests may be positively or negatively affected as a result of advance mitigation project execution or successful advance mitigation project completion.</p>
<p>transportation agency</p>	<p>“Transportation agency” means [Caltrans], a metropolitan planning organization, a regional transportation planning agency, or another public agency that implements transportation improvements (SHC § 800(5)(m)).</p>
<p>transportation improvement</p>	<p>“Transportation improvement” means a transportation capital improvement project (SHC § 800(5)(n)).</p>
<p>transportation project</p>	<p>A transportation project is an endeavor undertaken to create a unique physical improvement to California’s transportation system. Transportation projects are proposed to meet a need or resolve an identified transportation problem, along with addressing environmental, social, cultural, economic, community, aesthetic, historic, and scenic goals. Article 19, section 2, subdivision (a) of the California Constitution authorizes the use of revenues from taxes imposed by the state on motor vehicle fuels to be used for the mitigation of environmental effects resulting from the construction, improvement, maintenance, and operation of public streets and highways.</p>

APPENDIX B

Streets and Highway Code. Division 1. Chapter 4. Article 2.5. Advance Mitigation Program

STREETS AND HIGHWAYS CODE – SHC

DIVISION 1. STATE HIGHWAYS [50 - 897] (*Division 1 enacted by Stats. 1935, Ch. 29.*)

CHAPTER 4. Cooperation By and With the State [760 - 834] (*Chapter 4 enacted by Stats. 1935, Ch. 29.*)

ARTICLE 2.5. Advance Mitigation Program [800 - 800.9] (*Article 2.5 added by Stats. 2017, Ch. 5, Sec. 35.*)

800. (a) The Advance Mitigation Program is hereby created in the department to enhance communications between the department and stakeholders to protect natural resources through project mitigation, to meet or exceed applicable environmental requirements, to accelerate project delivery, and to mitigate, to the maximum extent required by law, environmental impacts from transportation infrastructure projects. The department shall consult on all activities pursuant to this article with the Department of Fish and Wildlife, including activities pursuant to Chapter 9 (commencing with Section 1850) of Division 2 of the Fish and Game Code.

(b) Commencing with the 2017–18 fiscal year, and for a period of four years, the department shall set aside no less than thirty million dollars (\$30,000,000) annually for the Advance Mitigation Program from the annual appropriations for the State Highway Operation and Protection Program and the State Transportation Improvement Program for the planning and implementation of projects in the Advance Mitigation Program. Mitigation credits or values generated or obtained with these funds may be used only for transportation improvements in the State Transportation Improvement Program or the State Highway Operation and Protection Program, and may be transferred to another agency, but only upon full reimbursement of the department pursuant to subdivision (b) of Section 800.6.

(c) Upon the order of the Director of Finance, the Controller shall transfer the amount identified for the Advance Mitigation Program in subdivision (b), as determined by the department and the Department of Finance, to the Advance Mitigation Account in the State Transportation Fund.

(d) The annual Budget Act and subsequent legislation may establish additional provisions and requirements for the program.

(Amended by Stats. 2017, Ch. 95, Sec. 10. (SB 103) Effective July 21, 2017.)

800.5. For purposes of this article, the following terms have the following meanings:

(a) “Acquire” and “acquisition” mean, with respect to land or a waterway, acquisition of fee title or purchase of a conservation easement that protects conservation and mitigation values on the land or waterway in perpetuity.

(b) “Administrative draft natural community conservation plan” means a substantially complete draft of a natural community conservation plan that is released after January 1, 2016, to the general public, plan participants, and the department.

- (c) “Advance mitigation” means mitigation implemented before, and in anticipation of, environmental effects of planned transportation improvements.
- (d) “Commission” means the California Transportation Commission.
- (e) “Conservation easement” means a perpetual conservation easement that complies with Chapter 4 (commencing with Section 815) of Title 2 of Part 2 of Division 2 of the Civil Code.
- (f) “Department” means the Department of Transportation.
- (g) “Mitigation credit agreement” means a mitigation credit agreement pursuant to Chapter 9 (commencing with Section 1850) of Division 2 of the Fish and Game Code.
- (h) “Natural Communities Conservation Plan” means a plan developed pursuant to Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code.
- (i) “Planned transportation improvement” means a transportation project that a transportation agency has identified in a regional transportation plan, an interregional transportation plan, a capital improvement program, or other approved transportation planning document, excluding any project that is associated with or interacting with the high-speed rail program. A planned transportation improvement may include, but is not limited to, a transportation project that has been planned, programmed, proposed for approval, or that has been approved.
- (j) “Program” means the Advance Mitigation Program implemented pursuant to this article.
- (k) “Regional conservation investment strategy” means a regional conservation investment strategy approved by the Department of Fish and Wildlife pursuant to Chapter 9 (commencing with Section 1850) of Division 2 of the Fish and Game Code.
- (l) “Regulatory agency” means a state or federal natural resource protection agency with regulatory authority over planned transportation improvements. A regulatory agency includes, but is not limited to, the Natural Resources Agency, the Department of Fish and Wildlife, California regional water quality control boards, the United States Fish and Wildlife Service, the National Marine Fisheries Service, the United States Environmental Protection Agency, and the United States Army Corps of Engineers.
- (m) “Transportation agency” means the department, a metropolitan planning organization, a regional transportation planning agency, or another public agency that implements transportation improvements.
- (n) “Transportation improvement” means a transportation capital improvement project.

(Added by Stats. 2017, Ch. 95, Sec. 11. (SB 103) Effective July 21, 2017.)

800.6. (a) The funds in the Advance Mitigation Account created in Section 800.7 shall be used only to do the following:

- (1) Purchase, or fund the purchase of, credits from mitigation banks, conservation banks, or in-lieu fee programs approved by one or more regulatory agencies. The department may also establish mitigation banks, conservation banks, or in-lieu fee programs, or fund the establishment of mitigation banks, conservation banks, or in-lieu fee programs, in accordance with applicable state and federal standards, if

the department determines that those banks or in-lieu fee programs would provide appropriate mitigation of the anticipated potential impacts of planned transportation improvements identified pursuant to Section 800.8.

(2) Pay, or fund the payment of, mitigation fees or other costs or payments associated with coverage for the department's or other transportation agency's projects under natural community conservation plans approved pursuant to Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code, or habitat conservation plans approved in accordance with the federal Endangered Species Act. The department shall, upon commencement of a regional conservation investment strategy pursuant to paragraph (3), provide written notification thereof to the executive administrative officer of any administrative draft natural community conservation plan, approved natural community conservation plan, or approved regional federal habitat conservation plan that overlaps the proposed area of the regional conservation investment strategy.

(3) Prepare, or fund the preparation of, regional conservation assessments and regional conservation investment strategies. Where a regional conservation investment strategy has been approved by the Department of Fish and Wildlife, the department may do either of the following:

(A) Enter into, or fund the preparation of, mitigation credit agreements with the Department of Fish and Wildlife; purchase credits from an established mitigation credit agreement; or implement, or fund the implementation of, conservation actions and habitat enhancement actions as needed to generate mitigation credits pursuant to those mitigation credit agreements.

(B) Acquire, restore, manage, monitor, enhance, and preserve lands, waterways, aquatic resources, or fisheries, or fund the acquisition, restoration, management, monitoring, enhancement, and preservation of lands, waterways, aquatic resources, or fisheries that would measurably advance a conservation objective in the regional conservation investment strategy if the department concludes that the action or actions could conserve or create environmental values that are appropriate to mitigate the anticipated potential impacts of planned transportation improvements.

(4) Where the advance mitigation mechanisms in paragraphs (1) to (3), inclusive, are not practicable, the department may implement advance mitigation, or fund the implementation of advance mitigation, in accordance with a programmatic mitigation plan pursuant to Section 800.9. No more than 25 percent of the funds in the Advance Mitigation Account may be allocated for this purpose over a four-year period.

(b) The department may use, or allow other transportation agencies to use, mitigation credits or values generated or obtained under the program to fulfill the mitigation requirements of planned transportation improvements if the applicable transportation agency reimburses the program for all costs of purchasing or creating the mitigation credits or values, as determined by the department. Those costs shall be calculated using total cost accounting and shall include, as applicable, land acquisition or conservation easement costs, monitoring and enforcement costs, restoration costs, transaction costs, administrative costs, contingency costs, and land management, monitoring, and protection costs.

(c) The department shall track all implemented advance mitigation projects to use as credits for environmental mitigation.

(d) Projects or plans prepared pursuant to this section that overlap with any approved natural community conservation plan or approved regional federal habitat conservation plan, shall be consistent

with that plan and shall include an explanation of whether and to what extent they are consistent with any overlapping state or federal recovery plan, or other state-approved or federal-approved conservation strategy.

(e) Mitigation credits created pursuant to this section may be used for covered activities under an approved natural community conservation plan only in accordance with the requirements of the plan. Individuals and entities eligible for coverage as a participating special entity under an approved natural community conservation plan may use mitigation credits created pursuant to this section only if the plan's implementing entity declines to extend coverage to the covered activity proposed by the eligible individual or entity.

(f) By July 1, 2019, and biennially thereafter, the department, pursuant to Section 9795 of the Government Code, and notwithstanding Section 10231.5 of the Government Code, shall submit to the Legislature a report that describes to what extent the Advance Mitigation Program has accelerated the delivery of transportation projects. At a minimum, the report shall include the following:

- (1) An accounting of the Advance Mitigation Account funds.
- (2) Identification of expected state and federal resource and regulatory agency mitigation requirements for transportation projects utilizing the Advance Mitigation Program.
- (3) A discussion of the extent to which those requirements are satisfied using advance mitigation credits.
- (4) The use of funds to prepare, or to fund the preparation of, regional conservation assessments and regional conservation investment strategies.
- (5) Recommendations for maximizing the ability of the Advance Mitigation Program to satisfy state and federal mitigation requirements.

(g) By July 1, 2018, or one year after the initial Advance Mitigation Program investments have begun, whichever is earlier, and biennially thereafter, the Department of Fish and Wildlife shall, pursuant to Section 9795 of the Government Code, and notwithstanding Section 10231.5 of the Government Code, submit a report to the Legislature that describes the extent to which the Advance Mitigation Program has improved the quality and effectiveness of habitat mitigation provided by the department for transportation projects and makes related recommendations on how to maximize these attributes. The report shall also include recommendations on how to maximize the quality and effectiveness of habitat mitigation developed pursuant to the Advance Mitigation Program.

(h) Nothing in this article shall be construed to impose any restrictions or requirements on the department for activities that do not involve the utilization of Advance Mitigation Account funds. Nothing in this article shall be construed to require the department to use the Advance Mitigation Program.

(i) Prior to making any expenditure from the Advance Mitigation Account, the Director of Transportation shall make a determination and justification that the proposed expenditure is likely to accelerate project delivery of specific projects.

(j) Any state water or transportation infrastructure agency that requests approval of a regional conservation investment strategy pursuant to subdivision (a) of Section 1852 of the Fish and Game Code that may be used to facilitate mitigation for an infrastructure project shall not be subject to the

limitation on the number of regional conservation investment strategies set in Section 1861 of the Fish and Game Code.

(Added by Stats. 2017, Ch. 95, Sec. 12. (SB 103) Effective July 21, 2017.)

800.7. The Advance Mitigation Account is hereby created in the State Transportation Fund as a revolving fund. Notwithstanding Section 13340 of the Government Code, the account shall be continuously appropriated without regard to fiscal years for purposes of the Advance Mitigation Program. The activity of the account shall be reported to the commission. The program is intended to become self-sustaining. Expenditures from the account shall later be reimbursed from project funding available at the time a planned transportation project is constructed.

(Added by Stats. 2017, Ch. 95, Sec. 13. (SB 103) Effective July 21, 2017.)

800.8. The program is intended to improve the efficiency and efficacy of mitigation only and is not intended to supplant the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resource Code) or any other environmental law. The identification of planned transportation projects and of mitigation projects or measures for planned transportation projects under this article does not imply or require approval of those projects for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resource Code) or any other environmental law.

(Added by Stats. 2017, Ch. 95, Sec. 14. (SB 103) Effective July 21, 2017.)

800.9. The department, pursuant to this article and for the purpose of implementing the Advance Mitigation Program, may develop a programmatic mitigation plan pursuant to Section 169 of Title 23 of the United States Code to address the potential environmental impacts of future transportation projects for the purpose of required mitigation approved by federal, state, and local agencies. The programmatic mitigation plans shall include, to the maximum extent practicable, the information required for regional conservation investment strategies.

(Added by Stats. 2017, Ch. 95, Sec. 15. (SB 103) Effective July 21, 2017.)

APPENDIX C

Revision Log

Number	Description of Change	Section Number	Version

