

Date of Hearing: April 4, 2016

ASSEMBLY COMMITTEE ON TRANSPORTATION

Jim Frazier, Chair

AB 1833 (Linder) – As Amended March 16, 2016

SUBJECT: Transportation projects: environmental mitigation

SUMMARY: Creates an advanced mitigation program within the California Department of Transportation (Caltrans) to accelerate project delivery. Specifically, **this bill:**

- 1) Creates an Advanced Mitigation Program within Caltrans to streamline the environmental process and accelerate project delivery.
- 2) Requires Caltrans to establish, no later than February 1, 2017, an interagency transportation advanced mitigation steering committee (Interagency Committee) consisting of Caltrans and appropriate state and federal agencies.
- 3) Defines "advanced mitigation" as mitigation implemented before, and in anticipation of, environmental effects of future transportation projects.
- 4) Authorizes Caltrans to utilize a variety of mitigation instruments including mitigation banks, in lieu fee programs, and conservation easements.
- 5) Authorizes Caltrans to use advanced mitigation credits to fulfill mitigation requirements of any eligible State Transportation Improvement Program (STIP) or State Highway Operation and Protection Program (SHOPP) project.
- 6) Requires Caltrans to track all implemented advanced mitigation for use as credits for environmental mitigation of state-sponsored projects.
- 7) Requires the Interagency Committee to advise Caltrans on opportunities to carry out advanced mitigation projects; to develop streamlining opportunities with regard to alignment of state and federal regulations and procedures related to mitigation requirements and implementation; and to provide input on crediting, using, and tracking advanced mitigation investments.

EXISTING LAW:

- 1) Gives Caltrans authority and control over state highways.
- 2) Requires state and local agencies, pursuant to the California Environmental Quality Act (CEQA), to identify significant environmental impacts of projects and to avoid or mitigate those impacts, if feasible.
- 3) Requires, pursuant to CEQA, that lead agencies prepare a negative declaration, mitigated negative declaration, or environmental impact report with regard to project impacts.
- 4) Pursuant to CEQA, the National Environmental Policy Act, and numerous other state and federal laws, requires mitigation for unavoidable impacts to certain resources as a result of a project construction.

FISCAL EFFECT: Unknown

COMMENTS: State and federal environmental laws have long required mitigation as a means of compensating for adverse impacts. While it is widely acknowledged that ecological impacts should be first avoided or minimized and then restored at the location where the impact occurs, many times unavoidable losses occur and can only be addressed by replacing (mitigating) the impacted habitat. For large infrastructure development entities, like Caltrans, whose activities can result in a broad range of impacts from small, temporary disturbances associated with maintenance activities to large multi-acre impacts associated with building bridges or highway alignments, developing multiple small mitigation sites can be costly, time consuming, and result in fragmented habitats.

To address these issues, both state and regional entities have utilized advanced mitigation as a way to provide high quality replacement habitat, achieve economies of scale in its development, and reduce project delivered delays. For the most part, Caltrans has greater experience developing smaller-scale advanced mitigation sites in comparison to regionally-led efforts where large-scale mitigation, some exceeding 500 acres, is more the norm.

One of the reasons Caltrans more frequently performs smaller-scale advanced mitigation is that it must rely, almost exclusively, on funds from individual project budgets. Since project funds are not available far enough in advance, it is not possible for them to complete the costly and time consuming steps needed to complete advanced mitigation before the project goes to construction and mitigation credits are needed.

Regionally-based advanced mitigation efforts, on the other hand, are distinguished by their large scale, both in term of land area and financial commitment. Advanced mitigation efforts undertaken by regional entities in California are typically funded by local developer fees, bonds, grants and, sometime, sales taxes. They also result in the protection of large land areas, sometimes up to 500 acres. Additionally, it can take regional entities decades to complete the mitigation site and make it ready for use as project mitigation. Also, costs to complete advanced mitigation can range from tens of millions to billions of dollars.

Committee concerns: By introducing AB 1833, the author seeks to provide Caltrans with the tools it needs to develop an advanced mitigation program so that greater project environmental streamlining can be achieved. While this is laudable, it can be argued that Caltrans already possesses and exercises much of the authority this bill provides. It could also be argued, however, that by setting a deadline in statute, AB 1833 provides Caltrans with incentive to move forward with advanced mitigation efforts. Unfortunately, what this bill does not provide is the desperately needed funding mechanism to ensure that Caltrans can successfully create advance mitigation.

Double referral: This bill will be referred to the Assembly Natural Resources Committee should it pass out of this committee.

Related legislation: SB 901 (Bates) is identical to this bill with the exception that SB 901 requires that Caltrans set aside at least \$30 million annually for the program from the STIP and SHOPP and that the CTC allocate those funds consistent with the Advanced Mitigation Program. AB 901 is awaiting a hearing in the Senate Transportation and Housing Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

California League of Conservation Voters

Sierra Club California

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