

**WILDLIFE HABITAT POLICY RESEARCH PROGRAM
2006 RESEARCH PROGRAM**

**Final Report
1.E.: Analysis of U.S. State and Local Policies**

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by

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1. Abstract: Proven Nature-Friendly Opportunities for Local Governments, Public Agencies, and Developers

The State Wildlife Action Plans offer an unprecedented opportunity for each state to implement coordinated wildlife conservation. Although traditional approaches to habitat conservation such as acquisition will play an important role in the implementation of the plans, effective conservation also may be achieved through other kinds of activities carried out by entities with primary objectives other than habitat conservation. The purpose of this project was to identify high-value opportunities for local implementation of State Wildlife Action Plans through public and private activities affecting land use and management. We set out to determine what conditions promote success in habitat conservation (1) led by local governments, (2) achieved as ancillary benefits to locally implemented state and federal government programs not principally focused on habitat, and (3) realized through private investments in land development.

The findings of this study are based on nine case studies of local communities, agencies, and developers that have made habitat conservation an important *secondary* objective of their plans, policies, and projects. Based on existing best practices, the six key elements of successful integration of habitat conservation into these actions are: (1) creating and sustaining an independent entity focused *primarily* on habitat to ensure that the focus on conservation will be maintained over time and to stimulate regional conservation projects outside the initial project areas; (2) maintaining access to authoritative conservation science over time to ensure that management of the project is dynamic and addresses ecological and physical change; (3) articulating a commitment to habitat goals to “brand” the project, program, or place as wildlife-supporting and help to expand and adapt the commitment to conservation over time; (4) identifying regional habitat conservation opportunities and sources of funding to extend the initial vision of the project and accomplish regional habitat conservation goals; (5) educating the surrounding community to improve citizen involvement in the project and public interest in wildlife conservation; and (6) achieving outside, external certification and recognition to validate a project’s “brand” as habitat-friendly and to ensure continuity and durability of the habitat goals over time.

These key elements provide planners, developers, and government agencies with some ‘best practices’ for the design and implementation of local land use programs and projects that incorporate wildlife conservation. They can also help state wildlife managers identify the types of partnerships with local planners and developers that will successfully advance their State Wildlife Action Plan goals. Specifically, the three government programs with significant opportunities to generate “ancillary benefits” for wildlife profiled in the case studies – source water protection, control of nonpoint source water pollution, and compensatory mitigation for transportation project impacts on wetlands – offer substantial, replicable opportunities for local implementation of wildlife conservation. Using these programs to advance State Wildlife Action Plan implementation will require state wildlife managers to recognize and pursue these opportunities.

The results of this research will be communicated to the principal audiences through the dissemination of a book highlighting the key elements and case study examples, public presentations at both planning and wildlife conferences, and dissemination of briefing materials for wildlife managers.

2. Introduction:

Wildlife conservation in the United States has generally depended upon regulations concerning the hunting or “taking” of particular species, and upon governments and nonprofit organizations setting aside or acquiring habitat lands. In these cases, wildlife is the primary focus of the governmental or organizational action. But entities focused primarily on wildlife will always be a minority of institutions and are unlikely to control sufficient funds or command sufficient national attention to meet the nation’s wildlife conservation needs. Not just habitat ownership and traditional regulation of wildlife taking, but also local land use regulation, conservation plans, incentives, and voluntary actions by the public and private sectors will be needed to maintain and restore the rich biological heritage of the United States. The non-regulatory, information-rich, State Wildlife Action Plans provide opportunities to enable numerous public and private actors to participate in effective wildlife conservation. In addition, the plans provide a platform upon which state wildlife managers can pursue partnerships with developers and planners and local implementation of state resource programs to further conservation goals.

3. Purpose:

The purpose of this study is to identify high value opportunities to implement and increase the effectiveness of the State Wildlife Action Plans through the local implementation of public and private activities affecting land use and land management. The fundamental questions of this research project are: How well can public and private actors whose primary purpose is *not* wildlife do in conserving habitat, and what can their experiences teach us in designing and encouraging additional programs?

4. Summary of Results:

The findings of this study are based on nine case studies. Each case study was selected from a larger array of cases based on criteria that emphasized diversity in geography, recognition by peers, use of conservation science, and other factors, including connection of the habitat conservation to some larger awareness of the regional conservation landscape in order to avoid studies that simply exemplified site-level (“ship-in-a-bottle”) conservation. Although several of the cases are associated with or driven by federal programs, all are implemented at the local level.

The case studies include three of each of the following types:

- **Local government land use planning and growth management actions** that support habitat conservation.
 - *Baltimore County, Maryland – Integrated Land Use and Environmental Regulation.*
 - *Contra Costa County, California HCP/NCCP – Habitat Conservation Planning for Future Development.*
 - *Summit County, Colorado – Wildlife Habitat Overlay Zoning.*
- **Local implementation of federal, state, and local environmental and infrastructure programs aimed at other goals** but that can generate wildlife habitat conservation and restoration benefits as an ancillary outcome if managed to do so.
 - *Fall River, Massachusetts – Safe Drinking Water Act (§1453/1454), Source Water Protection.*
 - *Yakima River, Washington – Clean Water Act (§319), Nonpoint Source Water Pollution Control.*
 - *North Carolina Ecosystem Enhancement Program (EEP) – Clean Water Act (§404), Wetland Mitigation for Transportation Projects Statewide.*
- **Private land developments** that incorporate habitat conservation at the site level in ways that also support regional habitat needs.
 - *Santa Lucia Preserve, Monterey County, California – Luxury Conservation Development/Preserve.*
 - *Coffee Creek Center, Chesterton, Indiana – Mixed Use New Urbanist Conservation Development.*
 - *General Motors, Lansing Delta Township, Michigan – Corporate Lands Wildlife Habitat.*

Wildlife conservation was not the primary objective of each of the entities studied, although it was of substantial importance. In the case of the local governments, their concerns were issues related to advancing the “public health, safety, and welfare,” the classic definition of local land use regulatory authority,¹ and included the creation and

¹ Rutherford Platt, *Land Use & Society* (rev. ed.) (2004).

maintenance of functioning, fiscally solvent, attractive communities. In the case of the three state and federal government programs with significant potential for ancillary benefits for wildlife, it was sound management of public drinking water supply lands, reduction of agricultural water pollution, and timely environmental permitting of highway and transportation projects. In the case of private land development activities, it was the production and sale of real estate products and management of lands incidental to manufacturing. Yet, in each case, wildlife became part of the objective, part of the product or benefit – indeed, an identified part of the enterprise.

Although each of the case studies offers unique lessons for habitat conservation, six general lessons emerge.

1. Engage or create a sustainable independent entity whose primary concern is habitat.

In activities where wildlife habitat is not the primary driver but an important secondary objective, it is important to create and sustain an external independent entity whose *primary concern is* the wildlife habitat and who will ensure that the focus on habitat will not be lost over time. For example, the creation of independent conservancies to manage the habitat conservation elements of the Santa Lucia and Coffee Creek Center residential developments ensures the continued conservation of the habitats and also provides credibility in dealing with outside institutions. The conservancies also made it possible to pursue and stimulate regional conservation projects outside the initial project area.

2. Maintain continuing access to conservation science.

No conservation project or program can simply rest on an initial set of assumptions and static data. Habitat management must be dynamic and recognize and address ecological and physical change.² Many of the case studies bear out the importance of identifying authoritative sources for up-to-date conservation science information, and building this information gathering into the process – rather than simply resting upon initial consultant studies, however complete and useful. For example, the East Contra Costa County HCP/NCCP and North Carolina EEP have built-in scientific advisory review bodies that guide implementation of the programs. In Baltimore County, the environmental science is closely integrated with the land planning and permitting process; the County has also served as a key proving ground for state-based research and pilot projects.

3. Commitment to habitat elements of a project or program, while coming from different sources, must be articulated often as part of the brand identity.

Habitat conservation can enter project or program planning in different ways, but its identification as an essential part of the purpose makes it possible to sustain the commitment over time. In each of our case studies, a strong articulated vision has made it possible to bring about a fairly substantial commitment to wildlife habitat conservation

² Bruce A. Stein, “Bridging the Gap: Incorporating Science-Based Information into Land Use Planning,” in Environmental Law Institute, *Lasting Landscapes: Reflections on the Role of Conservation Science in Land Use Planning* (2007).

– and, in each case, to allow that commitment to expand and adapt over time. This articulated vision could be thought of as a way of “branding” projects, programs, or places as wildlife-supporting. Habitat is not incidental but is part of the identity of the place.

4. Regional influence of these actions includes both recognition of landscape-level opportunities to connect conserved habitat with other lands and opportunities to influence the actions of entities beyond the project participants.

The regional context of habitat conservation efforts, including links to regional conservation planning, was emphasized by the selection criteria for the case studies. The case studies illustrate different ways in which regional conservation opportunities are identified and addressed, and the variety of spillover effects of case study actions on independent entities. Regional conservation can be accomplished both by example and by seeking additional funding sources for projects extending the initial vision of the project to other lands and waters (as in Fall River, Coffee Creek Center, and the Yakima §319 program).

5. Effective projects and programs reach out to educate the public and surrounding community about native habitats and wildlife.

Each of the case studies engaged the public in a substantial way. The private developments (Santa Lucia Preserve, Coffee Creek Center, and GM Lansing Delta Township plant) provided access and sponsored educational opportunities for children and adults. The local governments (Baltimore County, Summit County, and Contra Costa County) engaged with the public in creating institutions, in administration of the provisions through planning and advisory boards, and in commenting on individual activities protecting wildlife and habitat. And the government programs with ancillary benefits for wildlife (Fall River, Yakima, and North Carolina EEP) engaged a broader constituency, moving beyond the technical implementation of source water protection, nonpoint source water pollution control, and wetland mitigation projects, into involving citizens in planning and in visiting and using sites conserved by these processes.

6. Recognition by a certification program provides accountability and continuity.

A number of these case study areas have been the subject of external recognition, which helps to validate their brand as habitat-friendly, and to provide accountability and reinforcement of their intentions. Institutions change over time, people leave, and visionary leaders aren’t always able to keep the habitat vision in the forefront of recognition. It is helpful to have external recognition of the goals and practices set in place so that these can be maintained and reinforced over time. This recognition can help internal players and managers overcome pressures based on changing priorities or flagging commitments.

Additional Findings

In addition to the six key findings from review of all nine case studies, a number of other observations emerged.

First, conservation biology and land use planning can be integrated. Review of all of the case studies shows that input from local biologists was critically important in each of the case study projects. It informed decisions throughout the process of designing the project or program, and helped to resolve conflicts and address competing priorities. Going forward, State Wildlife Action Plans provide scientific data in an organized way that can inform more detailed project planning on any landscape when used by conservation biologists and planners together, and when provision is made for future reviews and adjustments over time. The wildlife agencies would benefit from forming partnerships with the private entities for informational purposes. Conservation developments that take into account a broader regional landscape are feasible and within current capacity.

Second, local governments seeking to conserve and protect wildlife habitat have a great many tools to draw upon. The three local government case studies showed use of comprehensive land use plans, zoning, overlay zoning, wildlife habitat assessment requirements, subdivision requirements, tree conservation and mitigation requirements, water and wetland buffers, land and easement acquisition, transfer of development rights, urban-rural service boundaries, agricultural zoning, invasive plant controls, and impact fees. These diverse cases demonstrate the vast array of tools that can be employed for complementary purposes and further show that wildlife conservation objectives can be served by a mix of politically feasible mechanisms adopted by governments operating at a county-scale landscape. Local governments' effective use of these tools depends upon their access to, and understanding of, conservation biology principles and conservation thresholds,³ and their public commitment to conservation goals as a defining feature of the community.

Third, the three public agency programs with “ancillary benefits” for wildlife offer *very substantial, replicable* opportunities for wildlife conservation in landscapes across the nation.

Source water protection will be critical as the U.S. population (already at 300 million) continues to expand and demand for water rises. The federal Safe Drinking Water Act⁴ has created programs intended to lead to greater protection for these lands by state and local governments and local water suppliers. Protection of watershed lands and habitats are not only compatible, but mutually reinforcing, as the Fall River, Massachusetts case study demonstrates. The assembly of watershed lands and their connection to other public and private conservation lands provides a significant opportunity for wildlife. The key need is for information and an understanding of the landscape as a whole – a role that the Commonwealth of Massachusetts provided to facilitate the Fall River effort – and a role that State Wildlife Action Plans now make possible across the country.

³ Environmental Law Institute, Conservation Thresholds for Land Use Planners (2003).

⁴ 42 U.S.C. §§300f – 300j-26.

Programs to control nonpoint sources of water pollution also present a major opportunity to conserve wildlife habitat. Nonpoint source pollution of the nation's waters is the leading cause of impaired water quality.⁵ The U.S. Environmental Protection Agency's §319 grant program offers a means to address impairments in a watershed context by funding states to develop nonpoint source management programs and driving the funding toward targeted, locally implemented, watershed-based projects. States have substantial flexibility in structuring their nonpoint source control programs, and may integrate §319 funding with other state-based programs to meet multiple objectives.⁶ The North Yakima River experience shows that §319 funding can help with restoration of aquatic habitat, and further the objectives of comprehensive watershed planning. If integrated with information from State Wildlife Action Plans, such watershed improvements can serve habitat restoration as well as pollution control objectives. The potential importance of §319 in the habitat context is apparent from the fact that it appears not only in the North Yakima case study, but in another case study not focused on that program. The Coffee Creek Watershed Conservancy obtained a §319 grant to fund the development of a watershed plan to address water quality concerns related to Coffee Creek and its tributaries.

Mitigation associated with transportation projects presents a significant opportunity to marshal funding and planning to support wildlife habitat conservation. State transportation agencies are continually required to provide compensatory mitigation for unavoidable wetland losses in accordance with §404 of the Clean Water Act and the 404(b)(1) mitigation guidelines.⁷ Mitigation expenses are eligible project expenses under federal law providing aid to states for transportation projects, and as the North Carolina case study shows, these can amount to tens of millions of dollars each year for each state. The Environmental Law Institute recently found that compensatory mitigation expenses lay somewhere between \$2.5 billion and \$4.4 billion, with a likely midpoint of approximately \$3.4 billion.⁸ Transportation-related expenditures are likely a significant fraction of this amount. The Transportation Equity Act for the 21st Century (TEA-21) established a preference for mitigation banking to compensate for unavoidable losses to wetlands or other natural habitat caused by transportation projects receiving federal assistance.⁹ This means that aggregating wetland mitigation on large sites is preferred, thus providing a further opportunity to integrate landscape level planning that takes into account other resources such as wildlife. The North Carolina EEP shows how land trusts can be integrated into the process. The use of State Wildlife Action Plans to guide

⁵ U.S. Environmental Protection Agency, Nonpoint Source Pollution, at <http://www.epa.gov/OWOW/NPS/qa.html>.

⁶ James M. McElfish, Jr., Linda Breggin, John A. Pendergrass III & Susan Bass, "Inventing Nonpoint Controls: Methods, Metrics and Results," 17 *Villa. Env'tl. L. J.* 87 (2006).

⁷ 33 U.S.C. § 1344, 40 CFR 230.10. For transportation demands on compensatory mitigation *see generally*, Environmental Law Institute, 2005 Status Report on Compensatory Mitigation in the United States (2006).

⁸ Environmental Law Institute, *Mitigation of Impacts to Fish and Wildlife Habitat: Estimating Costs and Identifying Opportunities* (2007 draft, in press), at 32.

⁹ *See* U.S. Department of Transportation, Federal Highway Administration, Federal Guidance on the Use of the TEA-21 Preference for Mitigation Banking to Fulfill Mitigation Requirements Under Section 404 of the CWA (July 11, 2003), available at <http://www.fhwa.dot.gov/environment/wetland/tea21bnk.htm>.

aggregated mitigation for transportation projects is conceptually very simple, and requires minimal adjustments to guidelines for mitigation approvals in any state.

Conclusion

Learning from experience is preferable to unguided experimentation, especially in a rapidly maturing field. The nine case studies developed for this study offer examples of local communities, agencies, and developers that have successfully incorporated habitat conservation as an important *secondary* objective of their plans, policies, and projects. The key elements of successful integration of habitat conservation that emerge from the case studies provide planners, developers, and government agencies with some 'best practices' for the design and implementation of local land use programs and projects that incorporate wildlife conservation. They also provide a guide to state wildlife managers seeking to maximize the conservation returns on their investments of time and limited staff resources.

5. Approach:

Case Study Selection Criteria

In selecting the case studies, ELI developed and preliminarily applied specific evaluation criteria in order to ensure that the selected studies would have a higher likelihood of reflecting the values demanded by the criteria. ELI also emphasized geographic and ecological diversity in order to increase the usefulness of the final product to potential users in diverse settings.

Criteria emphasized to identify local communities for case studies:

1. Spatially explicit planning
2. Innovative use of local land use regulations for wildlife conservation
3. Expert scientific information
4. Cooperation among regional partners
5. Public participation
6. Adequate and long-term funding
7. Detailed monitoring and adaptive management strategies
8. Effective management programs and restoration efforts
9. Broad coverage of taxa or ecosystems.

Criteria emphasized to identify locally implemented state and federal government programs for case studies:

1. Management strategies that actively include habitat
2. Measurable results
3. Reliance on science

Criteria emphasized to identify private land development case studies:

1. Linked in meaningful way to regional biodiversity conservation
2. Places economic value on wildlife habitat conservation
3. To extent possible, reflects potential LEED-ND criteria

Information Gathering

ELI gathered information from the existing literature, award/certification programs, and interviews to identify, select, and further develop the case studies.

Existing literature and databases. We completed literature searches as well as reviews of compendia of existing habitat-related case studies to identify and develop the private development and local community case studies. We searched the planning, landscape architecture, and architecture literature databases for articles on private developments that incorporate habitat conservation. We also reviewed existing databases to identify Habitat Conservation Plans that utilize local land use policy as an element of the approved plan.

Previous work and existing partnerships. We drew upon previous and current research and utilized partnerships to identify case studies. We conferred with colleagues from

planning organizations, conservation organizations (e.g. The Conservation Fund, Defenders of Wildlife), and academic institutions to identify potential projects.

Award/Certification Programs. We reviewed awards (e.g. American Planning Association's National Planning Awards, EPA Section 319 Success Stories, Federal Highway Administration's Exemplary Ecosystem Initiatives, Urban Land Institute's Awards for Excellence Program) and certification programs (Wildlife Habitat Council's Corporate Wildlife Habitat Certification/International Accreditation Program) to identify numerous candidates for study in each of the three program areas.

Project websites and interviews. We reviewed project documents and websites to gather information for each case study as well as to identify project leaders for interviews. We then conducted a series of targeted interviews to gather information and insight on each of the programs from those directly involved. Each of our interview participants were then asked to review the case study for accuracy and completeness.

Analysis of Information

Development of nine case studies. Each case study was chosen based on a detailed review against the evaluation criteria. The final case studies were developed using information gathered through primary project materials, newspaper or journal articles, and interviews with those directly involved with the program. Upon completion, each case study was reviewed by our project contacts for completeness and accuracy.

Development of a set of key lessons learned. Although each of our case studies provided unique lessons, we identified six key elements that were common among many of the programs and projects. The key lessons define success in our case studies and serve as 'best practices' for planners and developers designing and implementing future projects that incorporate wildlife conservation.

6. Deliverables:

Book

ELI will produce a book for planners, academics, and developers featuring our case studies of nature-friendly communities, government programs, and developments and the key elements of successful integration of habitat conservation that emerge from these case studies. The book also will be disseminated to state wildlife managers who may want to pursue partnerships with these entities to further conservation goals.

Summary of Research Results for Presentations

ELI has been asked to deliver the results of this project in a proposed symposium on the intersection of wildlife habitat conservation and urban development at the 2008 meeting of the Wildlife Society in Miami. We have also been asked to submit a proposal for a seminar on conservation planning at the 2008 meeting of the American Planning Association in Las Vegas.

Briefing Materials

We will disseminate briefing materials on the identified government programs with ancillary benefits for wildlife conservation to state wildlife agencies. These programs offer unique opportunities, and a potentially untapped source of funding, for local implementation of the State Wildlife Action Plans.

Communication of Results

The principal audiences for the conclusions and recommendations of this study are: planners, developers, academics, state agencies, and state wildlife managers. The results of this research will be communicated to the principal audiences through the dissemination of our book, public presentations at both planning and wildlife conferences, and development of briefing materials. All of the above materials will be available on ELI's Land and Biodiversity website to maximize their accessibility.

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APPENDICES:

Appendix A: List of Participants/Project Advisors

Appendix B: Links to project websites

Appendix C: List of publications

Appendix D: Hard copies

Appendix E: Project outputs

Appendix A

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Appendix B

Links to project websites

Environmental Law Institute: Land and Biodiversity Program
http://www2.eli.org/research/landbio_bio_projects.htm

Appendix C

List of publications

To be submitted upon completion.

Appendix D

Hard copies – Sent 11/09/2007

CASE STUDY PROJECT REPORTS (TO BE REFINED FOR FUTURE PUBLICATION): Nine case studies of local communities, agencies, and developers that have made habitat conservation an important *secondary* objective of their plans, policies, and projects:

- *Baltimore County, Maryland – Integrated Land Use and Environmental Regulation.*
- *Contra Costa County, California HCP/NCCP – Habitat Conservation Planning for Future Development.*
- *Summit County, Colorado – Wildlife Habitat Overlay Zoning.*
- *Fall River, Massachusetts – Safe Drinking Water Act (1453/1454), Source Water Protection.*
- *Yakima River, Washington – Clean Water Act (§319), Nonpoint Source Water Pollution Control.*
- *North Carolina Ecosystem Enhancement Program (EEP) – Clean Water Act (§404), Wetland Mitigation for Transportation Projects.*
- *Santa Lucia Preserve, Monterey County, California – Luxury Conservation Development/Preserve.*
- *Coffee Creek Center, Chesterton, Indiana – Mixed Use New Urbanist Conservation Development.*
- *General Motors, Lansing Delta Township, Michigan – Corporate Lands Wildlife Habitat.*

RESULTS AND KEY ELEMENTS OF SUCCESSFUL PROGRAMS (REPORT TO BE REFINED FOR FUTURE PUBLICATION): Report of results and key elements of successful programs:

- **Proven Nature-Friendly Opportunities: For Local Governments, Public Agencies, and Developers**

Hard copies of deliverables will be submitted upon completion.

Appendix E

Project outputs

Nine case studies of local communities, agencies, and developers that have made habitat conservation an important *secondary* objective of their plans, policies, and projects:

- *Baltimore County, Maryland – Integrated Land Use and Environmental Regulation.*
- *Contra Costa County, California HCP/NCCP – Habitat Conservation Planning for Future Development.*
- *Summit County, Colorado – Wildlife Habitat Overlay Zoning.*
- *Fall River, Massachusetts – Safe Drinking Water Act (1453/1454), Source Water Protection.*
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- *General Motors, Lansing Delta Township, Michigan – Corporate Lands Wildlife Habitat.*

Report of results and key elements of successful programs:

- Proven Nature-Friendly Opportunities: For Local Governments, Public Agencies, and Developers

PowerPoint Presentation. “Proven Nature-Friendly State and Local Policies.” Emailed to WHPRP program coordinator, Cheryl Horton, 11/09/07.