

Once a National Model, Habitat Plan Faces Uncertain Future

By [ROB DAVIS](#)

A decade ago, environmentalists, developers and politicians celebrated their agreement on a blueprint for the future development and conservation of land in the city of San Diego.

The Multiple Species Conservation Program, as it is called, outlined a regional approach to habitat planning. Instead of the piecemeal project-by-project development of the past, the plan was designed to preserve the most biologically significant lands remaining in San Diego.

The idea was almost unprecedented. That developers, environmentalists and politicians agreed on a plan to protect 85 species was celebrated across the nation. The New York Times' editorial page said the decision "means a virtual Noah's Ark of endangered plant and animal life will now have a fighting chance to survive the relentless development that has disfigured so much of Southern California."

But a year after its 1997 approval, 14 environmental groups sued the city and U.S. Fish and Wildlife Service over the plan. The suit came after one of the first development projects approved using the blueprint paved over dozens of small wetlands habitats known as vernal pools. The Cousins Marketcenter project in Mira Mesa left behind just one pool of 67; the habitat plan called for them to be avoided to the maximum extent practical.

In a court decision released late last year, a judge scolded the officials who approved that project. U.S. District Court Judge Rudi Brewster said the conservation blueprint may hasten the extinction of the very species it is supposed to protect. The decision was a serious blow to a plan that was once considered a national model.

The habitat conservation plan enabled the city of San Diego to issue permits to developers allowing them kill some of the 85 protected species, which range from the prolific Canada goose to the threatened California gnatcatcher.

The gnatcatcher's 1994 listing as a threatened species had the potential to paralyze development in the region because it would have restricted construction atop the bird's habitat. That threat helped launch efforts to draft the conservation plan. It allowed environmentalists and developers to carve out enough habitat to protect the gnatcatcher -- as well as the other 84 species.

The theory was this: Developers were required to mitigate construction projects by buying land and contributing to the preserve system. The goal was to sacrifice unimportant land to development in return for conserving the richest, most important habitat. Developers and the city bore responsibility for acquiring the preserved land.

The judge's ruling underlined what many critics saw as fundamental flaws. While outlining thousands of acres to preserve, the plan never provided any funding mechanism to manage and maintain land after it was bought. Brewster said the plan was inadequate and didn't ensure that the endangered species covered would ever rebound.

The plan, he wrote, "would permit monumental destruction of the vernal pool species, which are extremely sensitive to their environment and were virtually extinct in 1995."

His October 2006 ruling had immediate impacts across the city, halting 25 development projects -- most still in the application phase -- because they have the potential to damage wetlands. One of the largest is a 500-unit housing subdivision proposed in East Elliott. Construction stopped on a half-mile extension of Camino del Sur, a roadway near Carmel Mountain.

Six months after the ruling, the suit remains unresolved. While it directed the U.S. Fish and Wildlife Service to revise the plan, no changes have yet been made. Brewster's decision leaves a major unanswered question for every interested politician, developer and environmentalist in San Diego.

What next?

Fabric of Life

East of Chula Vista, a rutted dirt road winds through a verdant valley blanketed in sweet-smelling springtime blossoms. Purple lilac is flowering. Meadowlarks are gurgling their trademark warble. On either side of the path, the valley floor is fenced off with three silver strands of barbed wire.

But on each surrounding hillside, off-road vehicles have cut thick trails that unfurl down the landscape like clay-colored streamers. The area is littered with garbage: A stack of graffiti-covered concrete, mattresses, an old surfboard, broken Miller Lite bottles. Just out of sight, construction vehicles are beeping.

This is Proctor Valley. Environmentalists and biologists cite it as a perfect example of the failures of habitat conservation planning. The litter illustrates why the habitat blueprint went from heralded to hounded. The plan calls for this land to be preserved and protected by a handful of agencies, including the city of San Diego. But no money has ever been dedicated to its long-term maintenance, even though it was promised 10 years ago.

David Hogan, conservation manager for the Center for Biological Diversity, the lead plaintiff in the vernal pool lawsuit, climbs through the fence and walks over to a clearing, where tire tracks slice through a desiccated patch of cracked mud. This is a vernal pool. It is supposed to be protected, but clearly hasn't been.

Few types of habitat in San Diego County are as rare -- and loved and hated -- as vernal pools. The pool is a depression in the ground with a hard rock surface beneath it that prevents rainwater from seeping out. They fill and teem with life only during the rainy season. Inside live a host of endangered species. Those creatures are threatened with extinction because most pools have been paved over in Southern California. They're found on the flat mesas that attracted residential development. Just 3 percent remain.

Development advocates dismiss vernal pools as mere puddles. Environmentalists and biologists revere them for their evolutionary resilience. They point to the endangered San Diego fairy shrimp, which lives inside. The shrimp emerge during winter rains, laying eggs that can wait years for the right conditions to hatch.

The shrimp was one of seven species that Hogan and other environmentalists filed their suit to protect. But for all the attention given to the shrimp and the vernal pool, the federal court ruling isn't just about a half-inch shrimp that emerges every few years. The judge ruminates in his opinion about the crustacean's importance to the very fabric of human life. Brewster states this point clearly. Habitat conservation is fundamentally about life on Earth -- from man to the smallest shrimp.

"In the microscopic view, the fairy shrimp may make little identifiable difference," Brewster wrote. "But if this destruction is treated on a case-by-case basis as an unimportant loss, it does not take long before life on this planet is in jeopardy."

The judge raises this issue with the San Diego habitat plan: Congress created the Endangered Species Act for a reason. Species are not listed as endangered just to give them a robust fare-thee-well on their road to extinction. The act is meant to help species recover from the brink. But San Diego's habitat conservation plan doesn't do that, the judge says.

"The species," Brewster wrote, "are left in a 'heads I lose, tails you win' position."

The habitat plan needs a dedicated funding source for maintenance, Brewster wrote. So far, none has materialized.

Land acquisition has been funded. Biologists and city planners point to this as a success of the habitat plan. The city has acquired 92 percent of the 52,727 acres it agreed to preserve. The city has 40 years to acquire the remaining 4,000 acres, though it eliminated its purchasing budget in 2003 and cut two of its seven employees dedicated to habitat planning.

Jerre Stallcup, a conservation biologist who provided the scientific research for the plan, says government agencies often claim they're doing the best they can given fiscal constraints. She agrees that they're trying.

"But," she says, "it's not what we said we were going to do."

The Funding Search

Walking through Proctor Valley, Hogan narrates his vision for the conserved land. The off-road trails would be restored. Ranger patrols would happen frequently. A maintenance budget would fund regular fence repairs. Exotic plants would be weeded to give native species a competitive edge. Sheriffs would bust off-road vehicles drivers.

The habitat plan promised that type of maintenance would occur. Lands wouldn't just be set aside, they'd be managed. When the habitat conservation plan was approved in 1997, a regional source of maintenance funding was promised by 2000. But the commitment was vague and never outlined any specifics. The region still has not fulfilled its decade-old promise.

"Just getting the plan signed and agreed to was viewed as a huge victory on all sides," says Stallcup, now with the Conservation Biology Institute in Encinitas. "But we sacrificed something to get there."

Brewster, the judge, chided the city for never identifying a funding source and scolded the U.S. Fish and Wildlife Service, which approved the plan, for allowing it to happen. As the lawsuit fallout continues -- the Fish and Wildlife Service is required to revise the plan -- battle lines are being drawn around that unidentified pot of money. Who will pay?

San Diego County voters will be asked whether they want to fund habitat management in a 2008 referendum, says Marney Cox, chief economist at the San Diego Association of Governments, a regional planning agency. A tax increase would be needed, though no specific proposal has emerged. If that fails, an endowment as large as \$1.2 billion will be needed, Cox says. That endowment would generate annual funding to acquire and manage preserved lands.

The 2008 ballot measure to fund habitat preservation is a requirement of the 2004 TransNet initiative, which extended a half-cent

sales tax to fund road improvements and environmental mitigation.

Stallcup says the ballot initiative will be a tough sell. Polls have shown San Diego voters are not inclined to approve tax hikes to fund habitat protection, she says.

"We haven't shown the San Diego public that we've done any real conservation with the TransNet money the public already approved," she says. "Unless we do that pretty quickly, 2008 seems not very far off."

Hogan dismisses the ballot initiative as another vague promise, and says the only immediate and guaranteed way to produce funding would be to levy impact fees on new development.

This is anathema to builders. They point to the original deal, which agreed to never saddle developers with additional preservation costs in the future.

Craig Benedetto, a spokesman for several San Diego developers, says the original habitat plan agreed that funding would come from the region -- not from homebuilders. He points to a tax hike as an alternative. But levying a fee on developers is guaranteed to force a lawsuit, he says.

"The burden and obligation shouldn't solely be on new development," he says. "Every new home in San Diego is going to be burdened with the sins of the past, and that doesn't seem like a fair option."

The city of San Diego is willing to consider charging developers such a fee. Jim Waring, the city's deputy chief operating officer for land use and economic development, says it could be one of many sources of the money needed to maintain preserved habitat. Development impact fees, TransNet mitigation money and other sources could help create a patchwork solution, he says.

"My personal opinion," Waring says, "is that the city shortsightedly gave into pressures many years ago when it adopted the program by not imposing such an impact fee."

Informal settlement discussions have been ongoing; a mediation session is scheduled for the involved parties in San Francisco in early June. Both Waring and Hogan say they're confident they can resolve the lawsuit.

"Nobody's interested in turning this into a war," Waring said. "I think we've had some good communication around the issues."