EXECUTIVE COMMITTEE

November 5, 2004

AGENDA ITEM NO.: 1

Action Requested: APPROVE

EXECUTIVE COMMITTEE DISCUSSION AND ACTIONS

Meeting of October 8, 2004

Chairman Mickey Cafagna (North County Inland) called the Executive Committee meeting to order at 8:30 a.m. The attendance sheet for the meeting is attached.

1. APPROVAL OF MINUTES

Upon a motion by Vice Chair Mary Sessom (East County) and a second by Councilmember Jim Madaffer (City of San Diego), the minutes of the September 10, 2004, Executive Committee meeting were unanimously approved.

2. PUBLIC COMMENTS/COMMUNICATIONS/MEMBERS COMMENTS

There were no public comments, communications, or member comments.

CONSENT (Item 3)

3. FY 2005 OVERALL WORK PROGRAM (OWP) AND BUDGET AMENDMENT (APPROVE)

The Executive Committee was asked to approve an amendment to the FY 2005 OWP and Program Budget to add $222,000 in funding from the U.S. Fish & Wildlife Service to the Regional Open Space and Natural Resource Strategies work element (#30027). A total of $109,000 would be passed through to the City of San Diego for its Vernal Pool Management Program, and $113,000 would be set aside for consultant services for SANDAG's habitat conservation program work.

Action: Upon a motion by Vice Chair Sessom and a second by Chair Cafagna, the Executive Committee approved Consent Item 3.

REPORTS

4. PROPOSED AMENDMENTS TO BYLAWS AND BOARD POLICIES (RECOMMEND)

Julie Wiley, Deputy General Counsel, reported that as part of the annual review staff has gone through the Bylaws and policies for necessary changes. A number of proposed changes are being presented to clarify and add flexibility. She asked for the Committee's input on the proposed changes.
Jack Limber, General Counsel, noted that the Nominating Committee has met and made a series of recommendations for changes in procedures for electing the Board Chair and Vice Chair and selecting the chairs and vice chairs for the five Policy Advisory Committees (PACs). The first recommendation is that the Board officers and PAC appointments be made on a calendar basis, the second recommendation is to elect a first and second vice chair of the Board, and a third recommendation is the criteria to be used to elect Board/PAC officers.

Chair Cafagna questioned the recommendation regarding rotation. Mr. Limber replied that the Nominating Committee is developing broadened language including availability, experience, temperament, and geographic diversity.

There were a number of comments by Committee members in opposition to the word “temperament” in the selection criteria. Vice Chair Sessom asked Mr. Limber to pass along these comments to the Nominating Committee. Mr. Limber agreed to do so.

Ms. Wiley said that due to other changes, the Bylaws and policy amendments will not be acted on until next month.

Ms. Wiley said that Section III of the Bylaws was changed to reflect the addition of the Public Safety Committee (PSC) and to allow the Board to adopt a list of meetings for which Board members can be paid and reimbursed their expenses. Article IV is revised to clarify the timing for the notice of meetings and to add authority for the Transportation Committee to give final approval for real property transactions. This article also is revised to designate both the second and fourth Fridays of the month for SANDAG’s regular Board meetings. Article VI has been amended to clarify the delegation of approval authority for contracting and budget changes to the Executive Committee and Transportation Committee, and to add a provision delegating authority to the PSC. Article X is revised to delete the requirement that additional notice be given for amendments to the Bylaws.

Mayor Lori Holt Pfeiler (North County Inland) said that there are at least five standing committees, but the Board is not precluded from adding additional standing committees if desired. Ms. Wiley replied that was correct.

Councilmember Madaffer said that one of the issues prior to consolidation was that SANDAG had an inordinate number of committees. He would hope that there is a mindset that we don’t continue to add committees. He said that we don’t want SANDAG to be known as an organization of committees. He suggested that if we need a committee for a certain task we should use the words “ad hoc” so it is clear that it is a temporary committee.

Gary Gallegos, Executive Director, agreed with Councilmember Madaffer’s statements and said that there should be a start and end date for ad hoc committees.

Councilmember Madaffer suggested that there be an annual review of committees stating their reasons for continuing to exist.

Ms. Wiley said that the next change of the Bylaws would allow the Board to adopt and amend a list of meetings and events that the members can be paid for and for which their
expenses are reimbursed. There was some confusion among Board members and we wanted to provide a suggested list to determine what would be appropriate for reimbursement.

Vice Chair Sessom asked who would put that list together. Mr. Limber said a list can be put together of meetings Board members have typically attended in the past. Mr. Gallegos stated that staff would develop a draft list and bring it to the Executive Committee for review at the next meeting and to the Board for approval.

Ms. Wiley said that Section 5, subsection d, would increase the number of meetings per month that Board members could be reimbursed from four to six. The idea was to be a Board-driven agency, and encourage more involvement from Board members.

Ms. Wiley said that on page 4, Section 2, it is required that five days’ notice of meetings be provided; however, the Brown Act only requires 72 hours. Staff thought that the Bylaws should be consistent with state law.

Chair Cafagna suggested that we stay on the five-day notice but will meet the 72-hour requirement. Ms. Wiley suggested that language be added that agendas will be provided to Board members at the earliest point in time but in no event later than 72 hours.

Councilmember Madaffer said that we have frequently heard from the public about the inability for them to get information electronically. He asked if this notice is codified in the Bylaws or just day-to-day procedures. Ms. Wiley said that it is part of the Public Records Act and the Brown Act. Mr. Limber added that our agenda materials are posted on the SANDAG Web site the week before a meeting. Ms. Wiley said that we can add language that information will be provided to the public in an electronic format. Mr. Gallegos said that action the Board took at the last meeting relating to distribution of agenda materials should be codified in Board policy somewhere. Mr. Limber said that we will likely add in the mailing and e-posting date for agenda and agenda items.

Ms. Wiley reported that in Section 3 on page 4, a sentence was added to clarify the Transportation Committee’s authority to hold closed sessions and make final decisions on property transactions related to transportation projects.

Vice Chair Sessom noted that voting members on the Transportation Committee are not necessarily voting members of SANDAG.

Chair Cafagna stated that there had been previous discussions about how much power the Transportation Committee should have. The Metropolitan Transit System (MTS) Board previously made the real property decisions for transit issues, but it met on a more frequent basis than the SANDAG Board meetings. There are things that need to be done and can’t wait for a once-a-month meeting. He thought this issue deserved more discussion. He asked if the Transportation Committee can initiate condemnation proceedings. Mr. Limber responded that the Transportation Committee cannot initiate condemnation proceedings, but if a settlement is reached, the Transportation Committee could approve the settlement. Chair Cafagna clarified that the Transportation Committee would implement the condemnation actions approved by the SANDAG Board.
Councilmember Madaffer said that this was part of the intent of Senate Bill (SB) 1703. Any actions of the Transportation Committee should be reported out to the full Board. The Board could have some override potential.

Vice Chair Sessom commented that the Airport Authority has no sense of the overview of what SANDAG does yet it is a voting member of the Transportation Committee. Some of the members of the Transportation Committee don’t know the overview of SANDAG yet they will be voting on these kinds of issues. She wondered if those members have the entire Board’s perspective to vote on such matters.

Chair Cafagna stated that the Transit Boards like this provision because they have more say and there are fewer Board members. He agreed that the Transit Boards should have voting input into the public transportation issues.

Mr. Gallegos pointed out that six of the nine Transportation Committee members come from the Board. The other three members represent MTS, the North San Diego County Transit Development Board (NCTD), and the Airport Authority.

Councilmember Ron Morrison (South County) said that not all of the six are regular Board members but they represent member agencies.

Chair Cafagna said that the reason this needs discussion and thought is that the opponents to our regional structure will say that the Transportation Committee can condemn property but Transportation Committee members are not directly elected; they are appointed.

Mayor Pfeiler mentioned that decisions made by the Transportation Committee have to fit in with overall SANDAG policies. If the decisions are consistent with Board policy they should be okay.

Chair Cafagna added that Transportation Committee members are still elected officials, and the ability to engage as many elected officials in the San Diego area is why this structure works.

Councilmember Madaffer suggested that you could codify in the Bylaws the idea that any decision of the Transportation Committee could be reviewed by a four-fifths vote of the Board. That way, the Board would have a right to veto or appeal a Transportation Committee decision.

Chair Cafagna agreed that we should require on those decisions a four-fifths or two thirds vote to pass. If it doesn’t meet those criteria the decision would go to the whole Board.

Mr. Gallegos said the purpose of providing the Transportation Committee with authority for property transactions was the timing issue. You are not going to get to the finality for a property transaction if there is an appeal process.

Mr. Limber reminded Committee members that the closed sessions would only be for property condemnation actions.
Ms. Wiley said that language could be added limiting Transportation Committee closed sessions to a need for a decision rather than leaving it open.

Councilmember Ryan stated that the SANDAG Board needs to let go and let the Transportation Committee do its job. If we feel there is a problem then we can change the structure.

Following discussion, it was determined that this section will be left as is and not changed.

Mr. Gallegos suggested that this kind of a change can be made as part of Policy 001.

Ms. Wiley said that on page 4, Section 4 of the Bylaws, a change is proposed that there be two Board meetings a month rather than one, and the Board can hold more meetings if needed.

Ms. Wiley said that the next change on page 6, Section 3, Article V, recognized there is usually more than one June meeting. However, the Nominating Committee will probably change the timing of elections based on what it will be recommending.

Section 3 on page 7, was changed to provide for a date certain, July 1, for when successors take office. This is another area where the month will probably change as a result of a Nominating Committee recommendation.

On page 8, under financial decision making, some clarifications have been made for contracting decisions rather than the acceptance of funds, which leads to a two-step process. Section 5, Subsection d, on page 8, would allow the PSC to approve up to $500,000 for Criminal Justice Division and Automated Regional Justice Information System (ARJIS) decisions. Subsection e indicates that the Executive Committee will report approvals under this section to the SANDAG Board at least quarterly.

Under page 9, a change was made to delete ambiguity for implementing actions. Delegation to another agency would designate an agency to take on a responsibility. There could be a situation where we would not know the agency name at the time of taking action. The language has been changed from “shall” to “should.”

Ms. Wiley commented that there may be some changes under Article VIII, Establishment of Regional Planning and Growth Management Review Board, that would be merged in with Nominating Committee changes.

Ms. Wiley noted that the last set of changes is in the amendment section, Article X, on page 11. In the past there was only one Board meeting per month and all changes to the Bylaws would go directly to the Board. Now we have two Board meetings a month and our practice has been to bring changes to the Executive Committee first. However, with this practice we won’t be able to meet the 20-day requirement for notice. It is suggested that the time be more consistent with meeting timelines. The Chair has suggested that the notice time be 14 days rather than 20 days, and to require in the Bylaws that the Executive Committee would first review any changes proposed to the Bylaws.
Mr. Gallegos said the purpose of this suggestion is that there are sometimes controversial issues that may need to go back to the various city councils.

Councilmember Feller said he would need at least seven days to be able to report to his city council.

Eric Pahlke, Chief Deputy Executive Director, explained that the concept was to bring Bylaws changes to the Executive Committee for review and discussion and then schedule the change again in the next month for a recommendation to the Board, which could take action two weeks after the second Executive Committee meeting.

Councilmember Ryan stated that when we start making changes to the Bylaws we need to err on the side of giving more time rather than less. It doesn’t help us to make the time limit more restrictive.

Chair Cafagna said that this change is in case there is something that needs to be done at the Policy Board meeting and the 20-day notice ties our hands. Ms. Wiley said that the change would actually lengthen the timeline. The notice would actually be 21 days or more. The requirement is not only to Board members, but also to the member agencies as well, so it is quite a large group. She asked if we need to continue to send to all individuals. Chair Cafagna said he thought we should err on the side of sending more rather than less notice.

Vice Chair Sessom pointed out that the Policy Board meeting was never intended to be a meeting for decision making. If that’s what we want to do then we need to have two business meetings.

Mr. Pahlke said the new process would involve a review by the Executive Committee and then a recommendation by the Executive Committee with action taken by the Board. The first time a Bylaws amendment was reviewed by the Executive Committee is when the notification to member agencies would occur. Mr. Gallegos added that this process leads to Board members recommending action to Board members.

Ms. Wiley then reviewed the proposed changes to Board policies. On Policy 001, a change was made to include the PSC as a PAC. In addition, a paragraph has been added to allow the Board to delegate functions to a PAC on a one-time basis upon the request of the Executive Committee and approval of the Chair and Vice Chair. Any such actions would be reported to the Board at its next regularly scheduled meeting.

Mr. Gallegos pointed out that any action delegated to the PACs are subject to Board action upon the request of any Board member.

Ms. Wiley stated that on page 2 of Policy 001, a similar change is under both Executive Committee and Transportation Committee responsibilities list, to provide the ability to approve up to $500,000 to contract out and accept funds. A section was added related to PSC membership responsibilities contained in Policy 026.
Ms. Wiley mentioned that a change deleting a paragraph related to a committee member missing three consecutive meetings was deleted. Mr. Gallegos said that committee attendance has not been a big problem.

Councilmember Ryan suggested that instead of deleting the language, replace it with language that a letter be sent to the Committee member and Alternate making them aware that their member agency has missed a number of meetings. He said that sometimes the Alternate does not know that the Committee member has been absent. He added that the City of Santee has a second Alternate to the SANDAG Board.

Councilmember Madaffer said there should be no excuse for any jurisdiction missing three consecutive meetings, and this needs to be brought to the Board’s attention. This organization does not function if the members are not present. He suggested that we keep it like it is and refer it back to staff for new language to visit at a future date. Ms. Wiley agreed to bring back new language for this section.

Ms. Wiley reported that in Policy 003, a change is proposed on page 2, Section 5, to remove the one-year period language to make it consistent with other language and to remove redundancy. This would allow the Executive Committee to have the authority to invest and reinvest funds on an ongoing basis. The remainder of the changes in this policy were to make title changes from the Director of Finance and Administration to the Director of Finance.

Ms. Wiley stated that changes to Policy 004 specifically relate to ethics and conflicts of interest requirements that apply to the Board and PACS and to other legislative committees. Proposed changes would broaden the requirements to anyone who served on a SANDAG committee. In addition, it added ARJIS as another entity for which SANDAG’s legal counsel provides legal advice.

Councilmember Madaffer asked about ethic requirements for employees. Ms. Wiley replied that the procurement manual handles the requirements for employees. Councilmember Madaffer suggested that that information be referenced in this policy.

Councilmember Ryan asked if SANDAG employees fill out a conflict of interest form. Ms. Wiley said those employees who are in designation positions in SANDAG’s Conflict of Interest Code are required to fill out a conflict of interest form.

Ms. Wiley said that the changes to Policy 007 related to changing the designation from Office of General Counsel to Director of Administration.

Councilmember Madaffer asked if it is noted in any policy that for matters of closed session Board members are given information in a confidential format prior to a closed session. Ms. Wiley agreed to formalize the current practice. Mr. Limber noted that it could be included in Policy 004 related to the distribution of agenda materials.

Councilmember Ryan asked about indemnity from a legal standpoint for actions taken by MTDB. Mr. Limber responded that all functions contained in SB 1703 that were previously conducted by MTDB are now provided by SANDAG. He added that if SANDAG is named in a
suit related to an operating entity, the operating entity will indemnify SANDAG. If there are other types of slip and fall accidents, there may be a naming of SANDAG related to design issues.

Ms. Wiley noted that the changes to Policy 009 were to correct the office telephone/fax numbers. Chair Cafagna suggested striking the references to phone numbers as being unnecessary.

Ms. Wiley said that in Policy 016, on page 7, Section 7, changes were requested by the engineering staff to have more flexibility for design-build, and to contract out to firms on smaller projects for efficiency purposes; this would technically violate our conflict of interest section. Mr. Gallegos said that SANDAG has a general engineering consultant that handles small design projects. We want to be able to move staffing resources to meet needs.

Councilmember Ryan asked how this is viewed from the outside. Mr. Gallegos replied that we haven't tested that. However, an individual working for the general engineering consultant would not be in a position of final decision making. The ultimate decision would be made by a SANDAG employee.

Councilmember Ryan expressed concern that SANDAG’s integrity might come into question with such a practice.

Ms. Wiley stated that Policy 017, page 2, Section 4.4, allows the Executive Director to approve up to 110 percent of the appraised value of property or $100,000 more than the appraisal, whichever is greater. Section 4.9 allows the Executive Director the ability to settle small claims that do not exceed $100,000.

Councilmember Ryan asked that any such actions be reported back to the Board.

Ms. Wiley said that the change in Policy 026 would add Section 4 so that the authorities of the PSC would be consistent with other Bylaws sections.

Mayor Pfeiler commented that with regard to meeting absence and the notice to the absentee Board member, she suggested that a copy of the letter also be sent to the Alternate(s) and to the rest of the Board members.

**Action:** Upon a motion by Councilmember Madaffer, and a second by Councilmember Feller, the Executive Committee directed staff to incorporate the input provided by Committee members related to the Bylaws and Board Policies and to bring this item back to the Executive Committee at its next meeting.

5. **LEGISLATIVE STATUS REPORT (INFORMATION/POSSIBLE ACTION)**

Ellen Roundtree, Director of Governmental Relations, reported that on the federal side, Congress could not come to a consensus and signed an extension of the transportation bill into law for another eight months. This is a clean bill with no policy changes or earmarks. This extension takes the pressure off but doesn’t prevent Congress from coming up with a bill after the election. Highlights of the extension included: (1) a donor state fix which
creates a new supplemental minimum guarantee program to add contract authority to FY 2004 state apportionments as necessary to ensure that final apportionments for FY 2004 meet the 90.5 percent minimum guaranteed rate of return; (2) freeing up the rest of the obligation limit and allowing it to be carried over to FY 2005; (3) continuing the budgetary firewalls established in the Transportation Equity Act for the 21st Century (TEA-21) that segregate highway and transit spending from the rest of the budget; (4) continuing to allow for advances on contract authority for highway and transit programs; (5) providing that only eighth-twelfths of whatever obligation limitation is provided for by appropriators can be distributed; and (6) prohibiting states in FY 2005 from transferring funds out of the Congestion Mitigation and Air Quality (CMAQ) and Surface Transportation Program (STP) set-asides.

Ms. Roundtree stated that on the appropriations side, Congress did not conclude its work by the September recess. There is a two-month extension at FY 2004 levels. This is typical of the last two years. The intent this year is to come back for the lame duck session to finish up the bill. It will be problematic if Congress does not extend the bill because it becomes a cash issue for projects if their apportionments are limited to the time constraints.

Mr. Gallegos said that basically there is no funding relief from Washington, D.C., on transportation projects.

Ms. Roundtree noted that the one bill that will likely get passed is the Homeland Security bill. They were hoping to vote on that soon, but there are no earmarks included. She added that rail and public transportation bills were introduced in September but none of them seemed to move.

Ms. Roundtree reported that on the State side, the Governor has either signed or vetoed all bills at this point. She stated that the Governor signed the SANDAG-sponsored bill, Assembly Bill (AB) 2032, providing state authority to implement value-pricing on two corridors in San Diego. SANDAG’s MOBILITY 2030 includes three projects that implement value pricing: Interstate 805 (I-805) between State Route (SR) 905 and SR 52; east of I-5 to SR 125 in Santee; and I-5 from I-805 to Vandergrift Boulevard. She said that additional legislation will be needed to implement a third project.

Councilmember Madaffer asked which projects would be under this program. Mr. Gallegos said that it is up to the Board to decide which projects to do. He thought that we may be able to get a third project later on.

Ms. Roundtree noted that the Governor is very much a supporter of the high-occupancy toll (HOT) lane concept like we already have with the I-15 Express Lanes.

Ms. Roundtree said there was another bill, Assembly Bill (AB) 2628, that would allow hybrid vehicles with fuel economy of 45 miles per gallon or greater, to utilize high-occupancy-vehicle (HOV) lanes. This is a demonstration program that will be monitored closely.

Ms. Roundtree also reviewed several other bills that were signed by the Governor: (1) SB 492, extending the housing self-certification pilot program in San Diego by one year; (2) AB 2158, enacting consensus-based changes for the regional housing needs allocation
(RHNA); (3) AB 2348, making numerous changes to the provisions of the housing element pertaining to land inventory, adequate sites, and permitted use; and (4) SB 1818, making various changes in the density bonus law to strengthen existing law to address the state’s housing needs.

Mr. Gallegos reported that related to the RHNA numbers, staff made a proposal yesterday to the city managers to sit down with them in a workshop setting. This is a positive move before the Board decision on the RHNA numbers.

Councilmember Ryan asked if the new density bonus law will have any effect on the San Diego region. Ms. Roundtree said that she will check on that and report back.

Ms. Roundtree stated that AB 1210 was the only bill related to design-build to survive the legislative session and was signed by the Governor. This bill extends to January 1, 2010, a pilot program law authorizing the Department of Transportation to let design-sequencing contracts. It also adds a phase two pilot program authorizing the design and construction of not more than 12 transportation projects to be selected based on criteria established by the Director of the Department of Transportation.

**Action:** The report was presented for information only.


Mr. Pahlke stated that item 5, Proposed Amendments to Bylaws and Board Policies, was deleted from this agenda and will be placed on next month’s agenda. This item will be replaced with the calendar of meetings for 2005 for the Board and PACs. Item 8 is the annual report on the Local Transit Assistance (LTA) program. Item 9, Regional Fare Policy and Comprehensive Fare Ordinance, was presented to the Transportation Committee last week and it was approved with a couple of changes. Staff was asked to present it to the Board at the October 22, 2004, meeting.

**Action:** Upon a motion by Councilmember Madaffer, and a second by Councilmember Feller, the Executive Committee voted to approve the Board meeting agenda for October 22, 2004, as presented.

7. **UPCOMING MEETINGS**

The next Executive Committee meeting is scheduled for Friday, November 5, 2004, at 8:00 a.m.

8. **ADJOURNMENT**

Chair Cafagna adjourned the meeting at 10:09 a.m.

Attachment: Attendance Sheet
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<th>NAME</th>
<th>MEMBER/ALTERNATE</th>
<th>ATTENDING</th>
<th>COMMENTS</th>
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