

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: August 15-16, 2018

Reference No.: 4.6
Action

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From: SUSAN BRANSEN
Executive Director

Prepared By: Garth Hopkins
Deputy Director

Subject: **COMMENTS ON INFORMAL DRAFT GUIDELINES FOR CALTRANS' ADVANCE MITIGATION PROGRAM**

ISSUE:

Should the California Transportation Commission (Commission) approve the attached letter for transmittal to the California Department of Transportation (Caltrans) in response to the Caltrans Informal Draft Advance Mitigation Program Guidelines?

RECOMMENDATION:

Staff recommends that the Commission approve transmittal of the attached letter prepared in response to the Informal Draft Advance Mitigation Program Guidelines.

BACKGROUND:

Advance mitigation provides the potential to obtain quality replacement habitat, achieve economies of scale by mitigating the environmental impact of multiple transportation projects, and shorten project delivery timelines resulting in both cost and time savings. The current practice in California is to identify and apply environmental mitigation measures on a project-by-project basis. The Advance Mitigation Program was created by the Legislature to:

- Enhance communication between Caltrans and stakeholders to protect natural resources through project mitigation
- To meet or exceed applicable environmental requirements
- To accelerate project delivery
- To mitigate, to the maximum extent required by law, the environmental impacts from transportation infrastructure projects

Caltrans has prepared Informal Draft Guidelines for the Advance Mitigation Program authorized by Senate Bill (SB) 1 in 2017. According to the draft guidelines, \$30 million per year for four years (\$120 million total) will be deposited into the Advance Mitigation Account. Funding for the account is derived from the State Highway Operation and Protection Program (SHOPP) and

the State Transportation Improvement Program (STIP) and is intended to be self-sustaining and revolving.

As written, the informal draft guidelines require completion of key aspects before the Advance Mitigation Program can be implemented. The attached letter contains recommendations for Caltrans to consider for implementation of the program.

Attachments:

- Attachment A: Commission Draft Comments to the Caltrans Informal Draft Advance Mitigation Program Guidelines

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STATE OF CALIFORNIA

ATTACHMENT A
EDMUND G. BROWN Jr., Governor

SENATOR JIM BEALL, Ex Officio
ASSEMBLY MEMBER JIM FRAZIER, Ex Officio

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August 15, 2018

Laurie Berman
Director
California Department of Transportation
1120 N Street
Sacramento, CA 95814

RE: Comments on Advance Mitigation Program Informal Draft Guidelines

Dear Director Berman:

The California Transportation Commission (Commission) considered the Informal Draft Guidelines for the Advance Mitigation Program prepared by the California Department of Transportation (Caltrans) at the Commission's August 2018 meeting. The Commission was pleased that funding for advance mitigation was authorized with the passage of Senate Bill (SB) 1 in 2017. According to SB 1, \$30 million will be deposited annually over the next four years into the Advance Mitigation Account. Funding for the account is derived from the State Highway Operation and Protection Program (SHOPP) and the State Transportation Improvement Program (STIP) and is intended to be self-sustaining and revolving. Although funds from this account can only be used for SHOPP or STIP transportation improvements, funding may be transferred to another agency for an advance mitigation project.

The Commission has previously supported the advance mitigation concept as it is expected to provide substantial benefits to the current practice in California of identifying and applying environmental mitigation measures on a project-by-project basis. The Advance Mitigation Program was created by the Legislature to enhance communication between Caltrans and stakeholders to protect natural resources through project mitigation; to meet or exceed applicable environmental requirements; to accelerate project delivery, and to mitigate the environmental

Laurie Berman

RE: Comments on Advance Mitigation Program Informal Draft Guidelines

August 15, 2018

Page 2

impacts from transportation infrastructure development. Advance mitigation provides the potential to obtain quality replacement habitat, achieve economies of scale by mitigating the environmental impact of multiple transportation projects, and shorten project delivery timelines resulting in both cost and time savings.

Overall, given the importance of this program, the Commission is concerned that the program is not yet implemented and the guidelines are incomplete. It is important that the level of guidance necessary for Caltrans staff, resource agencies, and other stakeholders to successfully implement the Advance Mitigation Program is timely and comprehensively established. As a result, the Commission has the following comments for your consideration:

1. To expedite implementation of the Advance Mitigation Program, a demonstration in select regions of the state where potential regional mitigation sites have already been identified should be considered. A focused demonstration program in specific geographic regions would allow Caltrans to partner with regional agencies with advance mitigation program plans already in place. Participation by regional transportation agencies will assist in accomplishing the overall goals of the Advance Mitigation Program. This would allow Caltrans staff to gain experience with implementing a new process prior to conducting a statewide needs assessment.
2. To ensure accountability of both SHOPP and STIP funds, the Commission expects that Advance Mitigation Program funds will be included in future Fund Estimates for both of those funding programs.
3. The program milestones should be refined to accelerate tasks wherever possible. This refinement should provide more detail on the steps and timeframes necessary for program implementation. According to the draft guidelines, actual scoping of advance mitigation projects will not begin until the winter of 2019; and the estimated timeline for expenditure of program funding is not specified. Accelerating the implementation of the overall program and expenditure of the funds should be a priority.
4. The guidelines should identify procedures for requesting the use and purchase of mitigation banking for upcoming transportation projects. Methods should also be identified to track and measure the following: acceleration of project delivery; efficient allocation and programming of funds; identification of projects eligible to use mitigation credits, and assurance that programmed projects reimburse the Advance Mitigation Account. The guidelines should also include a requirement and methodology to ensure the transactions are recorded for transparent accounting and reporting to the Commission and the Legislature.
5. Section 4.0 of the draft guidelines states: “*Specific procedures for programming, resourcing and delivery schedule development, as well as procedures for AMP [Advance Mitigation Program] projects, are being prepared.*” Given the importance of programming and delivery schedule development, the Commission is concerned these procedures are not identified in the draft guidelines. For example, the guidelines should specify how SHOPP and STIP projects will be impacted by advance mitigation; certainty of the process for permitting

Laurie Berman

RE: Comments on Advance Mitigation Program Informal Draft Guidelines

August 15, 2018

Page 3

agencies to value, issue, and apply mitigation credits for individual advance mitigation transportation projects; when the Resource Agencies that issue permits for specific transportation projects can be assured that mitigation is taking place; and the Caltrans divisions assigned to oversee the planning and programming of advance mitigation funds.

6. Federal, state, and regional resource agencies have a significant role in any advance mitigation efforts. The program will not achieve desired goals without the firm agreement of those agencies. The draft guidelines identify that Caltrans renewed a Memorandum of Understanding (MOU) in 2016 with a number of resource agency partners. This MOU was signed prior to SB 1 funding to implement the program. The guidelines should articulate the role, function, and requirements of the MOU as part of the Advance Mitigation Program.
7. The Advance Mitigation Account is intended to be self-sustaining and revolving. The guidelines should specify how programmed projects will use funds designated for mitigation to purchase credits. The document should also identify how and when credits are available for a project in a specific area; any up-front costs of purchasing credits, and if those credits are the most cost-effective approach to mitigate the transportation project.
8. The guidelines should provide a list with links to informational advance mitigation documents prepared by other entities.
9. The guidelines should specify that Caltrans will provide an annual update to the Commission on the expenditure of Advance Mitigation Account funds and an overview of progress made during the prior 12-month period. Caltrans may need to determine if a program update would be more beneficial at either the October or December 2018 Commission meetings. In future annual reporting by Caltrans beginning in 2019, the Commission would prefer regular reporting by fiscal year; with reports to the Commission at the August Commission meetings.

In summary, the Commission recommends that Caltrans reassess how guidelines for the Advance Mitigation Program should be structured to address key timelines for program implementation, and ensure that useful guidance is provided to practitioners responsible for carrying out this program. Consideration should also be given to the importance of convening a stakeholder group to help provide direction and identify steps to accelerate the timeline for use of Advance Mitigation Account funds.

Please contact Garth Hopkins, the Commission's Deputy Director for Transportation Planning at (916) 653-3148 if you have any questions.

Sincerely,

FRAN INMAN
Chair

Laurie Berman

RE: Comments on Advance Mitigation Program Informal Draft Guidelines

August 15, 2018

Page 4

c: Commissioners

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Karla Sutliff, Deputy Director, Project Delivery, Caltrans

Philip Stolarski, Chief, Division of Environmental Analysis, Caltrans

Amy Bailey, Office Chief, Advance Mitigation, Caltrans