

Appendix B. The Southern California Natural Community Conservation Planning Program: The Future of Habitat Protection?

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Habitat Conservation Plans (HCPs) have been controversial since the federal Endangered Species Act (ESA) was amended in 1982 to allow them. (See Chapter 6 in this report for a discussion of HCPs.) Environmental groups have complained that HCPs essentially undermine the protections afforded by the ESA. Developers and landowners are unhappy with the cost of the process and its uncertainty. Local communities object to the fact that the U.S. Fish and Wildlife Service (FWS) must approve the local HCP, giving FWS a determining role in local land-use planning.

According to O'Connell and Johnson (1997), most of these criticisms are true. They note that 85 percent of HCPs are for single landowners and single species and cover only small areas. There have been a few exceptions (the Balcones Canyonlands plan for Austin, Texas, and the Plum Creek Timber plan in Washington state that will cover more than 400,000 acres). Indeed, the typical HCP process is costly and uncertain and is unlikely to attain the standards and goals envisioned by the ESA and the environmental community.

A flaw in HCPs is also clear in the "assurances" that they offer to participating landowners. Drafting an HCP allows the property owner only an "incidental taking" permit (see Chapter 6 of this report) for endangered species listed by FWS. As of May 22, 1997, there were 446 animal species and 634 plant species on that list according to the FWS endangered species "box score" (which can be found at <http://www.fws.gov>). But there may be as many as 3,000 more "at-risk" species in the U.S. Consequently, as an HCP is prepared for the taking of a species that is currently on the list, another species may come on it, opening up the process once again.

In 1991, it became fairly clear to the State of California that intense development pressures in Southern California and the flaws in the ESA and HCPs would continue to lead to innumerable and costly fights between developers, environmentalists, and local governments. In response, the California Department of Fish and Game and the California Resources Agency worked together to draft the Natural Community Conservation Planning (NCCP) program. The legislature passed the NCCP Act of 1991.

The NCCP program goals differ fundamentally from ESA goals. The principal NCCP goal is to protect multiple habitat areas and multiple species. This approach has been called "bioregional planning" (Callahan 1993). The NCCP program uses a set of conservation guidelines drafted by a team of independent scientists, and the guidelines are made regulatory by federal rule. The California act identifies a conservation standard of "no net loss of habitat value" for completed plans, "a considerably higher benchmark than for losses allowed under the 'jeopardy' standard by which HCPs are ultimately judged" (O'Connell and Johnson 1997). The NCCP program also promotes public participation. Multiple stakeholders are involved in drafting the plans. Finally, it promotes the conservation of areas under diverse public ownership—a goal rarely achieved under the HCP provisions of the ESA.

The trade-off in the NCCP program is similar to that in HCPs—habitat and species protection for development certainty. Preserves are clearly mapped, and no development

can occur there, while other spaces are opened up to development. In other words, the blueprint for the region is more clear. But the NCCP program offers some significant differences in the way that trade-off is carried out. For instance, there is a "no surprises" policy to respond to the problem of "assurances" that vexed developers working with traditional HCPs. The policy ensures developers who are holding permits and properly implementing their HCPs that they will not be held liable if changes in nature result in necessary changes in the plans. If those changes result in an agency seeking additional lands, land restrictions, or financial compensation, those obligations will be met by the public agency, meaning the additional costs caused by those changes are picked up by the public. Regulations from the state and federal ESAs are combined in one set of requirements. And participation in the program is voluntary for landowners, who

Table B-1. The Problems with HCPs According to the Stakeholders

Environmental Community	Regulated Community
Little funding for plans and "no surprises"	Lack of certainty
"Jeopardy" too weak a standard	Unreasonable costs
Few public participation opportunities	Imbalanced allocation of costs
Ineffective management provisions	Agreements not reliable
Poor oversight of plan implementation	Science lacks rigor
Small ownerships lead to fragmentation	Planning process not predictable
Species focus too narrow	Implementing not streamlined
Lack of credible scientific input	Not enough public funding

Source: Michael A. O'Connell and Stephen P. Johnson, "Improving Habitat Conservation Planning: The California Natural Community Conservation Model," *Endangered Species Update* 14, nos. 1-2 (1997), Table 1.

may seek separate FWS or state permits if they wish. Critics of the program have said that it give developers carte blanche to develop whatever they wish on lands not designated as a preserve in an NCCP plan. But proponents of the program note that participating jurisdictions are not prohibited from continuing to protect hillsides and floodplains and establishing open space through other land-use regulations and programs.

The act that probably was the greatest catalyst to implementation of the NCCP program was the federal government's listing of the California gnatcatcher as a threatened species in 1993. Since this bird's habitat is in coastal areas at the base of mesas and in canyon beds, where it is easy to site housing subdivisions or shopping centers, the nomination changed the development scenario dramatically. Furthermore, the bird requires large areas of the coastal brush to survive—the range being from six to 40 acres to give it an adequate food source of insects and sufficient protection from predators. The various players now had an area on which to test NCCP—the coastal sage scrub habitat. This area covers nearly 6,000 square miles, is home to 90 potentially threatened or endangered species besides the gnatcatcher, and contains some extremely valuable land for development purposes. The habitat is also highly fragmented and scattered over large parts of three counties—Orange, San Diego, and Riverside—and smaller portions of two others—Los Angeles and San Bernardino. Fifty-nine local governments, numerous

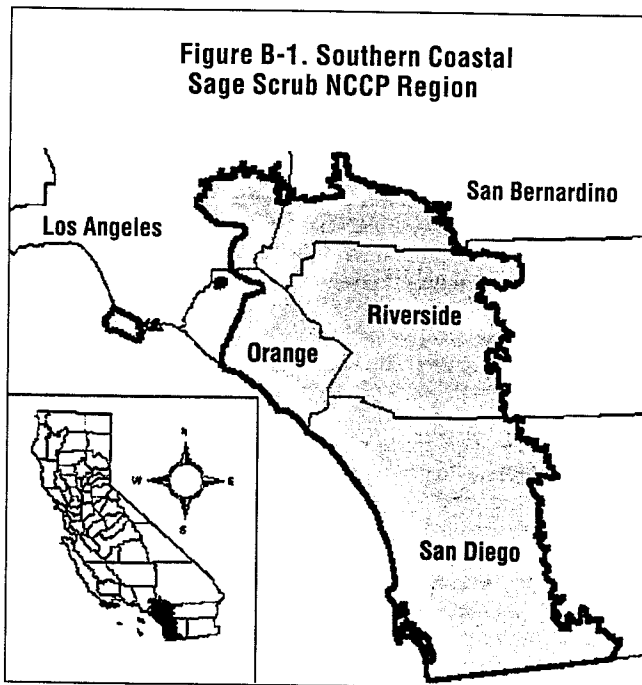
Table B-2. Comparison of ESA Section 10(a) and NCCP Conservation Concepts

Issue	Section 10(a)	NCCP
Planning Scope	Project-by-project	Biological Regions
Biological Scope	Single species or groups of listed species	Ecosystems and natural communities
Focus of Conservation	Highly imperiled species	Prelisting; Preventative
Scientific Input	Agencies and consultants	Independent Scientists
Institutional Involvement	Agencies and applicants	Local; State; Federal; Public; Private Landowners
Public Participation	Little or none	Work groups; Hearings; Public comment
Use of Agency Resources	Processing hundreds of individual permits	Servicing and enforcing several large-scale plans
Preserve Design	Fragmented set asides	Large habitat blocks
Duration	Short-term permits	Long-term or perpetual
Land Management	Relies on permittee	Independent; Adaptive; Required by agreement
Monitoring/Oversight	Passive; Relies on permittee	Active by agencies; Oversight by public
Landowner Assurances	Short-term, narrow	Predictable; broad
Conservation Standard	"Jeopardy"	No net loss habitat value; Contribution to recovery

Source: Michael A. O'Connell and Stephen P. Johnson, "Improving Habitat Conservation Planning: The California Natural Community Conservation Model," *Endangered Species Update* 14, nos. 1-2 (1997), Table 2.

landowners, other private interests, federal wildlife authorities, and the environmental community are all active players in this program, and, so far, the results have been noteworthy.

Figure B-1. Southern Coastal Sage Scrub NCCP Region



Orange County

In Orange County, the Board of Supervisors approved the Central/Coastal Natural Community Conservation Plan on April 16, 1996. This plan is the first of three habitat

conservation plans to be completed for Orange County as part of the state's NCCP program. The Central/Coastal plan guides environmental protection and land uses in a 209,000-acre area of developed land and open space in two noncontiguous parts of the county. The plan establishes a permanent preserve of nearly 38,000 acres of several types of habitat, including 19,000 acres of coastal sage scrub habitat, to help protect 42 different species, six of which are threatened or endangered. The plan makes it unnecessary to develop 42 separate conservation plans (one for each species) over the area.

Nearly 21,000 acres of the preserve were voluntarily dedicated by the largest private landowner in the area, the Irvine Company. Much of that land had been reserved for open space through a series of development agreements before institution of the plan. The agreement also calls for the Irvine Company to contribute funds to a management group, a nonprofit that includes representatives from the state's Department of Fish and Game. In all, the plan calls for a \$10.6 million endowment from the Irvine Company, other developers, and county, state, and federal governments to provide management services. In return for its cooperation, the Irvine Company will be allowed to develop its remaining lands in the area, even in areas considered habitat for the gnatcatcher and other threatened species.

Not everyone is happy with the plan. A spokesperson for the Defenders of Wildlife told the *San Francisco Chronicle* (7/18/96) that "we're locking in land management and species protection policies for 50 to 75 years." There was also criticism that the government was giving away too much—limiting protected areas while giving developers a blank check to build elsewhere for decades to come.

Riverside County

Riverside County offers a perfect example of how local governments have benefitted under the NCCP program. Riverside County began an HCP process in 1988 to provide

protection for the habitat of the Stephens' kangaroo rat. While the plan was being completed, three other species in the county area for the HCP were placed on the endangered species list—the Riverside fairy shrimp, the California red-legged frog, and the California gnatcatcher. All of the work ended in frustration with the ESA process and what was seen as federal interference in local government and private land-use matters.

In May 1996, the original plan was supplanted by a new 30-year HCP that establishes five preserves in the county. The new HCP covers 43,761 acres, 15,000 of which are occupied by the Stephens' kangaroo rat. Eight cities in the county signed on to the plan.

Funding for management of the preserves will come from a commitment of \$11.7 million from the eight cities and the county. The funding will come from development fees levied under the original HCP. The Bureau of Land Management will provide \$3.6 million for land acquisition and management. Several areas within the preserves will be managed by the state's Department of Fish and Game (the San Jacinto Wildlife Area) and the Department of Parks and Recreation (Lake Perris State Recreation Area), saving the county \$1.5 million in management costs.

San Diego

The Multiple Species Conservation Program (MSCP) was approved by the San Diego City Council on March 18, 1997. Passage by a conservative city of such a controversial plan was seen as key to getting the approval of neighboring jurisdictions that will be necessary to implement the program, and such approval is almost certain. After the vote, Interior Secretary Bruce Babbitt referred to the MSCP as "the jewel of habitat conservation plans" and predicted that it would have "important national implications . . . the latest and best example of a new era in American conservation."

Indeed, the scope of MSCP dwarfs any previous or planned effort at cooperation on a regional scale as regards habitat protection. It addresses more species, conserves a greater diversity of vegetation communities, and incorporates more local jurisdictions than any other plan currently approved or under development in the entire nation. It even has the blessing of both the San Diego Building Industry Association and San Diego County's Sierra Club.

The MSCP is the first of three such NCCP plans to be completed in San Diego County, which covers more than 1.3 million acres. The other two plans will cover northwestern San Diego County (the Multiple Species Habitat Plan) and eastern San Diego County (the Multiple Species and Open Space Plan).

Passage of MSCP was a crucial test for the NCCP process because critics expressed doubt that a program on this scale and facing the kind of development pressures that exist in San Diego County could get off the ground. They had noted that the Orange County HCP had been relatively easy to put together because much of the open space there had already been set aside and two large land owners controlled most of the property, meaning negotiations were simpler.

The specifics of the MSCP bear out its complexity and grand scale. The MSCP covers San Diego County from the San Dieguito River Valley south to Mexico and from the Pacific Ocean to national forest lands to the east. The heart of the program includes the establishment of a 171,917-acre preserve designed to protect 85 plant and animal species, including 14 threatened or endangered animal species and seven endangered plants. It has a 50-year time line. It links existing preserves like Los Penasquitos Canyon, the San Dieguito River Park, and the Torrey Pines State Reserve. Partners in the program include San Diego County and the cities of San Diego, Chula Vista, Coronado, Del Mar, El Cajon, La Mesa,

Poway, and Santee. Several federal agencies and many landowners are also stakeholders in the plan. Approximately 63 percent of the preserve will be contributed by the public partners, and another 27,000 acres will be bought by them. Participating jurisdictions must establish a regional funding program to purchase and manage 13,500 acres (about 8 percent of the preserve) within three years. Initial funding of \$41 million will come from a variety of sources, including developer fees, hotel tax receipts, and federal dollars. Other funding will be provided by management of some MSCP public lands by state and federal agencies, similar to that in the Riverside County plan.

The plan will be monitored closely by many because of its expense and complexity. A spokesperson for the local Sierra Club chapter said that it will be watching the implementation of the plan because "the devil is in the details." Others are concerned about funding. The executive director of the San Diego County Taxpayers Association told the *North County Times* (4/13/97) that there are "no dollars in a pot that says this money is going to be used for this specific purpose." In fact, the group gave the plan its Golden Fleece Award as an example of government waste. It is likely that a countywide ballot will need to be voted on in three years to secure a bond to help pay for the program. Costs are estimated to be between \$13 and \$39 per county household per year.

Other Subarea Plans and Program Accomplishments

The information in this section summarizes some other NCCP program accomplishments. These descriptions came from <http://ceres.ca.gov/cra/NCCP>, a site devoted to maintaining news about the progress of the NCCP program.

The Poway plan. This plan, when complete, will provide incidental-take coverage for 43 species of plants and animals. The City of Poway encompasses 25,000 acres and the HCP/NCCP plan establishes a 13,300-acre mitigation area where habitat conservation will be emphasized.

The San Diego Gas and Electric Company (SDGE) Plan. The NCCP Plan for SDGE, a linear NCCP, was the first plan approved in San Diego County. This subarea plan incorporates SDGE lands and easements, and future projects extending from southern Orange County south to the Mexican border. The project covers 110 plant and animal species and emphasizes avoidance of impacts. When impacts occur, the plan establishes mitigation requirements, which may include revegetation or use of up to 240 acres of mitigation credits set aside in several land parcels purchased by SDGE as mitigation banks. SDGE properties and easements play an important role in the NCCP region in providing habitat connectivity in areas where little natural habitat remains.

Conservation banks. Two new land banks were finalized. The Chiquita Canyon Conservation Bank encompasses 327 acres of critical coastal sage scrub and California gnatcatcher habitat in southern Orange County. The bank is owned and operated by the Transportation Corridor Agency, which has mitigation credits available to use for its own future projects or for sale to other parties. The San Vicente Conservation Bank, owned by the Boys and Girls Club of East County, was established in San Diego County and conserves 320 acres of coastal sage scrub and chaparral habitats. The proceeds from the sale of credits at this bank are used to support the activities of the Boys and Girls Club. The Boys and Girls Club is exploring placing adjacent lands into the bank as well. Several additional conservation banks are close to finalization.

Conclusion

The NCCP program is not perfect. Expense and funding are big issues. In the current political climate, habitat protection planning must take into account that private land owners will

be expecting to be paid for any infringements on their valid property rights. In areas like San Diego, where land values are extremely high, this presents a great challenge. Perhaps an editorial from *The Arizona Daily Star* (4/1/97) summed up the hope that the NCCP program brings to the development/habitat protection battle when the *Star* addressed the passage of the San Diego plan:

For once, intricate, painstaking compromise appears set to move beyond the failed, tract-by-tract, species-by-species scrimmaging that has cost developers time and society scores of extinctions. Moreover, land use in conservative San Diego has now been based soundly on consensus and science rather than the whims of the real estate industry. As a result, an entire metropolitan area today has a fighting chance to save its landscape, rather than just argue about it.

That is why a sort of moral responsibility to stay on board falls on conservationists as well as builders just now.

The alternatives of inaction or gridlock are too dismal. Even scientists associated with groups like the Environmental Defense Fund agree business-as-usual under the Endangered Species Act won't do the job. Meanwhile, Western political alignments rarely permit wholesale land set-asides or unilateral government action to halt species decline.

It is imperative for conservationists, employing the leverage the act does provide, to work constructively to craft big-scale compromises like San Diego's, particularly in conservative regions of the sprawling West.

Such designs—if properly structured—remain the best deal available at a difficult moment. Likewise, they look like the best way to heal a world in pieces. Would that the fractured community of greater Tucson could draw itself together in a similar way.