

Advance Mitigation Program

Annual Report to the
California Transportation Commission

October 2019



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Executive Summary

The California Department of Transportation (Caltrans) Advance Mitigation Program was established by the Road Repair and Accountability Act of 2017 (Senate Bill 1, Beall, Chapter 5, Statutes of 2017) and the budget trailer bill, Senate Bill 103 (Committee on Budget and Fiscal Review, Chapter 95, Statutes of 2017) to plan and implement advance mitigation solutions for the department's future transportation projects. This new business practice allows Caltrans to accelerate project delivery by proactively obtaining environmental mitigation in advance of—rather than during—transportation projects. Caltrans administers this program to support districts interested in planning and delivering advance mitigation projects.

The primary goal of the program is to address longer-term future environmental mitigation needs resulting in improved environmental, economic, and project delivery outcomes. By consolidating the forecasted mitigation needs of multiple future transportation projects, Caltrans can potentially provide strategically placed and environmentally sound replacement habitat and shorten project delivery timelines, resulting in both time and cost savings. Ultimately, the program aims to help Caltrans meet conservation goals in addition to regulatory requirements.

This report is the first annual report to the California Transportation Commission by the Advance Mitigation Program as required by Streets and Highways Code section 800.7. This report covers the time period from the creation of the program in April 2017 through June 30, 2019. The purpose of the report is to provide the California Transportation Commission with information on how the financial activity in the Advance Mitigation Account, the transportation projects that have purchased mitigation credits from the Advance Mitigation Program, and the amount, type and location of mitigation credits that the Advance Mitigation Program has made available to transportation projects.

This report describes the following:

- The statutory authority for the program
- The State and federal environmental mitigation regulations that the Advance Mitigation Program seeks to satisfy
- The five-step planning process Caltrans is undertaking to approve the use of Advance Mitigation Account funds
- The progress made in establishing the program

During the first reporting period, the Advance Mitigation Program achieved a number of key milestones:

- Significant progress on the work plan to establish the program
- Deposit of the first two \$30 million annual deposits in the newly created Advance Mitigation Account
- Development of the Advance Mitigation Program Draft Formal Guidelines
- Implementation of the five-step planning process to approve an allocation of Advance Mitigation Account funds

Caltrans' Advance Mitigation Program work plan is still early in its development, and the Department is in the process of integrating the work plan into Caltrans' planning and project delivery organizational structure, with completion targeted for the end of the 2019 calendar year. As a result, no funds were expended from the Advance Mitigation Account at the end of this reporting period.

Caltrans anticipates including data on the use of account funds beginning with the second annual report in 2020 and continues to make progress on program development to make funding available for advance mitigation projects likely to accelerate the transportation project delivery. The Department anticipates the first funding decisions in the 2020-2021 fiscal year.

As part of the implementation of the five-step planning process to approve an allocation of Advance Mitigation Account funds, Caltrans will continue to:

- Conduct a Statewide Advance Mitigation Needs Assessment documenting a forecast of 957 transportation projects statewide that potentially have 11,640 acres of project footprint. The assessment results are publicly available on the Advance Mitigation Program's website.
- Identify ten districts that have planning resources for advance mitigation purposes in the 2017-2018 and 2018-2019 fiscal years.
- Identify seven Geographic Areas of Interest where advance mitigation appears viable.
- Pilot Regional Advance Mitigation Needs Assessment to:
 - Apply the results of the Statewide Advance Mitigation Needs Assessment within the Geographic Area of Interest.

- Identify existing mitigation opportunities authorized for use of Advance Mitigation Account funds.
 - Seeks ways to maximize the environmental and conservation value of the mitigation.
 - Draft and final Regional Advance Mitigation Needs Assessments will be made publicly available on the Advanced Mitigation Program's website during the 2019-2020 fiscal year.
- Support the development of the California Department of Fish and Wildlife's Regional Conservation Investment Strategies program.

Careful planning is a vital and necessary component to the success of the Advance Mitigation Program. The Advance Mitigation Program planning process establishes the authority and justification for expending public funds in accordance with the State Constitution and Streets and Highways Code; provides the basis for consulting with the California Department of Fish and Wildlife and communicating with stakeholders and interested parties to maximize the conservation benefits of the mitigation, to make wise investments in strategic mitigation projects that meet the mitigation requirements of transportation projects and that subsequently accelerate their delivery; and to recoup the funds from the Advance Mitigation Account from the transportation projects so that the Advance Mitigation Account becomes self-sustaining over time.

Caltrans has been a leader in developing advance mitigation planning, policy and science, having been a signatory to interagency agreements and through partnering with multiple parties to develop advance mitigation planning for over a decade. This experience has allowed for the piloting of \$52 million of advance mitigation projects to be programmed and delivered through the State Highway Operations and Protection Program and has informed the development and integration of this new program into Caltrans' planning and delivery processes.

Statutory Reference and Purpose

Streets and Highways Code section 800.7 requires Caltrans to report on the activity in the Advance Mitigation Account to the California Transportation Commission. Additionally, Streets and Highways Code section 800 (b) indicates that only transportation projects in the State Transportation Improvement Plan and the State Highway Operations and Protection Program are eligible to use the mitigation created through the Advance Mitigation Program. Furthermore, Streets and Highways Code section 800.7 requires that these transportation projects reimburse

that Advance Mitigation Account for the mitigation used, so that the account becomes self-sustaining.

Per the Advance Mitigation Program Draft Formal Guidelines, section 12.3, Caltrans will submit a report to the California Transportation Commission each year that covers the activity in the account during the previous fiscal year, ending on June 30 of that year. The report will include:

- Details on the financial activity within the Advance Mitigation Account,
- A list of STIP and SHOPP transportation projects that have used mitigation created by the Advance Mitigation Program, and
- The amount and type of credits established, pursuant to Streets and Highways Code 800.6(a)(1) - 800.6(a)(4) and sold by the Advance Mitigation Program.

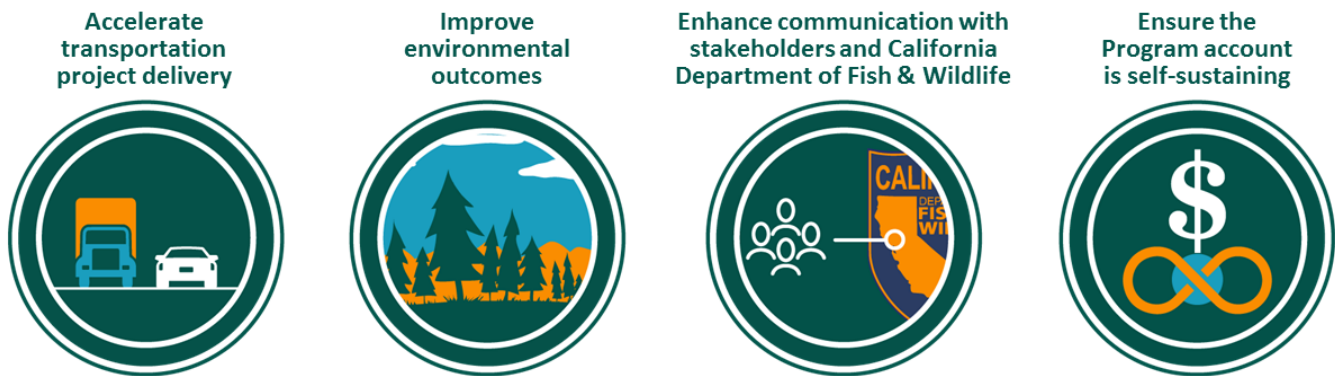
This report is the first report to the California Transportation Commission and covers activity in the Advance Mitigation Account since its creation up through June 30, 2019. At this point in time, the Advance Mitigation Program is still in its planning process and is anticipating allocating funds to the first advance mitigation projects in 2020.

Program Background

The Advance Mitigation Program was created through the Road Repair and Accountability Act of 2017 (SB 1, Beall, Chapter 5, Statutes of 2017, Sec.35) and the SB 103 budget trailer bill (Committee on Budget and Fiscal Review, Chapter 95, Statutes of 2017, Sections 10-15). The entire text of the Advance Mitigation Program within Streets and Highways Code can be found in Appendix A. The purpose of the legislation (Streets and Highways Code section 800(a), 800.7; Figure 1) is to:

- Accelerate transportation project delivery
- Enhance communications between Caltrans and stakeholders to protect natural resources through project mitigation, to meet or exceed applicable environmental requirements, and to mitigate, to the maximum extent required by law, environmental impacts from transportation infrastructure projects
- Ensure Caltrans consults with the California Department of Fish and Wildlife on all aspects of this program, and to enhance communications with the other natural resource agencies and other stakeholders
- Ensure that the Advance Mitigation Account is self-sustaining

Figure 1. Advance Mitigation Program Goals



The legislation:

- Created the Advance Mitigation Program within the Department of Transportation (Streets and Highways Code section 800(a)).
- Created the Advance Mitigation Account within the State Highway Fund (Streets and Highways Code section 800(c); 800.7) as a revolving fund that is intended to become self-sustaining (Streets and Highways Code section 800.7).
- Authorizes the State Controller, upon order from the Director of Finance, to transfer no less than \$30 million annually into the Advance Mitigation Account for four years, commencing with the 2017-2018 fiscal year for the planning and implementation of projects in the Advance Mitigation Program (Streets and Highways Code section 800(b); 800(c)).
- Restricts the use of mitigation credits or values generated or obtained with the Advance Mitigation Account funds to only transportation projects in the State Transportation Improvement Program and State Highway Operations and Protection Program and requires these transportation projects to reimburse the Advance Mitigation Account for the expenditures from the account Streets and Highways Code section 800(b); 800.6(b); 800.7).
- Authorizes Caltrans to allow other transportation agencies to use mitigation credits or values generated or obtained with the Advance Mitigation Account funds on their State Transportation and Improvement Program transportation projects provided that these transportation agencies fully reimburse the Advance Mitigation Account for the full cost of the mitigation credits or values

used as determined by Caltrans (Streets and Highways Code section 800(b); 800.6(b)).

The authorized expenditures from the account include:

- Purchasing or funding the purchase of credits from conservation banks, mitigation banks or in-lieu-fee programs approved by one or more regulatory agencies or establishing or funding the establishment of new conservation banks, mitigation banks, or in-lieu-fee programs (Streets and Highways Code section 800.6(a)(1)).
- Paying or funding the payment of mitigation fees or other costs associated with mitigating through Natural Community Conservation Plans and/or Habitat Conservation Plans (Streets and Highways Code section 800.6(a)(2)).
- Preparing or funding the preparation of Regional Conservation Assessments and Regional Conservation Investment Strategies, including entering into Mitigation Credit Agreements (Streets and Highways Code section 800.6(a)(3)).
- Performing other mitigation activities, where the above are not feasible, pursuant to a Programmatic Mitigation Plan (Streets and Highways Code section 800.6(a)(4); 800.9).

Restrictions on the Department include:

- A prohibition on spending any funds from the Advance Mitigation Account unless the Caltrans Director makes a determination and justification that the expenditure will likely accelerate the delivery of specific transportation projects (Streets and Highways Code section 800.6(i)).
- Where Advance Mitigation Program activities occur in areas with existing Natural Community Conservation Plans and/or Habitat Conservation Plans, these activities must be consistent with the Natural Community Conservation Plans and/or Habitat Conservation Plans or any other state or federally approved recovery plan or conservation plan (Streets and Highways Code section 800.6(d)).
- For the authorized expenditures identified in Streets and Highways Code sections 800.6(a)(1) - 800.6(a)(3), Caltrans is limited to allocating no more than 25% of the funds in the Advance Mitigation Account during a four-year period (Streets and Highways Code section 800.6(a)(4)).

- A provision insuring that Caltrans will continue to follow the California Environmental Quality Act (CEQA) for its transportation projects, which includes the responsibility to avoid and minimize potential impacts to the environment prior to compensating for impacts and stipulating that the mitigation actions undertaken pursuant to the Advance Mitigation Program do not endorse or imply acceptance of any transportation project alternatives nor its subsequent impacts (Streets and Highways Code section 800.8).

Reporting requirements include:

- A biennial report to the state legislature made by Caltrans reporting on the acceleration of transportation project delivery, commencing on July 1, 2019 (Streets and Highways Code section 800.6(f)).
- Disclosure to the California Transportation Commission on activity in the Advance Mitigation Account, of which this report is the first (Streets and Highways Code section 800.7).
- A biennial report to the state legislature made by California Department Fish and Wildlife reporting on how the program has improved the quality and effectiveness of habitat mitigation and makes related recommendations on how to maximize these attributes, with its first report filed on July 1, 2018, (Streets and Highways Code section 800.6(g)).

Regulatory Context of the Program

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 compensating for the impact by replacing or providing substitute resources or environments (40 CFR 1508.20; CEQA Guidelines Section 15370). This case is typically referred to as “compensatory mitigation”

Compensatory mitigation is a mitigation strategy that is preferentially applied only after it has been determined that there will be unavoidable impacts and efforts to avoid, minimize, rectify, and reduce the impact have been incorporated, to the extent practicable, in the transportation project's design and delivery. Traditionally, this determination comes late in the transportation project delivery process, prompted by natural resource regulatory agency permits, at which time the compensatory mitigation action is both funded and implemented concurrently with the transportation project (Figure 2). Advance mitigation shifts this traditional business practice of mitigation planning and implementation to before transportation project permitting and impacts occur and decouples the compensatory mitigation's purchase or establishment from the delivery of any one specific transportation project. Subsequently, when advance mitigation credits are available to a transportation project, transportation project-related internal and external mitigation planning, implementation, administration, and coordination tasks are substantially reduced (Figure 3).

Figure 2: Traditional Transportation Project Delivery Process

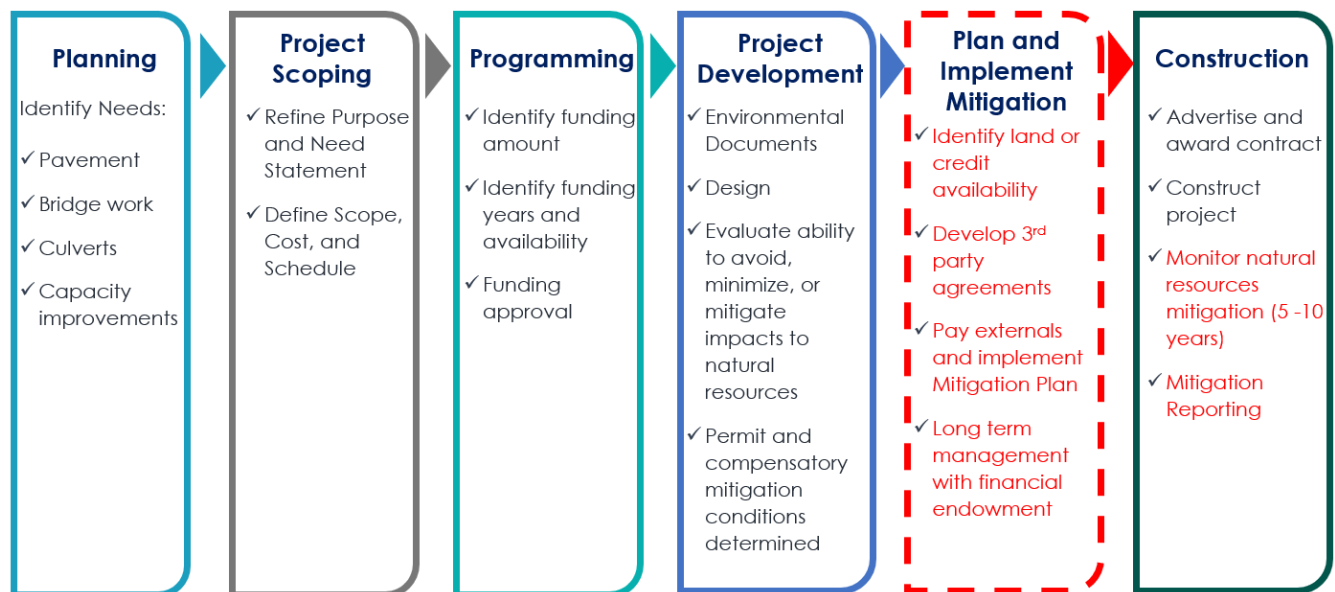
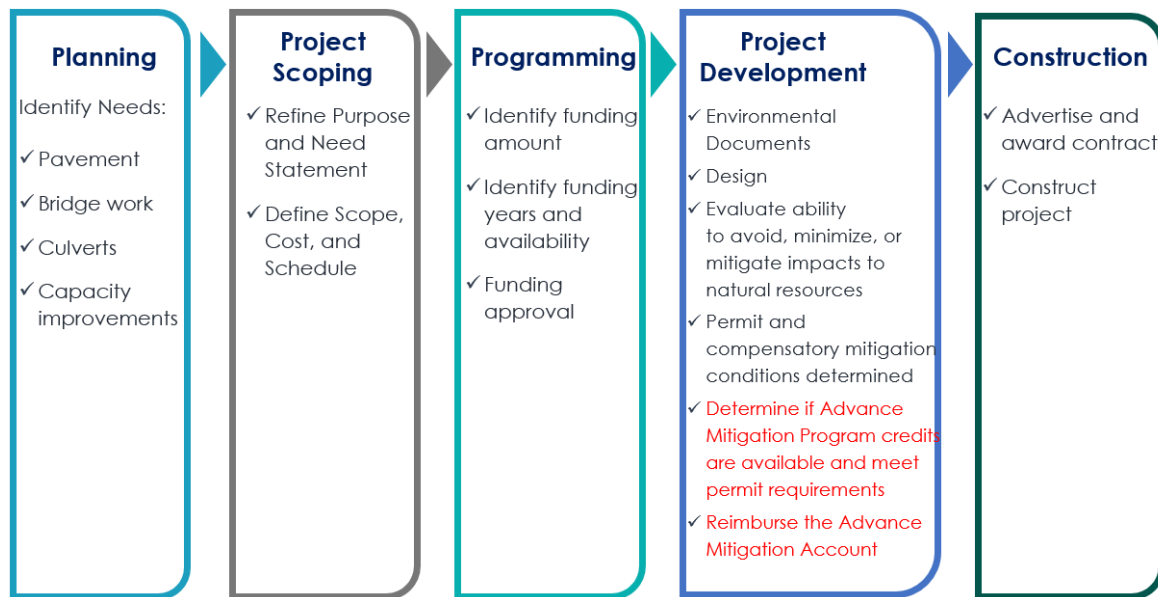


Figure 3: Transportation Project Delivery Where Advance Mitigation is Available



Advance mitigation anticipates that unavoidable impacts will be identified in the future. Caltrans identifies and plans for compensatory mitigation sites and implements the mitigation before transportation projects are completely designed and funded. When mitigation sites are selected independent of transportation project delivery timelines, there exists 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 is done more efficiently.
- 2) Reduce uncertainty about securing a transportation project's environmental permits, thereby reducing the potential for negative impacts to a 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 a case for less mitigation for a project's impact (known as lower mitigation ratios). Note that the implementation of advance mitigation is based on estimation of potential needs of future transportation projects, but that this early implementation does not obviate the legal requirements to avoid and minimize the impacts of transportation projects prior to providing compensatory mitigation, nor does the implementation of an advance mitigation action imply endorsement of a particular transportation project alternative.

The legal requirements to provide compensatory mitigation for significant and unavoidable impacts include, but are not limited to:

- California Environmental Quality Act (Public Resource Code section 21000 et seq.)
- National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.)
- Federal Endangered Species Act of 1973 (16 USC 1531-1543)
- California Endangered Species Act (Fish and Game Code section 2050 et seq.)
- Federal Clean Water Act, sections 401 and 404 (33 USC 1251-1376)
- Porter-Cologne Water Quality Control Act (California Water Code section 13000, et seq.)
- California Fish and Game Code, section 1600 et seq.
- Federal Coastal Zone Management Act of 1972 (16 U.S.C. 1451-1464)
- California Coastal Act of 1976 (Public Resource Code section 30000 et seq.)
- McAteer-Petris Act (Government Code Sections 66650-66661)

In California, agencies with jurisdiction over natural resources that could be impacted by transportation projects include, but are not limited to:

- United States Department of Interior, Fish and Wildlife Service
- United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service
- California Department of Fish and Wildlife
- The State Water Resources Control Board
- The United States Army Corps of Engineers
- The California Coastal Commission

History of the Development of the Advance Mitigation Program

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, 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 various agencies signed or supported a Memorandum of Understanding, including the California Department of Water Resources; Caltrans; United States Environmental Protection Agency; United States Fish and Wildlife Service; United States Army Corps of Engineers; the National Oceanic and Atmospheric Administration, National Marine Fisheries Service; California Department of Fish and Wildlife; California Wildlife Conservation Board; California Natural Resources Agency; and the California Business, Transportation and Housing Agency.

The group defined the goals of advance mitigation, developed a planning processes and initiated a pilot study to inform the development of a number of regional advance mitigation efforts. These also inform the legislative foundation and planning processes of the Advance Mitigation Program.

In 2011, Caltrans signed a Memorandum of Understanding with the California Department of Fish and Wildlife, United States Army Corps of Engineers; United States Environmental Protection Agency; United States Fish and Wildlife Service; and the National Oceanic and Atmospheric Administration, National Marine Fisheries Service to establish the Statewide Advance Mitigation Initiative. In the Statewide Advance Mitigation Initiative Memorandum of Understanding, Caltrans and the California Department of Fish and Wildlife 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 Statewide Advance Mitigation Initiative Memorandum of Understanding provided the basis for establishing an advance mitigation program in the State Highway Operation and Protection Program's Roadside Protection and Restoration Program in 2013, for programming advance mitigation projects in the 2016 State Highway Operation and Protection Program. During 2015, the Advance Mitigation Program within the State Highway Operation and Protection Program became a separate program within the State Highway Operation and Protection Program.

In the 2016 State Highway Operation and Protection Program, three advance mitigation projects totaling \$15.365 million were programmed, with a \$40 million reserve set aside for future projects to be amended in. Nine additional advance mitigation projects were amended in prior to the commencement of the 2018 State Highway Operation and Protection Program, bringing the total programming of advance mitigation projects in this program to \$52.245 million. One advance mitigation project was programmed in the 2018 State Highway Operation and Protection Program; no reserve for advance mitigation was established in the 2018 State Highway Operation and Protection Program. These advance mitigation projects have served as pilots for

informing Caltrans' advance mitigation project delivery processes with a diverse range of mitigation project types.

These advance mitigation projects have included the following:

- Buying credits from existing conservation and mitigation banks
- Buying credits from an existing in-lieu-fee program
- Creating a new conservation bank
- Contributing funds to a multispecies Habitat Conservation Plan/Natural Community Conservation Plan, performing environmental enhancements on a Caltrans-owned parcel
- An early attempt to create mitigation credits from building a wildlife undercrossing structure

Some existing credits have been purchased, and some are already being used by transportation projects with resource agency approval. Caltrans gained lessons learned on contracting as well as working with the resource agencies and third-party mitigation providers to develop agreements that can accommodate the advance mitigation approach.

After the passage of Senate Bill 1 and Senate Bill 103, Caltrans established an internal steering committee and an internal work group to establish a schedule and identify the actions necessary to implement the program and integrate it into the Department's existing processes. The groups developed a work plan targeted for completion by the end of the 2019 calendar year.

Program Status/Accomplishments

Allowable expenditures from the Advance Mitigation Account are defined in Streets and Highways Code section 800.6(a), and no expenditures can be made from the account until the Caltrans Director makes the determination and justification that the expenditure will likely accelerate project delivery of specific transportation projects per Streets and Highways Code section 800.6(i). The Caltrans Director's Approval must be informed and documented. Caltrans has established a five-step planning process to reach that determination as part of the Advance Mitigation Program workplan. No credits have been produced during the reporting period and as a result, no State Highway Operations and Protection Program or State Transportation Improvement Program transportation projects have been accelerated by the Advance Mitigation Program to date. Based on the schedule established through the steering committee and the implementation of the five- step planning process, the work funded by the

Advance Mitigation Account intends to begin with implementing advance mitigation projects in the 2020/21 fiscal year. Caltrans anticipates that data on the delivery acceleration of transportation projects may be available in the 2021 report.

Nevertheless, Caltrans has made significant progress developing the Advance Mitigation Program during the current reporting period. Accomplishments include the following:

- Biweekly coordination with the California Department of Fish and Wildlife on the Advance Mitigation Program to assist in guiding various aspects of the program's planning and implementation.
- The Advance Mitigation Account was created by the Department of Finance as Fund 2504.
- The first two deposits of \$30 million each (\$60 million total) for the 2017-2018 fiscal year and the 2018-2019 fiscal year have been made, with interest accruing on these deposits.
- Pursuant to the 2016 Statewide Advance Mitigation Initiative Memorandum of Understanding, Caltrans is working with the signatory agencies to develop a master process agreement for managing and reducing some of the financial, technical, and strategic risks associated with making early investments in advance mitigation project planning and delivery. This also will improve the probability that mitigation will be approved for use on transportation projects. It is notable that the California Coastal Commission is likely to be added as a signatory to both agreements. During the reporting period, the master process agreement was undergoing final review by the signatory agencies, and at the time of drafting of this report, all of the signatory agencies have indicated their intent to sign. Caltrans anticipates that the process master agreement will be signed by winter of 2019.
- Draft Informal Guidelines for the Advance Mitigation Program were provided in June 2018 and comments were received from interested parties and stakeholders.
- Formal Draft Guidelines for the program were provided to the Legislature in November 2018 and made available to the public during the reporting period for this report. Two public workshops were held during January 2019, public comments were received, and the Final Formal Guidelines are anticipated to be published during Summer of 2019.

- Final Formal Guidelines outline a two-phase process in which the Advance Mitigation Program will conduct planning (Figure 4) and implementation of advance mitigation projects (Figure 5). The Advance Mitigation Program has begun implementing its planning process, the goal of which is to provide the Caltrans Director with viable, scoped advance mitigation projects that will likely accelerate the delivery of specific transportation projects, to support of the Caltrans Director's Approval (Streets and Highways Code Section 800.6(i)). Descriptions of each of the steps and the specific accomplishments under each step are described below. The project delivery phase has not begun at the time of this report and is not discussed further in this document.

Through the Advance Mitigation Program planning process, Caltrans aims to maximize the environmental and conservation benefits of planned mitigation while providing time- and cost-savings for the delivery of transportation projects. The Advance Mitigation Program planning process consists of five steps culminating in the Caltrans Director's Approval under Streets and Highways Code Section 800.6(i). As none of these planning activities can be funded from the Advance Mitigation Account, the Advance Mitigation Program has worked with the Department's Division of Transportation Planning to secure sufficient planning resources for the Caltrans districts to perform these planning activities, including the nomination and scoping of advance mitigation projects. Ten of the twelve Caltrans districts expressed an interest and committed planning resources to the planning process during the 2017-2018 and 2018-2019 fiscal years; constraints on the availability of personnel and planning resources prevented the remaining two districts from participating. The five steps of the Advance Mitigation Program planning process, as illustrated in Figure 4, are as follows.

Figure 4. Advance Mitigation Program Planning Phase



Figure 5. Advance Mitigation Program Project Delivery Phase



Step 1: Statewide Advance Mitigation Needs Assessment

Step 1 Background:

- The Statewide Advance Mitigation Needs Assessment, which is a Geographic Information System-based assessment, is performed on future planned state transportation projects that are identified on current long-range transportation plans. Assumptions are made on the general types of transportation project activities as to what extent, if any, they may potentially incur an off-pavement footprint. These potential footprints are overlaid with natural resource data layers that model species habitat and aquatic resources. Analyses are run on a district-wide basis, with impacts to specific resources within specific ecoregions or watersheds estimated. The Statewide Advance Mitigation Needs Assessment will be performed, at a minimum, on a biennial basis.
- The Statewide Advance Mitigation Needs Assessment is important to the Advance Mitigation Program for the following reasons:
 - It establishes the Advance Mitigation Program 's authority to perform mitigation for transportation projects under Article XIX Section 2(a) of the California Constitution by identifying transportation projects that are reasonably certain to occur.
 - It provides a list of transportation projects that are likely to have their delivery accelerated through implementation of advance mitigation projects, necessary for the Caltrans Director's Approval pursuant to Streets and Highways Code section 800.6(i).

- It provides the information necessary to identify appropriate Geographical Areas of Interest and established the scope of the potential advance mitigation projects.
- It must be noted that the purpose of the Statewide Advance Mitigation Needs Assessment is to conceptualize, identify, and scope the potential of advance mitigation projects only, and, despite being aggregated from individual transportation projects, cannot be taken to imply or infer anything about these transportation projects, which have not begun their NEPA/ CEQA processes at the point of planning. The Statewide Advance Mitigation Needs Assessment results do not remove the need for transportation projects to perform NEPA/ CEQA, do not imply the adoption of any given transportation project alternative, nor eliminate the need for these projects to avoid environmental impacts altogether or otherwise minimize their effects prior to seeking compensation. Similarly, the Statewide Advance Mitigation Needs Assessment results cannot be construed as a commitment by any given transportation project to perform the mitigation that was estimated. The compensatory mitigation for a transportation project does not become a requirement until after it completes NEPA/ CEQA and has permits issued by the relevant resource agencies, nor use the mitigation created by the Advance Mitigation Program unless the relevant resource agencies indicate that it is appropriate for the mitigation required for that transportation project.

Step 1 Status:

- A Statewide Advance Mitigation Needs Assessment was performed based on the State Highway Operations and Protection Program Ten Year Project Book for the 2017-2018 fiscal year (Second Quarter), that was completed during December 2018. The results have been provided to the ten Districts that elected to participate in the process, and a report of the statewide assessment has been distributed through the Advance Mitigation Program's outreach e-mail list, which consists of more than 3000 individuals and organizations that have expressed an interest in the Advance Mitigation Program and requested to be contacted for Advance Mitigation Program updates and activity. The report was presented to the public by webcast on August 14, 2019.

Step 2: Geographic Area of Interest Selection

Step 2 Background:

- Following completion of the Statewide Advance Mitigation Needs Assessment, and using its results, the Advance Mitigation Program coordinates with the

Caltrans districts to identify which specific natural resources would be of the greatest benefit to implement through an advance mitigation approach, and to identify an ecoregion or watershed-based region within which to develop an advance mitigation project. This region is referred to as the “geographic area of interest”. State Transportation Improvement Program-eligible projects that are on the fiscally constrained Regional Transportation Plans are identified and screened for potential impacts in coordination with the Districts, and the Districts will coordinate with their regional and local transportation agencies to refine the project list and consider in the geographic area of interest selection.

Step 2 Status:

- Preliminary discussions with ten Caltrans districts (Districts 1, 2, 3, 4, 5, 6, 7, 8, 11 and 12) to identify potential geographic area of interests have begun.
- Worked with Division of Transportation Planning to create a process to establish a list of State Transportation Improvement Program-eligible projects included in the fiscally constrained Regional Transportation Plans.
 - Provided direction to the Districts on engaging their regional and local transportation agencies in this dialogue,
 - Districts have begun coordinating with their regional and local partners

Step 3: Regional Advance Mitigation Needs Assessment

Step 3 Background:

- The Regional Advance Mitigation Needs Assessment is a document that builds on the needs identified in the Statewide Advance Mitigation Needs Assessment for a given geographic area of interest. It seeks to maximize the environmental and conservation benefits from potential mitigation actions and provide the Caltrans districts with sufficient information to conceptualize advance mitigation projects that can be scoped and submitted for the Caltrans Director's Approval. Within the geographic area of interest, the Regional Advance Mitigation Needs Assessment documents:
 - The potential compensatory mitigation needs for future transportation projects for State Highway Operations and Protection Program and State Transportation Improvement Program-eligible transportation projects.
 - The condition of the existing landscape in the Geographic Area of Interest in terms of habitat presence, suitability for species, and provision for connectivity and climate change resilience, based on information including,

but not limited to, data and information sources provided by the California Department of Fish and Wildlife such as the State Wildlife Action Plan, Areas of Conservation Emphasis, California Essential Habitat Connectivity, and Biogeographic Information and Observation System.

- Existing opportunities for advance mitigation authorized under Streets and Highways Code section 800.6(a).
- Conservation goals, objectives, and actions identified in existing conservation plans, recovery plans, watershed plans, etc., including, but not limited to the State Wildlife Action Plan, existing Natural Community Conservation Plans/Habitat Conservation Plans, and existing Regional Conservation Assessments/Regional Conservation Investment Strategies.
- The draft Regional Advance Mitigation Needs Assessments will be made available to and reviewed by the Statewide Advance Mitigation Initiative signatory resource agencies, interested parties, and the public in alignment with the requirements of 23 USC 169 as cited within Streets and Highways Code section 800.9.

Step 3 Status:

- Regional Advance Mitigation Needs Assessments that will provide the scoping of advance mitigation projects for nomination and potential approval have begun. During this reporting period, the work for developing a pilot document for the first Regional Advance Mitigation Needs Assessment began, and to date, the work on three additional Regional Advance Mitigation Needs Assessments has also commenced.

Step 4: Project Scoping and Initiation

Step 4 Background:

- Based on the Regional Advance Mitigation Needs Assessment, Districts will identify and scope advance mitigation project alternatives and document how these alternatives will likely accelerate the delivery of transportation projects documented in the Statewide Advance Mitigation Needs Assessment and Regional Advance Mitigation Needs Assessment.
- The Advance Mitigation Program will screen the proposals and make recommendations to the Caltrans Director.

Step 4 Status:

- During the reporting period for this report, no advance mitigation projects reached the scoping and initiation phase.

Step 5: Caltrans Director's Approval

Step 5 Background

- The Caltrans Director will review the scoping and nomination documents of the advance mitigation project and the Advance Mitigation Program's recommendations and make a determination and justification that funding the advance mitigation project is likely to accelerate transportation project delivery, per Streets and Highways Code section 800.6(i).
- Once the determination and justification have been made, the Districts can request a fund allocation from the Advance Mitigation Account for the advance mitigation project, and delivery of that advance mitigation project can commence.

Step 5 Status:

- During the reporting period of this report, no advance mitigation projects have been presented to the Caltrans Director.
- The first programming cycle is anticipated in the 2020/21 fiscal year.

Advance Mitigation Account

Streets and Highways Code section 800.7 requires reporting on the activity in the Advance Mitigation Account to the California Transportation Commission. The time-period covered by this report saw the creation of the Advance Mitigation Account and the deposit of the first funds into the account. The Divisions of Accounting and Budgets coordinated with the State Controller to establish the Advance Mitigation Account (Fund 2504) on September 8, 2017, per Streets and Highways Code sections 800(c) and 800.7. The first two annual deposits of \$30 million required per Streets and Highways Code section 800(b) for the 2017-2018 and the 2018-2019 fiscal years have been made. These funds have earned interest and as of June 30, 2019, the total amount in the account was \$60,622,305.58 (see Figure 3). Through the joint effort of the Division of Budgets and the Division of Accounting, and with the collaboration of the Department of Finance, the State Controller's Office established appropriation procedures for the Capital Outlay Program and all coding structures necessary for disbursing payment from Advance Mitigation Account. During this reporting period, no expenditures have been made from the Advance Mitigation Account.

Figure 3. Advance Mitigation Account Activity

DEPARTMENT OF TRANSPORTATION (2660) ADVANCE MITIGATION ACCOUNT, STATE TRANSPORTATION FUND (2504) FUND RECONCILIATION FOR THE FISCAL YEAR ENDED JUNE 30, 2019		
Account Number	ACCOUNT TITLE	
1140	Cash In State Treasury	330.26
1210	FY18-19 Deposits in Surplus Money Investment	30,964,000.00
	FY17-18 Deposits in Surplus Money Investment	30,000,000.00
A. Total Cash and Deposits		60,964,330.26
REVENUES AND TRANSFERS		
8000	0150300 Income From Surplus Money Investment Fund	964,330.26
9811	FY18-19 Annual Transfers In from State Highway Account Fund (0042)	30,000,000.00
	FY17-18 Annual Transfers In from State Highway Account Fund (0042)	30,000,000.00
B. Total Revenues and Transfers		60,964,330.26
EXPENDITURES		
9030	20.20 Streets and Highways Codesec. 800.7 1835019 - Capital Outlay Projects for purposes of The Advance Mitigation Program Per Ch.95/17 (SB 103) Sec.13	0.00
C. Total Expenditures		0.00
D. FUND BALANCE Through 06/30/2019 (A-C)		60,964,330.26
		Difference A+B+C = \$0

Transportation Projects That Purchased Mitigation

The Advance Mitigation Program Guidelines indicate that a list of transportation projects that have purchased mitigation from the Advance Mitigation Program will be provided in the annual report to the California Transportation Commission. At the conclusion of the reporting period for this report, no advance mitigation projects were funded through the Advance Mitigation Program, and therefore no transportation projects have had their mitigation requirements satisfied through the Advance Mitigation Program.

Future reports will include a list of transportation projects that acquired mitigation credits from the Advance Mitigation Program. For each of these projects, the following information will be provided:

- The total state and federal mitigation requirements will be identified. This description will include:
 - Specific environmental documents, biological opinions, and permits that these projects have and the mitigation requirements (whether these requirements were satisfied through the Advance Mitigation Program or not).
 - The state or federal entity issuing the opinions or permits.
 - The specific type of mitigation being required (endangered species habitat, wetlands, etc.) and the amount needed.
- The total amount and type of credits that were acquired from the Advance Mitigation Program.
- A discussion as to whether the Advance Mitigation Program was able to satisfy all of the transportation project's mitigation requirements, and the degree to which it accelerated that transportation project's delivery.

Number of Credits Established and Sold

The Advance Mitigation Program Guidelines indicate that the number of credits established and sold by the Advance Mitigation Program will be provided in the annual report to the California Transportation Commission. At the conclusion of the reporting period for this report, no advance mitigation projects were funded through the Advance Mitigation Program, and therefore no mitigation credits have been established or sold by the Advance Mitigation Program.

Future reports will include a list of advance projects that will make mitigation credits available from the Advance Mitigation Program. For each of these advance mitigation projects, the following information will be provided:

- The type and total amount of mitigation credits established, as authorized under Streets and Highways Code section 800.6(a)(1) – 800.6(a)(4),
- The geographic region served by the established credits,
- The amount of these credits that have been purchased and by which transportation projects, and
- The total number of credits remaining in the ledger that are not purchased at the end of the reporting period and listing the amount that may be reserved by future transportation projects, including a list of those projects or if they are generally available.

Conclusion and Next Steps

By the end of the reporting period for this annual report, Caltrans made steady progress in getting the Advance Mitigation Program established and moving toward having the first advance mitigation projects scoped, nominated, and approved by the Caltrans Director for funding allocation through the Advance Mitigation Account. Caltrans has established a multidisciplinary steering committee and work group to identify the tasks necessary to establish and run the program, and Caltrans is aiming for completion by the end of the 2019 calendar year. The Advance Mitigation Account has been established and the first two annual deposits of \$30 million each have been made to the account. The Advance Mitigation Program processed its Guidelines per Assembly Bill 115 (Committee on Budget, Chapter 20, Statutes of 2017, Section 25); negotiated an agreement with the seven Statewide Advance Mitigation Initiative signatory resource agencies for their engagement with the advance mitigation planning and implementation process; performed outreach to the California Transportation Commission, Metropolitan Planning Organizations, Councils of Governments, Regional Transportation Planning Agencies, Regional Advance Mitigation Programs, resource agencies and conservation groups; performed a Statewide Advance Mitigation Needs Assessment; identified ten regions within the Caltrans districts within which to propose advance mitigation projects; and began work on the first of the regional assessments to provide information to scope the first Advance Mitigation Account-funded advance mitigation projects. Throughout the development of the Advance Mitigation Program, Caltrans continues to consult with the California Department of Fish and Wildlife on a biweekly basis.

Looking ahead to the 2020 Advance Mitigation Program Report to the California Transportation Commission, Caltrans anticipates that the initial round of Regional Advance Mitigation Needs Assessments will be completed. Their completion may result in a minimum of ten advance mitigation projects being scoped, initiated, nominated and approved for funds allocation for project delivery from the Advance Mitigation Account. The first round of advance mitigation projects submitted to the Caltrans Director for funding allocation is expected in fiscal year 2020-2021. How far along these advance mitigation projects will be at the end of the next reporting period will depend on the identified transportation needs in the geographic areas of interest, and the specific nature of the advance mitigation projects that were proposed for the Caltrans Director's Approval.

References

Caltrans. 2019. Statewide Advance Needs Assessment Report. Office of Strategic Biological Planning, Advance Mitigation and Innovation, Division of Environmental Analysis, Caltrans Headquarters, Sacramento.

Caltrans. 2019. Advance Mitigation Program Guidelines. Office of Strategic Biological Planning, Advance Mitigation and Innovation, Division of Environmental Analysis, Caltrans Headquarters, Sacramento.

Appendix

Statutory Reporting Reference: Streets and Highway Code

Streets and Highways Code – SHC

DIVISION 1. STATE HIGHWAYS [50 - 897]

CHAPTER 4. Cooperation By and With the State [760 - 834]

ARTICLE 2.5. Advance Mitigation Program [800 - 800.9]

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.

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

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

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

(c) “Advance mitigation” means mitigation implemented before, and in anticipation of, environmental effects of planned transportation improvements.

(d) “Commission” means the California Transportation Commission.

(e) “Conservation easement” means a perpetual conservation easement that complies with Chapter 4 (commencing with Section 815) of Title 2 of Part 2 of Division 2 of the Civil Code.

(f) “Department” means the Department of Transportation.

(g) “Mitigation credit agreement” means a mitigation credit agreement pursuant to Chapter 9 (commencing with Section 1850) of Division 2 of the Fish and Game Code.

(h) “Natural Communities Conservation Plan” means a plan developed pursuant to Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code.

(i) “Planned transportation improvement” means a transportation project that a transportation agency has identified in a regional transportation plan, an interregional transportation plan, a capital improvement program, or other approved transportation planning document, excluding any project that is associated with or interacting with the high-speed rail program. A planned transportation improvement may include, but is not limited to, a transportation project that has been planned, programmed, proposed for approval, or that has been approved.

(j) “Program” means the Advance Mitigation Program implemented pursuant to this article.

(k) “Regional conservation investment strategy” means a regional conservation investment strategy approved by the Department of Fish and Wildlife pursuant to Chapter 9 (commencing with Section 1850) of Division 2 of the Fish and Game Code.

(l) “Regulatory agency” means a state or federal natural resource protection agency with regulatory authority over planned transportation improvements. A regulatory agency includes, but is not limited to, the Natural Resources Agency, the Department of Fish and Wildlife, California regional water quality control boards, the United States Fish and Wildlife Service, the National Marine Fisheries Service, the United States Environmental Protection Agency, and the United States Army Corps of Engineers.

(m) “Transportation agency” means the department, a metropolitan planning organization, a regional transportation planning agency, or another public agency that implements transportation improvements.

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

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

(1) Purchase, or fund the purchase of, credits from mitigation banks, conservation banks, or in-lieu fee programs approved by one or more regulatory agencies. The department may also establish mitigation banks, conservation banks, or in-lieu fee programs, or fund the establishment of mitigation banks, conservation banks, or in-lieu fee programs, in accordance with applicable state and federal standards, if the department determines that those banks or in-lieu fee programs would provide appropriate mitigation of the anticipated potential impacts of planned transportation improvements identified pursuant to Section 800.8.

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

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

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

(B) Acquire, restore, manage, monitor, enhance, and preserve lands, waterways, aquatic resources, or fisheries, or fund the acquisition, restoration, management, monitoring, enhancement, and preservation of lands, waterways, aquatic resources, or fisheries that would measurably advance a conservation objective in the regional

conservation investment strategy if the department concludes that the action or actions could conserve or create environmental values that are appropriate to mitigate the anticipated potential impacts of planned transportation improvements.

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

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

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

(d) Projects or plans prepared pursuant to this section that overlap with any approved natural community conservation plan or approved regional federal habitat conservation plan, shall be consistent with that plan and shall include an explanation of whether and to what extent they are consistent with any overlapping state or federal recovery plan, or other state-approved or federal-approved conservation strategy.

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

(f) By July 1, 2019, and biennially thereafter, the department, pursuant to Section 9795 of the Government Code, and notwithstanding Section 10231.5 of the Government Code, shall submit to the Legislature a report that describes to what extent the

Advance Mitigation Program has accelerated the delivery of transportation projects. At a minimum, the report shall include the following:

- (1) An accounting of the Advance Mitigation Account funds.
 - (2) Identification of expected state and federal resource and regulatory agency mitigation requirements for transportation projects utilizing the Advance Mitigation Program.
 - (3) A discussion of the extent to which those requirements are satisfied using advance mitigation credits.
 - (4) The use of funds to prepare, or to fund the preparation of, regional conservation assessments and regional conservation investment strategies.
 - (5) Recommendations for maximizing the ability of the Advance Mitigation Program to satisfy state and federal mitigation requirements.
- (g) By July 1, 2018, or one year after the initial Advance Mitigation Program investments have begun, whichever is earlier, and biennially thereafter, the Department of Fish and Wildlife shall, pursuant to Section 9795 of the Government Code, and notwithstanding Section 10231.5 of the Government Code, submit a report to the Legislature that describes the extent to which the Advance Mitigation Program has improved the quality and effectiveness of habitat mitigation provided by the department for transportation projects and makes related recommendations on how to maximize these attributes. The report shall also include recommendations on how to maximize the quality and effectiveness of habitat mitigation developed pursuant to the Advance Mitigation Program.
- (h) Nothing in this article shall be construed to impose any restrictions or requirements on the department for activities that do not involve the utilization of Advance Mitigation Account funds. Nothing in this article shall be construed to require the department to use the Advance Mitigation Program.
- (i) Prior to making any expenditure from the Advance Mitigation Account, the Director of Transportation shall make a determination and justification that the proposed expenditure is likely to accelerate project delivery of specific projects.
- (j) Any state water or transportation infrastructure agency that requests approval of a regional conservation investment strategy pursuant to subdivision (a) of Section 1852 of the Fish and Game Code that may be used to facilitate mitigation for an infrastructure project shall not be subject to the limitation on the number of regional conservation investment strategies set in Section 1861 of the Fish and Game Code.

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

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.

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 strategy.