

Recommended Procedures for Long Term Environmental Mitigation Measures (for Locally Administered projects processed through DLA)

Although it is preferable that environmental mitigation measures be addressed before or during the construction contract, some federally funded projects may involve environmental mitigation measures that extend well beyond the construction phase of a project. Examples of this mitigation work include, but are not limited to; plant establishment required by a Biological Opinion under Section 7 of the Endangered Species Act; wetlands replacement required by an Army Corps permit; or more rarely, multi-year analysis and reporting for a complex archaeological data recovery.

For environmental mitigation work that extends beyond the life of the construction contract, it is recommended that a separate federal project be established specifically for the mitigation work. This would facilitate close-out of the “parent” construction project and permit the mitigation work to be administered/monitored independently by the appropriate staff.

The recommended procedures are as follows:

- **Setup a Separate FPN for Long Term Environmental Mitigation Work**
 - Prior to initiating work on the long term environmental mitigation work, create a new federal project number (FPN) in LP2000
 - * Local Assistance project prefixes are typically assigned to identify the funding program not the type of work, therefore, use standard project prefixes (e.g., STPL) for the environmental mitigation FPN
 - Cross-reference the new and parent FPNs in both FADS and LP2000
 - For STIP funded projects, consideration must be given to STIP Timely Use of Funds (TUF) deadlines, which normally allow less time than other deadlines. Even with the maximum allowable time extension, standard TUF timeframes may be insufficient for long term activities. In the request for CTC Construction Allocation, pertinent long term activities should be described, including the timeframe that will be necessary for completion, so that the long term work can be split out at the time of CTC vote.

- **FTIP Programming**
 - If the mitigation project is to be federally authorized within the same FTIP/FSTIP cycle as the construction contract, an “Administrative Modification” to the FTIP/FSTIP is necessary to split the mitigation project out from the parent CON project
 - However, if mitigation work project will be programmed in a subsequent FTIP/FSTIP cycle, then it can either be addressed in the development of the new FTIP/FSTIP, or incorporated into the new FTIP/FSTIP via a “Formal Amendment”, or incorporated as a post-programming change to the original project, as appropriate.

- **E-76 Processing**
 - Prior to submitting the E-76 package, contact District environmental staff to determine if a revalidation of the NEPA document is required
 - Prior to beginning the mitigation work, deobligate the required federal funds from the “parent” FPN / construction project in FADS / FMIS. Reobligate the federal funds onto the new FPN (establishes the federal eligibility date for the environmental mitigation work - since typically two different contractors are involved)
 - * “RELATE” the new FPN (environmental mitigation) to the parent FPN (construction) in FADS/FMIS, and cross reference the projects in LP2000 and on the new project finance letter
 - * E-76 support documentation should reference the original/revalidated NEPA document and RW Certification of the “original” CON project

- * Local Agency should provide an itemized list of participating vs. nonparticipating costs, as well as, a schedule/timeline. Please note:
 - o acquisition costs and construction costs are typically eligible for federal participation
 - o “long term” maintenance costs past the plant establishment period outlined in the regulatory agreement documents are NOT eligible for federal participation

- **Program Supplement Agreement (PSA)**
 - In addition to the typical federal requirements, for environmental mitigation projects the PSA should “reference” the local agency responsibilities per the regulatory agency’s requirements as outlined in the entitlement/consultation documents to be made part of the program supplement agreement.
 - Since these environmental mitigation projects are typically lower cost projects, a more appropriate dollar threshold for retention amounts should be established for these projects. A special covenant requiring a 20% total federal/State funds or \$5,000 minimum retention amount will be incorporated into the program supplement agreement the for these long term mitigation projects.

- **Avoid Inactive Obligations**
 - Local Agencies must periodically bill for project costs to prevent the project from becoming inactive and the resulting deobligation of remaining federal funds
 - The DLA Master Agreement(s) also requires an ADMINISTERING AGENCY to submit project invoices every six (6) months, minimum (and no more than monthly)
 - Please note that the DLAE does have the authority to approve invoices for payment that are less that 2% of the total federal/State funds or less than \$1,000

- **Failed Plant Establishment Mitigation**
 - The Local Agency is responsible for implementing all terms and conditions of the regulatory agency’s mitigation requirements (failure to comply with mitigation requirements is not an option)
 - In the event of “failed” plant establishment or wetland replacement, Caltrans environmental staff (unless the original mitigation agreement was set up for the local agency to report directly to the regulatory agency) will consult with the regulatory agency to determine whether or not the failure was a result of Local Agency/consultant negligence.
 - * If the Local Agency/consultant is found to have been negligent, the Local Agency is responsible for any additional costs to achieve compliance with the regulatory agency’s environmental requirements.
 - * In some instances, the failure of plant establishment or wetland replacement may occur even when the Local Agency/consultant has performed with due diligence and oversight (e.g., a result of unexpected drought conditions or accidental contamination). Many mitigation plans and agreements with regulatory agencies often have contingency plans for re-planting when failures are beyond the control of a diligent Local Agency/consultant. Although FHWA typically will not fund “redoing” work, they may consider doing so on a case by case basis.

- **Project Close-Out for Environmental Mitigation**
 - Due to the specialty nature of this work, Caltrans District environmental staff should be consulted during the project acceptance/close-out process.