

***TransNet* Environmental Mitigation Program:
Land Acquisition and Restoration Process and Criteria**

On September 26, 2008, the San Diego Association of Governments Board of Directors (BOD) approved the attached process and criteria for SANDAG staff to utilize in evaluating and acquiring mitigation lands under the *TransNet* Environmental Mitigation Program. Parties interested in providing potential opportunities for SANDAG to consider as mitigation should read the following and then e-mail or call the SANDAG staff contact listed below.

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**Guidelines for the Implementation of the
TransNet Environmental Mitigation Program
Conservation and Mitigation Strategy
August 1, 2008**

1. Background

The *TransNet* Extension Ordinance and Expenditure Plan, approved countywide by voters in November 2004, includes an Environmental Mitigation Program (EMP), which is a funding allocation category for the costs to mitigate habitat impacts for regional transportation projects. The EMP is a unique component of the *TransNet* Extension in that it goes beyond traditional mitigation for transportation projects by including annual funding allocations for habitat acquisition, management, and monitoring activities as needed to help implement the regional habitat conservation plans. This funding allocation is tied to mitigation requirements and the environmental clearance approval process for projects outlined in the Regional Transportation Plan (RTP).

On March 19, 2008, San Diego Association of Governments (SANDAG), California Department of Transportation (Caltrans), United States Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (CDFG) entered into a Memorandum of Agreement (MOA), which outlines the roles and commitments of these organizations regarding the implementation of the *TransNet* EMP.

Included in the MOA is the commitment to implement a conservation and mitigation strategy which will: (1) identify conservation opportunities for habitat acquisition, creation, and restoration that promote 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.

The following process and criteria have been established by the SANDAG Board of Directors to guide SANDAG and Caltrans staff with the identification and acquisition of mitigation property when implementing the *TransNet* EMP.

2. Conservation and Mitigation Strategy

Compensatory mitigation for RTP¹ projects will require the following general types of habitats: coastal wetlands, freshwater wetlands, and uplands. During the development of the *TransNet* EMP, a planning level estimate was made for the amount of acres to be acquired, restored, and managed for these habitat types and an estimated cost. In addition, depending on the number of regulatory permits and size of expenditures, various levels of assurances will be required. The following outlines the process and criteria for advanced mitigation; an illustrative flowchart is provided (see Section 3). Those transportation projects included in the Regional Transportation Improvement Plan (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.

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.

¹ Pursuant to the *TransNet* EMP MOA, the RTP referenced in these guidelines is Mobility 2030 (2004). Projects may be substituted in future RTP updates following the provisions of Section 14 of the MOA.

- b) The above agencies will be working with outside organizations (for example, local jurisdictions, nonprofits, private land owners, consultants) to identify opportunities and will develop a strategic alliance with the State Wildlife Conservation Board (WCB) and California State Coastal Conservancy (SCC) to leverage funding and achieve larger mutual goals while providing advanced mitigation for RTP Projects.

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 which 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 lift²” 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 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.

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.

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.

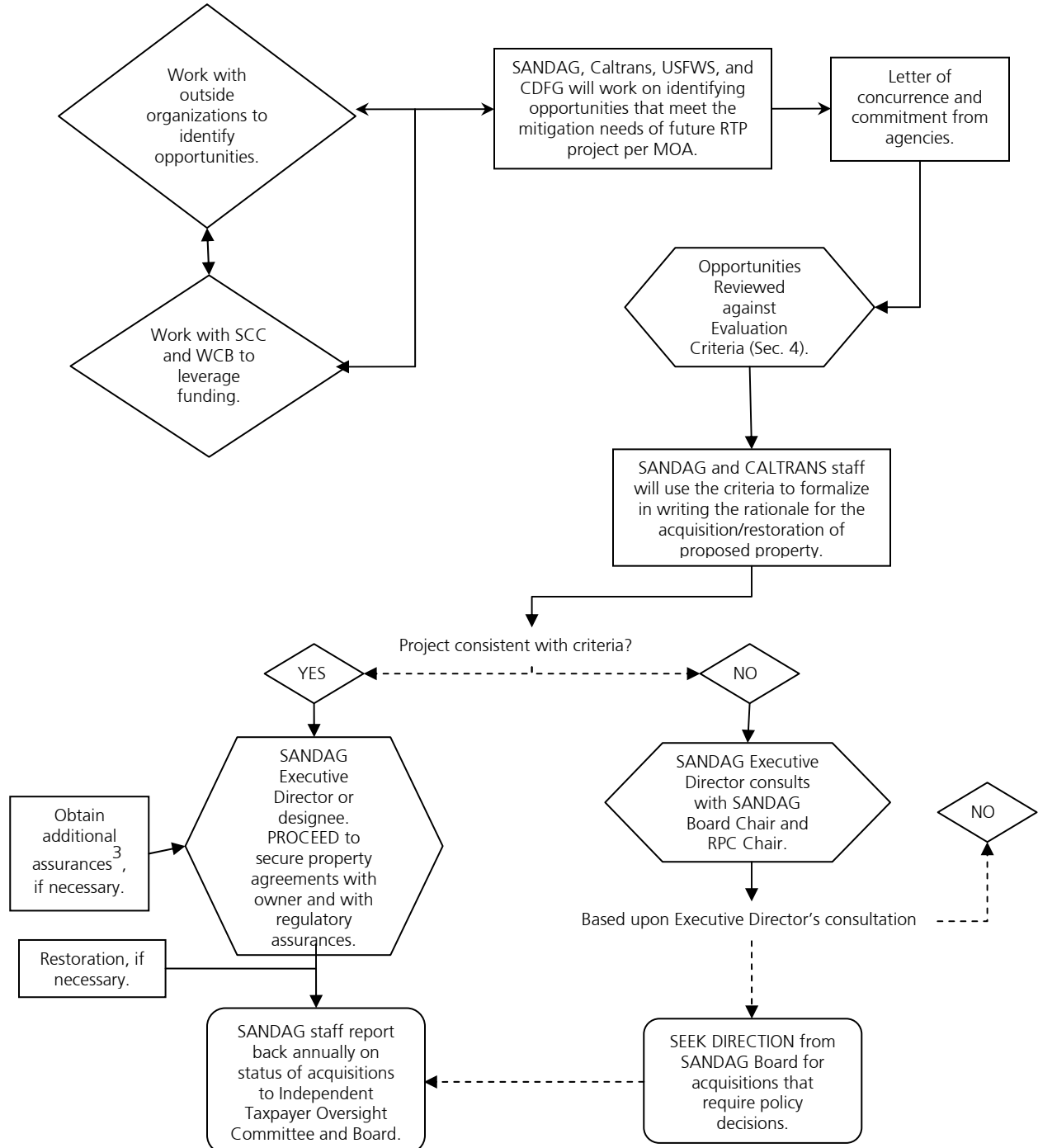
Pursuant to Section 8 of the *TransNet* EMP MOA, “the focus of the initial mitigation efforts under the Conservation Mitigation Strategy (CMS) will be on those RTP projects identified and approved

² Ecological lift is defined as the ecological improvement in wetland habitats from existing conditions. Several existing metrics and methodologies are available to assess the lift.

by the SANDAG Board as Early Action Projects (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.”

3. Conceptual Implementation Flow Chart

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



³ 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.

4. *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 Natural Community Conservation Planning (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 is 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 (ITOC) 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.

5. Budget and Phasing

SANDAG CIP Number: 1200200 (V07)	CIP Project Name: TransNet EMP Biological Mitigation Fund
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Project Description	Phasing for Mitigation Efforts
EMP for the early mitigation of <i>TransNet</i> transportation projects. This will include habitat acquisition, restoration, creation, enhancement, management, and monitoring necessary for meeting project mitigation.	The focus of the initial mitigation efforts will be on those projects identified and approved as EAP followed by those identified as "Revenue Constrained" under the RTP. Mitigation opportunities for the remaining transportation projects will be initiated if the signatories of the MOA agree that an environmental mitigation opportunity has arisen to satisfy a non-EAP.
Project Features	Annual Reporting on Progress
On March 19, 2008, SANDAG entered into MOA with Caltrans, USFWS, and CDFG to implement the EMP Program. This includes the capacity to fund \$440 million dollars over the next 10 years to meet future project mitigation requirements.	On no less than an annual basis, SANDAG staff will present a status report on the progress of mitigation efforts under the <i>TransNet</i> EMP. The progress report will outline what properties have been acquired and/or restored, and how the program is meeting the objectives outlined in the ordinance.

MOA Funding Plan (\$ Millions)	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	Total
Capacity per POF ⁴	\$70	\$100	\$100	\$70	\$30	\$15	\$15	\$15	\$15	\$10	\$440
Expended	\$16										

⁴ Capacity pursuant to *TransNet* POF and consistent with the provisions of the MOA. In millions, nominal dollars.

Capacity		70	100	100	70	30	15	15	15	15	10	440
Projected Expenditures ⁵ (\$ Millions)		FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	Total
State Route (SR) 76	Freshwater Wetlands	5	20	7								\$32
SR 76	Uplands	11	24	8								\$43
I-5 ⁶	Coastal Wetlands		15	32	26	30	15	15	15	15	10	\$173
I-5 ⁶	Freshwater Wetlands			3								\$3
I-5 ⁶	Uplands		15	10	4							\$29
Early Mitigation for other regional RTP projects and local streets and roads			80	40	40							\$160
ANNUAL TOTAL:		\$16	\$154	\$100	\$70	\$30	\$15	\$15	\$15	\$15	\$10	\$440

⁵ This is an estimated cash flow for programming purposes. Actual expenditures may vary annually, but can not exceed the annual capacity cap. Unused funds will roll over into the next year. In millions, nominal dollars.

⁶ This includes the environmental mitigation for Coastal Rail Doubletracking.