

**Memorandum of Agreement (MOA 5005765)
among the San Diego Association of Governments (SANDAG), the
California Department of Fish and Wildlife (CDFW), the California Department of
Transportation (Caltrans), and the United States Fish & Wildlife Service (USFWS)
(collectively "the signatories") Regarding the Mitigation for Transportation
Projects Under the *TransNet* Extension Ordinance
Environmental Mitigation Program**

WHEREAS, the San Diego Association of Governments (SANDAG), as the designated Regional Transportation Planning Agency, is required to prepare a Regional Transportation Plan (RTP) for the San Diego region pursuant to Section 65080 of the Government Code;

WHEREAS, in October 2015, the SANDAG Board of Directors adopted San Diego Forward: The Regional Plan (2015 Regional Plan) as the RTP;

WHEREAS, the RTP includes a list of transportation network improvements and other transportation policies and programs that are intended to improve the mobility of people and goods throughout the region which are further clarified in the Regional Transportation Improvement Program (RTIP), which covers five fiscal years and was most recently adopted in 2016;

WHEREAS, the *TransNet* Extension Ordinance and Expenditure Plan (*TransNet* Extension Ordinance) Commission Ordinance 04-01 was adopted by the SANDAG Board on May 28, 2004, to provide for continuation of the half-cent transportation sales tax for 40 years to relieve traffic congestion, improve safety, and match state/federal funds;

WHEREAS, the *TransNet* Extension Ordinance was approved by the voters on November 2, 2004;

WHEREAS, the *TransNet* Extension Ordinance included the establishment and implementation of an Environmental Mitigation Program (EMP), including 11 principles that further defined the major elements of the EMP;

WHEREAS, in January 2005, the SANDAG Board approved a set of projects for accelerated implementation referred to as the *TransNet* Early Action Program (EAP);

WHEREAS, mitigation, which means for purposes of this Memorandum of Agreement (MOA), the early acquisition, creation, restoration, enhancement, and/or management of high-quality habitat, is more cost-effective and more biologically beneficial than the mitigation of habitat based on a project-by-project approach to mitigation;

WHEREAS, the *TransNet* EMP is intended, in part, to provide for early large-scale acquisition and management of important habitat areas and to create a reliable funding approach for required mitigation for future transportation improvements, thereby enabling the purchase of habitat that may become scarcer in the future, reducing future costs, and accelerating project delivery;

WHEREAS, proactive mitigation of transportation projects would provide an opportunity to implement the *TransNet* EMP by providing opportunities for early large-scale conservation, permit streamlining, and certain cost savings;

WHEREAS, the need for biological monitoring and management of the habitat preserve areas is critical to maintain habitats and ecosystem processes for the persistence and resilience of native flora and fauna;

WHEREAS, the signatories to this MOA agree that SANDAG will continue to include updates to funding for the biological mitigation of transportation projects to implement the currently adopted RTP, and additional funding for regional management and monitoring to implement the Regional Management Strategic Plan¹;

WHEREAS, the *TransNet* Extension Ordinance contains the provision that the EMP could yield an economic benefit of \$200 million (estimated in 2002 dollars) through the benefits of incorporating specified regional and local transportation projects into applicable habitat conservation plans, thereby allowing mitigation requirements for covered species to be fixed, and allowing mitigation requirements to be met through purchase of land in advance of need in larger blocks at a lower cost;

WHEREAS, on March 19, 2008, SANDAG, the California Department of Transportation (Caltrans), the United States Fish and Wildlife Service (USFWS), and the California Department of Fish and Wildlife (CDFW) entered into a MOA regarding the mitigation for transportation projects under the *TransNet* Extension Ordinance EMP;

WHEREAS, on September 26, 2008, the SANDAG Board approved the attached process and criteria for SANDAG staff to utilize in evaluating and acquiring mitigation lands under the *TransNet* EMP, included as part of the Construction and Mitigation Strategy (CMS) shown in Attachment A;

WHEREAS, in October 2011, the Governor of California signed Senate Bill 468, which states that *"SANDAG shall commit to dedicate a portion of the TransNet Regional Habitat Conservation Fund for regional habitat acquisition, management, and monitoring activities necessary to implement habitat conservation plans based on the estimated economic benefits derived from permitting and approval efficiencies on the north coast corridor project as a result of the procedures of this section, with that funding to be released by SANDAG in phases based upon the proportion of project work that has been issued permits, consistency reviews, or other applicable approvals, and in accordance with any other criteria as deemed appropriate by SANDAG taking into account the purpose and intent of TransNet"*;

WHEREAS, in August 2013, the signatories amended the MOA originally signed in March 2008, to clarify the process and phasing of the release of economic benefit funding utilizing the existing process identified in the original MOA and subsequent SANDAG Board actions;

WHEREAS, the signatories have determined that entering into this MOA does not constitute a project as that term is used in the California Environmental Quality Act (CEQA), California Public Resource Code section 21000, et seq., that entering into this MOA does not constitute a major federal action significantly affecting the human environment as those terms are used in the National Environmental Policy Act (NEPA), 42 U.S.C. section 4321, et seq., and that CEQA and NEPA compliance are conditions precedent to any signatory being committed to carry out any obligations set forth in this MOA for which such compliance is required;

¹ The Regional Management Strategic Plan is a comprehensive plan to promote the management and monitoring of at-risk native species and their habitat in the San Diego region.

NOW THEREFORE, BE IT RESOLVED that the signatories agree as follows:

1. The signatories agree to continue to implement the CMS (Attachment A, and incorporated by reference as if fully restated here) as the method for identifying priority habitat acquisition, creation, and restoration opportunities that will be designed to fully mitigate the range of anticipated wildlife habitat, natural communities, fisheries, and sensitive species² impacts resulting from projects in the currently adopted RTP, as well as for local transportation projects that are funded through *TransNet*. The CMS aligns the estimated impacts of these transportation project(s) to mitigation opportunities, which are intended to be the basis for determining subsequent agreements identified under Section 7 below, and the parties agree that such agreements may provide regulatory assurances under the authority and jurisdiction of the signatory agencies.
2. SANDAG agrees to continue to include in future budget updates, a cash flow for mitigation of *TransNet* regional and local transportation projects totaling no less than \$440 million (nominal dollars) through the expiration of this MOA pursuant to a SANDAG-approved budget that can be amended through an annual process.

Funding can be used for: (1) acquisition; (2) restoration and enhancement; and (3) monitoring and management, as required to meet each transportation project's full mitigation needs. Funds not utilized in any given year could be rolled over into the next fiscal year. Borrowing to the degree necessary to meet this objective would be implemented consistent with the adopted Plan of Finance (POF), with debt service to be paid from annual EMP revenues. Up to \$82 million in interest-free fund transfers from transportation categories could be provided as a loan to finance the early acquisitions. Additionally, \$30 million in debt-service assistance as identified in the *TransNet* Extension Ordinance also could be provided. Interest-free fund transfers from transportation project categories could be allowed in such a way that transportation projects are not delayed. Such transferred funds would be returned for use on transportation projects by the end of the *TransNet* Extension in 2048.
3. SANDAG has allocated \$4 million a year, starting at the beginning of FY 2008 and will continue to allocate this amount annually until the end of FY 2029 to be used for regional management and monitoring. The source of the funds allocated for regional management and monitoring are attributed to the Regional Conservation Fund as described in *TransNet* Extension EMP Principle 4.
4. SANDAG will continue to provide an annual report analyzing the status and progress of the MOA in implementing the goals of the *TransNet* EMP for presentation to the SANDAG Board.

² Sensitive species are generally those that have been covered, or are anticipated to be covered, by approved or in progress Natural Communities Conservation Program (NCCP)/Habitat Conservation Program (HCP) planning efforts.

5. The signatories agree to evaluate and SANDAG would modify, if necessary, the POF no later than ten years after execution of this MOA to accommodate any insufficiencies identified in the tri-annual Independent Taxpayer Oversight Committee performance audit, SANDAG Audit Committee recommendations, and/or ten-year *TransNet* comprehensive review to address potential variations in funding, changes to the adopted RTP, and changes to the CMS.
6. EMP funds will be made available according to the schedule described in the POF. The release for advance mitigation will be contingent upon executed agreements intended to establish the mitigation of *TransNet*-funded regional and local transportation projects as identified in Attachment B (which is incorporated by reference as if fully restated here). The agreements may take various forms and address a range of actions from project-specific to more programmatic-level approaches towards mitigation and conservation actions. Types of agreements could include, but are not limited to:
 - a. Advanced Permittee Responsible Mitigation Agreements (e.g. Interstate 5 North Coast Corridor Agreement)
 - b. Letter of Concurrence and Commitments (e.g., Sage Hill agreement)
 - c. Wetland Mitigation Banking Agreement (e.g., Rancho Jamul)
 - d. Advanced Conservation Banking Agreement (e.g., Hidden Valley Memorandum of Understanding [MOU])
 - e. Programmatic Consultation (e.g., Rail Corridor from Orange County to Oceanside)
 - f. Early Federal Endangered Species Act Section 7 Consultation
 - g. Project(s) Specific Agreement(s)
 - h. Natural Community Conservation Plan/Habitat Conservation Plan NCCP/HCP
 - i. Regional General Permits (e.g., Contra Costa County)
 - j. Regional Conservation Investment Strategy
7. The focus of the initial mitigation efforts under this CMS will be on those projects identified in the latest adopted RTP and approved by the SANDAG Board. The focus will be on projects identified as EAP projects followed by other regional projects included in the RTP. Mitigation opportunities for the remaining transportation projects will be initiated if the signatories of this MOA agree that an environmental mitigation opportunity has arisen to satisfy a non-EAP project consistent with Section 2 above.
8. SANDAG will work with the local jurisdictions to identify the mitigation needs for local transportation projects identified in the most currently adopted RTIP and utilize existing lands acquired for local streets and roads or assist the jurisdictions with acquisition, restoration and management to meet their mitigation needs. Existing credits are currently memorialized in the Conservation Credit Agreement dated November 25, 2014.
9. Economic Benefit will be released in accordance with the implementation policies identified in Attachment C of this MOA or a similar mutually agreed upon methodology developed

over the life of the MOA, after repayment of the debt financing has been fulfilled on existing bonds issued to promote advance mitigation during the first ten years of the program.

10. The mitigation requirements for each project(s) will be addressed on a case-by-case basis and incorporated into a specific agreement pursuant to Section 6 above to be executed by the signatories. The signatories hereto intend that if a project(s) conforms to the scope, general alignment, and biological effects analysis described in an executed agreement pursuant to Section 6 above, no additional compensatory mitigation to satisfy the Federal Endangered Species Act (ESA), the California Endangered Species Act (CESA), the California NCCP, or Fish and Game Code section 1600 et seq., are anticipated; however, final determination of project impacts and necessary mitigation will be determined through applicable statutory permitting processes. The parties agree to follow the CMS process for identification and acquisition of mitigation property as described in Attachment A of the MOA.
11. Each project will be reviewed by the Wildlife Agencies through applicable statutory and regulatory processes. In addition, the Wildlife Agencies will determine each project's consistency with executed agreements. The Wildlife Agencies will contact, in writing, the signatories within 60 days of receipt of the SANDAG request for concurrence regarding conformance with the executed agreements. If the project does not conform, the Wildlife Agencies will identify necessary actions required for consistency with the approved agreement(s). For projects that conform to the approved agreements, the Wildlife Agencies will expedite issuance of the permits, as staffing resources allow. Notwithstanding this section or any other provision of this MOA, nothing in this MOA is intended or will be interpreted to pre-determine the outcome of any applicable statutory and regulatory processes under ESA, NEPA, CEQA, NCCP, or other applicable federal or state laws.
12. Principals of federal or state "Safe Harbor" agreements pursuant to 50 CFR §§ 17.22(c) and at 17.32(c), or Section 2089 of California Fish and Game Code, may be included, as appropriate, and as determined by the relevant parties, in any agreement that improves resources in advance of project impacts for resources that may be affected by the transportation project (e.g., coastal lagoon restoration).
13. Local jurisdictions with approved NCCP/HCPs and incidental take authorizations/exemptions that include local transportation projects as covered activities, have received regulatory assurances regarding mitigation for such projects, as provided for in the federal No Surprises Rule (e.g., cities of Chula Vista, San Diego, La Mesa, Poway, Carlsbad, and the County of San Diego). Other jurisdictions may obtain such assurances for covered transportation projects upon approval by the Wildlife Agencies of their NCCPs/HCPs and issuance of corresponding incidental take authorizations.
14. Mitigation for projects identified in Attachment B may be substituted for other *TransNet* projects as identified in the most recently adopted RTP. Substituted projects must have impacts equal to or less than the original project and the exchange must be approved by the Wildlife Agencies. The amount of use of mitigation credits would be addressed by subsequent agreements as identified in Section 6 above.

15. The Wildlife Agencies will actively cooperate with SANDAG and Caltrans during the permitting process for *TransNet* projects impacting wetlands, and waters of the United States, which are regulated by the U.S. Army Corps of Engineers, EPA, Regional Water Quality Control Board, and/or CDFW through wetland banking agreements, master streambed alteration agreements, regional general permits, or mechanisms, as appropriate. The signatories support wetland creation, where appropriate and feasible, and restoration projects for use as advance mitigation and, as appropriate will mutually assist with identifying and/or obtaining funding for planning and permitting of the creation and restoration projects.
16. USFWS will support and, if appropriate, present the federal Consistency Determination for federal projects to the California Coastal Commission for coastal wetland restoration agreement(s) provided USFWS determines the projects meet the Consistency Determination requirements under federal and state law.
17. SANDAG, acting as the San Diego County Regional Transportation Commission, is accountable for all *TransNet* expenditures pursuant to the *TransNet* Extension Ordinance. As such, SANDAG is responsible for the expenditure of funds for advanced mitigation through the execution of the agreements described in Section 6, above. It is the intent of SANDAG to continue to utilize the capabilities and expertise of Caltrans staff, a SANDAG-contracted independent third-party, or itself to acquire real property and to develop and implement restoration plans. The Wildlife Agencies will cooperate in identifying opportunities and priorities consistent with the CMS.
18. The signatories agree in good faith to expend the technical, and staff resources necessary to implement the provisions of this MOA. However, nothing in this MOA shall be construed as obligating the signatories to expend funds, or for the future payment of money, in excess of appropriations authorized by law, nor does this MOA pre-determine the outcome of any future statutory or regulatory process under federal or state law or the execution of further agreements between the signatories. In addition, nothing in this MOA will be construed to establish a limit on the funds necessary to provide mitigation as required under the ESA and the CESA, or any other applicable law or regulation; all mitigation costs set forth in this MOA, including Attachments A and B, and the documents referred to herein are estimates only.
19. The signatories agree to review and modify this MOA, if necessary, after ten years from its execution by all signatories based upon its performance in providing advanced mitigation, enhanced project delivery, and overall availability of *TransNet* funding. Based upon the results of this review, all signatories retain the right to obtain mitigation of individual projects on a project-by-project basis pursuant to Section D and Principle 11 of the *TransNet* Extension Ordinance, the ESA, and the CESA.
20. Nothing in this MOA shall supersede those provisions adopted by the voters in November 2004 under the *TransNet* Extension Ordinance.

21. Any notice required or permitted under this MOA may be personally served on another party, by the party giving notice, or may be served by certified mail, return receipt requested, to the following addresses:

For SANDAG:
401 B Street, Suite 800
San Diego, CA 92101
Attention: Hasan Ikhrata

For USFWS:
2177 Salk Avenue, Suite 250
Carlsbad, CA 92008
Attention: Field Supervisor

For CDFW:
3838 Ruffin Road
San Diego, CA 92123
Attention: Ed Pert

For Caltrans:
4050 Taylor Street
San Diego, CA 92110
Attention: Cory Binns

22. That unless it is amended by the parties in writing, this MOA shall terminate ten years after execution of this agreement, or on such earlier or later date as the parties may agree to in writing. This MOA shall continue in effect unless and until a party to the MOA gives 60 days written notice of its desire to withdraw from the MOA. If such notice is given, the MOA shall continue to be binding on those parties who have not formally withdrawn.
23. No Member of Congress shall be entitled to any share or part of this Agreement, or to any benefit that may arise from it.
24. This MOA shall be interpreted in accordance with the laws of the State of California and applicable federal laws.
25. All terms, conditions, and provisions hereof shall inure to and shall bind each of the parties hereto, and each of their respective successors, and assigns.
26. For purposes of this MOA, the relationship of the parties is that of independent entities and not as agents of each other or as joint venturers or partners. The parties shall maintain sole and exclusive control over their personnel, agents, consultants, and operations.
27. No alteration or variation of the terms of this MOA shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
28. Nothing in the provisions of this MOA is intended to create duties or obligations to or rights in third parties to this MOA, to accord to any third party a right to sue pursuant to this MOA, or to affect the legal liability of the parties to this MOA to third parties.

29. This MOA may be executed in any number of identical counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument when each party has signed one such counterpart.

IN WITNESS WHEREOF, the Parties hereto have executed this MOA effective this 23 day of May, 2019.

SAN DIEGO ASSOCIATION OF GOVERNMENTS



for
HASAN IKHRATA
Executive Director or designee

CALTRANS

CORY BINNS
District 11 Director

UNITED STATES FISH AND WILDLIFE SERVICE

Carlsbad Fish and Wildlife Service
Field Supervisor

**CALIFORNIA DEPARTMENT OF FISH
AND WILDLIFE**

ED PERT
Regional Manager

- Attachments: A. *TransNet* Conservation and Mitigation Strategy
B. Estimated Mitigation Need and Cost by Project
C. *TransNet* Economic Benefit Implementation Policy Points

APPROVED AS TO FORM



Office of General Counsel

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HASAN IKHRATA
Executive Director or designee

Office of General Counsel

CALTRANS

CORY BINNS
District 11 Director

UNITED STATES FISH AND WILDLIFE SERVICE

Carlsbad Fish and Wildlife Service
Field Supervisor

**CALIFORNIA DEPARTMENT OF FISH
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HASAN IKHRATA
Executive Director or designee

Office of General Counsel

CALTRANS

CORY BINNS
District 11 Director

UNITED STATES FISH AND WILDLIFE SERVICE

SCOTT SOBIECH

Digitally signed by SCOTT
SOBIECH
Date: 2019.05.09 07:00:51 -07'00'

Carlsbad Fish and Wildlife Service
Acting Field Supervisor

**CALIFORNIA DEPARTMENT OF FISH
AND WILDLIFE**

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Executive Director or designee

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CALTRANS

CORY BINNS
District 11 Director

UNITED STATES FISH AND WILDLIFE SERVICE

Carlsbad Fish and Wildlife Service
Field Supervisor

**CALIFORNIA DEPARTMENT OF FISH
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TransNet Conservation and Mitigation Strategy

The goal of the *TransNet* Conservation and Mitigation Strategy (CMS) is to: (1) identify conservation opportunities for habitat acquisition, creation, and restoration that promotes regional habitat conservation planning; and (2) align these opportunities in such a way to fully mitigate the range of potential wildlife habitat, natural communities, fisheries, and sensitive species impacts resulting from transportation projects in the currently adopted Regional Transportation Plan (RTP) pursuant to Section 14 of the *TransNet* EMP Memorandum of Agreement (MOA).

A. Identification of Conservation Opportunities

The United States Fish and Wildlife Service and the California Department of Fish and Wildlife (Wildlife Agencies) will partner with SANDAG and Caltrans to identify conservation opportunities that promote the regional conservation of biodiversity, thereby implementing San Diego's regional habitat plans that have been adopted (or will be adopted) under the Natural Community Conservation Planning Act (NCCP), and as Habitat Conservation Plans (HCPs) under the Endangered Species Act. Implementation of these NCCPs/HCPs will collectively promote San Diego Forward: The Regional Plan's (2015 Regional Plan) policy objectives to, *"focus growth in areas that are already urbanized, allowing the region to set aside and restore more open space in our less developed areas,"* and *"protect and restore our region's urban canyons, coastlines, beaches and water resources,"* and also will provide certainty and streamlined regulatory permitting of future transportation projects.

The opportunities will consist of identification of land acquisitions, upland and wetland restoration and creation, and other specific actions that will contribute to the goal of *"maintain[ing] and enhance[ing] biological diversity in the region and conserving viable populations of endangered, threatened, and key sensitive species and their habitat, thereby preventing local extirpation and ultimate extinction (MSCP Biological Goals and Standards)."*

In assisting with the development of the conservation opportunities, the Wildlife Agencies will use the basic fundamental tenets of habitat reserve design based upon the recommendations of the NCCP scientific advisors¹, and specific objectives² based upon the current needs of the regional NCCPs/HCPs, as well as the opportunities to leverage *TransNet* funds with non-*TransNet* funding. While the fundamental tenets will not change over time, the objectives will be subject to periodic reassessments as the regional NCCP/HCP matures.

¹ Southern California coastal sage scrub NCCP Conservation Guidelines (1983). California Department of Fish and Wildlife (CDFW and California Resources Agency).

² Specific objectives could include, as examples, preservation of vernal pool and maritime succulent scrub habitat, restoration of quino checkerspot butterfly and burrowing owl habitat, and creation of coastal wetland habitat.

B. Alignment with Regional Transportation Plan Mitigation Needs

Based upon a review of the projects in the most currently adopted RTP and current Regional Transportation Improvement Program (RTIP), and the estimated impacts (Attachment B), as amended, the Wildlife Agencies will partner with SANDAG and Caltrans, and other federal and state regulatory agencies, to align mitigation needs of the RTP project(s) with the identified conservation opportunities, with an emphasis on transportation projects belonging to the Early Action Program (EAP) and then to other projects. The conservation opportunity will meet the mitigation needs of the project(s) and be formalized in an appropriate agreement as identified in the MOA prior to the release of funds for acquisition of such property. The Wildlife Agencies will not mandate a specific opportunity as the required mitigation, but instead will provide a range of options for SANDAG and Caltrans to consider based upon cost, timeliness, and respect for private property rights, other state and federal regulatory requirements, and other considerations.

Conceptually, conservation opportunities that achieve the mitigation for estimated RTP project(s) impacts can be grouped into coastal wetlands, jurisdictional freshwater wetlands, uplands, and species specific. Habitat acquisition, restoration, creation, and species-specific enhancement will all be considered, as appropriate.

It is expected that in order to implement this approach, some projects may require additional biological analysis to provide more specificity on the habitats and species that could be impacted and conservation opportunities as a follow-up to confirm the assumptions of executed agreements as described in the MOA.

C. *TransNet*

The following process and criteria were adopted by the SANDAG Board of Directors on August 1, 2008, to guide SANDAG and Caltrans staff with the identification and acquisition of mitigation property when implementing the *TransNet* Environmental Mitigation Program (EMP). They will be used to implement the identification and acquisition of land under the EMP.

1. Conservation and Mitigation Strategy

Compensatory mitigation for RTP¹ projects will require the following general types of habitats: coastal wetlands, freshwater wetlands, and uplands. During the development of the *TransNet* EMP, a planning level estimate was made for the amount of acres to be acquired, restored, and managed for these habitat types and an estimated cost. In addition, depending on the number of regulatory permits and size of expenditures; various levels of assurances will be required. The following outlines the process and criteria for advanced mitigation; an illustrative flowchart is provided (see Section D.1). Those transportation projects included in the RTIP that have identified or are in the process of identifying environmental mitigation through various regulatory permitting processes are not subject to the process and criteria set out in this document, and therefore, will not be postponed.

³ Pursuant to the MOA, the RTP referenced in these guidelines is the 2015 Regional Plan. Projects may be substituted in future RTP updates following the provisions of Section 14 of the MOA.

2. Identification of Opportunities
 - a. SANDAG, Caltrans, USFWS, and CDFG will work on identifying opportunities that meet the mitigation needs of future RTP projects per the MOA.
 - b. The above agencies will be working with outside organizations (for example, local jurisdictions, nonprofits, private land owners, consultants) to identify opportunities and will develop a strategic alliance with the State Wildlife Conservation Board (WCB) and California State Coastal Conservancy (SCC) to leverage funding and achieve larger mutual goals while providing advanced mitigation for RTP Projects.
3. Strategy for Mitigation of Coastal Wetlands
 - a. SANDAG, Caltrans, USFWS, and CDFG have agreed that the mitigation solution for the projects in the coastal zone will require a unique approach. The agencies, along with partners from the California Coastal Commission, SCC, U.S. Army Corps of Engineers, and local stakeholders have developed an Advanced Permittee Responsible Mitigation Agreement that complements the Public Works Plan for projects in the coastal Interstate 5 (I-5) Corridor. This approach consists of a strategy that looks at the existing ecological health of the coastal wetlands in San Diego County, and the opportunities for "ecological lift" by creation/restoration, enhancement, and capital improvement activities that improve the ecological functioning of the wetland. These activities will be assigned mitigation credits equivalent to the ecological lift resulting from the action compared to existing conditions of the wetlands. This may include acquisitions for the creation of wetlands where possible.
 - b. Agreements will be entered into by SANDAG, Caltrans, and the regulatory agencies that comprise the Resource Enhancement Mitigation Program of the Public Works Plan/Transportation and Resource Enhancement Program for the I-5 North Coast Corridor to implement the Advanced Permittee Responsible Mitigation Agreement.
 - c. Acquisition of property could occur prior to the signing of a new agreement provided that all parties agree in writing that the site would become part of the coastal wetland mitigation strategy and agree to the value of mitigation credits.
4. Strategy for Mitigation of Non-Coastal Wetlands and Uplands
 - a. SANDAG and Caltrans will seek assurances through a wetland mitigation bank agreement, conservation agreement, or alternative agreements as determined to the satisfaction of SANDAG and Caltrans.
 - b. A letter of concurrence and commitment from USFWS and CDFG stating that a property is suitable for mitigation will be required prior to an appraisal of the property.

- c. It is the intent of SANDAG to have all assurances from the regulatory agencies in place prior to expenditures of any funds necessary for acquisition. SANDAG may rely upon a letter of concurrence and commitment from the Wildlife Agencies to secure the property in fee title, easement, option, or lease. Restoration, if necessary, would come after additional assurances (for example, mitigation bank agreement, approved restoration plans) from the regulatory agencies are in place.

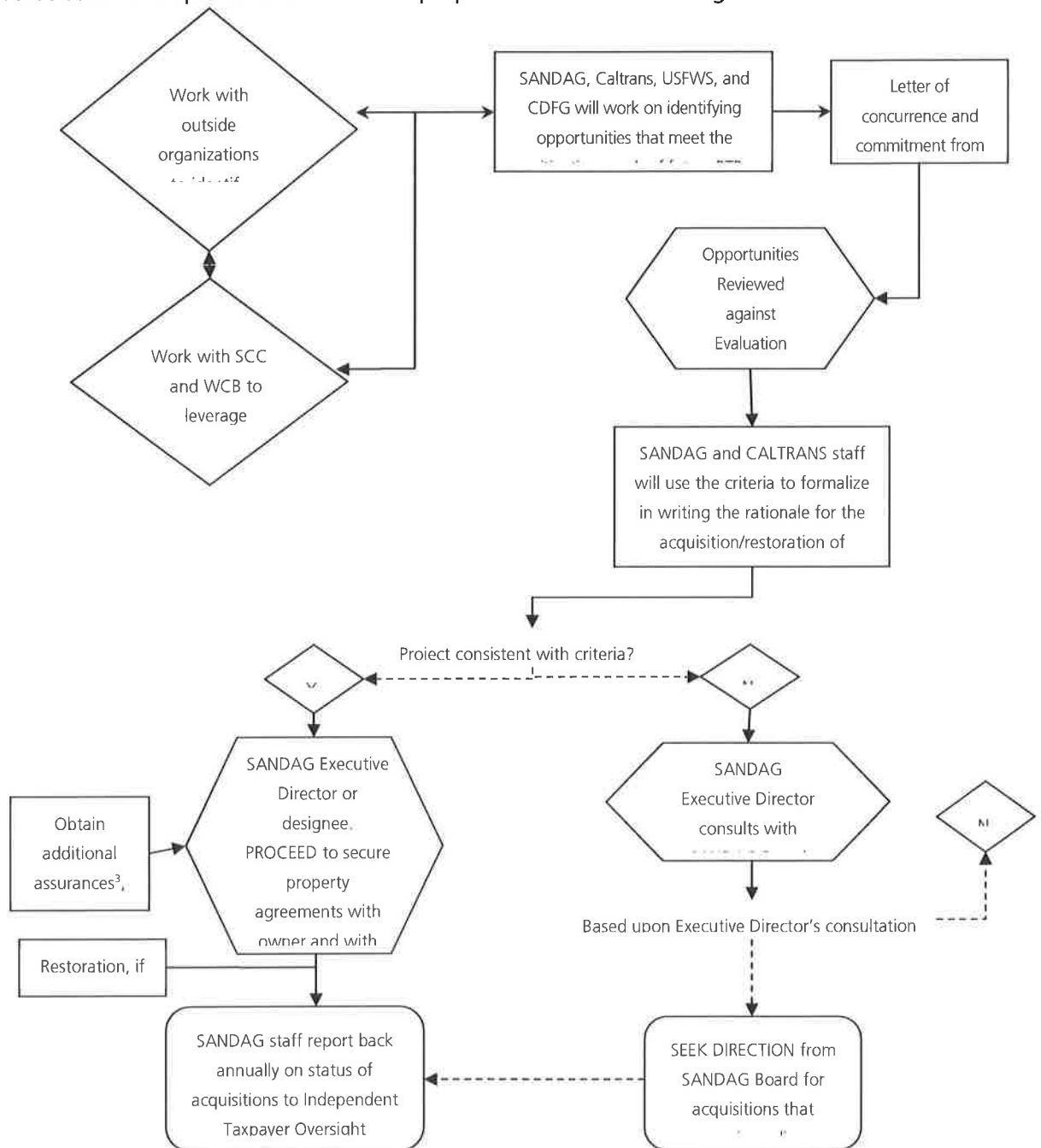
D. Process and Criteria for Mitigation

SANDAG and Caltrans staff will pursue mitigation opportunities consistent with the strategies above and secure opportunities as illustrated in Section 3. Section 4 describes the criteria that will guide SANDAG and Caltrans staff in the acquisition of conservation opportunities. SANDAG and Caltrans staff will formalize in writing how the proposed acquisition/restoration of the proposed property conforms to these criteria.

Pursuant to Section 7 of the MOA, "the focus of the initial mitigation efforts under this CMS will be on those projects identified in the latest adopted RTP and approved by the SANDAG Board. The focus will be on projects identified as EAP projects followed by other regional projects included in the RTP. Mitigation opportunities for the remaining transportation projects will be initiated if the signatories of this MOA agree that an environmental mitigation opportunity has arisen to satisfy a non-EAP project . . ."

1. Conceptual Implementation Flow Chart

To be used for acquisition/restoration of properties for advanced mitigation.



Additional assurances are described in Section 6 of the MOA and include but are not limited to advance mitigation agreements, mitigation banks, and programmatic consultations.

2. *TransNet* EMP Mitigation Evaluation Criteria

- a. RTP Mitigation: The property will satisfy one or more RTP projects as identified in the MOA with a focus on projects identified as EAP followed by other regional projects in the RTP. Mitigation opportunities to meet other RTP projects and local street and road projects will be considered under the terms of the MOA. The regulatory agencies will be required to provide assurance in the form of a letter of concurrence and commitment that the land is adequate for mitigation prior to appraisal of the property. Additional assurance such as conservation or mitigation bank agreements may be required prior to execution of a purchase agreement and/or the restoration of the property.
- b. Jurisdictional Land Use Plans: Use of the site as habitat mitigation/open space is consistent with the long-range land use and transportation policies of one or more local jurisdictions. If the use of the site as habitat mitigation/open space is not consistent, the jurisdiction(s) does not object to the site being purchased for mitigation.
- c. Willing Seller: Owner of the property is a willing seller with clear title to the property and any hazardous material identified in a Phase I environmental site assessment has been evaluated and addressed.
- d. Appraisal: The property must be appraised by a qualified licensed appraiser in accordance with established acquisition and appraisal standards and the first written offer will reflect the fair market value of the property.
- e. Promotes Natural Community Conservation Planning: The proposed mitigation will contribute to the success of the San Diego regional NCCP by acquiring and restoring unique habitat areas, key populations of endangered species, lands adjacent to existing conserved habitat lands, and/or promoting wildlife linkages with the goal of establishing mitigation ratios in subsequent agreements pursuant to the adopted habitat conservation plans.
- f. Owner/Manager: Perpetual ownership of the land has been identified, as well as a qualified land manager. The identified owner is a public agency or nonprofit willing to provide a conservation easement or deed restriction to SANDAG or Caltrans upon transfer of title that contains a reversionary clause back to SANDAG or Caltrans if the land is not being managed and monitored pursuant to a Resource Management Plan acceptable to the Wildlife Agencies. SANDAG, Caltrans, and the land manager have agreed upon the annual cost to manage the land and the method for funding the annual management costs.

- g. Cost: The cost of the mitigation is consistent with the estimates established under the *TransNet* Extension Ordinance as adjusted for inflation in the *TransNet* Plan of Finance. The Executive Director or designee shall have the authority to expend funds for mitigation up to 10 percent above the planning level estimates, subject to SANDAG Board Policy No. 017. Staff shall track and monitor any cost savings on a program-wide basis. The Executive Director shall have the authority to approve expenditures of funds for mitigation above 10 percent of the planning level estimates if there are enough cost savings accumulated on a program-wide basis to cover the expected costs as verified through an analysis prepared by staff and verified by the *TransNet* Program Manager. Expenditures for mitigation that exceed the planning level estimate or the appraised value of the property by 10 percent and above any accumulated programmatic cost savings would require approval by the SANDAG Board to proceed, subject to SANDAG Board Policy No. 017. SANDAG staff will track the expenditures and cost savings of the mitigation and provide an annual report to the Independent Taxpayer Oversight Committee and SANDAG Board with any recommendations for adjustments to ensure that the program-wide costs are consistent with the estimates established under the *TransNet* Extension Ordinance.

Estimated Mitigation Need and Cost by Project

RTP Project	From	To	Coastal Wetlands	Non-Coastal Wetlands	Uplands	Estimated Mitigation Costs (TPMF)	Estimated Economic Benefit (EB)
Major Regional Projects						\$2002	\$2002
I-5	SR 56	Vandegrift Boulevard	20	0	60	\$76,000,000	\$21,279,823
I-5/I-805	Port of Entry-Mexico		0	1	0	\$555,000	\$155,399
I-5/I-805	HOV Connectors		0	1	0	\$555,000	\$155,399
I-805	SR 905	SR 54	0	2	5	\$2,360,000	\$660,794
I-805	SR 54	I-8	0	1	2	\$1,055,000	\$295,398
I-805	Mission Valley Viaduct		0	2	0	\$1,110,000	\$310,797
SR 11	SR 905	Mexico	0	2	10	\$3,610,000	\$1,010,792
SR 52	I-805	I-15	0	0	2	\$500,000	\$139,999
SR 52	I-15	SR 125	0	1	5	\$1,805,000	\$505,396
SR 76	Melrose Drive	Mission Road	0	25	60	\$28,875,000	\$8,084,933
SR 76	Mission Road	I-15	0	45	110	\$52,475,000	\$14,692,878
Coastal Rail Doubletracking			20	0	20	\$66,000,000	\$18,479,846
Mid-Coast Light Rail			0	5	10	\$5,275,000	\$1,476,988
I-5/SR 56	Freeway Connectors		0	2	0	\$1,110,000	\$310,797
SR 54/SR 125	I-5	SR 94	0	2	5	\$2,360,000	\$660,794
SR 905	I-805	Mexico	0	6	80	\$23,330,000	\$6,532,346
I-5	SR 54	SR 163	0	1	0	\$555,000	\$155,399
I-5	I-805	SR 56	0	1	0	\$555,000	\$155,399
I-5	SR 905	SR 54	0	1	2	\$1,055,000	\$295,398
I-5	SR 163	I-8	0	1	0	\$555,000	\$155,399
I-5	I-8	I-805	0	1	5	\$1,805,000	\$505,396
I-5/I-8	Freeway Connectors		5	0	0	\$15,250,000	\$4,269,964
I-5/SR 78	Freeway Connectors		0	2	0	\$1,110,000	\$310,797
SR 94/SR 125	Freeway Connectors		0	1	0	\$555,000	\$155,399
Oceanside to Escondido Transit Enhancements			0	2	10	\$3,610,000	\$1,010,792
I-8	SR 125	Los Coches Road	0	1	10	\$3,055,000	\$855,393
I-15	SR 94	SR 163	0	5	10	\$5,275,000	\$1,476,988
I-15/SR 78	HOV Connectors		0	1	0	\$555,000	\$155,399
I-15/SR 94	HOV Connectors		0	1	2	\$1,055,000	\$295,398

RTP Project	From	To	Coastal Wetlands	Non-Coastal Wetlands	Uplands	Estimated Mitigation Costs (TPMF)	Estimated Economic Benefit (EB)
I-805	I-8	I-5	0	2	10	\$3,610,000	\$1,010,792
I-805/SR 52	HOV Connectors		0	1	2	\$1,055,000	\$295,398
SR 52	I-5	I-805	0	1	2	\$1,055,000	\$295,398
SR 56	I-5	I-15	0	1	5	\$1,805,000	\$505,396
SR 67	Mapleview Street	Dye Road	0	5	150	\$40,275,000	\$11,276,906
SR 75/SR 282	Glorietta Boulevard	Alameda Boulevard	0	1	0	\$555,000	\$155,399
SR 78	I-5	I-15	0	2	5	\$2,360,000	\$660,794
SR 94	Avocado Boulevard	Steele Canyon Road	0	5	25	\$9,025,000	\$2,526,979
SR 94	SR 125	Avocado Boulevard	0	1	0	\$555,000	\$155,399
SR 94/SR 125	I-5	I-8	0	1	5	\$1,805,000	\$505,396
SR 125	SR 905	San Miguel Road	0	1	1	\$805,000	\$225,398
SR 125	San Miguel Road	SR 54	0	1	0	\$555,000	\$155,399
Kearny Mesa Transitway			0	1	5	\$1,805,000	\$505,396
Sorrento Mesa Transitway			0	5	45	\$14,025,000	\$3,926,967
SPRINTER Extension to North County Fair			0	1	0	\$555,000	\$155,399
Subtotal			45	142	663	\$381,810,000	\$106,905,909
Minor Regional Projects			0	23	136	\$46,765,000	\$13,094,091
Subtotal			45	165	799	\$428,575,000	\$120,000,000
Support Costs						\$21,425,000	\$0
Subtotal						\$450,000,000	\$120,000,000
Local Transportation Projects						\$200,000,000	\$40,000,000
Subtotal						\$650,000,000	\$160,000,000
Regional Management and Monitoring Funds Previously Authorized by MOA						N/A	\$40,000,000
Total						\$650,000,000	\$200,000,000

Notes:

These projects are from the 2030 Regional Transportation Plan approved March 2003, which was in effect at the time of the TransNet Ordinance. Projects may change pursuant to future RTP updates approved by the SANDAG Board. Following the adoption of each new RTP the attachment will be revised.

TPMF – Transportation Project Mitigation Fund

Acreages estimated using Generalized Vegetation mapping from SANDAG 1995 Regional Vegetation database.

Cost per acre based on recent mitigation ratios, acquisition, restoration, creation, and endowment costs.

Costs are in 2002 dollars.

TransNet Economic Benefit Implementation Policy Points

1. Economic Benefit consists of those funds that are generated by the mitigation of regional transportation projects and local streets and roads that occur in advance of permit needs that were estimated at \$200 million in 2002. SANDAG tracks these funds in its Capital Improvement Project No. 1200300 Regional Habitat Conservation Fund.
2. Economic Benefit would be generated upon a transportation project(s) or phase of a larger project obtaining final regulatory sign off on all federal, state, and local permits, or equivalent consistency reviews or approvals required to develop the transportation infrastructure.
3. Potential Economic Benefit will be reduced by the allocation already approved by the SANDAG Board of Directors (\$40 million) and any future allocations under this Memorandum of Agreement (MOA). The remaining Economic Benefit will be evaluated for release at the termination of this MOA when debt service for borrowing for the first ten years of the Environmental Mitigation Program (EMP) has been completed.
4. Economic Benefit for regional transportation projects will be derived by the proportionate amount of actual mitigation cost for the project divided by the total mitigation cost provided under the EMP for all projects and then multiplied by remaining economic benefit. Larger projects developed in phases would release their economic benefit in proportion to the economic benefit calculated for the entire project.
5. Economic Benefit accrued for local streets and minor regional projects would be determined by the total cost of mitigation divided by the total available local street funds then multiplied by the remaining economic benefit.
6. Allocated Economic Benefit funds would be converted to the year of expenditure dollars by the SANDAG Board based upon using growth in *TransNet* revenues.
7. Economic Benefit can be used for regional habitat acquisition, management, and/or monitoring necessary to implement the regional habitat conservation plans utilizing the established SANDAG processes.
8. SANDAG will utilize the evaluation criteria contained in the CMS, which is Attachment A to the MOA.
9. A committee comprised of representatives from SANDAG, Caltrans, United State Fish and Wildlife Service, California Department of Fish and Wildlife, and U.S. Geological Survey would evaluate all proposals resulting from a call for projects for land acquisitions and provide their recommendation to the SANDAG Board using evaluation criteria approved by the SANDAG Board and the eligibility findings identified in Policy Point No. 8, above.
10. The EMP Working Group would make a recommendation to the Regional Planning Committee for any allocations of economic benefit funds proposed for regional management and monitoring. Economic Benefit funding for management and monitoring would be allocated by the SANDAG Board as part of the annual allocations of funding.

11. Economic Benefit would be calculated after debt service for borrowing for the first ten years of the EMP has been completed, and then as part of the Plan of Finance approval by the SANDAG Board. Economic Benefit would be released in phases so as not to impact the infrastructure improvements previously approved by the Board for design and/or construction. Any bonding required to fund Economic Benefit would be consistent with the *TransNet* Implementation Guidelines adopted by the SANDAG Board on September 24, 2004, which indicates that borrowing would be limited to \$30 million and, to the degree needed, up to \$82 million in *"intra-program fund transfers from transportation categories."*