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GLOSSARY OF NATURAL RESOURCE REGULATORY AGENCY-INCLUSIVE ADVANCE MITIGATION TERMS AND EXPRESSIONS

Objective: To develop a glossary of advance mitigation terms and expressions that are inclusive of the natural resource regulatory agencies who are signatories to the *Master Process Agreement for Planning and Developing Advance Mitigation throughout California for the California Department of Transportation Advance Mitigation Program* (“Process Agreement;” California Department of Transportation [“Caltrans”] et al. 2020). The signatories consist of the California Department of Fish and Wildlife (“CDFW”); the California State Water Resources Control Board (“SWB”); the U.S. Army Corps of Engineers, Los Angeles District, Sacramento District, and San Francisco District (“Corps”); the U.S. Environmental Protection Agency (“EPA”); the U.S. Fish and Wildlife Service (“FWS”); the National Marine Fisheries Service (“NMFS”); and the California State Coastal Commission (“CCC”).

In the following table, terms with an asterisk (*) are taken directly from the Process Agreement and have been vetted by each signatory’s legal department. All terms are reflected in the Regional Advance Mitigation Needs Assessments (“RAMNAs”) prepared by the Caltrans Advance Mitigation Program (“AMP”) and have been reviewed by natural resource regulatory agency staff.

Glossary

Word or Term	Definition
advance mitigation actions	<p>Actions undertaken to establish or create credits or values that will be eligible for application, in the future and with natural resource regulatory agency approval, as offsets for unavoidable transportation project impacts during a transportation project’s permitting and technical assistance process.</p>
advance mitigation project-specific interagency agreement*	<p>An advance mitigation project-specific interagency agreement is a general term to describe an agreement between agencies that attaches or binds advance mitigation requirements to a sponsor, qualified third-party, or permittee. Examples of advance mitigation project-specific interagency agreements include a cooperative agreement, mitigation credit agreement, or other interagency agreement.</p> <p>Advance mitigation project-specific interagency agreements are developed after a Caltrans advance mitigation project is funded. The precise timing is dependent on the applicable regulations or mitigation instrument adopted for the advance mitigation project and if construction-related environmental documents and permits are required.</p> <p>The term “advance mitigation project-specific interagency agreement” is meant to capture the interagency agreements Caltrans enters into with non-Corps Agency Partners to document terms not covered by an instrument. In general, unless otherwise prescribed in regulation, in this case, an advance mitigation project-specific interagency agreement should include the resource type(s), resource value(s), protection level, service area, time frame, performance and compliance requirements, mitigation accounting procedures, funding, monitoring, and the advance mitigation project’s closeout terms and conditions. Further, the advance mitigation project-specific interagency agreement should (1) describe or refer to the forecast transportation project impacts that the advance mitigation is intended to offset, i.e., reiterate the anticipated need for transportation project mitigation in the future that was presented in the scoping document; and (2) include a statement indicating that the final determination of transportation project mitigation fulfillment requirements will be made at the time of an actual transportation project’s permitting.</p>
Agency Partners*	<p>“Agency Partners” refers to the resource and regulatory agency signatories to the <i>Statewide Advance Mitigation Initiative Memorandum of Understanding</i> (“SAMI MOU”), which include the CDFW, SWB, Corps, the EPA, FWS, NMFS, and the CCC, and any future resource and regulatory agency signatories that would like to participate in the agreement.</p>
assessment unit	<p>For the Caltrans AMP, an assessment unit is a hydrologic unit code eight-digit (“HUC-8”) or ecoregion section. Caltrans advance mitigation planning is performed at a HUC-8 or ecoregion section scale to define appropriate planning areas for mitigation implementation and anticipated use areas that align with natural resource regulatory agency practices. The 2008 Mitigation Rule applies the HUC-8 spatial framework. CDFW’s <i>State Wildlife Action Plan</i> applies the ecoregion section spatial framework.</p>
beneficial uses and water quality objectives relevant to the RAMNA	<p>Beneficial uses are relevant to the RAMNA when they can potentially be enhanced through mitigation actions that yield SWB-approved in-kind compensatory mitigation credits that are also aligned with and approved by CDFW, CCC, FWS, NMFS, and/or the Corps.</p>



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compensatory mitigation*	<p>Compensatory mitigation requirements may be included by an Agency Partner as a future transportation project condition. Hence, for the purposes of this Process Agreement, the term compensatory mitigation is defined in each Agency Partner’s regulation and policy, including but not limited to 33 C.F.R. § 332.2, 40 C.F.R. § 230.92, 40 C.F.R. § 1508.20, and 14 C.C.R. § 15370. Further, as a lead agency under the California Environmental Quality Act and National Environmental Policy Act, Caltrans may also determine compensatory mitigation is required.</p> <p>Compensatory mitigation is typically achieved through the restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources, habitat, or other resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.</p>
concurrent transportation project mitigation	A mitigation action that is concurrent with transportation project permitting. May consist of the use or application of a mitigation credit as an offset to unavoidable impacts during transportation project delivery.
condition	Natural resource regulatory agencies condition projects through their permitting and technical assistance processes. See “mitigation conditions.”
conservation benefits and values	The positive results of conservation actions.
conservation goals and objectives*	Conservation goals and objectives are a broad set of regional natural resource sustainability goals and objectives that are consistent with both regulatory requirements and conservation science.
credit	<p>Compensatory mitigation credits are developed through an appropriate regulatory mechanism, which are then available for use or application by transportation projects to offset adverse impacts. Credits represent the ecological uplift obtained through an advance mitigation action.</p> <p><i>Note:</i> Compare to definition within draft mitigation credit agreement (“MCA”) guidelines (CDFW, in progress): “The unit of measure representing the accrual, attainment, or protection of aquatic functions and/or the focal species or other conservation elements on the MCA site.”</p>
established regulatory framework	Bank establishment regulations, in-lieu fee (“ILF”) establishment regulations, MCA creation regulations, other written credit establishment guidance. See “advance mitigation project-specific interagency agreement.” See “regulatory mechanism.”
in-kind	A resource of a similar structural and functional type to the impacted resource.
instrument*	The legal document for the establishment, operation and use of a conservation bank, mitigation bank, or ILF program.
mitigation actions	Actions undertaken by Caltrans to mitigate for transportation project impacts or, with advance mitigation, to be prepared for potential impacts. See “advance mitigation actions.”



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mitigation conditions	Mitigation conditions are placed on or included in transportation projects through the transportation project’s natural resource regulatory agency permitting and technical assistance processes.
natural resource regulatory agency	A term that is inclusive of resource agencies and regulatory agencies. <i>Note:</i> The Corps is not a “resource agency”—while its mandate is to protect (and restore, where appropriate) aquatic resources, it is a regulatory agency. FWS and NMFS are resource agencies. CDFW is both a regulatory and a resource agency.
natural resource regulatory agency tools and references	Examples of natural resource regulatory agency tools and references are: <ul style="list-style-type: none"> ▪ CDFW’s Biogeographic Information and Observation System; ▪ FWS’ Information for Planning and Consultation (“IPaC”); ▪ CCC’s Local Coastal Program Land Use Plans; ▪ Water Board Basin Plans; ▪ U.S. Geological Survey Watershed Boundary Dataset; and ▪ the San Francisco Estuary Institute’s California Aquatic Resource Inventory dataset. <p>This list is not exhaustive.</p>
offset	Mitigation offsets negative impacts to natural resources. During a transportation project’s permitting and technical assistance process, a natural resource regulatory agency may require or recommend compensatory mitigation to offset unavoidable impacts. In some cases, compensatory mitigation credits can satisfy these conditions.
out-of-kind	A resource of a different structural and functional type from the impacted resource.
overlapping jurisdiction	More than one agency has official power to make legal decisions and judgements with respect to the same natural resource.
overlapping requirements	More than one agency’s requirements of Caltrans transportation projects for the same natural resources.
permitting and technical assistance processes	Acknowledges that Caltrans interacts with natural resource regulatory agencies through more than one process, not simply through a permit process.
plans, policies, and regulations	The universe of natural resource-related instructions that Caltrans responds to when planning and delivering projects.
regulatory mechanism	Bank establishment regulations, ILF establishment regulations, MCA creation regulations, and other written credit establishment guidance. See “advance mitigation project-specific interagency agreements.” See “established regulatory framework.”
signatory to instrument, MCA, or project-specific agreement	Agency(ies) who have signed an agreement with respect to the offset value of credits. <i>Note:</i> It is possible for an agency to be a member of an Interagency Review Team (“IRT”) and sign an instrument without approving the credits established as having offset value.

Word or Term	Definition
transfer	<p>From bank credit sale without a transfer agreement template (California Banking Agency Management Team 2021):</p> <p><i>The use or application of Credits to mitigate for a particular [transportation] project’s impacts by a person or entity seeking the Transfer (“Permittee”)</i></p> <p><i>Note:</i> There are a number of other definitions of “transfer” from related documents and endeavors:</p> <p>From the <i>Regional Conservation Investment Strategies Program Guidelines</i> (CDFW 2018):</p> <p><i>The [MCA sponsor] may create and use, sell, or otherwise transfer the credits upon CDFW’s approval that the credits have been created in accordance with the MCA.</i></p> <p>From draft MCA guidelines (CDFW, in progress):</p> <p><i>The sale or conveyance of the ownership of credits by the MCA sponsor.</i></p> <p>From Streets and Highway Code (“SHC”) § 800(b), the legislation establishing the AMP:</p> <p><i>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.</i></p> <p>From Caltrans’ perspective:</p> <p><i>The transfer of the liability of ecological loss from the permittee, applicant, or project proponent [i.e., Caltrans] to the conservation banker, mitigation banker, or ILF sponsor. Once the applicant, permittee, or project proponent purchases the credits as per regulations, it becomes the responsibility of the conservation banker, mitigation banker, or ILF sponsor to develop, maintain, and monitor the site on a long-term basis.</i></p>
value	Alternative description for offset when “credit” is not applicable.

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Caltrans (California Department of Transportation), CDFW (California Department of Fish and Wildlife), SWB (State Water Resources Control Board), Corps (U.S. Army Corps of Engineers, Los Angeles District, Sacramento District, and San Francisco District), EPA (U.S. Environmental Protection Agency),

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