CALIFORNIA PLANNING & DEVELOPMENT REPORT

June 1990 | William Fulton, Editor & Publisher | Vol. 5, No. 6

Species, Wetlands Emerge As Major Planning Issues

Two environmental issues — wetlands and endangered species — have emerged as leading shapers of California's planning and development trends in the 1990s. With environmental awareness rising nationwide, both have become high-profile political issues — especially in California, where rapid development and a unique diversity of plant and animal wildlife come into conflict continually.

California is, of course, one of the fastest-growing states in the country, adding 6 million new residents in the last decade alone. But it is also a place of remarkable topographic and biological diversity. Coastlines, deserts, and mountains give the state an unusual variety of wildlife habitats. "We're both blessed and burdened with biological diversity in California," says Richard Spotts of Defenders of Wildlife in Sacramento. "There's more diversity in California than in the rest of the U.S. and Canada combined."

This conflict is affecting planning and development in California in two ways. First, the protection of both wetlands and endangered species is likely to require the preservation of a great deal of undeveloped land in California, thereby limiting the future supply of land for development. And second, the federal government has great regulatory power in both areas, meaning federal agencies are becoming important "players" in determining local land-use policies around the state. *Continued on page 3*

Brown to Revise Bill On Regional Government

Assembly Speaker Willie Brown's regional government proposal faces considerable opposition and is in the process of being redrafted.

In late April, the Assembly Local Government Committee debated Brown's bill, AB 4242, for an entire morning. Despite the speaker's clout, however, Brown chose not to force a committee vote at that time — instead withdrawing it for revisions. Brown plans to bring the revised bill back to the committee, though it will require a waiver of the legislature's usual schedule for hearing bills.

AB 4242 would create "regional infrastructure and development agencies" in seven of the state's largest metropolitan regions. These agencies would combine the current budget and responsibilities of regional water quality control boards, air pollution control districts, regional transportation planning agencies, councils of governments, and local agency formation commissions. The agency would also have review power over local plans and siting power of LULUs, or "locally unwanted land uses." (For a full discussion of the bill's provisions, see *CP&DR*, April 1990.)

The bill is based on the results of an Assembly Office of Research report, which found that regional interests were unrepresented because of the power of fragmented local government and single-purpose regional agencies. At the *Continued on page 5*

INSIDE

BRIEFS

Irvine Trades Density for Monorail

The City of Irvine has approved a density bonus for two office towers near John Wayne Airport in exchange for a developer's commitment to build a half-mile monorail.

The Irvine Planning Commission granted McDonnell Douglas Realty Corp. a density bonus of about 30% on two office towers the company is planning the construct near the John Wayne Airport and the Irvine Business Complex. In return, McDonnell Douglas has promised to build a monorail from the airport to the office towers, which will be located in between MacArthur Blvd. and John Wayne Airport.

Orange County municipal leaders hope to use the McDonnell Douglas monorail as the basis for a larger monorail system that will eventually stretch through several cities in central Orange County. However, Irvine Councilwoman Sally Anne Sheridan opposes the density bonus and has asked the city council to review the project's approval.

Anaheim Settles Key Arena Lawsuits

The balance of power may be shifting once again in the intense battle between Anaheim and Santa Ana to build a sports arena first.

Santa Ana, which had forged ahead in the competition, has been sued by a citizen group, which claims that approval of the arena is inconsistent with the city's general plan.

Meanwhile, Anaheim has settled several crucial lawsuits that were impeding its ability to proceed with an arena project. To avoid parking problems arising from overlapping events, the city has agreed not to schedule events at the arena within two hours of the start of Rams home football games at nearby Anaheim Stadium. The city will also pay $400,000 to the owners of a mobile-home park next door the site. In January, a local judge enjoined Anaheim from proceeding on the arena project while the lawsuits were pending.

If both arenas are built as planned, they will be located about five miles apart.

Riverside Must Pay Legal Fees

The City of Riverside has been ordered to pay attorneys' fees in the successful lawsuits challenging the city's two slow-growth ordinances. The legal bills could cost several hundred thousand dollars.

Riverside County Superior Court Judge Vincent Miceli, who invalidated Proposition R and Measure C last year, awarded the fees under the "private attorney general doctrine," which permits plaintiffs to recover fees if their actions contribute to the public interest.

Last August, Miceli threw out the two slow-growth ordinances, which restricted development in citrus-growing and hillside areas. Miceli said the two measures, which passed in 1979 and 1987, were not valid because the city's general plan was inadequate. *(CP&DR, September 1989.)*

Roundup

Bowing to neighborhood pressure, **UCLA has withdrawn plans for a conference center** in Westwood....The Silicon Valley city of **Sunnyvale considers rezoning some 600 acres of commercial property to residential use**....Planning to adopt new land-use rules for the district, **Anaheim imposes a 45-day moratorium on development around Disneyland**....Residents of **La Jolla consider seceding from San Diego** and creating a separate city....A proposed **traffic court building in Sacramento faces neighborhood opposition** because — why else? — it would generate too much traffic.

UPDATE

Santa Clarita Growth Target Lowered

A dramatic reduction in the Santa Clarita Valley's growth has been approved by the Los Angeles County Regional Planning Commission.

At a mid-May meeting, the planning commission approved a revised general plan for the unincorporated areas of Santa Clarita that would permit construction of only about 12,000 more houses. If approved by the Board of Supervisors, the new plan would mean the county would have to reject most pending applications from homebuilders, who are planning construction of some 38,000 new homes in the area.

The Santa Clarita Valley has been the site of a heated turf battle in recent months between L.A. County and the City of Santa Clarita, which incorporated in 1987. The city has sought — unsuccessfully — to gain control over the undeveloped portions of the valley, which remain in county control. The L.A. County Local Agency Formation Commission has twice rejected the city's request for a large sphere of influence. (*CP&DR*, December 1989.)

City officials claim that in the past the county has permitted development with little regard for the infrastructure needed to support that development. As recently as last fall, city officials feared that the county, which has historically been sympathetic to development, would permit construction of all 38,000 additional units.

Confronted with so many pending applications, county planners decided to revise the area's general plan. However, homebuilders have vowed to press their case before the Board of Supervisors, which has frequently overruled the planning commission on development issues in the past.

CALIFORNIA PLANNING & DEVELOPMENT REPORT

is published monthly by Torf Fulton Associates

1275 Sunnycrest Avenue
Ventura, California 93003
(805) 642-7838

Subscription price: $179 per year

Editor & Publisher: William Fulton
Contributing Editors: Morris Newman, Stephen Svete

ISSN No. 0891-382X

SPECIAL REPORT: FEDERAL ENVIRONMENTAL LAWS

Endangered Species, Wetlands Emerge as Major Planning Issues

Continued from page 1

On the wetlands front, controversy is swirling around both state and federal proposals for a "no net loss" policy that would require developers to replace all wetlands acreage they destroy. President Bush announced a no-net-loss policy last year but has since backed off from it. Meanwhile, a number of wetlands bills are pending in Sacramento — many deal especially with the Central Valley — and several state agencies, such as the Coastal Commission, are pursuing wetlands preservation aggressively.

Regarding endangered species, California is at the forefront of the move to create "habitats" for animals threatened with extinction — a strategy that evolved out of the Endangered Species Act mostly from experiments in this state. Most controversial is a proposal in Riverside County to create a "multi-species habitat" for the protection of all species that are endangered now or may be listed as endangered in the future. The habitat, which arose out of a controversy involving the endangered Stephens' kangaroo rat, could take up as much as 20,000 acres and cost as much as $500 million.

Both issues reflect the political contradictions inherent in many environmental matters. On the one hand, political support for the general notion of wetlands and endangered species preservation is rock-solid. But on the other hand, political leaders often balk at the immense cost of such preservation, especially when weighed against other political popular causes, such as affordable housing. Rep. David Dreier, R-Covina, summed up this political contribution not long ago when he told the Washington Post: "The really ndangered species here is the young family. I don't want us to make e Stephens' kangaroo rat extinct, but if I have a choice between a rat and a young family in Southern California, that's a pretty easy decision to make."

But environmentalists have used the laws aggressively, saying they are necessary to protect California's natural environment during a time of unprecedented growth. "Whether we like it or not," says Bill Havert, former staff director of the Sierra Club in San Bernardino, "we are writing the future natural history of California right now."

Perhaps most significant is the way wetlands and endangered species draws the federal government into the development fray. Section 404 of the federal Clean Water Act prohibits anyone from draining or filling a wetland without a permit from the Army Corps of Engineers. The Environmental Protection Agency has the power to consult with the Corps on wetlands — a power the agency has begun to use strongly now that wetlands advocate William Reilly is the administrator. The Endangered Species Act prohibits any private party from killing a federally listed endangered species without obtaining a permit from the U.S. Fish & Wildlife Service.

Therefore, these laws give the Army Corp and Fish & Wildlife veto power over local land-use policy. When new land developments threaten wetlands or endangered species, the federal agencies can step in and bring the project to a halt. Furthermore, developers and local officials violating the laws are subject to criminal prosecution. These strong provisions have forced local governments and developers to "play ball" with federal agencies, negotiating solutions that take into account not only local planning priorities but also the protection of natural resources.

Wetlands: 'No Net Loss" Policy Creates Controversy

The issue of disappearing wetlands is shaping up as one of the leading environmental footballs of the 1990s, in California and around the nation.

George Bush, who promised in 1988 that he would be the "environmental president," is under pressure from both environmentalists and federal wildlife agencies to honor his pledge of "no net loss" of wetlands areas. Oil, farm, and real estate interests oppose the policy — but there is no question that the Bush Administration is taking a tougher stand on wetlands than the Reagan Administration, a fact that is sure to influence local land-use and development policy throughout California in the '90s.

California conservation efforts are focused on the Central Valley and the few remaining coastal areas with viable wetlands. In the Central Valley, hunters and environmentalists have closed ranks in an effort to salvage the few surviving marshes in the region. At least seven proposed bills in the California Legislature would aid wetlands conservation while, in some cases, offering incentives to land owners to preserve wetlands.

If the wetlands agenda is successful in Sacramento, California could follow Maryland's lead as the first state to adopt a "no net loss" policy. Maryland has also used provisions of the Clean Water Act to regain control over wetlands regulation from the federal government.

Meanwhile, regulators and developers are combing California's ,100-mile coastline to find remaining wetlands areas that could rve as "mitigation banks" to offset the impact of coastal projects. ew areas meet the high standards of both state and federal regulators.

According to the National Wildlife Association, the United States has destroyed 87% of its native wetlands — a broad term covering swamps, marshes, tidal pools, freshwater wetlands, and other ecosystems. Wetlands provide wildife habitat, and, in some cases, clean pollutants from ground water and serve as flood plains. Nationally, between 350,000 and 500,000 acres of inland wetlands are drained annually, most for agricultural uses.

Under Section 404 of the Clean Water Act, no wetlands may be filled without a permit from the U.S. Army Corps of Engineers. In the Bush Administration, however, the Environmental Protection Agency has played a more significant role in wetlands regulation. And state agencies such as the California Coastal Commission have also played an aggressive role in wetlands protection.

Environmentalists and governmental advocates are now seeking to codify two techniques for saving wetlands: one-for-one mitigation and sequencing.

Mitigation takes many forms, including restoring degraded wetlands and creating new marshes and swamps where none previously existed. The so-called "no net loss" policy requires one acre of mitigation for every acre of wetlands destroyed. While some eco-systems are more easily restored than others, "replications" in general have fared poorly. Some scientists question the value of artificial wetlands, arguing that ecosystems that have evolved over thousands of years cannot be reproduced easily.

The policy of sequencing strongly discourages development on wetlands. Those few projects that are approved must be environmentally sensitive, and all impacts on wetlands must be mitigated.

Continued on page 4

SPECIAL REPORT: FEDERAL ENVIRONMENTAL LAWS

Wetlands: 'No Net Loss" Policy Creates Controversy

Continued from page 3

Federal Action

Wetlands became a national political issue in 1988, when the Conservation Foundation convened the National Wetlands Policy Forum. That pow-wow of politicians, environmentalists, and businessmen arrived at a set of recommendations which conferees hoped would lay the groundwork for future government policy. Significantly, the National Wetlands Task Force gave political spin to the policy of "no net loss."

George Bush endorsed "no net loss" during the 1988 presidential campaign and reiterated his support in the early months of his administration. He appointed William Reilly, the president of the Conservation Foundation and godfather of the National Wetlands Task Force, as EPA administrator.

Reilly quickly proved his mettle in March 1989 by killing the Two Forks Dam project near Denver. Cancellation of the reservoir project enraged local politicians, who complained of "inconsistencies" in Section 404 of Clean Water Act, which governs dredge-and-fill activities and wetlands conservation.

Wetlands protection gained added impetus in November 1989, when the EPA drafted a Memorandum of Agreement with the Army Corps of Engineers on wetlands. The memorandum both created a uniform definition of wetlands and attempted to end inter-agency feuding over the issue. The Army Corps, which has permitting power for most inland wetlands in the U.S., has been viewed as lax in conservation, while the EPA is considered tough. More importantly, the memorandum endorsed the policy of sequencing.

Environmentalists applauded the creation of "united front" in regulation, but expressed disappointment over the definition of wetlands in the memo, which follows Corps standards. That definition of wetlands requires the presence of water, wildlife, and vegetation; EPA had formerly accepted any one of those conditions.

Environmentalists were further disappointed by an "escape hatch" built into the final version of the memorandum in February 1990. That version, which had been delayed two months by the administration, allows developers to build in wetlands without mitigation in some cases. The diluted document was the handiwork of White House chief Sununu, who has exerted increasing influence over environmental issues in the Bush administration. "Those changes in wording would be significant only in the wrong hands," says Jim Leape, Conservation Foundation vice president in charge of wetlands issues, adding "Once you permit officials to make changes, that encourages (officials) to look for changes."

The farm lobby, already inflamed by wetlands protections in the Farm Act of 1985, is apparently pressuring the administration to ease off on further restrictions on wetlands encroachment. The so-called "swampbuster" provision of the Farm Act denied farm subsidies to farmers who convert wetlands to agricultural use. The pending Farm Act of 1990 includes a beefed-up version of Swampbuster, revoking farm subsidies and other aid to farmers who cultivated wetlands in any way; the 1985 bill yanked subsidies only for the planting of commodity crops. Cindy Deacon Williams, a lobbyist with the National Wildlife Federation, argues that Swampbuster needs more teeth. "Only 26 (farm) producers have been denied subsidies since 1985, although 300,000 acres of wetlands have been lost yearly since that time," she says.

Big oil, on the other hand, is worried about the effect of mitigation on coastal drilling, particularly in Alaska's North Slope. Local wetlands are frozen tundra, an eco-system which is difficult to mitigate. For that reason, oil companies are concerned about not getting caught in a regulatory blind alley, in which the government tells companies to mitigate and no mitigation strategy applies. (The Conservation Foundation suggests that removing gravel from work sites might be mitigation enough.)

Fielding those concerns is an administration task force on wetlands policy, created in May 1989. The task force includes representatives from Army Corps, EPA, and the Council of Environmental Quality, an agency of the executive branch with close ties to the White House. Task force member Robin O'Malley, who is a senior policy analyst at CEQ, says the group does not intend to rubber-stamp the recommendations of the Conservation Foundation's wetlands task force. "Although I understand the Conservation Foundation wants to move forward quickly ... we need to start over. We need to talk linkage and trade-offs," he says.

Meanwhile, Congress is offering wetlands legislation of its own.

- Rep. Clint Bennett, D-Florida, has authored HR 4528, The Wetlands No-Net-Loss Act, which offers favorable tax treatment to landowners who conserve wetlands and sets up standards for state water boards in wetlands preservation. The bill also authorizes a national inventory of federally owned wetlands.
- Rep. George Miller, D-Martinez, is proposing HR 4700, which would require the restoration of Central Valley rivers and wetlands by the year 2000. Specifically, the bill would provide 400,000 acre-feet of water to wildlife refuges and restore 120,000 acres of wetlands.

Wetlands Controversies in California

Although coastal areas comprise only a small fraction of California's wetlands, they frequently give rise to high-profile political battles between developers and environmentalists, such as in the longstanding litigations over Ballona Wetlands near West Los Angeles and the Mola project in Seal Beach, and the Bolsa Chica wetlands in Huntington Beach.

The two chief watchdogs of California's coasts — the California Coastal Commission and the San Francisco Bay Conservation and Development Commission — regulate development in coastal wetlands and have protected wetlands vigilantly. But they face both natural and economic obstacles.

Off-site mitigation is major headache for both agencies. The strategy makes sense in particular for small mitigations of an acre or less; those mitigations can be pooled into a single large preserve, which arguably could provide greater benefit than scattered small wetlands.

Large off-site mitigations, such as required by the 2,600-acre expansion of the Ports of Los Angeles and Long Beach, are more difficult to achieve, however. The Coastal Commission has allowed the ports to use some mitigation credits to restore the 525-acre Batiquitos Lagoon near Carlsbad in San Diego County; recently, developers of the Playa Vista project near Santa Monica confirmed that the ports were in preliminary discussions with them to buy some mitigation credits at 250-acre Ballona Wetlands. Such long-range trade-offs, however, may not make ecological sense, according to Peter Grenell, executive director of the Coastal Conservancy, a sister organization of the Commission. "Los Angeles gets the economic benefit of the ports, but San Diego gets the habitat," he says.

Governmental agencies are also demanding more and more that off-site mitigations be good matches biologically to areas that have been destroyed. Cost is a third difficulty, because California's world-class land values could make some mitigations prohibitive.

SPECIAL REPORT: FEDERAL ENVIRONMENTAL LAWS

Wetlands: 'No Net Loss" Policy Creates Controversy

Similar problems plague the creation of "mitigation banks," which are sites assembled in advance and then are "bought into" by developers. To date, the 30-acre Bracut Marsh project in Humboldt Bay is the sole experiment undertaken approved by the Coastal Commission. The project has not been entirely successful; some types of vegetation did not thrive in the area, and signs of pollution from a former sawmill on the site required extra cleanup. Grenell adds that federal agencies are wary about approving payments to mitigation banks before such banks actually exist.

The Central Valley and State Legislation

Much of the attention in California is pointed inland at the Central Valley. Those inland marshes, a crucial waterfowl habitat, have been shrinking by 5,400 acres annually, according to the U.S. Fish and Wildlife Service. Political support seems strong in Sacramento. Significantly, several proposed bills offer incentives to land owners to maintain or restore wetlands. "These bills are carrots, not sticks," says Alison Harvey, chief deputy for Assemblyman Phil Isenberg, D-Sacramento. Isenberg is co-sponsor of four bills. Important bills in the legislature now:

- AB 4325, sponsored by Isenberg and Bill Baker, R-Walnut Creek, would allow state regulators to give grants to private landowners for wetlands restoration and maintenance. Harvey observes that two-thirds of the remaining 100,000 acres of Central Valley wetlands are privately owned. Likely participants include Audubon Society, Nature Conservancy, and Ducks Unlimited.
- AB 4326 (Isenberg-Baker) would direct the State Lands Commission to commission an inventory of all wetlands areas of 100 acres or larger.
- AB 4327 (Isenberg-Baker) would require public agencies to mitigate for wetlands destroyed in public projects, such as airports or harbors.
- AB 4328 (Isenberg-Baker) would ask the state to survey reclaimed waste water, such as purified sewage water. Such waters can become part of wetlands restoration projects, such as the Stony Lakes project in Sacramento.
- SB 344, authored by State Sen. Dan McCorquodale, D-San Jose, would allow developers in Central Valley projects to offset the loss of wetlands through off-site mitigation. Developers would be required to replace lost wetland acreage by a ratio of 3:1.
- SB 2530, authored by Sen. Milton Marks, D-San Francisco, would require the state to buy 225,000 acres of wetlands. The bill also calls for the mapping of wetlands statewide. Other than $500,000 for the map, however, bill does not request a specific allocation of funds for the land purchases.
- AB 4231, sponsored by Assemblyman Byron Sher, D-Palo Alto, would amend the California Environmental Quality Act to codify "no net loss" into standards of wetlands mitigation.

Other States

While federal agencies are the muscle behind wetlands issues, state governments are a source of creativity in mitigation efforts. "States have been the cockpit of the country's most imaginative environmental initiatives," EPA Administrator Reilly recently told *The Washington Post*. Here are some of the most innovative state efforts:

- Maryland became the first state to enact "no net loss" into law in 1989, though its impact on agriculture is being phased in over a three-year period. The statute also gives the state permitting power over Maryland's wetlands. A provision of Section 404 of the Clean Water Act allows states to take over regulatory power from the Army Corps for inland wetlands if the program is approved by the EPA.
- North Dakota passed a law in 1987 effectively endorsing "no net loss" by requiring farmers and developers to replace every acre of wetlands lost to agriculture. In addition, Fish and Wildlife has been negotating with 30 local farmers to preserve or restore 1,500 acres of wetlands; land owners are to be paid $15 to $40 an acre every acre preserved.

Contacts: Peter Grenell, Coastal Conservancy (415) 531-5520.
Alison Harvey, Isenberg's office, (916) 445-1611.
Assemblyman Byron Sher, (916) 445-7632.
Jim Leape, Conservation Foundation, (202) 778-9651.
Peter Douglas, California Coastal Commission, (415) 553-8555.
Cindy Deacon Williams, National Wildlife Federation, (202) 797-6800.
Robin O'Malley, Council for Environmental Quality, (202) 395-5750.
Dave Davis, EPA Office of Wetlands Protection, (202) 383-5043.

Morris Newman

Brown to Revise Regional Government Proposal

Continued from page 1

Assembly committee hearing, a variety of interest groups — including local governments — expressed concern about the bill. Some local governments have even opposed the bill outright.

Two major changes are likely to be made in AB 4242, according to Assembly Office of Research staffer Todd Kaufman, who drafted both the Assembly report and the Brown bill.

First, it is likely that the bill will propose an all-elected governing body for the regional agency. At present the bill proposes a combination of regionally elected officials and local officials appointed by their peers. Kaufman said all the elected officials would be chosen by district.

Second, the bill is likely to contain some provision that will permit cities and counties to work together on sub-regional planning efforts in order to avoid top-down rule from the regional agency. In this regard, AB 4242 may begin to look similar to SB 1332, sponsored by Sen. Robert Presley, D-Riverside, which would also create a mechanism to permit sub-regional planning.

As Kaufman explained it, the revised AB 4242 will probably encourage sub-regional planning in order to create a "bargaining arena" to permit "a trading of money for certain responsibilities within the region."

Kaufman acknowledged that AB 4242 does not lay out the state's role, nor does it address the question of financial resources.

Contact: Todd Kaufman, Assembly Office of Research, (916) 445-1638.

SPECIAL REPORT: FEDERAL ENVIRONMENTAL LAWS

Endangered Species Act: Single-Species Focus Creates Problems

Until the U.S. Fish & Wildlife Service intervened in the Stephens' kangaroo rat controversy in Riverside County, few people in California planning and development circles truly understood the power of the Endangered Species Act. In fact, the law has such strength that one expert calls it the "pit bull" of federal environmental laws.

"It is a federal crime to 'take' an endangered species," says Fish & Wildlife biologist Peter Stine. "This is a very strong piece of legislation."

The law spells out procedures by which the Fish & Wildlife Service may designate species that are in danger of extinction. Once a species is placed on the endangered list, the agency has the power to halt all development that might place that species' future existence in jeopardy. Thus, for example, when Fish & Wildlife concluded that rapid home construction in western Riverside County would place the Stephens' kangaroo rat in jeopardy, the agency was able to threaten local officials with criminal prosecution if they permitted those developments to proceed.

California also has an endangered species law. The state law parallels the federal act, and appears to serve two purposes. First, it permits the state to take action on species that are threatened statewide but not nationally. And second, it permits the California Department of Fish & Game to work on in conjunction with the federal Fish & Wildlife Service in protecting federally endangered species.

Fish & Wildlife is not inflexible, however. Under the law, the agency has the power to reach negotiated solutions and permit so-called "incidental taking" of endangered species if it is part of an overall plan to preserve that species in the long run. In the K-rat controversy, for example, Riverside County, Fish & Wildlife, and developers have agreed on a plan to create a K-rat preserve and permit home construction to proceed elsewhere in the county.

Such habitat agreements were permitted under congressional amendments passed in 1982. Nevertheless, the way that the Endangered Species Act is written makes it difficult to deal with problems long in advance.

The Single-Species Approach And the 'Extinction Curve'

The Endangered Species Act is meant to protect wildlife and biological diversity. However, the law does not give Fish & Wildlife specific power to protect ecosystems and wildlife habitats. Rather, the law focuses on protecting individual species.

In part, this is a natural outgrowth of the history of wildlife protection efforts, many of which have been species-specific. Politically popular species, such as bald eagles and marine mammals, were protected by law even before the passage of the Endangered Species Act in 1973. Some experts say that the single-species approach also came about partly because of political rivalry between the federal government and states, which have traditionally regulated wildlife preserves. "The Endangered Species Act represents a relatively careful excision from state authority of those species that are in sufficiently perilous plight that they need stringent protection," says Michael Bean of the Environmental Defense Fund.

The single-species approach has limited the Endangered Species Act's flexibility and Fish & Wildlife's ability to take a long-term approach. The agency is permitted to list species as "threatened," meaning those species are likely to be listed as "endangered" in the future. But until a species is listed as threatened, Fish & Wildlife cannot take action, nor can it make any guarantees that current preservation efforts will be sufficient in the future.

This inflexibility causes development interests great frustration. "We do not argue with the goal," says Bart Doyle, a lawyer with the Building Industry Association of Southern California. "We feel the mechanism has fundamental flaws. We think the act works ass-backwards. The listing comes down and everybody begins to scramble."

Indeed, this is exactly what happened last year when Fish & Wildlife issued an emergency listing classifying the desert tortoise as endangered. The listing halted hundreds of millions of dollars of construction projects in the Las Vegas area. Local builders and governmental entities sued the Interior Department, but eventually reached a settlement similar to the settlement over the kangaroo rat. Builders will pay $500 per acre to create a habitat for the tortoise and also create a research center.

It was this same concern that led Interior Secretary Manuel Lujan to make some controversial remarks in Denver a few weeks ago. Discussing a controversy in Arizona, where a mountaintop telescope would threaten the existence of a certain type of squirrel, Lujan said: "Do we have to save every subspecies? Nobody's told me the difference between a red squirrel, a black one, and a brown one."

Lujan's remarks were assailed at length by environmentalists. However, when he apologized for them several days later, he said he was merely expressing frustration at the "reactive" nature of the law. "I have to stand there and watch the train wreck, but I have to wait until after the wreck to start," he said.

Inflexibility and the single-species approach also drew the attention of President George Bush on a recent visit to Portland. Commenting on the ongoing dispute between environmentalists and the timber industry over preservation of the spotted owl, he characteristically encouraged a "balance" of interests.

Ironically, despite the inflexibility of the law and its tough provisions, biologists are not gaining ground against endangered species. According to J. Michael Scott, leader of the Idaho Cooperative Fish & Wildlife Research Unit, in 1976 there were 608 endangered species. Three had recovery plans and 605 did not. Today there are 1,004 endangered species — 269 with recovery plans and 735 without them. "Despite a tremendous amount of attention and a tremendous amount of money being spent, we are not getting ahead of this extinction curve," he says.

Indeed, many other biologists agree that it will be impossible to find enough financial resources to save all species that are now endangered. Says Scott: "The time to protect a species is when it's common, not when it's rare."

The Development of the Habitat Concept

Despite the inflexibility written into the Endangered Species Act originally, several controversies since 1978 have led to amendments in the law and changes in the way it is interpreted.

The seminal event was the snail darter controversy during the Carter Administration. The Tennesee Valley Authority, a federal agency, had built the Tellico Dam, but closing the gates of the dam would have threatened an endangered minnow, the snail darter. In an opinion written by Chief Justice Warren Burger, the U.S. Supreme Court ruled against the TVA. (*TVA v. Hill*, 437 U.S. 153 (1978). Subsequently, special legislation permitted the dam gates to close and the minnow was moved to another river.)

At about the same time, an endangered-species controversy arose over the private development of San Bruno Mountain just south of San Francisco. Home construction threatened the habitat of the Mission Blue butterfly, as did an invasion of the shrub gorse. Under the law as it was written at the time, Fish & Wildlife could not permit the development to proceed. However, environmentalists in San Mateo County decided to try to reach a compromise that Fish & Wildlife would accept. "We did not want to cause a confrontation that would lead to a weakening of the act in Congress," recalls Tom Adams, a San Mateo lawyer who represented the environmentalists.

Under the San Bruno agreement, some home construction on the mountain was permitted. But most of the mountain was preserved and either sold or donated to the county and the state. The result was that, in spite of the development, 87% of the butterfly habitat was preserved. Furthermore, as part of the deal, the developers agreed to fund a maintenance program for the habitat that would help protect it from the encroaching gorse — so that the development actually helped preserve the habitat rather than destroy it.

The resulting "habitat conservation plan" was the first of its kind in the nation. And the San Bruno plan formed the basis of important 1982 amendments to the Endangered Species Act, which permitted Fish & Wildlife to issue an "incidental take" permit for an endangered species (also known as a 10-A permit) if the agency has approved a habitat conservation plan for that species.

Since then, several other HCPs have been set up and close to 30 are under negotiation. With only a few exceptions, all of them are in California. But many of them have presented more difficulty than the San Bruno Mountain HCP. One of the largest habitats established, for example, is a 20,000-acre habitat in Riverside County's Coachella Valley for the fringe-toed lizard.

The Riverside County K-Rat And Multi-Species Habitats

The most highly publicized endangered species controversy in California has dealt with the Stephens' kangaroo rat, which lives in the grasslands of western Riverside County. The K-rat was listed as endangered last year, halting home construction throughout its 20,000-acre habitat.

After lengthy negotiations among Riverside County, several cities in the area, developers, and Fish & Wildlife, an interim plan to preserve the K-rat is about to receive federal approval. Under the plan, developers in the area will pay $1,950 per acre into a fund that will be used to buy a 4,000-acre habitat for the K-rat. Under the plan, the habitat acreage would be allocated among all the jurisdictions in the area, with Riverside County (52%) and the City of Riverside (34%) taking the bulk of it. The "rolling program" would require that when 1,000 acres of habitat are released for development, 900 acres must be purchased for habitat preservation within three to six months.

A slowdown in the real estate market has relieved the pressure slightly; many large development companies may postpone projects until the market is more favorable. But Riverside County has unusual biological diversity even for California, with 20 to 40 species that might be listed as endangered in the future. Now Riverside County officials are pondering how to get ahead of the extinction curve by creating a huge multi-species habitat to protect all species that may become endangered in the future.

The multi-species habitat apparently would have to encompass about 20,000 acres, or about 30 square miles, and could cost as much as $500 million to create and maintain. Even then, it may be difficult to shoehorn the habitat into a county of more than 1 million people. "Many of our options are precluded by general land-use patterns," says biologist Paul Fromer of RECON, a San Diego consulting firm working for the county. "Riverside County is not like Idaho. We'll try to save a little of everything and enough of everything to guarantee future existence."

But two important questions loom. First, where will the money come from? And second, what guarantee can Fish & Wildlife give Riverside County that these preventive efforts will be sufficient in the future?

Riverside County officials are currently looking to piece together a financing package from a variety of local, state, federal, and private sources. A fee on new development, similar to the K-rat fee, is probable. The county hopes to tap federal sources, such as the Land and Water Conservation Fund, and state sources, such as the environmental license plate fund. The county may also pursue such regulatory schemes as mitigation banks, clustering, and density bonuses to open up land.

The crucial financing tool, however, is likely to be a county bond issue on the November ballot. County officials want to create the Riverside County Regional Park and Open Space District, which will probably impose a parcel tax of between $30 and $46 per year in order to create $120 million in bonding capacity.

But this raises the question of whether an endangered species habitat would be politically popular — especially since it would be connected in the public mind with the unpopular K-rat. So county officials apparently hope to piggyback the habitat on top of the more popular issue of parks and open space, saying the money will be used to buy not only land for animals, but also parkland and wild areas that can be used as trails.

Yet it's questionable how much assurance Fish & Wildlife can give Riverside County in advance that the county would be immune from further endangered species problems because of the habitat. "What the services thinks today the consequences of some incidental taking might be ... might be quite different from what the service will think in five years," says Michael Bean, a lawyer for the Environmental Defense Fund in Washington. "That is not to say that the service cannot give some reasonable assurance today ... so long as there are no significant changes in the distribution or abundance or the nature and variety of threats to the species."

Amid all this debate on how to forestall future problems with endangered species, some builders have argued that they should not play along. Rather, these builders say they should hope that these political controversies will erode public support for the act, opening the possibility that Congress will weaken it. But even the spotted owl, the desert tortoise, and the K-rat have not damaged public support for the general concept of protecting endangered species.

Lujan's recent comments, for example, produced no wave of support for his position. "There's no question that there are Western senators who sympathize with his remarks," says Jim Leape of the Conservation Foundation. "But there's no indication that it's shaped any more broadley." Indeed, after Lujan's remarks in Denver and Bush's in Portland, the White House specifically stated that Bush was giving no consideration to weakening the Endangered Species Act.

Contacts: Paul Selzer, lawyer for Riverside County, (619) 325-7264.
Jim Leape, Conservation Foundation (202) 778-9641.
Michael Bean, Environmental Defense Fund (202) 387-3500.
Bart Doyle, BIA of Southern California, (213) 250-8965.
Mike Scott, University of Idaho, (208) 885-6336.
Rob Thornton, Nossaman Guthner, (714) 835-9000.
Richard Spotts, Defenders of Wildlife, (916) 442-6386.

DEALS

Will There Be a Happy Ending for Riverside's Fantasy Attraction?

On its face, the Mission Inn seems an unlikely vehicle for the redevelopment of Riverside. The project is one of the most complex and costly historic restorations in the U.S. A previous developer went bankrupt in the midst of a $50-million renovation, and the project is currently owned by a bank. Local hotels are running at 50% occupancy. And the Inn is one of the few regional attractions in an isolated location 60 miles from Los Angeles.

Despite those qualms, Riverside officials are betting heavily on the Mission Inn to anchor the city's redevelopment plans. Marguerretta S. Gulati, director of Riverside's development department, told *The New York Times* earlier this year that the Inn is "the centerpiece of our whole downtown redevelopment, physically, architecturally, economically and culturally," adding, "It is the thing Riverside is known for nationally. It is a magnet for other development in the area. It will bring people back downtown."

If the city collects on its wager, the town hero will be Chemical Bank. The New York-based lender became the reluctant owner of the hotel two years ago, with the collapse of the prior developer, Carley Capital Group. In an era when lenders are skittish about real estate lending, to put it mildly, Chemical Bank is pumping $9 million into the hotel to complete the restoration.

That effort is doubly ambitious, considering the scale of the job. Ralph Megna, Mission Inn project director for the City of Riverside, describes the ongoing rehabilitation of the Inn as "one of the half-dozen most complicated historic rehab projects undertaken in the United States," comparable to the Willard Hotel in Washington and the St. Louis Union Station. An official statement by the city acknowledges that "projects that are the scale and character of the Mission Inn are enormous risks," adding, "A screw-up involving any one of a million variables can doom the project."

Built over a 40-year period starting before the turn of the century, the Inn is one of the great California fantasy buildings. Rivaled only by Hearst Castle as a study in architectural abandon, the Inn is an circus of styles, incorporating elements of Spanish, Gothic, and Moorish architecture. The 320,000-square-foot structure is crowded with catwalks, loggias, and alcoves. Artwork abounds in the interior: the St. Francis of Assisi Chapel features four original Tiffany windows, three Tiffany mosaics, and an 18-foot altar covered in golf leaf, transported to Riverside from a Mexican church. The building is a National Historic Landmark.

Original owner Frank Augustus Miller died in 1935, and the Inn went through a succession of owners. In 1976, the City of Riverside bought the failing Inn and attempted to run the hotel itself — with poor results. "It's fair to say the city did not profit by being in the hotel business," says Megna. By the time the city sold the hotel to Carley, a Wisconsin-based syndicator, in the mid-1980s, only a handful of guest rooms remained; most had been converted to apartments and other uses.

Carley went broke in 1988, shortly before the company had expected to complete work on the Mission Inn and reopen it as an Omni Hotel. Riverside city officials said that problem real estate in the Eastern U.S., rather than the cost of restoring the Mission Inn, were largely responsible for the syndicator's demise. Carley's lender, Chemical Bank, was left with a shuttered hotel and an unpaid mortgage of $27.3 million.

In the summer 1989, Chemical decided to stick with the Inn. "I have to say that it was an extraordinarly gutsy move on their part," says Megna. Chemical, he adds, "could have walked, and written off the project and sold it." Chemical also honored $4.7 million in city loans to the project, although the bank could conceivably have disclaimed responsibility for the debts of a previous owner. The city, for its part, forgave $800,000 of a seismic-repair job as a goodwill offering.

Why did Chemical Bank take a risk on the Mission Inn? "This is a unique asset in a high-growth market, and it really has no competition,"says Pam Hendrickson, a vice president at Chemical's Manhattan headquarters.

And, she adds, "We felt that (the Inn) was more saleable as a completed project. In real estate, there is disproportionate discounting for the uncertainty factor associated with an incomplete project."

Riverside and Chemical Bank apparently agreed not to disagree. "We didn't go in with our fists raised," says Hendrickson. In turn, she found city officials "creative and helpful." Those officials streamlined the permitting process and conducted a marketing campaign for the hotel.

According to Riverside officials, the strategy to save the Mission Inn relied on converting historical value into economic value. The 20% investment tax credit for historic preservation may yield between $6 million to $8 million in savings to the bank. The Inn also won a Urban Development Action Grant of $2.7 million. The city is spending $10 million to build a 534-space parking garage, to be leased at a "favorable" rate to the hotel for three years, and thereafter at market rate. Lastly, the city has agreed to rebate bed tax to the hotel for 10 years. Excluding the cost of the parking structure, those incentives are worth up to $15 million, or possibly 25% of the "in place"value of the Inn itself, according to the redevelopment agency.

Described as the "ultimate fixer upper,"the Inn required seismic work — the building sits near the notorious San Andreas fault — and replacement of 750 doors and 450 windows.

Redevelopment officials are betting on the value of what one consultant calls "heritage tourism:" bringing in bucks with historic attractions. The city claims that 60% of all vacations or trips of more than three days include a visit to a historic site. And the Megna further claims that the Mission Inn might book up to 50% more business in guest rooms and meeting halls than a newly built hotel of comparable size.

Although the city has no revenue participation in the Mission Inn, Riverside is relying on the Inn to buttress downtown redevelopment. Two mixed-use projects, worth a total $12 million, are planned directly north of the Inn. Diagonally across the street, the city is developing a 100,000-square-foot office building and garage for Riverside's public utilities department. And the city is soliciting statements of interest for a 60,000-square-foot expansion of the nearby convention center, doubling its current size. Says Megna, "With the Mission Inn, we are in a better position to market our convention center; at present, our ability to host large conferences and convention is severely limited. We have fewer than 300 first-class hotel rooms in town."

Megna acknowledges that he was "a bit shocked" to learn that Riverside residents have felt discouraged and wearied by the long wait to restore the Mission Inn. "I have thought that, frankly, it was unrealistic to expect the project to travel a straight line from beginning to end, considering its size and complexity. In the context of urban development projects, 15 years is not an extraordinary length of time."

Chemical Bank's Hendrickson says she is holding off on self-congratulation until she finds a buyer for hotel. The mininum asking price is $28 million. She acknowledges that a sale is near, but won't comment further. "Once we have seen whether we can sell the property, and at what price, then we have a happy ending," she says. "But not until then."

Morris Newman