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# MEETING NOTICE AND AGENDA

**MEMBER AGENCIES**

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 and  
 County of San Diego

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 United States  
 Department of Defense  
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 Unified Port District  
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 Water Authority  
 Southern California  
 Tribal Chairmen's Association  
 Mexico

## ENVIRONMENTAL MITIGATION PROGRAM WORKING GROUP

The Environmental Mitigation Program Working Group may take action on any item appearing on this agenda.

Tuesday, May 12, 2009

1 to 2:30 p.m.

SANDAG, 7th Floor Conference Room  
 401 B Street, Suite 800  
 San Diego, CA 92101-4231

Staff Contact: Keith Greer  
 (619) 699-7390  
[kgr@sandag.org](mailto:kgr@sandag.org)

### AGENDA HIGHLIGHTS

- ENFORCEMENT OPTIONS FOR OPEN SPACE LANDS

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# ENVIRONMENTAL MITIGATION PROGRAM WORKING GROUP

Tuesday, May 12, 2009

ITEM #		RECOMMENDATION
1.	WELCOME AND INTRODUCTIONS	
+2.	SUMMARY OF MARCH 10, 2009, MEETING	APPROVE
	Review and approve the meeting summary of the March 10, 2009, meeting. Approval of this item was deferred until May 12, 2009, to allow the members more time to review the minutes.	
+3.	SUMMARY OF APRIL 14, 2009, MEETING	APPROVE
	Review and approve the meeting summary of the April 14, 2009, meeting.	
4.	PUBLIC COMMENTS AND COMMUNICATIONS	COMMENT
	Members of the public will have the opportunity to address the Environmental Mitigation Program Working Group (EMPWG) on any issue within the jurisdiction of the Working Group. Speakers are limited to three minutes each.	
5.	ENFORCEMENT OPTIONS FOR OPEN SPACE LANDS (Panelists: Mike McBride, DFG Enforcement Branch; Sergeant Rick Turvey, Sheriffs OHV Enforcement; Chris Zirkle, Open Space Divisions City of San Diego)	DISCUSSION/ POSSIBLE ACTION
	The EMPWG will hear from a panel of enforcement experts on their authorities, experience, and recommendations on enforcement of illegal activities in open space areas. The panelists will provide suggestions on how to most effectively and efficiently utilize \$220,000 of funds allocated by the SANDAG Board of Directors on September 26, 2008, for regional enforcement efforts.	

**ITEM #**

**RECOMMENDATION**

6. NEXT MEETING DATE AND ADJOURN

INFORMATION

The next meeting of the EMPWG will be on July 14, 2009. Tentative topics to be discussed are recommendations on a regional management and monitoring entity, recommendations on updates to the five-year funding strategy and TY 2010 Land Management Grants criteria, and an annual status report on the progress of the *TransNet* Environmental Mitigation Program.

+ next to an item indicates an attachment

**NOTE: IMMEDIATELY FOLLOWING THE EMPWG, MR. RON REMPEL WILL HOST A WORKSHOP ON ROLES, RESPONSIBILITIES, AND GOVERNANCE STRUCTURES OF A REGIONAL LAND MANAGEMENT AND BIOLOGICAL MONITORING ENTITY. THIS WILL BE HELD FROM 2:30 TO 4 P.M. IN THE SANDAG BOARD ROOM.**

**San Diego Association of Governments**  
**ENVIRONMENTAL MITIGATION PROGRAM**  
**WORKING GROUP**

April 14, 2009

AGENDA ITEM NO.: **2**

**Action Requested: APPROVE**

SUMMARY OF MARCH 10, 2009, MEETING  
(with Revisions from April 14, 2009)

**Members in Attendance:**

Hon. Carrie Downey, (Chair), City of Coronado  
Tom Oberbauer, (Vice Chair), County of San Diego  
Bruce April, Caltrans  
Michael Beck, Endangered Habitats League  
Catherine Caldwell (Alt.), Wildlife Conservation Board  
Mike Grim, City of Carlsbad, North County Coastal  
Anne Harvey, San Diego Conservation Network  
Megan Johnson (Alt.), California Coastal Conservancy  
Jeanne Krosch, City of San Diego  
David Mayer, California Department of Fish and Game  
Carlton Rochester (Alt.), USGS  
Kathy Viatella, the Nature Conservancy  
Jim Whalen, Alliance for Habitat Conservation  
Susan Wynn, U.S. Fish and Wildlife Service  
Emily Young, the San Diego Foundation

**Others in Attendance:**

Gabriel Buhr, California Coastal Commission  
Markus Spiegelberg, Center for Natural Lands Management  
Vicki Touchstone, Fish and Wildlife Service SDNWR  
Jerry Jakubauskas, City of San Diego  
Randy Rodriguez, Department of Fish and Game  
Libby Lucas, Department of Fish and Game  
Megan Hamilton, County Dept. of Parks and Recreation  
Betsy Miller, City of San Diego Parks and Recreation  
Shelby Howard, HELIX Environmental Planning  
Darren Smith, California State Parks  
Bruce Hanson, EDAW  
Anne Fege, San Diego Natural History Museum  
Niki McGinnis, City of San Diego Water Department  
Mike Hastings, Weston Solutions  
Jerre Stallcup, Conservation Biology Institute  
Trish Smith, the Nature Conservancy

**Others in Attendance: (Continued)**

Leslie Woollenweber, San Dieguito River Valley Conservancy

Shea O'Keefe, Natural Resources Conservation Service

Jason Giessow, Dendra Inc.

Christina Schaefer, TAIC

Ron Rempel

Diane Rosenberg (Alt.), San Diego Foundation

**SANDAG Staff in Attendance:**

Julie Wiley

Rob Rundle

Keith Greer

Marina Som

**1. Welcome and Introductions**

Chair Hon. Carrie Downey, City of Coronado, called the meeting to order at 1 p.m., and welcomed the group. She invited members and guests to introduce themselves.

**2. February 10, 2009, Meeting Summary**

Ms. Downey asked the Working Group if there were any corrections to the meeting summary. Carlton Rochester, USGS, moved to approve the minutes but noted a typo on page 8, Item #7, of the agenda. The EMPWG reviewed the Ad Hoc Subcommittee's recommendations on the Regional Habitat Conservation Funding on November 13, 2008, and not on November 13, 2009, as written. Mike Grim, City of Carlsbad, North County Coastal, seconded the motion and the motion carried without opposition.

**3. Public Comments and Communications**

Members of the public had the opportunity to address the Committee on matters before the EMPWG. No public comments were received at this time.

Ms. Downey requested that members of the public wishing to comment at this time or speak to an item on the agenda limit their comment to three minutes.

**4. Status of EMPWG Funding Efforts**

Keith Greer, SANDAG, provided an update on the Regional Habitat Conservation Fund Grants. A list of allocated funds and contract status of projects under the funding effort was provided as Attachment #4 on page 11-13 of the agenda. Mr. Greer noted a correction on page 12, the funding amount provided to the Southwest Wetland Interpretive Association Tijuana River Valley Invasive Removal was \$147,000 not \$497,900 as indicated. Staff is currently working to make this information available online through an internet application.

Additionally, Mr. Greer noted the \$220,000 allocation for enforcement activities, as approved by the Board has yet to be utilized. SANDAG staff is trying to determine the most cost-effective way to make use of that money. Staff is proposing to setup a panel presentation to discuss this issue in greater detail at the May 12, 2009, meeting.

## **5. Regional Management and Monitoring Roles and Governance**

*[NOTE: THE MINUTES FOR THIS ITEM ARE EXPANDED TO MORE FULLY CAPTURE THE DISCUSSION AT THE REQUEST OF THE EMPWG]*

Mr. Ron Rempel presented potential roles and responsibilities of the regional management and monitoring entity and a comparison of potential governance structure for it. Mr. Rempel solicited input from EMPWG members and the public to formulate a draft recommendation to the Executive Oversight Committee. Two feedback forms were disseminated for this purpose. The first requests input on the prospective roles and responsibilities of the proposed regional entity, and the second requests input on various evaluation criteria for three governance structures proposed for the regional entity.

### Part 1: Discussion of the Potential Roles and Responsibilities of the Entity

In regards to a process question posed by Michael Beck, Endangered Habitat League, Mr. Greer said that the EMPWG will be making a recommendation to the Regional Planning Committee in June after it goes to the Executive Committee on May 19. Mr. Beck commented that the Working Group should vote on the item before it goes to the Executive Committee.

Ms. Downey said the sequence proposed by staff, is the best way to disseminate information to air the concerns of the EMPWG to the Executive Oversight Committee, without having to take a formal position at this time. Mr. Greer additionally noted that the EMPWG makes recommendations to the Regional Planning Committee and not the Executive Oversight Committee.

Jim Whalen, Alliance for Habitat Conservation, asked for clarification on what is meant by the word "coordinate" in describing the roles of the entity. Mr. Rempel said that coordination depends on the type of activity. If multiple organizations are involved in an effort, for example, coordination could involve dealing with contracts and funding sources or ensuring the timeframe and data collecting methods are standardized. The regional entity would have a say over whether or not it thinks the activities are serving its intended purpose.

Jerre Stallcup, Conservation Biology Institute, noted a mistake in the numbering of the importance scale on the feedback form. "Not important" should be numbered 1 and not 3.

Mr. Grim inquired how Role #10: Provide data and analytical report to the agencies and the public, relates to what is already being done with the MSCP plan in its annual report. Mr. Rempel stated the analytical report would synthesize data from across the county and provide a regional analysis rather than an assessment based on individual permittees or preserve systems.

To address a question by Emily Young, San Diego Foundation, on whether the feedback form is asking EMPWG members to prioritize roles, Mr. Rempel said that each potential role should be judged independently.

Kathy Viatella, the Nature Conservancy, suggested the inclusion of constraints for it may affect levels of implementation. Mr. Rempel asked the EMPWG to judge the breadth of the roles and responsibilities rather than the entity's priorities at this point.

Ms. Young inquired which of the roles listed in the form does the Nature Reserve of Orange County (NROC) focus on most. Trish Smith, the Nature Conservancy, said NROC coordinates monitoring activities, oversees contracts for monitoring across all lands, prepares an annual report that summarizes management actions undertaken by each land manager within the reserve, prepares reserve-wide invasive species control programs and implement it, and coordinates and revises monitoring protocols. NROC, however, does not coordinate volunteers, collect nor synthesize monitoring data; these are done through contractors.

Megan Johnson, California Coastal Conservancy, asked how Role #6 differs from Role #18. Mr. Rempel said that Role #6 would involve interagency coordination on potential expenditures of those agencies dollars as opposed to seeking grants to do specific activities.

Part 2: The EMPWG was asked to provide input on potential governance structures (below) for the regional management and monitoring program.

1. Joint Powers Agency (JPA)
  - Local Agency
  - Local, State, and Federal Agency
2. Department within SANDAG
3. Non-profit Public Benefit Corporation

Julie Wiley, SANDAG General Counsel, was present to provide legal counsel on questions relating to these structures.

Mr. Whalen inquired about the advocacy roles of nonprofit corporations. Ms. Wiley stated that she is unsure of their limitations since she is not a nonprofits legal counsel; however, governmental entities are not allowed to engage in political advocacy. She also noted that *TransNet* dollars are not to be used for electioneering or to seek funding through a referendum.

Diane Rosenberg noted the Alliance for Justice Web site has information that speaks to this issue.

Ms. Wynn asked if conservancies, such as a state-chartered conservancy, were considered as potential governance structures and whether the scope of an existing conservancy could be expanded. Mr. Rempel said that conservancies were not listed as potential governance structures because a state chartered conservancy, for example, must report to the state Resources Agency, its members are determined by the state legislature, and it is difficult to establish in this economic time. Additionally, the Resources Agency has made it clear in recent years that it does not want to see the creation of any more conservancies and expanding the scope of an existing one may bring about a host of political issues that the regional may not want to deal with.

Ms. Young asked Mr. Rempel to clarify what is meant by internal versus external politics. Mr. Rempel said that internal politics are situations when board decisions are influenced by interactions with staff, as opposed to external politics, where decision-making is based on outside influences from elected officials and the public.

David Mayer, California Department of Fish and Game, inquired if enforcement capabilities over preserved lands could be included under the JPA scenario. Mr. Rempel said this would be based on agreed upon roles and authorities granted to the JPA by its members.

Ms. Viatella asked if JPAs could receive private donations. Mr. Rempel said, although JPAs can receive donations, most people do not want to donate to JPAs.

Mr. April noted the benefit of a state-chartered conservancy is that the transfer of lands from a state agency to a state conservancy could be accomplished under current state law more effectively than transferring it, which would not be the case with to a nonprofit entity. A senate bill allows Caltrans to transfer lands to private nonprofits; however, it does not allow the transfer of money to them. The bill is currently hollow because a nonprofit would not want to take the land without the money.

Mr. Rempel said a state chartered conservancy and a JPA do many of the same things, however, the real difference is the process upon which they are established and the authorities transferred to them when they were created. A state chartered conservancy is established by state statute and the state legislature identifies members of its board, whereas a JPA is established upon a negotiated agreement between its member and they in turn determine the selection of the board members. Mr. Rempel said that a JPA would be more in line with EMPWG goals and objectives.

Ms. Johnson asked who approves the creation of a JPA. Mr. Rempel indicated approval rest upon the organizations who enters into the agreement.

Ms. Wiley added a JPA is created by a Joint Powers Agreement, wherein, certain entities decide to jointly endeavor to accomplish something and they must choose one of their members as the one whose rules must be followed by the JPA. The JPA cannot do anything beyond what one of members can do or give it authority to do. For example, when SANDAG was JPA, the City of Escondido was the member agency whose laws SANDAG had to abide by.

Ms. Wynn asked if jurisdictions would potentially have a vote in this entity. Mr. Rempel said that membership would depend on whether this entity is created as a local JPA or one with the state and federal agencies involved. The decision would be dependent on what is agreed upon by the parties involved.

Ms. Downey asked if a hybrid form of governance is possible within the SANDAG structure. Citing ARJIS as an example, Ms. Wiley said that this hybrid scenario is something that could be considered.

~~Ms. Downey asked if another column should be placed in the form to provide input on this hybrid structure.~~ Tom Oberbauer, County of San Diego, recommended the addition of a new column in the feedback form for a different governance structure. This structure would be similar to that of what is currently in place at SANDAG, in which the Executive Committee would provide oversight. Mr. Rempel said that an additional column would be the best way for this information to be included in the form.

Ms. Viatella said that it is hard to do this sort of evaluation since some of the elements that the Working Group is asked to provide input on, taken together, are inherently conflicting. Ms. Viatella said that a nonprofit 501(c)3 structure seems best suited for the regional entity in order to have the flexibility, independence, and ability to receive both public and private fund that the EMPWG is seeking; but, when going back to the list of potential roles, Ms. Viatella said that it blurs the line between being a 501(c)3 as opposed to being a permittor.

Mr. Beck requested that his comments be placed on the record:

Mr. Beck said: For context I want to state that, from our perspective anyway, that this discussion and this decision about the regional monitoring entity are fundamentally essential for the program [NCCP] to succeed. So this is a hugely important decision and the decision is probably going to create a structure that is going to not be undone. In my view, I don't think we are going to revisit this [issue], so I think that this is, again, something that we have to look past this moment and imagine 20-30 years from now something that is actually functioning and doing what it needs to do. And again, from [Ms.] Viatella's perspective... what... this entity has to do is [that] it absolutely must have a regional perspective; it has to have no lines whatsoever within the decision-making process in terms of geography. Its job, its primary purpose, is... to get the information that would allow us collectively to assess the viability of these covered species [under the NCCP], there is going to be over a hundred of them in San Diego County... It [the regional entity] has to develop... But, [a] part of what threatens people about a NGO, and I am arguing for one, is they think that somehow it is going to be mis-using authority or usurping some authority of power that they have. So there is a kind of this knee jerk cultural reaction to a NGO that actually have authority to accomplish something. This [role of the regional entity] is highly technical work; this is not buying land. There is no reason to have condemnation value or purpose or that sort of thing. This is very technical work and once this thing [entity] gets structured towards doing work, nobody in the broad public is going to pay much attention to it. But the point that Kathy made about making a separation between what ultimately must happen, again, is adaptive management directives are suppose to be the result of this monitoring program... to prioritize management, to prioritize monitoring... The wildlife agencies really have the obligation to do that, so maybe as we move forward we can separate the threat or the fear that people have about an NGO and reestablish that obligation or reconfirm that obligation for adaptive management directives because that is the only issue of control here... is what you are going to tell local government to focus on... and if that stays with the wildlife agencies maybe that threat is eliminated.

Ms. Downey asked Mr. Beck if he anticipates an agency, such that as Fish and Wildlife, to give management directives based upon what is produced by the regional entity.

Mr. Beck said: I think that you will find that the NCCP anticipates that the wildlife agencies have the obligation to do that work and there could be some variations on a theme. But, maybe that is a way because when you define control... it is really what this thing [entity] is going to tell local governments to do for which species, that's it. That's the only fearful thing in this and it shouldn't be fearful because local government should be doing it. Local government and JPAs all come to the table with their geographic lines around them, every single JPA that we have in San Diego County operates in that way. The reason why JPAs all attach themselves to NGOs [is] because NGOs can do things that they can't do... They [NGOs] can put a personality on the effort, they connect with the

community, they do fundraising, they bring some kind of character to an organization and JPAs are kind of not intended and not expected to have a personality- they just don't. So those are the functions that have to happen in our view.

The priorities of what this thing [entity] has to do as well, [is that] it has to have a regional perspective, has to be the most cost-effective entity and that includes the ability to fundraise. So much of what has happen in the NCCP in San Diego County is the result of the effort of nonprofits and not of government in terms of making the program work and getting funding and doing all of these structural things as well as focusing on linkages when local government doesn't do it, and focusing on wrens when local government doesn't do it. There are so many things that are essentially performed by nonprofits and the business communities as well. The program would have never been accepted and voted on by the City of San Diego had not both the business and the environmental communities stood up there and said do this. So there is a hugely important role, and this translates again into the structural gear that we are talking about. It has to be independent. Everybody agrees that if you are talking about science and monitoring data it has to have independent science, otherwise just don't even do it because you would damage the NCCP by having something that is ever perceived, at a statewide level, as manipulating... Look [at] what just happened over that last eight years when science was manipulated. This thing [entity] must have creditability and independence and the only way to do it in our view is to be an NGO.

Ms. Downey asked if the EMPWG does that, then who get to decide the appointment of the Board members and who reviews it.

Mr. Beck said: That decision will come from people who actually are spending the money, so ultimately that will translate to the SANDAG Board and I don't know what is between this entity and the SANDAG Board. I think that there are different ways to structure things, but ultimately the veto power on the adaptive management directives are probably the wildlife agencies and the authority to make a decision ultimately in regard to the funding based on clear science based recommendations would be the SANDAG board. If you look at what we have done under this Ad Hoc Committee that we have been operating under, and the regional planning committee all the way up to the SANDAG Board, things get vetted here because everyone around the table has a real interest in what they are doing and really cares about the answers and by the time they go through the process those decisions are not being changed by the SANDAG Board. In a JPA, people know that they all show up once a month or once quarterly and they get the agenda the day before and they read it ten minutes before and that is who shows up to make the decisions. That is a highly different thing than what we are talking about here with an NGO that actually is populated by scientists, non-elected officials, [although] it could have elected officials in the system for sure. You are all elected officials [Chair, Carrie Downey]] that has participated in this process. Lori Pfeiler, mayor of Escondido, is now an advocate for this campaign [Quality of Life] that we are doing because she's invested in it.

Ms. Downey asked if the EMPWG see its Chair as a possible interface to get SANDAG funding approvals once we get this entity gets set up.

Ms. Viatella said the one thing she likes about the nonprofit nature is that nonprofits fail or thrives based on performance and how they are evaluated by their contributors. She noted that it is a lot easier to dissolve something that is failing.

Mr. Beck said: This [Working] Group developed and made recommendations on the work program [and] that wasn't change when it went forward. This entity is going to have to have a structured universe that is adaptable, that is based on the work program and the best available science today. But, that may change and those things happen in the interim and this entity must be able to recognize when those things are happening. It has to have the creditability when those independent people on the ground can pick up the phone and believe that somebody on the other end is going to listen to them and actually act on those things. The bulk of things is going to be hard wire into a work program but has to be nimble, flexible, and creditable and interfaced with biology.

Mr. Greer noted the EMPWG is a structured committee that makes recommendations to the Regional Planning Committee, which makes recommendations to the SANDAG Board of Directors. Through the vetting process, the EMPWG recommendations seem to be well supported at the Board level. But the question here is what type of structure does the Working Group want the entity to be and how funding, if it comes to SANDAG, flows from down from the SANDAG Board to the regional entity.

Ms. Wiley emphasized that if the Group decides to create an NGO, then that entity has to be completely separated from SANDAG, otherwise the Brown Act, Public Records Act, employment laws, and contracting procedures of a public entity will apply to the NGO and the flexibility in which the group is looking for would not be there. The nexus that the group seeks may be in the form of a contractual relationship versus a direct control type of relationship.

Mr. Rempel added that through a contractual relationship, the EMPWG and the Regional Planning Committee could be kept in the process.

Ms. Wynn inquired about contractual agreements between an NGO and SANDAG for management plan preparations. Ms. Wiley said that this would basically be a cooperative agreement between the parties. She cites SANDAG's relationship with (FULL ACCESS & COORDINATED TRANSPORTATION (FACT), the designed Consolidated Transportation Services Agency for San Diego County. FACT is a completely separate entity from SANDAG. Each year, FACT has to apply for funding based on its scope and SANDAG has input on whether it is willing to include it in the contract and fund. The Senior and Disabled Working Group provides comments on what FACT is supposed to accomplish as far as coordinating transportation for the region for disabled and senior persons.

Ms. Wiley said that through contracts, SANDAG, from EMPWG recommendations, could impose performance standards and timelines for when the scope has to be accomplished. She does not want the Working Group to think that what is being done at SANDAG could be transplanted and labeled as an NGO because this cannot be done without losing flexible.

A question was raised if this entity is a separate nonprofit organization, would the same contracting procedures apply similar to the land management grants, in which the EMPWG recommends funding and SANDAG issues a contract to the entity.

Ms. Wiley said that the grant allocation process is on a competitive basis. In this case, Ms. Wiley does not believe that it was the intention of the drafter and voters of the *TransNet* Ordinance to have the regional entity compete for funds, thus a cooperative agreement is more appropriate because the *TransNet* Ordinance specifically speaks to the creation of this regional entity and this entity having use of the funds.

A comment was made that the entire structure of this effort is to create one regional entity and this discussion is about drafting the two roles of the entity, the science and implementation. The commenter said that he would have mixed feeling about having an NGO being in charged of all the implementation because the NGO are going to run into liabilities and execution problems and it might be beneficial to the state and federal agency as apart of the JPA that helps create that nexus for communication.

Mr. Grim said that it is very important to keep the permittee/permittor relationship separate from this regional effort to not confuse jurisdictional and regional entity roles. The regional entity is more about informing and coordinating rather than regulating.

Ms. Downey asked Mr. Grim what he believes is the best structure to keep those roles separate. Mr. Grim responded that a NGO would be the best because with a JPA would involve people that are not really scientifically informed.

Mr. Greer said the whole purpose of the regional entity is to develop good science on species for land management and monitoring.

Mr. Whalen cited three examples of entities with a failing governance structure of each of the governance structures being discussed. Mr. Whalen said that the Otay Ranch JPA failed to produce results even though it is funded and have a game plan, the Santa Monica Conservancy is equivalent to a NGO but is unaccountable, and the Southeast Economic Development Corporation (SEDC) is a public corporation that has a corrupt setup. Mr. Whalen said that this entity must be some kind of public corporation with a lot of external controls over governance; it has to have oversight, standards and accountability provisions attached to it.

Ms. Wiley said that getting this NGO off the ground would be difficult because SANDAG cannot provide legal counsel and staff because SANDAG has to have an arms length relationship to this entity.

Mr. Greer asked how the Regional Energy Office (REO) was created. Ms. Wiley said that she does not know the answer, although the REO is completely separated from SANDAG with its own staff and legal entity.

Ms. Downey said that she thought REO was once apart of SANDAG. Ms. Wiley said that it had offices at SANDAG and SANDAG did provide some funding, but the REO wanted be an independent entity and did file articles of incorporation 6 or 7 years ago.

Ms. Downey inquired if *TransNet* funds could be used to hire an independent attorney to set up this entity because the *TransNet* Ordinance clearly envisions the development of this entity. Ms. Wiley said that she would have to think about this because the issue is whether the ordinance contemplates that money should be used for something even before it's created.

Mr. Rempel said he does not anticipate a problem in finding pro-bono legal assistance to develop an NGO document.

Ms. Viatella inquired if SANDAG performs audits. Ms. Wiley said that SANDAG contracts mandate audits be performed by an independent firm and require that SANDAG have access to these records.

Mr. Rempel inquired if SANDAG does both a performance audit and a financial audit to determine performance compliance. Ms. Wiley said, yes, it does.

Ms. Stallcup noted that this entity would not replace land managers; rather, it would coordinate amongst them so there would not necessarily be the kind of problems associated with permits because it is assumed that land managers would continue to manage their land.

Mr. April raised the issue of land that are not currently being managed- who is going to assume those duties under this entity.

Ms. Downey requested that SANDAG staff provide the feedback forms electronically for members of the EMPWG and the public. Mr. Greer indicated he would send these out.

## **6. EMPWG Subcommittee Recommendations on Land Management Grants**

This item was deferred to the April 14 meeting.

## **7. Next Meeting Date and Adjourn**

Chair Downey adjourned the meeting at 2:50 p.m. The next meeting is scheduled for April 14, 2009, from 1 to 2:30 p.m.

**San Diego Association of Governments**  
**ENVIRONMENTAL MITIGATION PROGRAM**  
**WORKING GROUP**

May 12, 2009

AGENDA ITEM NO.: **3**

**Action Requested: APPROVE**

SUMMARY OF APRIL 14, 2009, MEETING

**Members in Attendance:**

Hon. Carrie Downey, (Chair), City of Coronado  
Tom Oberbauer, (Vice Chair), County of San Diego  
Bruce April, Caltrans  
Michael Beck, Endangered Habitats League  
Catherine Caldwell, Wildlife Conservation Board (Alt.)  
Mike Grim, City of Carlsbad, North County Coastal  
Anne Harvey, San Diego Conservation Network  
Megan Johnson, California Coastal Conservancy  
Melanie Kush, City of Santee (Alt.)  
David Mayer, California Department of Fish and Game  
Betsy Miller, City of San Diego (Alt.)  
Jim Whalen, Alliance for Habitat Conservation  
Susan Wynn, U.S. Fish and Wildlife Service  
Emily Young, the San Diego Foundation  
Michelle Matson, U.S. Army Corps of Engineers

**Others in Attendance:**

Ron Rumpel, Consultant  
Rick Alexander, Sweetwater Authority  
Niki McGinnis, City of San Diego Water Department  
Jason Giessow, Dendra Inc.  
Leslie Woollenweber, San Dieguito River Valley Conservancy  
Libby Lucas, Department of Fish and Game  
Christina Schaefer, TAIC  
Megan Hamilton, County Dept. of Parks and Recreation  
Jerry Jakubauskas, City of San Diego  
Anne Fege, San Diego Natural History Museum  
Jeff Linker, Wildlife Research Institute  
Michael Nelson, San Diego River Conservancy  
Gabriel Buhr, California Coastal Commission  
Kristy Forburger, City of San Diego (MSCP)  
Josh Garcia, City of San Diego

**SANDAG Staff in Attendance:**

Rob Rundle  
Keith Greer  
Marina Som

**1. Welcome and Introductions**

Chair Hon. Carrie Downey, City of Coronado, called the meeting to order at 1 p.m., and welcomed the group. She invited members and guests to introduce themselves.

**2. March 10, 2009, Meeting Summary**

Ms. Downey asked the Working Group to review the meeting summary and if there were any corrections since the summary was expanded at the request of the Environmental Mitigation Program Working Group (EMPWG).

Tom Oberbauer, County of San Diego, said he would like reflected in the minutes his comments regarding the inclusion of an additional column for a different governance structure in the regional management and monitoring entity feedback form. This structure would be similar to the EMPWG, in which the Executive Committee would provide oversight.

Ms. Downey pointed to page 7 of the agenda, in which she was mistakenly attributed to the comment that Mr. Oberbauer is referring to.

Bruce April, Caltrans, would like to clarify his comment on page 6 of the agenda. He stated that it is actually more complicated than what was written. A state law allows Caltrans specifically to transfer lands to private nonprofits; however, it does not allow the transfer of money to them. The bill is currently hollow because a nonprofit would not take the land without the money.

Ms. Downey noted that on page 8, paragraph 5, the sentence should state, "Ms. Downey asked if the EMPWG does that, then who gets to decide the appointment of the *members* and who review it."

Since there are significant changes, Ms. Downey said that the approval of the March meeting summary will be postponed until the next meeting.

**3. Public Comments and Communications**

Members of the public had the opportunity to address the committee on matters before the EMPWG.

Michael Nelson, Executive Officer for the San Diego River Conservancy, expressed his appreciation of the Working Group's work on the land management grants, but he is concerned over the fact that their project proposal received zero funding even with an overall ranking of four. Mr. Nelson stated that the most limiting factor to their proposal appears to be the delay in the availability of state grants. He would like the EMPWG to know that those grants are designated as set-aside funds

for the Conservancy. Mr. Nelson said that he would like to work with the EMPWG in the future to perfect their application and noted that the alliances that were reflected in their applications are hard to hold together and it is important that this is acknowledged and invested into.

For the record, Ms. Downey announced that an e-mail was received from Charles David Stout indicating that he would not be able to attend this meeting. Mr. Stout had been communicating with Staff concerning the EMPWG evaluation of the Back Country Land Trust Environmental Mitigation Program.

#### **4. Recommendations of the EMPWG Ad Hoc Subcommittee on FY 2009 Land Management Grants**

Mr. Oberbauer discussed the EMPWG Ad Hoc Subcommittee recommendations for the FY 2009 Land Management Grants. The Ad Hoc Subcommittee was appointed on November 13, 2008, by the EMPWG to evaluate the land management grant applications for FY 2009. The Evaluation Committee consisted of Bruce April, Mike Grim, Anne Harvey, David Mayer, Jim Whalen, Susan Wynn, and two independent outside experts: Bill Tippetts and Dawn Lawson; and was chaired by Mr. Oberbauer.

SANDAG has allocated \$1.63 million of the *TransNet* Environmental Mitigation Program (EMP) funds for land management projects that: (1) reduced existing or emerging invasive species, (2) promote natural recovery of post-burn areas, (3) provide habitat restoration on post-burn and other degraded habitat lands to promote recovery of native species and vegetation communities, and/or (4) control access and garbage removal to reduce unintended impacts from recreational use. Twenty-nine applications, totaling \$7.1 million, were reviewed according to the criteria approved by the SANDAG Board on September 26, 2008. Only nine of those submitted applications were recommended for funding.

Mr. Oberbauer stated a number of high-ranking projects were not recommended for funding at this time due to issues over matching funds or they currently have land management funding from another EMP grant program.

Anne Harvey, San Diego Conservation Network, stated for the record that she is an unpaid volunteer for the Conservation Resources Network, an unpaid member of the executive board of the Friends of Los Penasquitos Canyon Preserve, and an unpaid volunteer of the executive board of the San Dieguito River Valley Conservancy. She stated since she is an unpaid member of those organizations, her participation in the Evaluation Committee presented no conflict of interest.

Emily Young, the San Diego Foundation, inquired if there were any discussions over focusing funds geographically, especially for projects around I-8 in the South County. Mr. Oberbauer responded that the projects were reviewed on a case-by-case basis to determine if they meet the criteria without consideration to overall geography, however, there were some overriding issues dealing with cactus wrens and specific property management activities.

Ms. Downey recalled how well the projects were geographically distributed when the first year grant was administered; though, this has not been the case for subsequent years. More attention was given to certain critical projects because the committee of experts decided that this is really

where the funds needed to be even though there were other projects that may have been more geographically dispersed. Ms. Downey said that geography could be a considering factor but it should not be weighed as heavily as some other factors.

Melanie Kush, City of Santee, thanked the Working Group for their ranking of 4 for the San Diego River Conservancy project this year. She said that this ranking was very encouraging; however, the current freeze of state funds is disappointing. She noted that this project would have covered a longer segment of the San Diego River and that they are going to keep trying to perfect their application and maybe bring out some more funds of their own next time.

Mr. April, as a member on the Committee, thanked everyone for their applications and interests. He said the project proposals were very good and it was a difficult process to go through to rank these projects. He encouraged applicants to pay close attention to the criteria and reapply next cycle.

David Mayer, Department of Fish and Game, recommended to applications that they break or phase complex projects because even if the whole project did not get funded, there may be some critical elements in the project that would.

Megan Johnson, California Coastal Conservancy, asked if some projects were not funded because they were in urban areas and is not as biologically significant as projects in the Multiple Species Conservation Program.

Mr. April said projects are weighed according to the criteria and if there are no rare or listed species or species at risk of extirpation, then that will setback the project score by five points. Susan Wynn, U.S. Fish and Wildlife Services, added the condition of coverage permits, was also a factor in ranking the projects.

Mr. Oberbauer stated projects do not have to absolutely be in a MSCP as a condition for funding.

Ms. Downey said it would a good idea for the group to familiarize themselves with the criteria if they are looking to modify them for the next cycle.

A question was posed about how the budget for each project was scrutinized and whether vehicles and equipment were considered under the criteria. Jim Whalen, Alliance for Habitat Conservation, said a lot of attention was paid to the budgets, and although vehicles and equipment are considered in the criteria, it generally rubbed reviewers the wrong way.

Ms. Wynn said that it was thought that projects with equipment funding would probably need to be funded for additional work in the future. She noted that, originally, some funds were allocated to equipment to make an investment in nonprofit groups so that they had the infrastructure to continue with their work.

Ms. Downey added that another reason they decided to fund equipment was because it was cost-effective due to joint-use of the equipment.

Mr. Whalen moved to approve the Ad Hoc Subcommittee's recommendations for the FY 2009 Land Management Grant. With Mr. April seconding the motion, it passed without opposition.

## **5. Establishment of Ad Hoc Committee to Review Five-Year Funding Strategy and Land Management Grant Criteria**

Mr. Greer discussed the formation of an ad hoc committee to review the five-year funding strategy and current land management grant process and criteria. This committee would recommend revisions, if necessary, at the May or July EMPWG meeting. Mr. Greer stated that the land grants are a couple months behind the start of SANDAG's fiscal year, which begins on July 1. If this can be completed before July 1, an additional two to three months can be gained.

Ms. Downey noted that this committee cannot have a quorum of the EMPWG members. Mr. Greer stated that a maximum of nine members could be on this committee.

Michael Beck, Endangered Habitats League, inquired if the responsibilities of this ad hoc committee will conflict with subsequent actions, such as applying for the land grants. Mr. Greer said that it would not because this is not an individual application process it is a larger discussion on policy recommendations.

Mr. Beck asked for clarification on how a noncommittee member, such as CBI, can be a part of this committee. Mr. Greer said that they would not sit in the ad hoc committee, but there could be an open meeting in which they could attend. Mr. Greer affirmed that he can send out the meeting time in a Brown Act notice process.

Ms. Wynn commented that the vision of a land manager that would develop the strategic plan which would guide land management operations in the region has yet to become a reality. She suggested that the five-year plan may want to reflect that a percentage of the land management fund be allocated to implementing the strategic plan versus doing a Request for Proposals.

Ms. Downey said that the hope is to have this position filled by the next fiscal year. Mr. Greer added that he hopes to have that person on board by the time the ad hoc committee convenes to evaluate projects.

Ms. Wynn said that she would be happy to chair this ad hoc committee.

Ms. Downey asked if other members would like to volunteer to be on this committee, especially those who had not sat on an ad hoc committee before. Mr. Greer said that those members are not in attendance at this meeting - USGS, the Nature Conservancy, and the City of Chula Vista.

Ms. Wynn motioned to approve the establishment of the ad hoc committee, which was seconded by Mr. Whalen. The motion carried without opposition.

## **6. Next Meeting Date and Adjourn**

Ms. Downey said that even though the EMPWG has envisioned meeting every other month, this has not been the case. She inquired if the group has to meet next month.

Mr. Greer recommended the Working Group meet in May so that they will be in the right cycle to meet on alternate months with the Shoreline Preservation Working Group. Additionally, for the next meeting, Staff is trying to setup a panel discussion on open space enforcement issues and the

use of the \$220,000 that has been allocated for enforcement activities under the Regional Habitat Conservation Fund Grants. Wardens from the California Department of Fish and Game and the park rangers from the City of San Diego have confirmed their attendance. Staff is trying to contact the County's Sheriff Department on their participation in this discussion.

Mr. Grim noted that the City of Carlsbad is contracting with the Center for Natural Lands Management (CNLM) to look at this issue for their Habitat Management Plan. He said he would be happy to share Carlsbad's experiences thus far and have CNLM participate in this discussion.

Chair Downey adjourned the meeting at 1:41 p.m. The next meeting is scheduled for May 12, 2009, from 1 to 2:30 p.m.