

# **Advance Mitigation Program**

Annual Report to the  
California Transportation Commission

January 2023



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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 long-term future biological mitigation needs resulting in improved environmental, economic, and project delivery outcomes. By consolidating the forecasted biological mitigation needs of multiple future transportation projects, Caltrans can provide strategically placed and environmentally sound mitigation to reduce project delivery timelines, resulting in both time and cost savings. Ultimately, the program aims to help Caltrans improve ecological outcomes and support project delivery efficiencies by proactively meeting regulatory requirements.

This report is the fourth 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 July 1, 2021, through June 30, 2022. The purpose of the report is to provide the California Transportation Commission with information on 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 and regulatory program requirements;
- The state and federal environmental mitigation regulations with which the Advance Mitigation Program seeks to comply;
- The five-step planning process Caltrans is undertaking to approve the use of Advance Mitigation Account funds;
- The progress made in implementing the program.

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

- Publicly posted the second Statewide Advance Mitigation Needs Assessment Report for the Second Quarter of the 2019-2020 fiscal year (<https://dot.ca.gov/programs/environmental-analysis/biology/advancemitigation#samnareports>);

- Fall of 2021 the Program staff met with all Districts to plan their potential need for Regional Advance Mitigation Needs Assessments, Project Initiation Proposals and Project Initiation Documents for the 2022/23 FY. The Program identified up to 15 new Advance Mitigation Program funded projects and up to 5 additional Regional Advance Mitigation Needs Assessments.
- Continued to implement the five-step planning process to approve an allocation of Advance Mitigation Account funds, including:
  - Finalized the *Mad-Redwood, Lower Eel, and South Fork Eel Sub-basins Regional Advance Mitigation Needs Assessment* (Caltrans District 1 lead) on July 2, 2021.
  - Approved the District 1 *Aquatic Resources and Fish Habitat Project Initiation Proposal* on June 10, 2022.
  - Approved the District 5 *Aquatic Resources Central Coast Region Project Initiation Proposal* for scoping on December 7, 2021.
  - Signed and Funded the District 6 *Aquatic Resource and Desert Species Project Initiation Document* by the Director on November 29, 2021.
  - Finalized the *Thirteen Ecoregion Subsections of the Southern California Coast and Southern California Mountains and Valleys Regional Advance Mitigation Needs Assessment* (Caltrans District 7 lead) on January 7, 2022.
  - Finalized the *Lower Sacramento Basin Regional Advance Mitigation Needs Assessment* (Caltrans District 3 lead) on February 3, 2022.
  - Finalized the *Six Northern Mojave Sub-basins and the Owens Lake Sub-basin Within California Regional Advance Mitigation Needs Assessment* (Caltrans District 9 lead) on April 19, 2022.
  - Finalized the *Gualala-Salmon, San Pablo Bay, and Tomales-Drake Bays Sub-basins Regional Advance Mitigation Needs Assessment* (Caltrans District 4 lead) on June 22, 2022.

Statewide, the program is transitioning from an emphasis on planning to an emphasis on project nomination and scoping. With Districts working in early planning stages for project delivery, a total of \$101,136.62 in capital outlay support was expended from the Advance Mitigation Account by the end of this reporting period. The account also accrued interest in the amount of \$217,432.52 in the fourth quarter of the reporting period. The balance in the account as of June 30, 2022 is \$123,212,262.63. The first capital expenditures are expected in the 2022/23 FY, and most of the funds in the Advance Mitigation Account are expected to be encumbered during this time as well. The capital support costs for these new advance mitigation projects are anticipated to appear as expenditures in the account during the 2023/24 FY, and their capital expenditures beginning in 2024/25 FY.

## **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 Final 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 State Transportation Improvement Plan and State Highway Operations and Protection Program 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 Sections 800.6(a)(1) - 800.6(a)(4) and sold by the Advance Mitigation Program.

This report is the fourth report to the California Transportation Commission and covers activity in the Advance Mitigation Account since July 1, 2021, through June 30, 2022. At this point in time, the Advance Mitigation Program has approved funds for projects to implement advance mitigation activities based on Regional Advance Mitigation Needs Assessments in the amount of \$12,546,000.

## **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, Section 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 Sections 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 Sections 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 Sections 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 Plan 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 Sections 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 Improvement Plan 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 Sections 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 Sections 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 fourth (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 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 other efforts to minimize, rectify, and reduce the impact have been incorporated in the transportation project's design 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. Caltrans identifies and plans for compensatory mitigation sites and implements the mitigation before transportation projects are 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.)
- McAtteer-Petris Act (Government Code Sections 66650-66661)

In California, state and federal 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 process and initiated a pilot study to inform the development of a number of regional advance mitigation efforts. These efforts informed 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 Operations and Protection Program's Roadside Protection and Restoration Program in 2013, for programming advance mitigation projects in the 2016 State Highway Operations and Protection Program. During 2015, the Advance Mitigation Program within the State Highway Operations and Protection Program became a separate program independent of the Roadside Protection and Restoration Program within the State Highway Operations and Protection Program.

In the 2016 State Highway Operations 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 included through amendment. Nine additional advance mitigation projects were added prior to the commencement of the 2018 State Highway Operations 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 Operations and Protection Program; no reserve for advance mitigation was established in the 2018 State Highway Operations 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 that was completed in the 2020-2021 fiscal year.

In the 2021-2022 fiscal year, the Program has developed enough Regional Advance Mitigation Needs Assessments to begin nominating and scoping advance mitigation projects statewide.

## **Program Status/Accomplishments**

Allowable expenditures from the Advance Mitigation Account are defined in Streets and Highways Code Section 800.6(a), which states that 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 Plan transportation projects have been accelerated by the Advance Mitigation Program to date. A mitigation credit is an agency approved offset for an impact to a resource. It is usually equivalent to an acre of resource, such as wetlands or waters, or habitat of a species that is protected by State and Federal laws. However, the first project funded by the Advance Mitigation Account was approved late in the 2020-2021 fiscal year. Caltrans anticipates that data on the delivery acceleration of transportation projects may be available in the 2023 report.

Caltrans has established a statewide planning foundation for the Advance Mitigation Program during the current reporting period, which will support a robust nomination and scoping program in the next fiscal year. Accomplishments include the following:

- Continued 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;
- Publicly posted the second Statewide Advance Mitigation Needs Assessment Report for the Second Quarter of the 2019-2020 fiscal year;
- Coordinated with Caltrans districts to engage regional and local transportation agencies in the advance mitigation planning process;
- Fall of 2021 the Program met with all Districts to plan their potential need for Regional Advance Mitigation Needs Assessments, Project Initiation Proposals and Project Initiation Documents for the 2022/23 FY. The Program identified up to 15 new Advance Mitigation Program funded projects and up to 5 additional Regional Advance Mitigation Needs Assessments.
- The following notable accomplishments that helped to establish a statewide planning foundation during this reporting period include:

- Finalized the Mad-Redwood, Lower Eel, and South Fork Eel Sub-basins Regional Advance Mitigation Needs Assessment (Caltrans District 1 lead) on July 2, 2021;
- Signed the District 5 Aquatic Resources Central Coast Region Project Initiation Proposal by the Program Manager on November 1, 2021;
- Signed the District 6 Aquatic Resource and Desert Species Project Initiation Document by the Director on November 29, 2021;
- Funded the District 6 Aquatic Resource and Desert Species Project approved by the Director on November 29, 2021;
- Finalized the Thirteen Ecoregion Subsections of the Southern California Coast and Southern California Mountains and Valleys Regional Advance Mitigation Needs Assessment (Caltrans District 7 lead) on January 7, 2022;
- Finalized the Lower Sacramento Basin Regional Advance Mitigation Needs Assessment (Caltrans District 3 lead) on February 3, 2022;
- Finalized the Six Northern Mojave Sub-basins and the Owens Lake Sub-basin Within California Regional Advance Mitigation Needs Assessment (Caltrans District 9 lead) on April 19, 2022;
- Finalized the Gualala-Salmon, San Pablo Bay, and Tomales-Drake Bays Sub-basins Regional Advance Mitigation Needs Assessment (Caltrans District 4 lead) on June 22, 2022.

Through the Advance Mitigation Program planning process, Caltrans aims to maximize the environmental 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. The five steps of the Advance Mitigation Program planning phase, as illustrated in Figure 2, are as follows:

**Figure 2. Advance Mitigation Program Planning Phase**



### **Step 1 Status: Statewide Advance Mitigation Needs Assessment**

- Caltrans commenced the biennial third run of the Statewide Advance Mitigation Needs Assessment, based on the State Highway Operations and Protection Program Ten-Year Project Book on a quarterly basis and the 2021-2022 fiscal year, first quarter results have been distributed to all Districts.

### **Step 2 Status: Geographic Area of Interest Selection**

- The Advance Mitigation Program worked with the Districts to identify Geographic Areas of Interest in Districts 2, 10 and 11, and with Districts 1, 6 and 10 to identify new GAls for additional RAMNA coverage
- The Advance Mitigation Program worked with the Division of Transportation Planning to create a process to establish a list of State Transportation Improvement Program-eligible projects which are included in the fiscally constrained Regional Transportation Plans.

### **Step 3 Status: Regional Advance Mitigation Needs Assessment**

- Five Regional Advance Mitigation Needs Assessments were completed:
  - District 1: Mad-Redwood, Lower Eel, and South Fork Eel Sub-basins
  - District 7: Thirteen Ecoregion Subsections of the Southern California Coast and Southern California Mountains and Valleys
  - District 3: Lower Sacramento Basin
  - District 9: Six Northern Mojave Sub-basins and the Owens Lake Sub-basin Within California
  - District 4: Gualala-Salmon, San Pablo Bay, and Tomales-Drake Bays Sub-basins
- One Regional Advance Mitigation Needs Assessment was drafted in the 2021-2022 fiscal year and is expected to be finalized during the first quarter of the 2022-2023 fiscal year:
  - District 10: Great Valley Ecoregion Section within Caltrans District 10

- Three draft Regional Advance Mitigation Needs Assessments were initiated:
  - District 2: Klamath Mountains Ecoregion
  - District 2: Southern Cascades Ecoregion
  - District 11: San Diego Sub-basin

**Step 4 Status: Project Scoping and Initiation**

- District 5 completed a Project Initiation Proposal and will soon submit the Project Initiation Document to the Advance Mitigation Program for review and approval to be funded during the next reporting period. It is anticipated that the project will be approved for funding through the Advance Mitigation Account by the Caltrans Director in the Fall of 2022.
- District 1 completed a Project Initiation Proposal and will soon submit the Project Initiation Document to the Advance Mitigation Program for review and approval to be funded during the next reporting period. It is anticipated that the project will be approved for funding through the Advance Mitigation Account by the Caltrans Director in the 2022-2023 fiscal year.
- Districts 8 and 6 completed their project initiation documents during the 2021-2022 fiscal year.

**Step 5 Status: Caltrans Director's Approval**

- The second Advance Mitigation Program Project Initiation Document was proposed by Caltrans District 6. It was approved and signed by the Director on November 29, 2021, with the final funding approval in the amount of \$4,441,000.00.
  - District 6 anticipates the project would produce 14 acres aquatic resource credits, 20 acres San Joaquin kit fox habitat credits and 22 acres Tipton kangaroo rat habitat credits to address future transportation project mitigation needs.

**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. As of June 30, 2022, the total amount in the account is \$123,212,262.63 (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 the last reporting period, expenditures were allocated from the Advance Mitigation Account for the District 6 and 8 Projects for Capital Outlay Support in the amount of \$101,136.62 (Figure 3).



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, 2022

ACCOUNT	DESCRIPTION	BALANCE
CASH AND DEPOSITS		
* Cash In State Treasury		204,262.63
Deposits in Surplus Money Investment		
FY18-19	60,622,000.00	
FY19-20	31,490,000.00	
FY20-21	30,681,000.00	
FY21-22	215,000.00	123,008,000.00
<b>A. Total Cash and Deposits</b>		<b>123,212,262.63</b>
REVENUES AND TRANSFERS		
Income From Surplus Money Investment Fund		
FY18-19	(964,330.26)	
FY19-20	(1,443,418.85)	
FY20-21	(460,783.98)	
** FY21-22	(444,866.16)	(3,313,399.25)
Annual Transfers In from State Highway Account Fund (0042)		
FY17-18 through FY20-21		(120,000,000.00)
<b>B. Total Revenues and Transfers</b>		<b>(123,313,399.25)</b>
EXPENDITURES		
*** 20.10 - 1835010 Capital Outlay Support	101,136.62	
20.20 - 1835019 Capital Outlay Projects	0.00	101,136.62
<b>C. Total Expenditures</b>		<b>101,136.62</b>
	A+B+C=0	0.00

Footnote:

\*Adjusted balance to include 203,696.37 year-end cash accruals

\*\*Adjusted balance to include (217,432.52) 4th quarter SMIF interest earned in the Fiscal Year 2021-22

\*\*\*Actual expenditures incurred in Fiscal Year 2021-22 which included 13,736.15 year-end expenditure accruals

## **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, two advance mitigation projects have been approved for funding through the Advance Mitigation Program (District 8 and District 6). The District 8 project was approved for funding in the 2020-2021 fiscal year, and the District 6 project was approved in the 2021-2022 fiscal year. Therefore, future transportation projects have yet to have their mitigation requirements satisfied through the Advance Mitigation Program. Four future transportation projects have been identified in the District 8 Project Initiation Document that are anticipated to benefit from the District 8 advance mitigation project.

The second Project Initiation Document from the Advance Mitigation Program was finalized in the 2021-2022 fiscal year by District 6 and approved by the Advance Mitigation Program on November 29<sup>th</sup>, 2021. The draft Project Initiation Document includes funding for the project in the amount of \$4,441,000. This project will potentially benefit 17 transportation projects.

The District 5 Project Initiation Proposal was approved during this reporting period. The total proposed project cost would be \$3,558,000, potentially benefitting 16 transportation projects.

The District 1 Project Initiation Proposal was approved during this reporting period. The total proposed project cost would be \$8,291,000, potentially benefitting 10 transportation projects.

Districts 5 and 1 are currently drafting project nomination documents. The anticipated cost of the advance mitigation projects and benefiting transportation projects will be reported in the next report for the 2022-2023 fiscal year.

Future reports will continue to include the most up-to-date list of transportation projects that acquired mitigation credits from the Advance Mitigation Program. For each of these projects, the following information will be provided, as the information comes in from the districts:

- 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, two advance mitigation projects were approved for funding through the Advance Mitigation Program (District 8 and District 6), however, the projects have yet to execute a contract and therefore no mitigation credits have been established or sold by the Advance Mitigation Program. The District 8 project would produce 42 Desert Tortoise credits, 1 wetland credit, and 27 desert ephemeral wash credits to address future transportation project mitigation needs. The District 6 project would produce 14 acres of aquatic resource credits, 20 acres of San Joaquin Kit Fox credits and 22 acres of Tipton kangaroo rat credits that will potentially benefit 17 transportation projects. According to the District 5 Project Initiation Proposal, they anticipate their project would produce 1 acre credit of wetlands and non-wetland waters, 11 acre credits of California red-legged frog habitat, and 75 acre credits of California tiger salamander habitat. Lastly, District 1 has completed a Project Initiation Proposal and anticipates completing a Project Initiation Document by the first quarter of the 2022-2023 fiscal year. According to their Project Initiation Proposal, they anticipate that their project would produce 13.2 acre credits of waters of the U.S., 7.95 acre credits of waters of the State, 5.85 acre credits of riparian habitat and 2.4 acre credits of fish habitat that have the potential to benefit 10 transportation projects.

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 Sections 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 first advance mitigation project scoped, nominated, and approved by the Caltrans Director for funding allocation through the Advance Mitigation Account for Districts 8 and 6. Through its multidisciplinary steering committee and work group, Caltrans has developed procedures, processes and advance mitigation project nomination and scoping documents that will allow Caltrans' Districts to nominate and scope advance mitigation projects, making it possible to have additional advance mitigation projects programmed from the Advance Mitigation Account into future fiscal years. The Advance Mitigation Program performed outreach to the California Transportation Commission, Metropolitan Planning Organizations, Councils of Governments, Regional Transportation Planning Agencies, Regional Advance Mitigation Programs, resource agencies, Tribes and conservation groups; initiated the second Statewide Advance Mitigation Needs Assessment and finalized five Regional Advance Mitigation Needs Assessments for Districts 1, 7, 3, 9, and 4; completed a draft Regional Advance Mitigation Needs Assessment for District 10; and began work on Regional Advance Mitigation Needs Assessments for Districts 2 and 11. 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 2022 Advance Mitigation Program Report to the California Transportation Commission, Caltrans anticipates that Districts 1 and 5 are likely to lead the next anticipated advance mitigation projects for the first quarter of the 2022-2023 fiscal year and both districts are currently drafting Project Initiation Documents; the final Regional Advance Mitigation Needs Assessments will be completed for Districts 2 and 11. Their completion may result in a minimum of three to a maximum of fifteen advance mitigation projects being scoped, initiated, nominated and approved for funds allocation for project delivery from the Advance Mitigation Account, based on planning meetings conducted with the Districts during Fall 2021. Additional advance mitigation projects are anticipated to be submitted to the Caltrans Director for funding allocation in fiscal year 2022-2023. 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. 2019a. *Statewide Advance Mitigation Needs Assessment Report*. State Highway Operation and Protection Program. Ten-Year Project Book. Second Quarter 2017/2018 Fiscal Year. May. California Department of Transportation. Sacramento, California. July. 335 pp.

Caltrans. 2019b. *Advance Mitigation Program Final Formal 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 strategies.