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Meeting Notice and Agenda

Environmental Mitigation Program Working Group

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

Tuesday, January 8, 2019

1 to 3 p.m.

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

Please take the elevator to the 8th floor to access the meeting room.

Staff Contact: Kim Smith
 (619) 699-6949
 kim.smith@sandag.org

Agenda Highlights

- **Environmental Mitigation Program Implementation Actions – New Memorandum of Agreement**
- **San Diego Zoo Global Native Seed Bank Grant Update**
- **U.S. Geological Survey – Five Hot Topics**

Please silence all electronic devices during the meeting

Mission Statement

The 18 cities and county government are SANDAG serving as the forum for regional decision-making. SANDAG builds consensus; makes strategic plans; obtains and allocates resources; plans, engineers, and builds public transit; and provides information on a broad range of topics pertinent to the region's quality of life.



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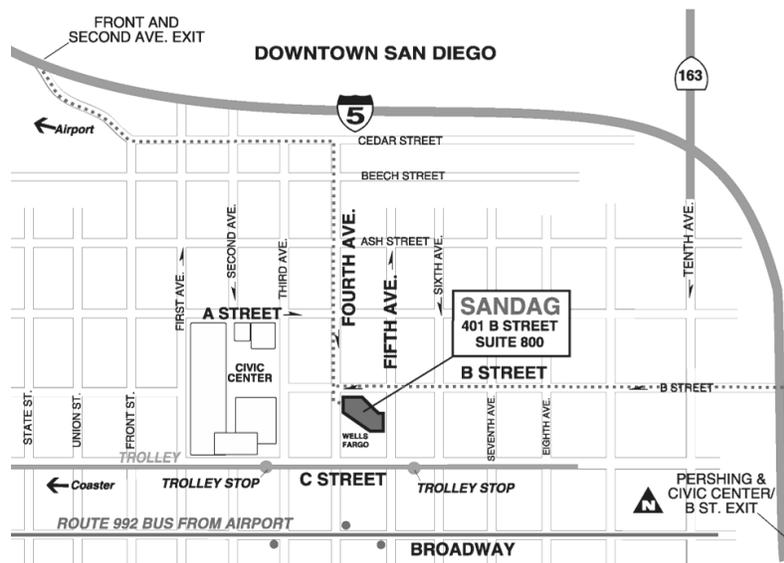
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Environmental Mitigation Program Working Group

Tuesday, January 08, 2019

Item No.		Recommendation
1.	Welcome and Introductions	Estimated Start Time 1 – 1:05 p.m.
+2.	Approval of Meeting Minutes The Environmental Mitigation Program Working Group (EMPWG) is asked to review and approve the minutes from its November 13, 2018, meeting.	Approve Estimated Start Time 1 – 1:05 p.m.
3.	Public Comments/Communications/Member Comments Members of the public shall have the opportunity to address the EMPWG on any issue within the jurisdiction of SANDAG that is not on this agenda. Anyone desiring to speak shall reserve time by completing a Request to Comment form and giving it to the meeting coordinator prior to speaking. Public speakers should notify the meeting coordinator if they have a handout for distribution to EMPWG members. Public speakers are limited to three minutes or less per person. EMPWG members also may provide information and announcements under this agenda item.	Estimated Start Time 1:10 – 1:15 p.m.
Reports		
+4.	Environmental Mitigation Program Implementation Actions – New Memorandum of Understanding (Keith Greer) Staff will present the new Memorandum of Agreement (MOA) that will cover the next ten years of the Environmental Mitigation Program. The EMPWG is asked to recommend to the Regional Planning Committee to recommend approval of the new MOA to the SANDAG Board of Directors.	Recommend Estimated Start Time 1:15 – 2:05 p.m.
5.	San Diego Zoo Global Native Seed Bank Grant Update (Joyce Maschinski, Institute for Conservation Research/San Diego Zoo Global) Joyce Maschinski will provide an overview and progress update on the San Diego Zoo's Native Seed Bank grant which was awarded funding as part of the 8th cycle of <i>TransNet</i> EMP Land Management Grants.	Information Estimated Start Time 2:05 – 2:25 p.m.
6.	U.S. Geological Survey – Five Hot Topics (Robert Fisher) Robert Fisher will give quick status updates on the following five topics; 1) southwestern pond turtle; 2) golden eagle; 3) badgers; 4) arroyo toads; and the Invasive Animal Strategy	Information Estimated Start Time 2:25 – 2:55 p.m.
7.	Upcoming Meetings The next EMPWG meeting is scheduled for Tuesday, March 12, 2019, at 1 p.m.	Information Estimated Start Time 2:55 - 3 p.m.
8.	Adjournment	

+ next to an item indicates an attachment



Environmental Mitigation Program Working Group

Item: **2**

January 8, 2019

Action Requested: **Approve**

November 13, 2018, Meeting Minutes

Chair Kristine Alessio (La Mesa) called the meeting of the Environmental Mitigation Program Working Group (EMPWG) to order at 1:02 p.m.

1. Welcome and Introductions

2. Approval of Meeting Minutes (Approve)

Action: Upon a motion by James Whalen (Alliance for Habitat Conservation) and a second by Susan Wynn (U.S. Fish and Wildlife Service), EMPWG approved the minutes from its September 11, 2018, meeting. Yes: Chair Alessio, Mr. Whalen, Matt Adams (Building Industry Association), Dai Hoang (City of Chula Vista), Deborah Mosley (County of San Diego), David Mayer (Department of Fish and Wildlife), Michael Beck (Endangered Habitat League), Trish Smith (The Nature Conservancy), Ms. Wynn, Lance Criley (U.S. Forest Service), Carlton Rochester (U.S. Geological Survey [USGS]). No: None. Abstain: Vice Chair LeAnn Carmichael (County of San Diego) John O'Donnell (City of Santee), and Anne Harvey (San Diego Conservation Network). Absent: Caltrans, City of Carlsbad, City of Poway, City of San Diego, The San Diego Foundation, U.S. Army Corps of Engineers, Wildlife Conservation Board.

3. Public Comments/Communications/Member Comments (Discussion)

Mr. Rochester mentioned that the USGS recently released a publication focusing on San Diego's classification as a 'hot spot' due to the various amounts of introduced species. San Diego received this classification because of the advanced tracking and recording methods that the County of San Diego and USGS utilizes.

Ms. Wynn announced that with the help of the San Diego Zoo and the Conservation of Biology Institute, the U.S. Fish and Wildlife Service was able to release its third batch of quino checkerspot butterfly larva on the San Diego National Wildlife Refuge located east of Sweetwater reservoir and north of the Sweetwater river.

Reports

4. Environmental Mitigation Program Implementation Actions – New Memorandum of Agreement (Information)

Keith Greer, Senior Regional Planner, presented the new Memorandum of Agreement (MOA) that will cover the next ten years of the Environmental Mitigation Program. In February of 2018, the MOA expired. Going forward, the new MOA proposes the continued funding of regional management and monitoring for the next ten years. It was recommended by Chair Alessio that this item be brought back to the January 8, 2019, meeting for recommendation by the EMPWG. This will allow the EMPWG members additional time to review the new MOA and funding necessities.

Action: This item is for information only.

5. Regional Vegetation Monitoring (Information)

Emily Perkins (San Diego Management and Monitoring Program [SDMMP]) and Dr. Kris Preston (SDMMP) presented an update on the Regional Vegetation Monitoring project, focusing on coastal sage scrub and chaparral communities.

Action: This item was for information only.

6. North County Habitat Connectivity (Information)

Mr. Rochester presented an update on a habitat connectivity assessment conducted in North County.

Action: This item was for information only.

7. Upcoming Meetings

The next EMPWG meeting is scheduled for Tuesday, January 8, 2019, at 1 p.m.

8. Adjournment

Chair Alessio adjourned the meeting at 3:01 p.m.

Confirmed Attendance at SANDAG Environmental Mitigation Program Working Group Meeting

November 13, 2018

Jurisdiction	Name	Attended	Comments
Alliance for Habitat Conservation	James Whalen	Y	Member
	Nick Doenges	N	Alternate
Army Corps of Engineers	Kyle Dahl	N	Member
	Vacant	N/A	Alternate
Building Industry Association	Matt Adams	Y	Member
	Vacant	N/A	Alternate
Caltrans	Bruce April	N	Member
	David Nagy	N	Alternate
City of Carlsbad	Rosanne Humphrey	N	Member
City of Chula Vista	Cheryl Goddard	N	Member
	Dai Hoang	Y	Alternate
City of Oceanside	Jeff Hunt	N	Alternate
City of Poway	Oda Audish	N	Member
	Carol Rosas	N	Alternate
City of San Diego	Betsy Miller	N	Member
	Heidi VonBlum	N	Alternate
City of Santee	Melanie Kush	Y	Member
	Christina Rios	N	Alternate
County of San Diego	LeAnn Carmichael	N	Vice Chair/ Member
	Deborah Mosley	Y	Alternate
Department of Fish and Wildlife	David Mayer	Y	Member
	Hans Sin	N	Alternate
Endangered Habitats League	Michael Beck	Y	Member
	Scott Grimes	N	Alternate
La Mesa	Hon. Kristine Alessio	Y	Chair
San Diego Conservation Network	Anne Harvey	Y	Member
	Vacant	N/A	Alternate

The Nature Conservancy	Trish Smith	Y	Member
	Cara Lacey	N	Alternate
The San Diego Foundation	Candace Wo	Y	Member
	Cami Mattson	N	Alternate
U.S. Fish and Wildlife Service	Susan Wynn	Y	Member
	David Zoutendyk	N	Alternate
U.S. Forest Service	Kirsten Winter	N	Member
	Lance Criley	Y	Alternate
USGS	Robert Fisher	N	Member
	Carlton Rochester	Y	Alternate
Wildlife Conservation Board	Peter Perrine	N	Member
	John Walsh	N	Alternate
Other Attendees			
Emily Perkins			
Dr. Kris Preston			
SANDAG Staff			
Courtney Pesce			
Keith Greer			
Sarah Pierce			



Environmental Mitigation Program Working Group

Item: **4**

January 8, 2018

Action Requested: **Recommend**

Environmental Mitigation Program Implementation Actions – New Memorandum of Agreement

Introduction

In February of 2018, the Memorandum of Agreement (MOA) outlining the implementation of the *TransNet* Environmental Mitigation Program (EMP) expired. The proposed MOA allows the implementation of the EMP for the next ten years. It clarifies the flow of funds for use for transportation mitigation, as well as regional management and biological monitoring. In addition, it updates the timing of the release of economic benefit.

Discussion

In March 2008, the SANDAG Board of Directors entered into a MOA with Caltrans, the United States Fish and Wildlife Service, and the California Department of Fish and Wildlife for the implementation of the *TransNet* EMP. The MOA was amended in August 2013 to discuss the economic benefit provisions of the EMP.

The new MOA proposes the following:

- Extension of the MOA for another ten years – through 2028.
- Continues funding for the Habitat Conservation Fund, including the San Diego Management and Monitoring Program at the same level (\$4 million annually) for the next ten years.
- Encapsulates the conservation and mitigation strategies separately approved by the SANDAG Board.
- Updates the timing of the release of Economic Benefit.

Establishment of a new MOA fulfills a recommendation made by the Independent Taxpayer Oversight Committee (ITOC) in the *TransNet* Triennial Performance Audit Report released in June of 2018.

Recommendation

The Environmental Mitigation Program Working Group (EMPWG) is asked to recommend to the Regional Planning Committee to recommend that the Board of Directors approve the new MOA that implements the EMP for the next ten years.

Next Steps

Pending approval from the EMPWG, the proposed MOA will be presented to the ITOC and the Regional Planning and Transportation Committees for recommendation for approval to the SANDAG Board in February 2019.

Key Staff Contact: Kim Smith, (619) 699-6949, kim.smith@sandag.org

Attachment: 1. Draft Memorandum of Agreement

**FOR DISCUSSION Memorandum of Agreement (MOA XXXX)
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 designed 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: Regional Plan (2015 Regional Plan) as the regional 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 Plan (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 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, 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 Environmental Mitigation Program;

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 agreement 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 as provided by the schedule above. 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 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 annually until the end of FY 2028 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 agreement 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. NCCP/HCP
 - i. Regional General Permits (e.g., Contra Costa County)
 - j. Regional Conservation Investment Strategy (RCIS)
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. Mitigation lands for local streets and road projects will occur in the permitted subarea plan or within the associated subregional NCCP plan with written approval of the Wildlife Agencies.

9. Economic Benefit will be released in accordance with the implementation policies identified in Attachment C of this MOA or a similar mutual agreed upon methodology developed over the life of the MOU, 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 7 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 processes. The parties agree to follow the CMS process identified in Attachment A of the MOA.
11. Each project will be reviewed by CDFW and USFWS (collectively 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 MOU, 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 federal Endangered Species Act at §§ ESA § 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. USFWS and CDFW 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 Federal 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 and 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 Ikhata

For USFWS:
2177 Salk Avenue, Suite 250
Carlsbad, CA 92008
Attention: Mendel Stewart

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 or to accord to any third party a right to sue this MOA, 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 on the day and year first above written.

SAN DIEGO ASSOCIATION OF GOVERNMENTS

CALIFORNIA DEPARTMENT OF FISH
AND WILDLIFE

HASAN IKHRATA
Executive Director

ED PERT
Deputy Director

CALTRANS

APPROVED AS TO FORM

CORY BINNS
District 11 Director

Office of General Counsel

UNITED STATES FISH AND WILDLIFE SERVICE

MENDEL STEWART
Carlsbad Fish and Wildlife Service
Field Supervisor

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

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 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 area already urbanized allowing the region to set aside and restore more open space in our less develop areas, and protect and restore or 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). CDFG 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 Regional Transportation Plan (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 RTP³ 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 3). 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 *TransNet* EMP 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 *TransNet* EMP 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 California Coastal Commission, SCC, U.S. Army Corps of Engineers, and local stakeholders will seek to develop a Comprehensive Coastal Wetland Mitigation Agreement that will complement a public works plan for projects in the coastal Interstate 5 (I-5) Corridor. This approach will consist 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 Publix Works Plan/Transportation and Resource Enhancement Program for the I-5 North Coast Corridor to implement the Comprehensive Coastal Wetland Mitigation Agreement.
 - c. Acquisition of property could occur prior to the signing of an 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.
 - d. A Comprehensive Coastal Wetland Mitigation Agreement will be brought to SANDAG Board for approval.

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.

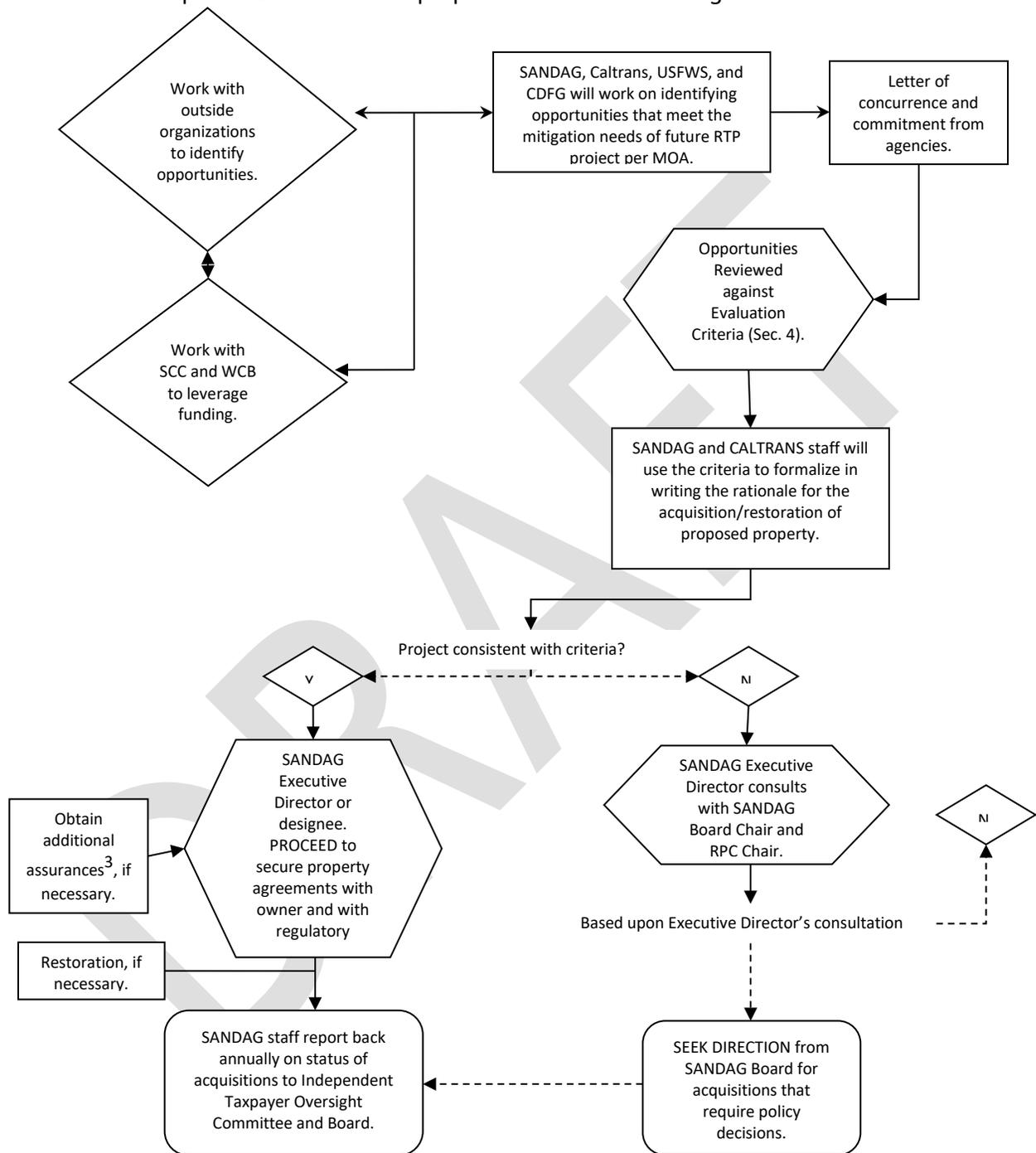
D. Process and Criteria for Mitigation

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 8 of the *TransNet* EMP MOA, “the focus of the initial mitigation efforts under the Conservation Mitigation Strategy (CMS) will be on those RTP projects identified and approved by the SANDAG Board as EAP followed by projects that are included in the “revenue constrained” scenario of 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 7 of the *TransNet* EMP 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 project as identified in *TransNet* EMP MOA with a focus on projects identified as EAP followed by those included in the “revenue constrained” scenario of the RTP. Mitigation opportunities to meet other RTP projects and local street and road projects will be considered under the terms of the *TransNet* EMP 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, 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 (POF). The Executive Director or designee shall have the authority to expend funds for mitigation up to 10 percent above the planning level estimates. 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. 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)
						\$2002	\$2002
Major Regional Projects							
I-5	SR 56	Vandegrift Blvd.	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
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

RTP Project	From	To	Coastal Wetlands	Non-Coastal Wetlands	Uplands	Estimated Mitigation Costs (TPMF)	Estimated Economic Benefit (EB)	
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 Blvd.	Alameda Blvd.	0	1	0	\$555,000	\$155,399	
SR 78	I-5	I-15	0	2	5	\$2,360,000	\$660,794	
SR 94	Avocado Blvd.	Steele Canyon Rd.	0	5	25	\$9,025,000	\$2,526,979	
SR 94	SR 125	Avocado Blvd.	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**

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 1200300 Regional Habitat Conservation Fund. 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.

Potential Economic Benefit will be reduced by the allocation already approved by the SANDAG Board of Directors (\$64 million) and any future allocations under this 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.

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.

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.

Allocated Economic Benefit funds would be converted to the year of expenditure dollars by the SANDAG Board based upon using growth in *TransNet* revenues.

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.

SANDAG will utilize the following eligibility findings for potential acquisition opportunities:

Promotes Natural Community Conservation Planning: The proposed acquisition will contribute to the success of the San Diego regional Natural Community Conservation Planning (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.

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 conservation/open space is not consistent, the jurisdiction(s) does not object to the site being purchased for habitat conservation/open space.

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 to the satisfaction of SANDAG.

Appraisal: The property must be appraised by a qualified licensed appraiser in accordance with established acquisition and appraisal standards, and reviewed independently by an appraisal specialist working for SANDAG. The first written offer will reflect the fair market value of the property.

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 organization willing to provide a conservation easement or deed restriction to SANDAG or mutually agreed-upon third party. SANDAG and the land manager have agreed upon the annual cost to manage the land and the method for funding the annual management costs.

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.

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 allocated by the SANDAG Board as part of the annual allocations of funding.

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.*"