ADVANCE MITIGATION PROGRAM
Draft Formal Guidelines
Version 0.0

November 2018
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LIST OF ACRONYMS

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<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>AMA</td>
<td>Advance Mitigation Account</td>
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<tr>
<td>AMP</td>
<td>Advance Mitigation Program</td>
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<tr>
<td>Caltrans</td>
<td>California Department of Transportation</td>
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<tr>
<td>CDFW</td>
<td>California Department of Fish and Wildlife</td>
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<tr>
<td>CEQA</td>
<td>California Environmental Quality Act</td>
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<tr>
<td>CTC</td>
<td>California Transportation Commission</td>
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<tr>
<td>FY</td>
<td>Fiscal Year</td>
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<tr>
<td>HCP</td>
<td>Habitat Conservation Plan</td>
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<tr>
<td>MCA</td>
<td>Mitigation Credit Agreement</td>
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<tr>
<td>MOU</td>
<td>Memoranda of Understanding or Memorandum of Understanding</td>
</tr>
<tr>
<td>NCCP</td>
<td>Natural Community Conservation Plan</td>
</tr>
<tr>
<td>NEPA</td>
<td>National Environmental Policy Act</td>
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<tr>
<td>RAMNA</td>
<td>Regional Advance Mitigation Needs Assessment</td>
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<tr>
<td>RCIS</td>
<td>Regional Conservation Investment Strategy</td>
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<tr>
<td>SAMI</td>
<td>Statewide Advance Mitigation Initiative</td>
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<tr>
<td>SAMNA</td>
<td>Statewide Advance Mitigation Needs Assessment</td>
</tr>
<tr>
<td>SHC</td>
<td>California Streets and Highway Code</td>
</tr>
<tr>
<td>SHOPP</td>
<td>State Highway Operation and Protection Program</td>
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<tr>
<td>STIP</td>
<td>State Transportation Improvement Program</td>
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A Glossary of Terms is included in Appendix A.
1 INTRODUCTION

The Road Repair and Accountability Act of 2017 (Act), also known as “Senate Bill 1” or “SB 1”1 (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, delivery, implementation, 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 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 — Introduces the guidelines.

SECTION 2 — Provides background information. Explains that compensatory mitigation is a requirement of some transportation project environmental permits. Lists the natural resource agencies’ authorities to require compensatory mitigation in a transportation project’s environmental permit. Provides a brief history of Caltrans advance mitigation initiatives.

SECTION 3 — 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 both integrating the Program into Caltrans, and planning and implementing advance mitigation projects consistent with SHC 800 et. seq.

SECTION 4 — Describes Caltrans Advance Mitigation Account (AMA), a revolving fund created by the Act.

SECTION 5 — Describes Caltrans advance mitigation planning process.

SECTION 6 — Describes Caltrans advance mitigation project programming process.

SECTION 7 — Provides an overview of how the Program will coordinate with agencies with jurisdiction over natural resources. Describes how Caltrans will coordinate with other

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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.”
transportation agencies (Metropolitan Planning Organizations, Regional Transportation Planning Agencies, and County Transportation Commissions) and Native American Tribes.

**SECTION 8** — 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** — Provides general description of Caltrans advance mitigation project delivery.

**SECTION 10** — Provides a general description of how Caltrans advance mitigation project status and mitigation will be tracked.

**SECTION 11** — Describes how future transportation projects may access the Program’s mitigation.

**SECTION 12** — Describes how Caltrans and CDFW will report on the Program to the Legislature and/or California Transportation Commission (CTC) as required by the Act.

**SECTION 13** — Describes the Program’s plans for outreach and communication.

**SECTION 14** — Describes how Caltrans has addressed advance mitigation Program-related and project-related risks.

**SECTION 15** — Defines Program-level efficiency expectations.

**APPENDICES** — Two appendices support the document: Appendix A—A Glossary of 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 advancemitigation.dot.ca.gov. If minor revisions are required, the update will be noted in the revision log and the updated document posted on advancemitigation.dot.ca.gov. The revision log is provided in Appendix C.
2 BACKGROUND INFORMATION

Compensatory mitigation\(^3\) is a mitigation strategy that is preferentially applied only after it has been determined that there will be unavoidable impacts and other efforts to minimize, rectify, and reduce the impact have been incorporated in the transportation project’s design\(^4\) and delivery. Traditionally, this determination comes late in the transportation project development process, prompted by natural resource agency permits, at which time the compensatory mitigation action is both funded and implemented concurrently with the transportation project. Advance mitigation shifts this traditional business practice of mitigation planning and implementation to before impacts and permitting occurs and decouples the implementation of the mitigation from the delivery of any one specific transportation project.

Advance mitigation anticipates that unavoidable impacts will be identified in the future and consists of having compensatory mitigation sites and plans identified and implemented before transportation projects are completely designed and funded. When mitigation sites are selected independent of transportation project delivery timelines, there is an opportunity to 1) consolidate the anticipated mitigation from multiple projects into fewer and larger sites, such that the mitigation provides higher ecological value; and, 2) ensure that securing a transportation project’s mitigation for its environmental permit will not negatively or unpredictably impact the transportation project’s schedule or costs. Further, when 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 lower mitigation ratios.

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.)
- California Endangered Species Act (CESA) (Fish and Game Code 2050 et seq.)
- California Fish and Game Code, Section 1600 et seq.

\(^3\) 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 project management guidance incorporates these mitigation measures, as a sequence, in order of priority. 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](https://www.environment.fhwa.dot.gov/projdev/tdmmitig2.asp).
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); 5) the US Army Corps of Engineers (USACE); and, 6) the California Coastal Commission (CCC).

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 (NPS), USACE, the United States Department of Agriculture (USDA) Forest Service, and USFWS, along 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 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 agencies.

In 2008, Caltrans joined a coalition of infrastructure and natural resource 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
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 U.S. and write three reports. In “Setting the Stage for Statewide Advance Mitigation in California”\(^5\), 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”\(^6\), 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 project delays. In “Funding and Financial Mechanisms to Support Advance Mitigation”\(^7\), 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 UC Davis, to perform original research: In “A Reference Manual for Caltrans Staff on Regional Advance Mitigation Impact Assessment Methods,”\(^8\) 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,”\(^9\) using historical information, UC Davis piloted its method to an area of the Sacramento Valley. In “A Review of Lessons Learned though the RAMP Working Group, an

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Addendum to the Draft Statewide Framework\textsuperscript{10} 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 the risks associated with making these early investments in planning and delivering advance mitigation projects and assuring that the mitigation will be approved for use.

The 2016 SHOPP 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.

\textsuperscript{10} James H. Thorne, Jacquelyn Bjorkman, and Patrick R. Huber. 2015. A Review of Lessons Learned though the RAMP Working Group, an Addendum to the Draft Statewide Framework. UC Davis.
3 ADVANCE MITIGATION PROGRAM

Located within Caltrans, the AMP oversees program administration, planning, delivery, implementation, and tracking of Caltrans’ advance mitigation projects.

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 projects11 (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 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. Transportation projects using AMA funded mitigation will reimburse the AMA (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 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 800 et seq., the AMP seeks to:

- Support the acceleration of transportation project delivery.

- Enhance Caltrans communication with stakeholders12 and CDFW.

- Protect natural resources through transportation project mitigation and to mitigate, to the maximum extent required by law, environmental impacts from future transportation infrastructure projects.

- Provide successful mitigation that meets or exceeds applicable environmental requirements that contribute to natural resource protection and enhancement.

- Ensure the AMA operates as a self-sustaining fund.

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.

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

12 “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.
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), summarized below:

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 transportation projects under a Natural Community Conservation Plan (NCCP) or a Habitat Conservation Plan (HCP).

4. Where a Resource Conservation Investment Strategy (RCIS) has been approved by CDFW pursuant to Regional Conservation Investment Strategies Program Guidelines, 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, conservation actions and habitat enhancement actions 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, while offsetting anticipated transportation improvement impacts.

5. If it is demonstrated that (1) through (4) are not feasible, implement or fund other forms of advance mitigation, including permittee responsible mitigation, in accordance with a programmatic mitigation plan pursuant to SHC 800.9.

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13 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.

14 https://www.wildlife.ca.gov/Conservation/Planning/Regional-Conservation

15 “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.

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

17 A programmatic mitigation plan is defined in 23 U.S.C. 169(a).

18 No more than 25 percent of the funds in the Advance Mitigation Account may be allocated for this purpose.

19 Note the authority for Caltrans to enter into cooperative agreements with public entities such as CDFW is under SHC 114 and SHC 130.
3.4 Program Roles and Responsibilities

Advance mitigation program 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.
- Manage the AMA.
- Maintain and monitor AMP guidelines and procedures.
- Maintain credit ledgers or otherwise track the usage of compensatory mitigation purchased or established by advance mitigation projects.
- Report biennially to the Legislature, as required by SHC 800.6(f).
- Consult with CDFW on all AMP activities, as required by SHC 800(a).
- Coordinate with natural resource agencies on processes and statewide agreements to support the AMP (23 U.S.C. 169(a); See Section 7.1 Agency Partners).
- Assist Districts with long-range planning for advance mitigation.
- Contact regional transportation partners to request specific information about their planned State Transportation Improvement Program (STIP) transportation projects.
- Work with Districts, Division of Transportation Planning, and Division of Budgets to resource the advance mitigation planning and advance mitigation projects appropriately.
- Provide accurate AMA accounting to CTC annually.
- Measure efficiencies.
- Determine, with Districts, when credits may be transferred to another transportation agency.
- Conduct outreach and provide information to local transportation agencies, the Native American Tribes, local advance mitigation programs, stakeholders, and the public about AMP.
- Seek partnering opportunities with local advance mitigation programs.

3.4.2 Caltrans Districts Responsibilities

- Adhere to and implement the AMP’s guidelines and procedures.
- Plan, scope, and deliver advance mitigation projects authorized under the Act (See Section 8.1) that meet forecasted SHOPP/STIP transportation project mitigation needs.
- Coordinate with Metropolitan Planning Organizations (MPO) and Regional Transportation Planning Agencies (RTPA).
- Coordinate with local advance mitigation programs.
• Coordinate with Headquarters when consulting with natural resource agencies on advance mitigation project implementation and credit usage.

• Coordinate with relevant resource agencies during planning and advance mitigation project delivery as appropriate.

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

• Budget compensatory mitigation costs into transportation projects, if environmental studies for the transportation project identify that it is potentially needed, in order to reimburse the program or implement mitigation through typical methods as part of the transportation project scope.

• Use AMP credits for district transportation projects and reimburse the AMP as appropriate.

• Coordinate with Headquarters on mitigation tracking and reporting tasks and requirements.

• With Headquarters, maintain credit ledgers or otherwise track the usage of compensatory mitigation purchased or established by advance mitigation projects.

• Determine, with Headquarters, when credits may be available for transfer to another transportation agency.

• Serve as the point of contact for local and regional transportation agencies regarding potential availability and use of credits.

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 planning and delivery of advance mitigation projects 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 program administration, advance mitigation project planning, delivery, implementation, and mitigation tracking.

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Date</th>
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<tbody>
<tr>
<td>Integrate AMP into Caltrans management operations: coordinate with Caltrans Divisions, such as transportation planning, budgets, accounting, project management, environmental analysis, and others</td>
<td>Begin August 2017</td>
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<tr>
<td>Form Advance Mitigation Account</td>
<td>September 8, 2017</td>
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<tr>
<td>CDFW reports to Legislature on conservation value of advance mitigation**</td>
<td>July 2018 and biennially thereafter</td>
</tr>
<tr>
<td>Publish Formal Guidelines</td>
<td>Fall 2018</td>
</tr>
<tr>
<td><strong>Milestone</strong></td>
<td><strong>Date</strong></td>
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<td>---------------</td>
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<tr>
<td>Advance mitigation project planning</td>
<td>Begin Fall 2018 and every two years thereafter</td>
</tr>
<tr>
<td>Forecast Caltrans statewide need for compensatory mitigation, through the State Advance Mitigation Needs Assessment (SAMNA).</td>
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<tr>
<td>For selected areas, document the case for advance mitigation projects in Regional Advance Mitigation Needs Assessment (RAMNA)</td>
<td>Fall 2018 and as funds are allocated, thereafter</td>
</tr>
<tr>
<td><strong>RAMNA reviewed by natural resource agencies and the public (23 U.S.C. 169(a)).</strong></td>
<td>Winter 2019 and as developed, thereafter</td>
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<tr>
<td>Advance mitigation project scoping</td>
<td>Begin Spring 2019 and no less than annually thereafter</td>
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<tr>
<td>AMP reviews list of advance mitigation project scoping documents prepared by the Districts and nominates advance mitigation projects for approval by the Director of Transportation.</td>
<td>Begin Spring 2019 and no less than annually thereafter</td>
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<tr>
<td>Director of Transportation makes determination and justification that proposed expenditure is likely to accelerate transportation project delivery</td>
<td>Summer 2019 and no less than annually thereafter</td>
</tr>
<tr>
<td>Advance mitigation project programming</td>
<td>Summer 2019 and no less than annually thereafter</td>
</tr>
<tr>
<td>Caltrans reports to Legislature on project acceleration due to advance mitigation**</td>
<td>July 1, 2019 and biennially thereafter</td>
</tr>
<tr>
<td>Caltrans reports Advance Mitigation Account activity to the California Transportation Commission (SHC 800.7) **</td>
<td>Begin August 2019, annually thereafter</td>
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<tr>
<td>Advance mitigation project delivery</td>
<td>Fall 2019 and as programmed thereafter</td>
</tr>
<tr>
<td>Advance Mitigation Account reimbursement</td>
<td>As transportation projects use credits/values</td>
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<tr>
<td>Mitigation tracking</td>
<td>Quarterly</td>
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**Reports are available to the natural resource agencies, public, local and regional transportation agencies, and other interested parties.**

SHC = Streets and Highway Code
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 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 budgets for and undertakes activities required for environmental compliance, permitting, and mitigation of transportation projects. When jurisdictional agencies agree, and the correct type and quantity of AMP credits are available, future SHOPP and STIP transportation projects may purchase AMP mitigation credits 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 mitigation required by transportation projects are typically federally reimbursable.

- When jurisdictional agencies agree, and Caltrans has determined the correct type and quantity of AMP credits are available for local transportation use, mitigation may be transferred to another transportation agency 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 (800(4)(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 reimburses the AMA. The annual Budget Act and subsequent legislation may establish additional provisions and requirements for the Program (SHC 800[d]).
5 ADVANCE MITIGATION PROJECT PLANNING

The primary goal of advance mitigation project planning is to address Caltrans’ potential future compensatory biological mitigation needs by justifying, authorizing, proposing, and scoping an advance mitigation project in the AMP. The advance mitigation project planning process is not intended to provide transportation project-level assessment of environmental impacts for the purposes of scoping transportation projects, provide environmental analysis of transportation projects, or permit 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.

The advance mitigation project planning process, broadly described, consists of three steps. First, a statewide assessment of the estimated potential compensatory mitigation need is performed, through the SAMNA process. Next, regions are identified that have the potential to provide advance mitigation opportunities that meet the Program objectives described under Section 3.1 above and provide for the best use of Program funds through a process referred to as the Regional Advance Mitigation Needs Assessment (RAMNA). Lastly, candidate advance mitigation projects are scoped and proposed at the District level for possible funding through the AMA. A brief description of each step is provided below.

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 reproducible methods developed for the AMP, the SAMNA will then be used to forecast potential habitat, species, and/or resource-level impacts from multiple transportation projects. Results will be spatially organized by Caltrans District 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. Needs are based on Caltrans anticipated SHOPP projects and their estimated potential compensatory mitigation.

5.2 Regional Advance Mitigation Needs Assessment (Step 2)

Once an overall estimate of potential compensatory mitigation needs is identified for the State, the AMP and the Districts will coordinate to identify a geographic areas of interest(s) 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 interests will be selected by Caltrans Districts and Headquarters based on the forecasted mitigation need from the SAMNA, professional judgment and experience with respect to mitigation opportunities (or lack thereof), and acceleration priorities for Caltrans planned transportation projects.

Next, Caltrans will request information from local transportation agencies about their planned STIP transportation projects to identify additional potential demand for Program mitigation in each geographic

20 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](http://www.dot.ca.gov/ser/vol3/vol3.htm)

21 Caltrans anticipates that a geographic area of interest will be smaller than a District.

22 The request will be for transportation project lists and their corresponding GIS files that conform to the AMP’s GIS standards.
area of interest. Then, for each geographic area of interest, Caltrans will prepare a RAMNA, a planning document, to document its consideration of mitigation opportunities and constraints in the area. The RAMNA will:

a. Identify transportation projects in long-range planning documents used to justify performing the assessment.

b. Document Caltrans’ rationale for selecting the geographic area of interest.

c. Document Caltrans’ forecast of compensatory mitigation needs, as predicted in the SAMNA and provided by local 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.

f. Summarize natural resource agency conservation goals and objectives related to the natural resources forecasted to be impacted.

g. Document land use, including existing protected lands.

h. Describe existing compensatory mitigation opportunities authorized under SHC §800.6(a), 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 for creating, purchasing, or obtaining compensatory mitigation that has a high probability of successfully meeting advance mitigation goals and objectives in the geographic area of interest.

Before the RAMNA will be used to support advance mitigation project planning, Caltrans will, per 23 U.S.C. 169(a):

- Consult with each agency with jurisdiction over the environmental resources considered in the RAMNA.

- Make a draft of the RAMNA available for review and comment by applicable environmental resource agencies, Native American Tribes, local transportation agencies, local advance mitigation programs, local conservation organizations, and the public.

- Consider any comments received from such agencies, Native American Tribes, local transportation agencies, local advance mitigation programs, local conservation organizations, and the public on the draft plan.

- Address such comments in the final plan as appropriate.

The review will take place between planning milestones. Comments and feedback received will be used to inform and contextualize Caltrans understanding of its advance mitigation needs for their consideration for the next planning step.
5.3 Advance Mitigation Project Scoping and Project Initiation (Step 3)

Once potential future compensatory mitigation needs are forecasted (Step 1) and opportunities and constraints are identified (Step 2), an advance mitigation project scope can be developed that addresses the objectives of the program as identified in Section 3.1 above. Informed by the SAMNA and RAMNA processes, Caltrans Districts may propose advance mitigation projects to the AMP for approval to be resourced to prepare scoping documents.

Advance mitigation projects will be scoped and initiated using a process similar to transportation projects, but customized and streamlined to fit the unique needs of advance mitigation projects. 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. The AMP will nominate scoped advance mitigation projects to the Director. Advance mitigation projects approved by the Director of Transportation will be programmed according to the AMP programming process (Section 6.0).

Each advance mitigation project will comply with all environmental laws and address Caltrans and CDFW tracking and reporting requirements. Advance mitigation projects shall be consistent with overlapping and approved NCCPs\(^{23}\) regional federal HCPs, state or federal recovery plans, or other state- or federal-conservation strategies (800.6\(d\)).

5.3.1 Prioritization

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

- The anticipated schedule the candidate advance mitigation project would have mitigation 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 the current political climate and Department priorities. Projects that do not rank high enough to make the nomination list due to prioritization will be considered for programming during the next cycle.

\(^{23}\) Where NCCPs exist within the geographic area of interest, additional considerations apply that will affect the subsequent proposal, scoping, and delivery of an advance mitigation project pursuant to SHC 800.6(a)(3), 800.6(d) and 800.6(e). SHC 800.6(e) requires Caltrans, if eligible to be a special participating entity, to first approach the NCCP and be declined coverage for the given activity before another source of credits, including those created under the AMP, may be used. To prevent AMA funds from being wasted on unusable credits, Districts must demonstrate that they have already met the conditions of SHC 800.6(e) prior to proposing an advance mitigation project for funding under the AMP.
6 ADVANCE MITIGATION PROJECT PROGRAMMING

The AMP programming process begins with the Director of Transportation’s approval of a Caltrans Districts’ advance mitigation project as part of the project scoping/initiation process described in Section 5.3. Subsequently, the Districts submit a funds request.

Projects will be programmed annually; the cycle may be adjusted in the future should new information show that a different cycle is more suitable.

6.1 Director’s Approval

As provided by SHC 800.6(i), prior to making any expenditure from the AMP, Caltrans’ Director of Transportation shall make a determination and justification that the proposed expenditure is likely to accelerate delivery of specific transportation projects.

6.2 Programming Allocation

Each District is responsible for requesting funds for its advance mitigation projects. Caltrans Division of Budgets is responsible for verifying that the proposed funds request aligns with the programmed advance mitigation project list. Once verified, Caltrans Division of Budgets will open the phase(s) for charging and expenditures. The AMA is the fund source for advance mitigation projects programmed in the AMP.
7 COORDINATION

7.1 Natural Resource Agencies

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

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(a), Caltrans also regularly consults with CDFW; the California SWRCB; the USACE, South Pacific Division; the EPA; USFWS; and the National Marine Fisheries Service ("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; 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 projects. As described in Section 5.2, 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 programming one of the authorized activities pursuant to SHC 800.6(a) (Section 3.3), Caltrans will apply and use existing advance mitigation laws, policies, procedures, templates, and guidance to purchase or establish mitigation.

24 “Conservation priorities” is defined as a broad set of regional natural resource sustainability goals and objectives that are consistent with both regulatory requirements and conservation science.
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 County Transportation Commissions

Metropolitan Planning Organizations, Regional Transportation Planning Agencies, County Transportation Commissions and Caltrans meet regularly. Caltrans briefs and updates its fellow transportation agencies during these meetings, which include relevant AMP and advance mitigation project information, as appropriate. Also, during planning for specific geographic areas, Caltrans will contact its local transportation partners to request specific information about their planned STIP transportation projects, to help inform the potential demand for mitigation in that area. Next, during planning, Caltrans will specifically invite local transportation agencies to comment on the RAMNA. Further, for advance mitigation project delivery, when a transportation agency may be an interested party, resource 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 transfer, Caltrans will notify local transportation agencies. It is Caltrans responsibility to partner with local transportation agencies when determining availability of credits or values for local transportation agency use. Locally sponsored STIP projects with an environmental document or permits requiring compensatory mitigation will be prioritized for transfer 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 a purchase agreement for credits transferred with a local transportation agency, allowing replenishment of the AMA.

7.3 Native American Tribes

The Caltrans Native American Advisory Committee (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 project 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 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.

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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.
8 ELIGIBILITY

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

8.1 Eligible Advance Mitigation Projects

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

- 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:
  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 Regional Conservation Investment Strategies Program Guidelines:
     - 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 as needed to generate mitigation credits pursuant to an MCA.
     - Implement, or fund the implementation of, habitat enhancement actions that would measurably advance a conservation objective specified in an RCIS, while offsetting anticipated transportation improvement impacts.

27 https://www.wildlife.ca.gov/Conservation/Planning/Regional-Conservation

28 “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).

29 “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 eradiating 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).

30 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.
5) Be developed in accordance with a programmatic mitigation plan\textsuperscript{31} pursuant to SHC 800.9\textsuperscript{32}, if it is demonstrated that the bulleted items above are not feasible.

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

\section*{8.2 Transportation Projects Eligible to Use Advance Mitigation}

As required by law, Caltrans budgets for and undertakes activities required for environmental compliance, permitting, and mitigation of individual transportation projects. 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 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 transferred for use by another transportation agency upon full reimbursement of the Caltrans AMA (See Section 4.1 and 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.

\begin{itemize}
\item \textsuperscript{31} A programmatic mitigation plan is defined in 23 U.S.C. 169(a).
\item \textsuperscript{32} No more than 25 percent of the funds in the AMA may be allocated for this purpose.
\end{itemize}
9 ADVANCE MITIGATION PROJECT DELIVERY

Advance mitigation projects will be undertaken to supply compensatory mitigation for potential use by future Caltrans transportation projects. Advance mitigation projects will be delivered using a process similar to delivery of transportation projects, but this process will be customized and streamlined to fit the unique requirements of mitigation projects and the scheduling needs of advance mitigation. Advance mitigation project delivery timelines, agency partners, contracting requirements, and processes will differ based on the type of mitigation purchased or developed (See Section 3.3 for advance mitigation project types authorized by the Act). Caltrans Districts may contract out all aspects of project delivery (including design, environmental approval, credit and service area approval, permitting, and construction) or may elect to do some 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 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.

9.1 Advance Mitigation Project Approach

Natural resource agency authorities to require compensatory mitigation are presented in Section 2.1. 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 entity 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 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 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. 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.”

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

Advance mitigation projects will result in an asset, in the form of 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 agencies.
10 ADVANCE MITIGATION PROJECT STATUS AND CREDIT TRACKING

In accordance with SHC 800.6 (c), Caltrans will track mitigation purchased or established by the Program to use as credits for environmental mitigation.

Caltrans will track all 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 and tracking available advance mitigation in the database and updating its status. Caltrans Headquarters will maintain the database and have the ability to access information for 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 (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 advance mitigation 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 accounting 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. Caltrans will calculate the appropriate cost per unit for AMP-funded mitigation.

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34 "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 be used to satisfy 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 created 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 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. Caltrans will also report AMA activity to the CTC (SHC 800.7).

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:

• Describe to what extent the AMP has accelerated the delivery of transportation projects.
• Provide an accounting of the AMA funds.
• Identify expected state and federal resource and regulatory agency 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 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 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. 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 by August 31, 2019, and every year thereafter. The report will include money deposited and expended from the account, a list of transportation projects that purchased 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.
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 program administration, 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

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 interested parties who may be impacted or influential to the Program.

- Stakeholder 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 audiences will occur to ensure the AMP is communicating effectively.

- Creation of Interactive Internal/External Websites: Caltrans will establish an internal webpage/database housed within its existing intranet site to act as the main resource of information for all Districts to access. The existing Program webpage will be enhanced as a repository of information displayed in an interactive and engaging way. The external, public-facing Caltrans website will have information similar to the internal intranet site but will be targeted to the needs and interests of the key partners, resource agencies, and interested parties. The website (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 stakeholders 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.

13.2 Opportunities for Communication, Engagement, and Feedback

Caltrans will maintain regular contact with CDFW regarding Program activities. The Department will participate in existing forums to engage internal and external groups. For selected areas, Caltrans will contact its regional transportation partners to request specific information about their planned STIP transportation projects\(^{35}\) in order to identify additional potential demand for Program mitigation. Engagement with Agency Partners will be solicited in the planning and delivery stages of advance mitigation projects.

\(^{35}\) The call will be for transportation project lists and their corresponding GIS files that meet the AMPs GIS standards.
mitigation projects. Agency Partner feedback will be requested during RAMNA circulation. Caltrans will circulate RAMNAs for Native American Tribe, local transportation agency, local advance mitigation program, and public comment, as well as solicit any other information that may be relevant to the planning effort. During project delivery of advance mitigation projects, engagement points with Agency Partners and the Native American Tribes, local transportation agencies, local advance mitigation programs, and public will be consistent with the advance mitigation instrument selected. Existing mitigation instruments the Program may use include Agency Partner participation when, for example, advance mitigation projects purchase credits, propose to create a mitigation bank, establish an in-lieu fee program, or develop an RCIS/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 the Department as appropriate.
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 on-going 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:

1. Reduced capital expenditures for mitigation, potentially through economies of scale or reduced mitigation ratios.
2. Calendar days saved by streamlining certain mitigation processes and developing better communication and partnerships with permitting agencies (accelerated delivery).
3. Staff hours saved by streamlining certain mitigation processes (reduced 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 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 Terms

<table>
<thead>
<tr>
<th>2016 Statewide Advance Mitigation Initiative Memorandum of Understanding (2016 SAMI MOU)</th>
<th>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 Agency Partners (defined below) and Caltrans in June 2016. It is a non-binding memorandum establishing collaborative support for Caltrans’ AMP.</th>
</tr>
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<tbody>
<tr>
<td><strong>Advance Mitigation</strong></td>
<td>“Advance mitigation” means mitigation implemented before, and in anticipation of, environmental effects of planned transportation improvements. Caltrans’ expenditures on advance mitigation are allowable when consistent with Article 19, Section 2(a) of California’s 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.</td>
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<tr>
<td><strong>Advance Mitigation Program</strong></td>
<td>Caltrans Advance Mitigation Program (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.).</td>
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<tr>
<td><strong>Advance Mitigation Project</strong></td>
<td>An advance mitigation project is a programmed and funded endeavor undertaken to establish, purchase, or obtain mitigation so that it is available for consideration and/or use by qualified future transportation projects. Advance mitigation projects consist of the authorized activities set forth in SHC §800.6(a) provided in Appendix B.</td>
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<td><strong>Agency Partners</strong></td>
<td>“Agency Partners” refers to the resource agency signatories to the SAMI MOU, which include CDFW, Corps, EPA, USFWS, State Water Board, NMFS, and any future signatories that would like to participate.</td>
</tr>
<tr>
<td><strong>Candidate Project</strong></td>
<td>Caltrans Districts select “candidate projects” from the suite of advance mitigation project conceptual proposals for scoping document development.</td>
</tr>
<tr>
<td><strong>Conceptual Proposal</strong></td>
<td>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 (RAMNA).</td>
</tr>
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</table>
### Compensatory Mitigation

“Compensatory mitigation” means the restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances, preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved (33 CFR 332.2). Further, for the purposes of the AMP, “compensatory mitigation” also means the restoration, establishment, enhancement, and/or, in certain circumstances, preservation of habitat and other resources for the purposes of offsetting unavoidable adverse impacts that remain after all appropriate and practicable avoidance and minimization has been achieved.

### 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.

### 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.

### 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.

### Programming

The term “programming” refers to the process Caltrans employs to set priorities for funding advance mitigation projects at the 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 (SAMNA). Local expertise and knowledge, Agency Partner input, and existing compensatory mitigation opportunities in the covered region also contribute to the assessment.
| Scoping Document | An advance mitigation project scoping document identifies the purpose, need and feasibility of a candidate advance mitigation project at the 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. |
| Stakeholders | “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. |
APPENDIX B

Article 2.5. Advance Mitigation Program

ARTICLE 2.5. Advance Mitigation Program [800 - 6009] (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. 55, Sec. 10; 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.
10/4/2017

(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 any other public agency that implements transportation improvements.

(n) "Transportation improvement" means a transportation capital improvement project.

(Added by Stats. 2017, Ch. 95, Sec. 11. 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; purhase 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 these 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. Effective July 21, 2017.)

809.7. 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. 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. 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. Effective July 21, 2017.)
## APPENDIX C

### Revision Log

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<th>Number</th>
<th>Description of Change</th>
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