**The Plastic Greens, Part 2: High Stakes Poker**

**By Susan Davis**

When last we looked in on the Plastic Greens, we were tracing the relationship between the Endangered Habitats League's origins and activities, and their corporate foundation funding. The League has played a major role in establishing Natural Communities Conservation Planning, an end run around the Endangered Species Act based on the premise that real estate development on the Southern California scale can be harmonized with biodiversity and a healthy environment. Using what are essentially giant Habitat Conservation Plans, the policy allows developers to destroy threatened and endangered species if they provide so-called mitigation by adding land to sprawling, interconnected wildlife preserves. Some of the mitigation has been scams, double-dipping or fakery, and in the process, the Endangered Species Act has been nearly eviscerated.

Chief Executive Officer Dr. Dan Silver runs the League out of Los Angeles, and Michael Beck directs its San Diego operations. It is important to note that the League works with hundreds of thousands of dollars of public money: it is a tax-exempt charitable trust and its revenues are tax-deductible gifts and donations, much of it from the Hewlett and Irvine Foundations.

As a result of Beck's and Silver's efforts, San Diego, with its three conservation plans -- one in the City, one in the North County, and one in the Southeastern County -- is being held up as a national model of how to do environmental preservation. The whole Multiple Species Conservation Plan saga in the City is one sad, messy story, usually presented in the press as a "win-win" solution.

But there's good news. Committed activists like the Center for Biodiversity, Spirit of the Sage Council, and California Native Plant Society are battling the planning process in the courts, and they have a good shot at winning their suits. League-free groups like Save Our Forests and Ranchlands are winning big county-wide land-use battles the old-fashioned way, without foundation grants or paid staffers. San Diego County is in turmoil over backcountry zoning, traffic, and water, and for the first time in a long time it's not the bland leading the blonde. There's some room to move away from the "collaborative conflict resolution" favored by big real estate, Pete Wilson, Bill Clinton and Bruce Babbitt, and toward real change and accountability.

**High stakes table**

So here's the story of San Diego's MSCP, and an accounting of what Hewlett and Irvine got for their money. In the early 1990s, the Endangered Habitats League petitioned to be invited to the NCCPs' negotiating tables as "stakeholders," to make decisions about where to allow development and the destruction of animals, plants and habitats, and where and how to "mitigate" the damage. Duncan McFetridge, president of Save Our Forests and Ranchlands, and an incorrigible resister of compromises, insisted from the beginning that this was "a developer-driven plan, not a conservation plan."

McFetridge is also proud owner of an unabbreviated Oxford English Dictionary, and he tells me the word "stakeholder" is a gambling term. It means people who have enough money or backing to be dealt into the game. And that's how the City's Multiple Species Conservation Plan unfolded: the big boys split the deck with the agencies, and the enviros were dealt low cards or allowed to look over each others' shoulders. The Mayor's office, the Building Industry Association and development companies (holding five aces), Fish and Wildlife, the San Diego Association of Governments, San Diego Gas and Electric, and the transportation and water districts, were joined by the Sierra Club, the Audubon Society, and the California Native Plant Society, among others. The Endangered Habitats League anted up, too.

In spite of heavy builders' representation, a developer front group with the smarmy name Alliance for Habitat Conservation also pulled up a chair. Early in the process, Alliance president James Whalen made a telling remark to EarthFirst! Journal: "This isn't about science," he told Craig Benneville, "its about politics. The building industry is going to fight for every acre it can get." An honest moment! By contrast, Audubon, the Sierra Club, and others earnestly sat in, thinking they were working within the system while the system was working them.

**One-eyed Jacks**

In the beginning of the planning process, these contending parties had to lay out the dimensions of the land to be preserved, the goals and principles of preservation, and the goals, principles and land to be sacrificed. This first set of negotiations took nearly five years, from 1991 to 1996, cost millions of dollars, and identified lands adding up to 172,000 acres, and affecting nearly 900 square miles. In the early phases of the planning, Jim Peugh of San Diego Audubon helped represent his organization in the negotiations. In the beginning, he says, "it didn't seem like a bad thing....It looked like something could come out of it," especially since the MSCP claimed to preserve communities of flora and fauna by acquiring whole areas, rather than saving one species at a time.

Then the Multiple Species Conservation Plan went into implementation, and that was when the real deals were struck and the rules crafted. Suddenly, one-eyed jacks were wild. "The fine cutting came in the last two years. There was a lot of give and take, and a lot of horse-trading, " says Jim Peugh, and he doesn't mean "give and take" in a positive way. As it shook out, Endangered Habitats League ended up representing most of the other environmentalists at the table. Rolfe and Peugh and others think that they probably let Silver and Beck do too much of the negotiating. There was a funny way, says one observer, in which EHL acted both as clients and as brokers. Beck and Silver didn't always consult, and didn't always report back, but people said "They have the time and energy to do it, and we're overwhelmed." (Recall where their time and energy came from.) "They seem pretty good at it. Let them do it."

**Fancy footwork**

But environmentalists were less worried about Beck's negotiating skills than they were about how the City's plan was actually being crafted. Talented scientists, both in Fish and Wildlife and on contract, were submitting data, field reports, and recommendations, only to have them ignored in the developer-dominated process. Ellen Bauder, vernal pool conservation committee chair of the California Native Plant Society and a nationally respected plant ecologist teaching at San Diego State University, had done a lot of the baseline data collection, as well as hypothesis testing, on rare plants, especially in the wetlands called vernal pools. Vernal pools are small depressions in the earth over hardpan; they fill with water after winter rains and are home to a vivid range of rare and delicate plants, animals and invertebrates. In San Diego, vernal pools are typically on the mesa tops coveted by real estate investors, so they were of great concern. And she did other background surveying as well, coordinating her information with Fish and Wildlife. But, Bauder says, while she was working with the agencies and The Nature Conservancy (now involved as a land broker) to come up with a biologically sound and politically acceptable solution, "they [the stakeholders and The Nature Conservancy] would be wheeling and dealing....I'd identify a critical place, and then I'd find that TNC had already been negotiating with the landowner." Bauder sent detailed and well-informed comments, queries and reports demanding to know the criteria for the deals, but concluded that TNC wasn't representing the natural resources well, and "science wasn't being followed in the negotiations. I finally decided it was no longer worth my while to offer expertise and comments." Worse, "by saying they had consulted me, they could imply that they had somehow incorporated my knowledge when they had not used it at all." Ironically, Bauder had been a board member of the California Nature Conservancy, but spilt with the organization when it reorganized to pull in more corporate support in the 1980s.

Allison Rolfe, now Executive Director of San Diego Audubon, wrote a thesis on the MSCP for her master's degree in Geography at San Diego State. After studying every step of the process she had felt hope for, she's concluded that the MSCP, like a changeling, "is what ever it wants to be." "The collaborative process, it's all political negotiation. You've got too many conflicting issues at stake, and so the stakeholders can only agree on things that are meaningless. They agree on statements like "We will avoid vernal pools to the maximum extent practicable." Allison is exercised. "To the public, that sounds good! But from my point of view, as a wetlands activist, that means nothing. Nothing! This is a permitting program. You are planning to issue a permit. So, when will you impact them and which ones will you impact? "

She catches her breath. "The political problem is, if they wanted to give us that information, they couldn't, because the Building Industry Association is at the table. They and the other stakeholders will not be tied down. That's why they are at the table: to make sure they have room to wiggle out of protection." The city had a thorough and accurate survey of the vernal pools that documented profound loss. Planners went ahead and made the political decision that some pools could be sacrificed, and some saved. Even if greens agreed with such a cynical act, how would the choices be made? If planners made the choice on the basis of biological integrity, and let "the owner of degraded pools develop, the owner of high quality pools is going to go nuts!" Rolfe watched the city try a different tack. "They said "We'll protect 88% of the vernal pools." But where does the 88% come from? Which 12% are gonna get hit? Is it 88% of the pools' historical range? Or is it 88% of the 3% of all of California's original vernal pools that we have left now? .... I never thought they even had 12% they could afford give away." Rolfe and Ellen Bauder asked many times what the City was preserving 88% of, but the City played it close to the vest and they never got answers. Preservation by percentages makes no sense in the world of plant biology, anyway, Bauder says, because rare plants are cyclical, seasonal and, in their embryonic forms, often not visible for years at a time. Rolfe says, "I kept saying, we're going to have to sue."

Meanwhile, according to another interviewee, Rolfe and her allies were told by Michael Beck to lay off the vernal pools issue, because "it was really pissing people off."

For another made-up number, take the celebrated 85 rare and sensitive plants and animals the San Diego City plan is supposed to save. "That's just a number they made up," laughs Rolfe. What? I thought it was the result of a survey, or, well, something. "Actually, San Diego County has as many as 200 to 300 sensitive species already listed or with potential for threatened and endangered status. The MSCP claims to adequately conserve 85. But as a measure of what was needed, 85 was just a conjectural number that's become a fact. At one point there was a standoff between the developers' numbers and the biologists' numbers. They didn't match at all." The lucky number 85 was probably due to some under-the-table card passing by the developers. Really, Rolfe says, there may be a lot of plants, even animals, we don't suspect are out there. There's that much land, that much diversity, and sound biological surveys are a mountain of expensive work.

**Pass me those dice....**

Ted Case, a UCSD biology professor and world-famous herpetologist was very interested in the MSCP from the beginning, not least because he thought it was going to be so geographically big that it might make some interesting research possible. Case is a soft-spoken, funny and gentle man, so it takes a while for the implications of what he's telling me to sink in. He says that if you collected baseline data on endangered species, set aside huge preserves, and then carefully monitored and collected information from the preserves for, say, fifty or a hundred years, "you'd have something really interesting to work with" to understand extinction and recovery. Especially recovery, which, he points out, scientists don't have a handle on. But, Case says, it was clear to him from the beginning that there was "a gear missing somewhere."

"Everyone was aware that there was no entity to coordinate the monitoring and management of the biological activity in the NCCP and MSCP." If you want to know whether species are really recovering, or even holding steady, data has to be collected at the right scale, and using methods to assure comparability. "For example, monitoring gnatcatchers in Poway should be comparable to monitoring gnatcatchers in Otay." But it was clear to Case from the beginning that this was never going to be allowed. "There was sentiment," he says, putting it in his tactful academic way, "that that would be unpalatable to local governments. It would be big government. I was at a meeting where it was suggested [that we plan for coordinated monitoring] and everyone just looked very uncomfortable." From the stakeholder's point of view, scientists like Case weren't there to offer expertise: they were just gamblers, too, and they were playing against the house.

Let me put it in my untactful way: from the point of view of the developers, systematic and coordinated monitoring ("big government") might shuffle their stacked deck. But from the gnatcatcher's, or any rare animal or plant's point of view, it could be essential. Under the Endangered Species Act, monitoring and management are required. Ted Case thinks that there may be monitoring and management records from the last several years of the MSCP somewhere, but he's an experienced researcher and he's not able to find anyone who knows where they are. "They just never set up an organizational structure."

Then there was the royal flush: the "No Surprises" clause. Developers nation-wide demanded it, and Bill Clinton delivered it in an amendment to the ESA. "No Surprises" means that no matter what happens to a plant or animal, or to its environment, or in the realm of science, once a landowner has signed on with the MSCP there can be no further limits on their right to develop their land. All further burdens for recovery measures fall on the government and, therefore, on the public. Case points out US Fish and Wildlife and California Fish and Game, the same agencies charged with monitoring the success of the MSCP, are also stuck with the expense of recovery if it fails. Quite a conflict, Ted Case suggests. Bad hand, I'd say.

San Diego's greens were outraged by "No Surprises". Spirit of the Sage Council in Orange County is leading the suit against it. Beck and Silver, of course, argued then and argue now that developers have to be given reasonable incentives to be at the table, and this was one. "You just don't do [these plans] without landowner assurances," insists Beck. "It is not possible....The principle is that we are all part of the problem, and we all need to pay for many years of bad decision making." What is this, the theory of collective guilt? We're going to pay developers not to break the law? Has the San Diego County Association of Taxpayers heard about this?

"Well, we don't support the use of No Surprises," says Beck heatedly. "No Surprises" was critical to the developers, and they didn't fight for it not to use it.

"No Surprises" is not just a theoretical problem. For a real-life scenario, Ellen Bauder points to the recent New York Times report that tanoak in Central California are being devastated by a mysterious and fast spreading "sudden oak death" syndrome. Now there's a surprise for you! What if sudden death syndrome spreads to the rare oaks protected in the giant, Southern California HCPs, and protection of the woodlands and their associated wildlife on developer land is needed? Does Beck really think the building industry won't invoke "No Surprises"? And this is only one of a score of real life surprises coming up.

**House of cards**

The other thing that the ESA requires of a Habitat Conservation Plan is an identified budget and a funding source. San Diego didn't have that either, and still doesn't. This was one more reason some field scientists who worked hard on the MSCP gave up and went away. Case the herpetologist says "All the advisory committees I've been on end in nothing, because they start with the presumption that there's no money. We've also tried working from overarching first principles [of conservation science], but the Building Industry Association, or City people, or agency people -- none of them want the bill, so the discussion goes nowhere. I just quit going."

Then there is the famous issue of connectivity. The giant preserves are supposed to allow wildlife migration for animals and dispersal for plants. San Diego County's preserves are supposed to be connected not only to each other, but to public lands, and to the preserves in Orange and Riverside counties. But the pace of destruction has been so fast, and participation so voluntary that the connections are weak. "The most ridiculous example of fake corridors was the one on Otay Mesa," says Ellen Bauder. "It is a 200 ft.-long concrete pipe, 6 ft. in diameter." At the Carmel Mountain developments on the coast, only one passway now connects a creekbed and a mesa with an estuary -- it is a low, cramped route under a fifteen lane freeway, which then crosses two-lane Sorrento Valley road, now closed. Despite MSCP mandates for linkages, the City is proposing to reopen the road for commuters to a local high-tech district. So much for connectivity.

Michael Beck is proud of the fact that he spent two years working to save an area called Crestridge, between El Cajon and Alpine. 2,600 acres was vested for development, and mapped for 95 houses. With a "bridge loan" from The Nature Conservancy, the state acquired Crestridge for the MSCP. "There was no leverage, just trust and personal relationships," says Beck. "Crestridge is important," says Duncan McFetridge of the hard-fighting Save Our Forests and Ranchlands. "No question about it, it is very valuable in natural and wildlife terms." McFetridge doesn't say positive things about Beck very often, but here he gives credit. But there's another but. Crestridge is supposed to link to a corridor from the southern lobe of the central preserve to the northern edge of the county's southern preserve. The corridor the wildlife is supposed to use passes south under Interstate 8, crosses a two lane asphalt highway, and heads straight into a sheer, 300 ft vertical rock face. There's a stop sign and a bus stop at the corner. McFetridge often shows a slide of this spot at political meetings, and he jokes that, luckily, the wildlife that can't make it up the cliff can catch the bus. "I even get laughs from the Building Industry boys on that one!" I-8 severs the two preserves absolutely, and Crestridge is meaningless if you can't get up that cliff.

All these worries and more forced the sincere hearts in the San Diego environmental community to oppose the adoption of the Multiple Species Conservation Plan by the City Council. Beck and the League had long since emerged as the responsible environmentalists, the ones who wouldn't make anyone powerful feel uncomfortable. Audubon's Jim Peugh says, “Finally, everything just came apart. The people from the agencies were cheery and encouraging. They didn't see why we just couldn't understand how great it would be. But accountability wasn't adequate, so we just couldn't support it." Allison Rolfe, then representing the Southwest Center for Biodiversity, says "I griped for a couple of years, saying it's not specific enough, it's not in compliance with the ESA, there's no accountability, and no sanctions" for violators. The City just kept saying "trust us." In the end, San Diego Audubon came out against the MSCP, but California Audubon sent letters of support. That was a bitter betrayal, says Peugh. "After that I just wanted to move somewhere where no one had ever heard the word MSCP." California Native Plant Society and the Southwest Center opposed the plan for offering inadequate protection of wildlife and the land. Save Our Forests sent letters urging rejection. The Sierra Club and Endangered Habitats League supported it. There was so much contention that, at the final council meeting, Building Industry Association representatives wore badges that said "Save the MSCP!"

Today, the first two steps of planning and approval are well along. The process of land acquisition is expected to take decades, and the money's still not all there. No one knows what's happening with perpetual management and monitoring, but the money's not there for that either. "If you think about it," says one activist, "it was a Ponzi scheme." A first group of players (the developers and public officials) chipped in --- time, money, pressure, and that all-important ingredient, publicity. Their stake in turn convinced the next group, the greens, to ante up their time and credibility so the project could move on to the next phase, which in turn convinced the third group, the public, to chip in by ratifying it. In a classic Ponzi, the last ones in take the greatest risk. And as in a classic Ponzi, there wasn't much there. San Diego might acquire some land it otherwise would not have, may be some nice park land, says UCSD biologist Michael Gilpin, who sat on some early advisory panels. But from the point of view of species recovery -- and again, we're talking hundreds of species -- it's a house of cards.

**Things fall apart**

After San Diego's Multiple Species Conservation Plan was adopted in April, 1997, the feathers really hit the fan. The first disaster was the bulldozing in late 1999 of 62 vernal pools for a shopping mall called Cousins Marketplace on Mira Mesa. Although the pools were supposed to be avoided under the MSCP, the city council issued Cousins a take permit allowing their destruction, and Mayor Susan Golding signed off on it. "The site was not the most pristine pools, but it was very good" sighs Allison Rolfe. They had "very notable biological diversity, and there were 62 of them, so they were functioning as a complex. They were connected to [the open lands of] Miramar Naval Air Station" which has (or had) its own pools, so there was connectivity. I tell Allison I didn't even know there were vernal pools in Mira Mesa: to me it's all one big commercial strip. There's an Old Navy and a huge parking lot there now. "We didn't even have a chance to know it before it was gone," she says.

Michael Beck gets hot under the collar at the notion that the Cousins pools incident reveals a big problem with the MSCP. Endangered Habitats League had argued against the take permit. "That's not the MSCP's fault, that's the implementer's fault," he rails. Allison Rolfe bristles back: "He's wrong, and he knows it. If you give the city that much flexibility in the MSCP, and they use it, is it their fault? Flexibility was built into the MSCP. Golding knew it was wrong, but she did it anyway." Rolfe recalls that during the MSCP planning process, when she'd raise objections about developer prerogatives and the lack of specificity about what could be "taken," city staffers and planners would tell her "just trust us, we'll do the right thing. " "In a perfect world, " Rolfe fumes, "it'd be great to trust politicians and decision makers. But Cousins is exactly what we foresaw in the wiggly, discretionary language."

It's not only the loose language. On any given day, one or another of San Diego's City Council members is under investigation for some scam or other, by one Attorney General or District Attorney or another. The current investigators are from the FBI and they're looking into -- guess what -- real estate developers and alleged council vote-buying. Susan Golding, everyone likes to remember to forget, is the ex-wife of a convicted money launderer. (She threw him overboard before becoming mayor.) And this is a city that in 1997 closed its Planning and Environmental Services Department, then reopened it as the Department of Development and Economic Services. You get the idea who runs the San Diego cardroom. I wouldn't trust this crew with a quarter for my parking meter.

What does Endangered Habitats League's Dan Silver have to say about the San Diego deal he and Beck brokered? "Overall, we're strong supporters of it. There are flaws, but the city and the county are on track [with their differently phased parts of the plan.] It has had some bumps...and some bad deals were made in MSCP developments." He cites Carmel Mountain (a disaster I wrote about in Counterpunch earlier this year), and a huge development called Fanita Ranch, a giant subdivision MSCP'd out in the east county near Santee. Fanita Ranch was so bad that the residents of Santee and Lakeside stopped it this spring with a ballot initiative. "The people became upset, realized it was bad, and made it better," says Silver. Right. Through the democratic process, Save Wild Santee knocked over the deck Silver and Beck helped stack.

What about the funding problems? "Well, the MSCP program is starved for funds. The regional funding source never materialized. But Proposition 12 will help that." The "regional funding source" Beck refers to is required by law, and I suspect it might be the countywide Transportation Tax money that the Mayor, with EHL and The Nature Conservancy, recently tried divert to open space acquisition. (One third of this money currently goes to new roads, one third to repairs and one third to badly needed public transportation.) The City passed the MSCP without the federally mandated funding in place, is about to be in default, and is being sued over this. The City is desperate, so Golding sent Silver to lobby for a last minute extension of the tax and a major reallocation of the proceeds. The San Diego Association of Governments (the regional transportation authority) was perplexed by this maneuver and told Mayor Golding and Dan Silver to get lost. Silver reportedly hectored the dumbfounded SANDAG officials: "You really disappoint me!" Clearly this guy thinks he's running the game.

As for Proposition 12, this spring's statewide bond initiative to fund parks and safe neighborhoods has a budget line in it for wildlife habitat acquisition. The Endangered Habitats League's 1999 tax return shows that they hired a lobbyist that year, and I'm only guessing, but I'd bet he or she was working in Sacramento to make sure that some of that bond money flowed in the MSCP's direction. Knowingly or not, California voters may have ponied up some money for the MSCP hustle.

The MSCP was supposed to be part of the movement to get big government off people's backs, and so it gave the enforcement of environmental law to the local authorities. Allison Rolfe registers what's been lost: "For almost ten years, we at the Southwest Center for Biodiversity were effectively holding federal agencies accountable in court. Now we can't do that anymore, because it is the City that is accountable." It was hard enough to sue the feds, but now they have to sue the city "on a project by project basis." Of course, an end to piece by piece, species by species litigation was supposed to be a big benefit of the MSCP. It's had a different effect. "It's so much more difficult, because you have to sue on the MSCP, and no one knows how that's going to work. The process by which we can sue has been clouded. If there's a problem, Fish and Wildlife blames it on the City, and the City blames it on Fish and Wildlife. How do we figure out who's at fault and explain that to a judge?" Rolfe is in there battling: she is the lead plaintiff, with the Southwest Center, in a suit against the MSCP's destruction of wetlands. Cousins Marketplace is Exhibit A. She is joined by thirteen other local and national groups, prominently not including the Endangered Habitats League.

Where does Rolfe think the MSCP is right now, in terms of preserving San Diego's biodiversity? Could it be working, despite what Dan Silver calls "bumps?" "It's hard to answer. The past was bad, and this might be better. But we are losing so much, so quickly my head's still spinning. So much of what we are setting aside is just a trade off against destruction." That doesn't sound much better to me. To make matters worse, Cindy Burrascano of the California Native Plant Society says "We can't get things listed now because of the MSCP. We find something threatened, on or off preserve sites, and Fish and Wildlife tells us that the MSCP means that "adequate protection" has already been established. So they won't list." The ability to sue is clouded and the sensitive species protection plan is being used to prevent protection. Thanks, Hewlett! Thanks, Irvine!

Susan Davis teaches at UC San Diego. In the next installment: the fake awards, the political connections, and how the plastic greens help keep the public out of environmental decision making.