

DRAFT

SONORAN DESERT CONSERVATION PLAN STEERING COMMITTEE

EDUCATION SESSION # 1

May 22, 1999 (9:00 - 11:30 a.m.)
Arizona-Sonora Desert Museum (Gallery)
2021 N. Kinney Road / Tucson, Arizona, 85743

CONSERVATION PLANS, THE ENDANGERED SPECIES ACT, AND THE CONSTITUTION

The Direction of Regional Conservation Planning
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TRENDS IN REGIONAL CONSERVATION PLANS

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I want to thank Chuck Huckelberry who is not here yet, and Maeveen Behan for having me here today. It's a real pleasure to be talking to a gathering of folks who are on the verge of doing something historic for the community and for generations to come. I appreciate the opportunity to tell you a bit about how this approach to conservation you are now considering came to life and why it's worth doing for the Sonoran Desert.

It was about 6-years ago that my former boss, Bruce Babbitt, joined the State of California in testing a new approach to wildlife conservation, an approach aimed at protecting not only an endangered songbird, the California Gnatcatcher, but an entire assortment of other species occupying an ecosystem threatened by the tide of development going through the coastal zone of Southern California. The moment was right for such an experiment.

The Endangered Species conflicts of the Pacific Northwest and elsewhere had yielded less than satisfactory outcomes from all perspectives. Indeed, the various interests ended up with tremendous uncertainty, tenuous conservation measures for species, splintered economies, and unpredictable land use restrictions. These experiences, better labeled train wrecks, highlighted shortcomings in the way the Federal Endangered Species Act was being administered, shortcomings that Secretary Babbitt thought could be remedied through imaginative and innovative use of the laws more dextrous provisions.

An opportunity to move the ESA in a new direction availed itself in California with the Federal designation of the Gnatcatcher as a threatened species. Utilizing an underemployed provision of the ESA, the Interior Secretary deferred to the processes established under a state initiative called "The Natural Communities Conservation Planning Program," to provide for the Gnatcatcher.

The NCCP Program embraced a number of concepts that Secretary Babbitt was intent on introducing into the ESA, concepts that were intended to provide the basis for greater protection, for a greater range of species across the landscape, lesser disruption to the economic interests of the area, and closer collaboration between local, state and the Federal Government.

The Secretary recognized that by linking the ESA with the NCCP Act, a model for fundamental change and the way biodiversity is preserved in this country would be in the making. Today, five counties in Southern California participate in the NCCP/HCP Program and are at various stages of developing plans that ultimately will produce a series of interconnected preserves that stretch from Los Angeles down to Mexico.

The first products of the experiment, the Orange County Central Coastal Plan and the San Diego County Multiple Species Conservation Plan, have been completed and are now the focus of national attention.

Of course, the question being asked by those interested in such matters including state and local government officials, is whether the plans have lived up to their expectations and are deserving of their status as models for the rest of the country.

In other words, has the Southern California experiment been a success?

The answer is plainly, yes.

What has been developed in Orange and San Diego County's are blueprints for other urbanizing communities committed to striking a balance between growth and development and environmental quality and its notion of livability.

These plans successfully put in place conservation measures unprecedented in their scope and breadth and yet do so without compromising the economic vitality of the region.

They are products of open participatory processes that respected the voices of all legitimate interests, yet they are examples of regulatory efficiency in streamlining. They are challenging undertakings for the participants yet they are being thought of as well worth the effort by many communities, not just those in California, but across the nation because they offer a better, more effective response to critical environmental challenges.

So, what are the concepts underlying the Southern California approach that set it apart from other existing and more traditional conservation strategies and provide the basis for a more potent, sensible response to the thorny challenge of species protection?

First, the program embraces the concept that by broadening the scale and comprehensiveness of conservation planning the capacity to conserve species will be greatly enhanced. The approach moves away from the species by species, project by project, nature of the ESA and instead, focuses on the entire landscape and its range of inhabitants.

Thus, the emphasis is on the preservation of ecosystems, not just its parts and on communities of species, not just those already imperiled. By planning on a regional level, conservation measures can be carried out in a systematic way with the needs established in a more anticipatory basis rather than a reactive basis. Unlike the core processes of the ESA which only intervene after a species has been deemed sufficiently imperiled to warrant its protection the Southern California Program is designed to put into place conservation measures intended to protect the future decline, protect against the future decline of species.

The Regional Planning Concept also potentially moderates the effective species conservation requirements on economic concerns of an area, thereby reducing potential friction between competing interests. Again, evaluating conservation needs on a regional basis, opportunities to find room for accommodation of interests increase as does the potential for reaching a sensible balance of the uses on the land.

The comprehensive nature of the regional plans provide landowners with the added advantage of far greater certainty and predictability in their own planning decisions. Addressing the needs of multiple species up-front means that landowners are spared the obligation to do so later. Thus, if a species covered by a plan is later listed, landowners are relieved of any new conservation requirements and assured that development plans can proceed unimpeded. Moreover, by integrating local, state and Federal conservation requirements into a single coordinated process, project proponents are able to move through the regulatory process in a faster, less costly manner.

Finally, the regional approach also provides a mechanism to integrate wildlife protection objectives into the planning processes of local government. Under the approach the primary responsibility is placed into the hands of local jurisdictions to implement these conservation measures. The approach recognizes that decisions about the use of the land are best left to local government and at the tools of local land use planning, unavailable to the Federal and state governments are ideally suited to protect wildlife. In effect, habitat conservation translates largely into land use regulation and is analogous to what local governments do to protect open space. Under the approach the role of the Federal government is limited to setting standards, monitoring performance and providing technical and financial assistance.

So how successfully were these concepts I just mentioned diffused into the Southern California Plans?

Well, let's go through the list.

First, the benefits to the conservation species. You need not be a conservation biologist to know that bigger is better and the plans developed by the Orange County and San Diego County folks are the biggest conservation plans ever done for an urbanizing landscape, yet they yield more conservation for more species of plants and animals than could have been accomplished under other existing local, state or Federal regulatory processes.

But that's only part of the story. The regional planning approach provided for a more thoughtful, informed judgement to be made about the nature and outcome of a conservation program.

How big?

In San Diego, 172,000 acres comprising 18 different habitat types will be preserved at levels sufficient to cover 85 endangered, threatened or rare species. In Orange County where the focus of the planning effort was primarily on the coastal sage scrub ecosystem, almost 38,000 acres of land will be protected, providing adequate coverage for about 39 species. The big picture view ensures that preservation opportunities can be optimized. Under the ESA, plans are often developed on a piecemeal basis with judgements about the biological needs determined in isolation, without the benefit of knowing how the pieces fit together.

The planning processes in Southern California, however, began with a thorough evaluation of the biological resources of the entire region. The conservation needs were then assessed through a detailed portrayal of the patterns and relationships among the critical areas. Without such a comprehensive analysis of the region, the elements of the sustainable preserve system such as its size, its location, its configuration would have been very difficult to shape.

Furthermore, by identifying at the outset the areas of highest biological value, strategies to most effectively build a preserve system could be conceived early on. Knowledge of the quality of the vegetation communities, the whereabouts of species, the location of corridors and linkages and the relationship between geologic, biologic and manmade features was essential in developing the outlines for a preserve system and devising the approaches to putting it together.

This information also provided the basis upon which participating jurisdictions could make determinations about the land use mechanisms best suited to accomplish the objectives of the program.

There is another dimension to the regional planning process in San Diego and Orange Counties that affords species a far greater measure of protection than otherwise would have occurred in a comprehensive adaptive management program. Built into the plans is a process to establish management and monitoring programs for the entire preserve system. As a condition of the permits conveyed pursuant to the program, participating jurisdictions were obligated to prepare and implement management plans in coordination with each other to assure that the preserve areas function appropriately.

The process of developing management plans for the preserve will be useful in identifying the most pressing research and data gathering needs. Land managers will require access to the best scientific information available to carry out their tasks. Recognizing that need, a core science group, under the leadership of the Biological Resources Division of the USGS, was formed to help identify research and data gaps and to engage the scientific community in undertaking projects that will increase the understanding of preserve management.

The program also provides an exciting opportunity for scientists to conduct research with real implications for preserve management. In fact, one renowned scientist told me not long ago, he was giving up investigating the reproductive strategies of lichen so that he could turn his attention to matters more relevant to the landscape.

Number two, the benefits to economic interests.

The listing in the Gnatcatcher might have induced a showdown of monumental proportions over the fate of the last remnants of the undisturbed landscape in Southern California. The State of California, fortunately, recognized early on the growing volatility of the situation caused by the anticipated Gnatcatcher listing as well as by a cue of other species awaiting protection under the state and Federal ESA. In response, the state enacted the NCCP Act and soon thereafter, began working with Orange and San Diego Counties to develop plans to avert a looming crisis.

The decision of Secretary Babbitt to put his faith in the NCCP process to provide for the conservation of the Gnatcatcher and to bolster the regional planning approach through a set of ESA administrative reforms, further helped to alleviate the remaining tensions. Consequently, the economic engines of Southern California never stalled and conflict never ignited over the listing of the Gnatcatcher.

The planning processes in San Diego and Orange Counties went forward with the participation and backing of the development community, an acknowledgment that regional planning offered an approach far superior to the other alternatives. To the landowner community the most enticing feature of the regional planning approach was the certainty it affords. Without the assurances provided by these plans, landowners would have had far less incentive to participate in the program.

In exchange for mitigating for impacts to species not under the protection of the state or Federal ESA, landowners have been able to resolve local, state and Federal conservation issues once and for all. The MSCP and the Central Coastal Plan succeed in collapsing an array of regulatory requirements and procedures into a single process.

Specifically, obligations of landowners to mitigate for impacts to biological resources are established through a single plan rather than through a series of disjointed processes, independently derived by different levels of government to supposedly reach similar objectives.

Through the San Diego and Orange County plans, the landowners satisfy the requirements of the Federal ESA and environmental review processes under (NEPA) as well as local regulations protecting biologically sensitive resources. Ordinarily, landowners would make their way through the labyrinth of regulations to secure permits and approvals necessary to proceed with a project that it would impact sensitive areas.

In San Diego County, for instance, the proposed development project potentially effecting state or Federally listed species now bypasses the Federal permitting process and instead, undergoes direct review by the local jurisdiction to determine its consistency with the MSCP. The participants in the MSCP and Central Coastal efforts found that the one-stop shopping concept was desirable enough to propose the integration of Section 404 of the Clean Water Act into a regional planning framework. Over the past couple of years, the Army Corps of Engineers and the Environmental Protection Agency have been working closely with both San Diego and Orange Counties to devise a similar approach and lay the foundation for undertaking comprehensive planning for wetlands and watershed resources.

Third, benefits to local governments.

Finally the Southern California plans are succeeding in shifting much of the responsibility for protection of the regions by diversity from the Federal and state governments to the local governments. In the MSCP and Central Coastal Plans, the preserve systems will be created mostly through the regulatory authorities of the participating jurisdictions.

In effect, habitat conservation goals will be integrated into general plans for those jurisdictions and will be considered along with residential and commercial development, open space, roads, schools and other public facilities, in zoning and other regulatory decisions. Under the regional planning process, each jurisdiction devises an approached implementation tailored to fit its own particular needs. In the MSCP, for instance, several different land use techniques are being utilized to build a preserve.

Some jurisdictions have hard lines delineating where development and preserve areas will be. Hard lines reflect agreements reached between landowners, jurisdictions and wildlife agencies on project design and mitigation requirements. Jurisdictions also have soft line areas where both conservation and development will occur at levels predetermined by the plan but where issues such as project configuration are determined through the local approval process consistent with the parameters set out beforehand. Yet still, another approach offers no lines at all, rather the rules of development are defined by a detailed set of local ordinances which include built-in incentives designed to steer mitigation to areas of highest biological value.

Regardless of the approach local governments are the chief decision makers. The state and Federal governments play primarily an oversight and advisory role in the process, the plans are developed by participating counties, and must comply with the guidelines and standards of the NCCP Program and be approved by the California Department of Fish and Game. The U.S. Fish and Wildlife Service also reviews plans to determine their adequacy under the ESA to protect the Gnatcatcher and other covered species.

If the conditions of the approved plan are breached the wildlife agencies can reassert control over the conservation effort and resume project by project permitting under the state and Federal ESA. The Federal and state governments further participate in the process by assisting the counties in implementing their plans. In addition to providing technical advice and biological considerations and on the sufficiency of the plans under the Endangered Species Laws, the Federal and state wildlife agencies contribute to the acquisition, the management and the research needs of the program. The Federal and state governments, for instance, have enrolled much of their regional landholdings in the NCCP Programs and have agreed to acquire additional lands to help to preserve systems.

So what's next?

The NCCP is succeeding in California but to what extent will the approach be successful in other areas of the country. That depends, of course, on the receptivity of other local governments to assuming the responsibility for taking difficult and controversial steps to ensure balanced uses on the land.

For the approach to work elsewhere, local governments must be willing to put measures sufficient to enable the Federal Government to delegate responsibility for the development, implementation and the enforcement of conservation measures mandated under the Endangered Species Act.

As you folks are beginning to learn, carrying out a regional planning process requires enormous commitment on the part of the participants through the process and also to the values and body in the preservation of biodiversity. What is becoming very apparent is that the commitment is strong in many communities throughout the country in protection of the natural environment and regional biological heritage. Since the adoption of the Southern California Plans, there has been great interest in regional conservation planning expressed by a cross-section of communities, particularly throughout the west and indeed, along with Pima County a number are off and running with their own programs. Let me just note a few so you will know that you are not alone.

Elsewhere in California, in Placer County like the Sierra Foothills Community, Central Coast Counties like Monterey; South Coast Counties like Ventura County; and Central Valley Communities like Merced and Alameda Counties are either considering or have begun to undertake efforts along these lines. The State of Colorado and the counties that make up the front range of the Rockies have joined in an effort to develop a regional plan for the conservation of threatened Preeble's Meadow Jumping Mouse and its riparian habitat. And last fall, in fact, Secretary Babbitt arrived in that state to announce the department's issuance of a special rule under the ESA intended to assist these jurisdictions in crafting such plans.

Because of the proliferation of these planning processes the foundation world has begun to turn its attention to helping these efforts. The Packard Foundation for instance, under its 175 million dollar Conserving California Landscapes Initiative has focused on providing assistance to local governments in California, intent on pursuing these plans by granting funding for planning and land acquisition.

In fact, the Hewlett and Irvine Foundation, the National Fish and Wildlife Foundations have also begun to promote these initiatives and in addition, the increasing financial commitment of the Federal Government as evidenced by the Vice President's Livability Agenda as proposed will greatly help assist these efforts.

The list is growing and I think in part due to a recognition by communities of their obligation to take steps to predict life resources in their backyards, but perhaps the stronger, more compelling reason is tied to quality of life concerns.

Many of these regions are grappling with a steady stream of new arrivals that add to the richness of their communities, but sometimes do so at the expense of open space, habitat, agricultural and range lands, water; and ironically, at the expense of the qualities that brought these people to these places in the first place, is the recent recognition by these communities of the intersection of a range of local, state and Federal goals, conserving endangered species, preserving agricultural operations that I think is spurring many more local officials and local citizenry to collaborate with their neighboring communities and with the Federal and state governments to plan for these regions. Thanks very much.