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CHERISHING THE COAST: CALIFORNIA GOES LONG

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I. INTRODUCTION

Each Western state cherishes one relationship with the Pacific Ocean above all others. For Washington, it is the Pacific salmon returning to their natal creeks each year to spawn;⁵ for Hawaii it is the *aina*, the land they hold in a vast sea;⁶ and for California it is more than 1,000 miles of unusually undeveloped and scenic coastline. Each state's rituals and rulemaking reflect extraordinary public regard for these resources and the ocean that supports them.

In California's case, the relationship coalesced with concern over a few excesses in oceanfront construction, percolated as pretty beach

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⁵ As an example, the annual salmon harvest contributes more than \$1 billion to Washington's economy. 2015 Washington Senate Joint Memorial No. 8007, (64th Leg. 2015) <http://lawfilesexternal.wa.gov/biennium/2015-16/Pdf/Bills/Senate%20Joint%20Memorials/8007-S-PS%20hatchery%20%20gen%20mgmt%20plans.pdf>.

⁶ For example, cases construing Haw. Const. art. XII, § 7 protecting land uses for subsistence, cultural and religious purposes by Native Hawaiian *ahupua'a* tenants, *see, e.g.*, *Kalipi v. Hawaiian Tr. Co., Ltd.*, 656 P.2d 745 (1982) (discussing customary and traditional rights exercised for subsistence, cultural and religious purposes by *ahupua'a* tenants); *Pele Defense Fund v. Paty*, 837 P.2d 1247, 1270 (1992).

2 GOLDEN GATE UNIV. ENVIRONMENTAL LAW J. [Vol. 10

towns grew ugly, gathered steam as developers proposed exclusive developments sprawled over coastal bluffs, and came to a head in the late 1960s with disastrous oil spills and proposed nuclear power plants too close to shore.⁷ At the time, California had long stretches of cliffs, bluffs, beaches, lagoons, wetlands, and surf relatively unfettered by industry and urbanization compared to Eastern or Southern states. And it was soon clear Californians wanted to keep it that way.

Both California and the nation were riding a wave of public concern about compromised coastlines that eventually led to federal coastal protections in 1972. The United States' Coastal Zone Management Act⁸ is widely viewed as classic federalism: environmental legislation that, unlike the top-down mandates of the Clean Water Act,⁹ for example, allows states to decide how best to implement coastal protections from the bottom up, based on common national criteria.¹⁰ In essence, the federal act established regulatory control of coastal land-use and provided funding for preservation and conservation.¹¹

⁷ For a discussion of the relationship between the Santa Barbara Oils Spills and the development of state and federal cooperation through the federal Coastal Zone Management Act, see *Cal. v. Norton*, 311 F.3d 1162 (9th Cir. 2002) (“Some would trace the current framework of environmental protections in substantial measure directly to the foot Santa Barbara spill. Of particular relevance here, the federal Coastal Zone Management Act and California’s Coastal Act followed in the wake of the spill and both provided California substantial oversight authority for offshore oil drilling in federally controlled areas”), cited in Linda Krop, *Defending State’s Rights Under the Coastal Zone Management Act-State of California v. Norton*, 8 SUSTAINABLE DEV. L. & POL’Y 54 (2007).

⁸ 16 U.S.C. §§ 1451, et seq. (2017).

⁹ 33 U.S.C. § 1251, et seq. (2017). See Andrew P. Morris, et al., *The Failure of EPA’s Water Quality Reforms: From Environment-Enhancing Competition to Uniformity and Polluter Profits*, 20 UCLA J. ENVTL. L. & POL’Y 25, 27 (2002) (“The modern Clean Water Act largely relies on a “command-and-control” approach to limiting the discharge of effluent in waters through permits”).

¹⁰ See 16 U.S.C. § 1456(c)(3)(A) (2017) (federal consistency requirements of the Coastal Zone Management Act); Telephone interview with Meg Caldwell, Deputy Director, Oceans, David and Lucile Packard Foundation (Aug. 30, 2016). See also, *Too Much of a Good Thing? Federal Supremacy & the Devolution of Regulatory Power: The Case of the Coastal Zone Management Act*, 48 NAVAL L. REV. 84, 85 (2001) (“In a departure from federal supremacy, Congress effectively assimilates a state’s law as codified in its coastal management plan and applies it to federal agencies. Once a state coastal management plan is approved by the Secretary of Commerce, all federal agency activities directly affecting or within the coastal zone must be consistent with the state plan ‘to the maximum extent practicable’”) (footnotes omitted). But see, Rachael E. Salcido, *Offshore Federalism and Ocean Industrialization*, 82 TUL. L. REV. 1355, 1415 (2008) (criticizing the CZMA’s dueling sovereign model as negatively affecting environmental protection of marine resources).

¹¹ 16 U.S.C. §§ 1455 & 1456 (2017). “Through a system of grants and other incentives, CZMA encourages each coastal state to develop a coastal management plan. Further grants and other benefits are made available to a coastal state after its management plan receives federal approval from the Secretary of Commerce. To obtain such approval a state plan must adequately consider the ‘national interest’ and ‘the views of the Federal agencies principally affected by such program.’” *Sec. of the Interior v. Cal.*, 464 U.S. 312, 316 (1984).

California never looked back. By 1976, the Golden State had powered through various commissions and studies to pass its own coastal¹² and conservancy acts.¹³ It also made a decision that continues to distinguish its approach to coastal zone management from most other states and countries: to not only create a regulatory California Coastal Commission, expanding on the tradition of the preexisting San Francisco Bay Conservation and Development Commission, but also to launch a non-regulatory California State Coastal Conservancy (the Conservancy).¹⁴

This article focuses on the Conservancy. It explores the Conservancy's uniquely proactive approach to coastal zone management through both oral history (collected via telephone interviews) and literature research. In general, being proactive has involved the Conservancy in activities such as identifying coastal areas or wildlife habitats in need of protection; developing plans and priorities for acquisition or restoration; assembling and supporting local stewards and partners; leading and shepherding collaborative projects to fruition; and often providing significant funding.

In retrospect, while it may have been relatively simple for California to set up several entities to restrict coastal development, it was unusually creative to set up a distinct entity with a more proactive conservation role.¹⁵ Many states have conservation agencies but few have agencies specifically focused on preserving and restoring coastal areas.¹⁶ California has such an agency—the Conservancy.

Today, both the Commission's clout and the Conservancy's vision protect the coast. Some see the relationship between the two agencies as working hand and glove,¹⁷ with the Commission ensuring public access when new coastal development is approved and the Conservancy ensuring that public access to the shoreline is achieved even in the absence of

¹² The California Coastal Act of 1976 (codified at Pub. Res. Code Div. 20 (§§ 30000 et seq.)) replaced the California Coastal Zone Conservation Act of 1972, which had been enacted by voter initiative, Proposition 20 (1972).

¹³ The Coastal Conservancy Act, Stats.1976, ch. 1441, § 1 (codified at Pub. Res. Code Div. 21 (§ § 31000, et seq.)) (2017). For a fuller discussion of the California Coastal Act and the Conservancy Act, see Legal Origins of the Conservancy, *infra* section II.

¹⁴ For a discussion of the unique approach of the Coastal Conservancy, see Joseph Patrillo, *The Coastal Concept*, 16 COASTAL MGMT. 1, 3-7 (1988) (article by the first Executive Officer of the Conservancy). See also Peter Grenell, *The Once and Future Experience of the California Coastal Conservancy*, 16 COASTAL MGMT. 13 (1988).

¹⁵ Telephone Interview with Philip Williams, Principal, Philip Williams & Associates (July 29, 2016).

¹⁶ One exception is Louisiana. The Coastal Protection, Conservation, Restoration and Management Act establishes the state's Coastal Protection and Restoration Authority and Coastal Protection, and Restoration Fund, which was later repealed and replaced by a coastal zone management act. See LA REV. STAT. T. 49, Ch. 2, Pt. II, Subpt. A, *repealed by Acts 2009, NO. 523* (West 2017).

¹⁷ Telephone Interview with Meg Caldwell, *supra* note 10.

4 GOLDEN GATE UNIV. ENVIRONMENTAL LAW J. [Vol. 10

development. California's growing Coastal Trail, now more than 700 miles long, demonstrates the effectiveness of this dual approach. Others point out that the Conservancy's non-regulatory role allows it to operate independently of the Commission on many fronts.¹⁸

As a unique and independent agency, the Conservancy has been able to engage in two activities not always associated with government work: taking risks and creating opportunities for collaboration with local partners, non-profits, and communities.¹⁹ As it goes about its work, the Conservancy strives to make sure that local voices are heard in the conservation process and that long-term stewardship of coastal lands is achieved through a clear sense of place. With this kind of support, many local land-trust and environmental organizations have become fierce advocates for coastal protection and stopped development even when the state has been unable to do so.²⁰ Collaboration can be time-consuming and costly, and at times trade-offs ensuring project sustainability have

¹⁸ The Commission has taken bold and sometimes controversial positions in defense of coastal resources resulting in several significant state and U.S. Supreme Court cases. *See, e.g.*, *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825 (1987) (holding that the Commission could not condition coastal development permit on property owners' transfer to public of easement across beachfront property); *Sec. of the Interior v. Cal.*, 464 U.S. 312, 334 (1984) (finding that consistency determination under Coastal Zone Management Act was not required when the federal government sold gas leases); Reauthorization Amendments of 1990, Pub. L. No. 101-508, 104 Stat. 1388-299 to -319 (codified at 16 U.S.C. §§ 1451-64 (2012)); Ann E. Carlson & Andrew Mayer, *Reverse Preemption*, 40 *ECOLOGY L.Q.* 583, 621 (2013). For a highly partisan account of the Commission's role, *see* J. David Breemer, *What Property Rights: The California Coastal Commission's History of Abusing Land Rights and Some Thoughts on the Underlying Causes*, 22 *UCLA J. ENVTL. L. & POL'Y* 247, 271 (2004). The Conservancy has also been both lauded and criticized for its role in land conservation within the state. *Compare* Joan Hartman, *The Southern California Wetlands Recovery Project: the unfolding story*, 30 *GOLDEN GATE U. L. REV.* 885 (2000) (discussing the Coastal Conservancy's critical role in protecting wetlands in Southern California), and *California's Land Conservation Efforts: The Role Of State Conservancies*, CAL. LEG. ANALYST'S OFFICE (2001), http://www.lao.ca.gov/2001/conservancies/010501_conservancies.html (last visited Apr. 27, 2017) ("[s]tate conservancies can be less cost-effective than alternative approaches in achieving land conservation goals.").

¹⁹ A former executive officer of the Conservancy summed up this approach in a review of the first ten years of the agency:

The Conservancy was created as a project-implementing agency, not as a planning agency. Therefore, it was obliged to seek ways to make the most of its limited resources in a direct and visible manner. It not only succeeded in solving some tough problems, it invented some new methods for doing so, and in the process it created a model that others are now, ten years later, seriously considering adopting elsewhere.

Peter Grenell, *The Coastal Conservancy: The First Decade*, 2 *CAL. WATERFRONT AGE* 5 (Fall 1986), http://scc.ca.gov/webmaster/coast_ocean_archives/0204.pdf.

²⁰ *See, e.g.*, *Bolsa Chica Land Tr. v. Super. Ct. of San Diego Cty.*, 71 *Cal.App.4th* 493 (1999) (holding that the Coastal Act did not authorize the development of environmentally sensitive areas and blocking the development of 5,700 residential units, a seventy-five-acre marina, and a 600-foot-wide navigable ocean channel and breakwater).

been imperfect.²¹ Nonetheless, collaboration remains a central tenet of the Conservancy's efforts to build long-lasting support for coastal projects.

II. LEGAL ORIGINS OF THE CONSERVANCY

Though many consider the Conservancy to be a product of California's Coastal Zone Management Act, it was actually created by separate legislation. The California Coastal Act and California Coastal Conservancy Acts of 1976 originated in an initiative measure, the Coastal Zone Conservation Act (also known as Proposition 20), passed by voters in the November 1972 general election.²² As California Supreme Court Chief Justice Mosk observed at the time:

[t]he People of California have become painfully aware of the deterioration in the quality and availability of recreational opportunities along the California coastline due to the combined factors of an increasing demand for its use and the simultaneous decreasing supply of accessible land in the coastal zone. Growing public consciousness of the finite quantity and fragile nature of the coastal environment led to the 1972 passage of Proposition 20. . .²³

Proposition 20 created state and regional commissions charged with preparing plans to increase public awareness of the coast and to manage land use and development within the coastal zone.²⁴ The goal was "to prepare, based upon such study and in full consultation with all affected governmental agencies, private interests, and the general public, a comprehensive, coordinated, enforceable plan for the orderly, long-range conservation and management of the natural resources of the coastal zone, to be known as the California Coastal Zone Conservation Plan."²⁵

²¹ For example, wetland conservation efforts sometimes result in the loss of prime agricultural land, and public access to sensitive wildlife areas can disrupt wildlife recovery. *See* Cal. Farm Bureau Fed'n v. Cal. Wildlife Conservation Bd., 143 Cal.App.4th 173 (2006) (requiring CEQA analysis of agricultural impacts from proposed restoration project).

²² Cal. Stats.1976, c. 1441, § 1. The Conservancy Act came out of recommendations of the interim commissions designed to undertake studies to determine the ecological planning principles and assumptions needed to ensure conservation and protection of coastal zone resources and, based upon such studies and in full consultation with all affected public and private interests, to develop and adopt a California Coastal Zone Conservation Plan (Coastal Zone Plan). (§§ 27001, subd. (b), 27300—27304.) For a history of Proposition 20, *see* CEEED v. Cal. Coastal Zone Conservation Comm'n, 43 Cal.App.3d 306, 311 (1974).

²³ Pac. Legal Found. v. Cal. Coastal Comm'n, 33 Cal. 3d 158, 162 (1982) (footnote omitted).

²⁴ *See* Former §§ 27300—27320, enacted by Prop. 20, Nov. 7, 1972 Gen. Elec. and repealed by Stats.1974, ch. 897, § 2, p.1900, eff. Jan. 1, 1977.

²⁵ Former § 27001 et seq. This statute was repealed with the passage of the California Coastal Act which implemented the federal Coastal Zone Management Act. *See* Stats.1974, c. 897, § 2.

6 GOLDEN GATE UNIV. ENVIRONMENTAL LAW J. [Vol. 10]

This plan guided the subsequent framing of the Coastal Act, establishing the Commission, and of the Coastal Conservancy Act, which created the California State Coastal Conservancy.²⁶ Consistent with the principle that regulatory and proprietary governmental powers should be separated,²⁷ the California legislature divided authority between the two new agencies.

With these acts, California joined other states in solidifying twenty years of efforts to exert more control over their coastlines. Together with the State Water Resources Control Board, and the San Francisco Bay Conservation and Development Commission, established in 1965 as the first coastal-zone management agency in the country,²⁸ the Conservancy and Commission became integral parts of a comprehensive vision through which the coast would be carefully stewarded, protected, and developed.²⁹

III. CHANGE OVER THE DECADES

Over time, the size, scope, and complexity of Conservancy projects has increased dramatically. Early projects revolved around acquiring small properties to solve big land use problems. El Nido was one of the first, a maze of 182 tiny lots waiting for development in a large subdivision above Malibu Beach in Southern California.³⁰ This subdivision was

²⁶ *Hagopian v. State of Cal.*, 223 Cal. App. 4th 349, 360–61 (2014), (as modified), *review denied* (as modified), *review denied* (Apr. 30, 2014); *Marine Forests Soc. v. Cal. Coastal Comm'n*, 36 Cal. 4th 1, 19 (2005).

²⁷ The doctrine of separation of governmental and proprietary state actions was popular in the 1970s around the time the Conservancy Act was being fashioned. *See generally* Karl Manheim, *New-Age Federalism and the Market Participant Doctrine*, 22 ARIZ. ST. L.J. 559, 571 (1990) (discussing the relative popularity of the doctrine with *Nat'l League of Cities v. Usery*, 426 U.S. 833 (1976)).

[S]tate action is proprietary if it “essentially reflect[s] the [governmental] entity’s own interest in its efficient procurement of needed goods and services,Second, state action is proprietary if “the narrow scope of the challenged action defeat[s] an inference that its primary goal was to encourage a general policy rather than address a specific proprietary problem.” . . . Thus, the doctrine also “protects narrow spending decisions that do not necessarily reflect a state’s interest in the efficient procurement of goods or services, but that also lack the effect of broader social regulation.

Engine Mfrs. Ass’n v. S. Coast Air Quality Mgmt. Dist., 498 F.3d 1031, 1041 (9th Cir. 2007) (citations omitted). The rapid development of the California coast in the 1960s and ‘70s suggested the lack of social regulation and the need to address the problem not just through zoning and other regulations, but through the state purchasing ecological services for the public at large.

²⁸ *See About Us*, S.F. BAY CONSERVATION AND DEV. COMM’N, <http://www.bcdc.ca.gov/aboutus> (last visited Sept. 13, 2016).

²⁹ Telephone Interview with Meg Caldwell, *supra* note 10.

³⁰ The El Nido subdivision was created in 1928 before the advent of modern zoning regulations and without regard for the environmental constraints of the area. The subdivision established several hundred very small lots, most of which were on steep canyon slopes. Cal. Coastal Comm’n

situated on steep and highly erosive soils. The Conservancy acquired the lots and placed open-space easements over all but 15 of them.³¹ It also transferred open-space easements to the Mountains Recreation and Conservation Authority.³² Today, fifteen lots remain with sufficient land area to develop two residences, which will offset the costs of the project.³³

In Northern California, in another early project, the Conservancy stepped in when the Commission needed help with mitigation for several small development proposals impacting pocket-size marshes.³⁴ Though the resulting Bracut Marsh Bank, built on an old lumberyard, did not turn out as planned, it represents one of the state's first wetland mitigation banks and an early example of the Conservancy thinking beyond individual property deals.³⁵

In the 1980s, the Conservancy began to work on larger-scale acquisition and restoration projects with proportional environmental benefits. These included estuarine restoration along the Tijuana River, whose health, and that of the disadvantaged communities along it, was suffering from cross-border pollution.³⁶

During this decade, the Conservancy's territory significantly expanded as well. In 1982, it gained jurisdiction over the shores and wetlands of the San Francisco Bay, broadening the definition of "coastal

Staff Report on (CDP) Application No.4-95-102, 4 (Feb. 29, 1996), <http://documents.coastal.ca.gov/reports/1996/3/W23-3-1996.pdf>.

³¹ A 1979 report addressing the cumulative impacts of development in the small lot subdivisions of the Santa Monica Mountains found that the El Nido subdivision "contains erosive soils, which due to grading for homesites, would create erosion and sedimentation problems in Solstice Creek." *Id.* at 5.

³² See El Nido Subdivision project file, Conservancy Project No. 79-008 (on file with the State Coastal Conservancy).

³³ *Id.*

³⁴ See Bracut Marsh Enhancement Plan, State Coastal Conservancy Staff Recommendation, Project No. 89-017, Mar. 16, 1989 (on file with the State Coastal Conservancy).

³⁵ See, e.g., U.S. ARMY CORPS OF ENGINEERS, NATIONAL WETLAND BANKING STUDY 5, 32 n. 58 (1994). Prior to 1980, the thirteen-acre site represented a filled, diked former tideland that had been used for twenty years as a lumber mill yard. The Conservancy initiated restoration of the site in 1981 by re-contouring the land and breaching the western levee to introduce tidal inundation to the site. Exotic vegetation was also removed and fencing was erected to minimize human disturbance. In 1992, six of the thirteen acres that make up the reserve were restored to tidal salt marsh. The remaining portion of the reserve include a small freshwater pond and seep, upland annual grassland, and a forested, freshwater wetland that was created in 1992 by planting native trees and shrubs. Mad River Biologists, Bracut Marsh Ecological Reserve, Final Monitoring Report 1-1 (2004) (on file with the State Coastal Conservancy).

³⁶ For a discussion of the evolution of the Tijuana Estuary restoration, see *History of SWIA & The Tijuana Estuary*, S.W. WETLAND INTERPRETIVE ASS'N, <http://www.swia4earth.org/History%20of%20SWIA.html> (last visited July 10, 2017). For historical maps and other geographical information, see *Tijuana River Valley Historical Ecology Investigation*, S.F. ESTUARY INST. & AQUATIC SCIENCE CTR., <http://www.sfei.org/projects/tijuana#sthash.QTjQyJ62.dpbs> (last visited July 10, 2017).

8 GOLDEN GATE UNIV. ENVIRONMENTAL LAW J. [Vol. 10

zone” set forth in the 1976 acts.³⁷ Soon afterwards, it gained access to interior watersheds well outside the established coastal zone. This expansion, achieved through negotiations with the California Department of Fish and Game (now Department of Fish and Wildlife), enabled the agency to take on an even greater variety of projects.³⁸

Also of importance in shaping the Conservancy’s direction was an early commitment to building local stewardship. With help from The Trust for Public Land, the Conservancy provided free training manuals and workshops to communities interested in permanently protecting the land they loved by forming land trusts. The Conservancy also provided granting funds to new land trusts for qualifying land acquisitions or other conservation projects while helping them learn management and negotiation skills.³⁹ Before these Conservancy and Trust for Public Land initiatives, few land trusts existed in California.⁴⁰

One particular development in the 1980s illustrates this aspect of early Conservancy priorities. In 1983, the Conservancy provided the funds necessary for the Marin Agricultural Land Trust (MALT) to acquire its first easement.⁴¹ MALT was established to purchase easements in coastal West Marin County and provide an economic boost for farms so they could be protected forever from development. Since then, the Conservancy has granted nearly twelve million dollars to help MALT acquire twenty-two easements protecting nearly 14,000 acres.⁴²

In the 1990s, the scale of the Conservancy’s projects expanded again. The Conservancy launched a region-specific Bay Area conservancy, and began shepherding more complex multi-benefit, multi-parcel, multi-agency projects through approvals and construction. Many of these projects are highlighted in section four of this article, “A Closer Look at the Conservancy in Action.”⁴³ During the 1990s, Conservancy projects covered a broad range, including: facilitating plans and permits to restore tidal action at a retired army airfield in Novato; breaking the deadlock

³⁷ Cal. Stats. 1997, chap. 896 (S.B.1048) (1997) (codified at Pub. Res. Code Div. 21, chap. 4.5 (§§ 31160, et seq.)).

³⁸ Telephone Interview with Neal Fishman, Former Deputy Director, State Coastal Conservancy (Aug. 15, 2016).

³⁹ California State Coastal Conservancy, Government Grants for Land Trusts developed by Janet Diehl, former Project Manager at the California State Coastal Conservancy (1990) (on file with the State Coastal Conservancy).

⁴⁰ Telephone Interview with Janet Diehl, former Project Manager, State Coastal Conservancy (Aug. 20, 2016).

⁴¹ Marin Agricultural Land Trust File, Conservancy Project No. 82-010 (on file with the State Coastal Conservancy).

⁴² *The Conservancy at 40 Years: Marin County*, CAL. STATE COASTAL CONSERVANCY, <http://scc.ca.gov/2016/06/07/the-conservancy-at-40-years-marin-county> (last visited Sept. 13, 2016).

⁴³ See *infra*, section IV.

over flood-control plans for the Napa River;⁴⁴ and nurturing boundary-crossing regional trail projects along and around California's shores.

Throughout the 2000s, substantial funding provided by park and water bonds allowed the Conservancy to partner with businesses and local municipalities on more-expensive projects such as the removal of San Clemente Dam on the Carmel River,⁴⁵ the restoration of beleaguered steelhead streams,⁴⁶ and the transformation of an industrial waterfront to a new public shore for Fort Bragg.⁴⁷

In this most recent decade, climate change, sea-level rise, and coastal erosion due to higher-intensity wave action have become more pressing issues for the Conservancy. The needs of vulnerable urban communities, and the potential for the creation of more natural infrastructure (such as wetlands, living shorelines, and oyster beds) than concrete sea walls to protect them, have become new priorities.

In many ways, this relatively rapid expansion of authority over time cannot be uncoupled from the concurrent growth in the agency's budget. Initial funding in 1976 was a lump sum of \$10 million dollars. Budgets expanded and contracted over decades, but were significantly augmented by state bonds in the 2000s of \$100, \$250, and \$400 million.⁴⁸ While a project in the 1980s might have involved fifty acres, a few regulators and resource managers, and \$100,000, today's projects range to thousands of acres and hundreds of millions of dollars, and involve myriad partners.⁴⁹

⁴⁴ See *infra*, text accompanying notes 95 through 104.

⁴⁵ See *infra*, text accompanying notes 105 through 116.

⁴⁶ Projects were developed in many of the major estuaries along the coast including Humboldt Bay, Tamales Bay, San Francisco Bay, Morro Bay, Monterey Bay and along the central coast of California.

A list of these projects is available at the office of the State Coastal Conservancy and specific areas can be accessed through the Conservancy's website.

⁴⁷ See *infra* text accompanying notes 120 through 121.

⁴⁸ Telephone Interview with Neal Fishman, *supra*, note 38. Details may include: Nejedly-Hart State, Urban, and Coastal Park Bond Act of 1976, \$10 million; California Parklands Act of 1980, ~ \$40 million; Propositions 18 and 19 of 1984, ~ \$80 million; Prop 70 of 1988, \$58 million; surplus state general fund money around '98, '99, ~ \$50-\$100 million; Coastal Protection Bond Act of 2000, ~\$50-55 million.

⁴⁹ Telephone Interview, Jeffrey Haltiner, Principal with Philip Williams Associates (and later ESA Associates) (July 20, 2016). Also compare the Bracut Marsh project, discussed *supra* in text accompanying note 35, and the Hamilton Wetland Restoration project, *infra* text accompanying notes 68 through 70. Bracut Marsh involved acquisition of 13 acres, the restoration of 9 acres and cost \$296,000 in 1980. Hamilton Wetlands Restoration involved 2600 acres and cost \$114,387,242 (approximately \$22 million state share) with the acquisition beginning in 2001 and completed in 2014).

10 GOLDEN GATE UNIV. ENVIRONMENTAL LAW J. [Vol. 10

From a restoration point of view, this kind of scale is necessary for ecosystem health and landscape resilience.⁵⁰

IV. A CLOSER LOOK AT THE CONSERVANCY IN ACTION: ON THE GROUND AND IN THE WATER

Now forty years old, the Conservancy has completed more than 2,400 projects in both coastal and inland counties, and in both Northern and Southern California.⁵¹ Hundreds more projects remain underway. In this time, the Conservancy has also helped conserve more than 500 properties containing more than 400,000 acres of wetlands, dunes, wildlife habitat, recreational lands, farmland, working forestlands, and scenic open space (see Map/Figure 1 for all major acquisitions).⁵² It has also facilitated access to, or construction of, hundreds of miles of trails, and retired hundreds of lots in inappropriately planned subdivisions along the coast.

In four decades, the Conservancy has invested more than \$2 billion dollars in public funds, and leveraged another \$3.5 billion dollars in investments.⁵³ The amounts spent are considerable and testify to the trust placed in the Conservancy over the years by other agencies, organizations, and the public to look after a beloved coast.

The following sections highlight how the Conservancy has fulfilled Coastal Act public access and protection directives in more detail. Sections are organized around the following Conservancy activities: restoring wetlands and coastal habitats; linking coasts, shores, and public open space via regional trail systems; conserving landscapes on larger scales; protecting watersheds; and increasing access to the coast for all Californians. These highlights represent a sampling of the myriad Conservancy projects and priorities⁵⁴ possible for an institution equipped with a Swiss

⁵⁰ Telephone Interview Jeffrey Haltiner, *supra* note 49. See also *Landscape Resilience Framework*, S.F. ESTUARY INST. (2015), http://resilientsv.sfei.org/sites/default/files/general_content/SFEI_2015_Landscape%20Resilience%20Framework.pdf.

⁵¹ Telephone Interview with Richard Wayman, Former Real Estate Manager, Coastal Conservancy (August 2016).

⁵² Data sources for Map 1 and Map 2 of this article include: Conservancy Projects – California State Coastal Conservancy, 2017; Regional Trails – California State Coastal Conservancy, 2017; Urban Areas – U.S. Census – Tiger 2015; Protected Areas – GreenInfo Network; CPAD 2016b, <http://www.greeninfo.org/> (last visited Mar. 8, 2018).

⁵³ “In its first 20 years, the Conservancy authorized approximately \$200 million for restoration, acquisition, and access projects. In the decade that followed, the Conservancy authorized projects using nearly \$1 billion in bond funds provided by California’s voters through Propositions 12, 13, 40, 50 and 84.” CAL. STATE COASTAL CONSERVANCY STRATEGIC PLAN 2013-2018 5, <http://scc.ca.gov/files/2013/03/SCC-Strategic-Plan-2013-18.pdf> (last visited May 21, 2017).

⁵⁴ CALIFORNIA STATE COASTAL CONSERVANCY, PROJECT VIEWER, <http://www.mapcollaborator.org/sccpv/prod/> (last visited Sept. 13, 2016).

army knife full of tools and strategies for achieving coastal protection and public access goals.⁵⁵

These sections also explore how the legal, financial, and institutional context outlined above plays out on the ground and in the water and highlight the role played by the Conservancy in completing these projects, whether as planner, funder, mediator, or advisor (see Map/Figure 2 showing major projects mentioned in this article).

A. THE RESTORATION AND ENHANCEMENT OF WETLANDS

Wetlands at the physical border between coast and ocean, or shore and bay, have long been a frontier of Conservancy action. In a sense, all the Conservancy's opportunities and challenges come together in the coastal wetland: wildlife protection, public access, climate adaptation, pollution abatement, and development.

Three of the Conservancy's largest and most significant wetlands projects from the last forty years reveal various aspects of this big picture, beginning with the restoration of the Elkhorn and Moro Cojo sloughs near Moss Landing in Monterey County. Together these two sloughs represent one of the state's three largest tracts of tidal salt marsh outside San Francisco Bay.⁵⁶

By the early 1980s, Elkhorn Slough had become significantly impacted by erosion, sedimentation, and runoff carrying high levels of heavy metals, agricultural nitrates, and coliform.⁵⁷ A \$50,000 grant from the Conservancy to Monterey County in 1985 funded the preparation of a comprehensive, science-based management plan to restore and protect this critical waterway.⁵⁸

Thirty-one years later, this project is still active and, additionally, encompasses Moro Cojo slough, located about a mile to the south. Ongoing efforts address restoration of the surrounding farmland, construction of recreational facilities and trails, and protection of the habitats of a

⁵⁵ Telephone Interview with Samuel Schuchat, Executive Officer of the State Coastal Conservancy (Sept. 2016).

⁵⁶ For a comparison of marsh extent throughout California, see *ECOATLAS*, <http://www.ecoatlas.org/> (last visited Mar. 8, 2018) (using California Aquatic Resources Inventory www.sfei.org/cari). This data source suggests the other two largest tracts may be Mugu and Humboldt Bay.

⁵⁷ For a history of the conservation and preservation of Elkhorn Slough, see Laurel Marcus, *Elkhorn Slough*, *CAL. COAST & OCEAN* 8, 11 (Fall 1991), http://scc.ca.gov/webmaster/coast_ocean_archives/0704.pdf.

⁵⁸ Elkhorn Slough Wetland Enhancement Program, State Coastal Conservancy Staff Recommendation, File No. 85-005 (1985) (on file with the State Coastal Conservancy).

12 GOLDEN GATE UNIV. ENVIRONMENTAL LAW J. [Vol. 10

variety of birds, fish, marine mammals, and invertebrate species that rely on the slough.⁵⁹

While the long-term protection and restoration of the sloughs has been achieved through multiple partners, the Conservancy has been central to this project since that first grant in 1985, providing critical resources at key moments.⁶⁰ Financially speaking, those resources now amount to \$8.7 million spent on acquisition (about twenty percent of the project total), \$2.7 million on restoration, and another \$8 million dollars passed along to other agencies.⁶¹ With this help, the effort at large has protected more than 3,000 acres.⁶²

The second significant complex of wetland projects launched by the Conservancy in the mid-1980s occurred in Marin and Sonoma counties. These projects tackled several uncertainties about wetland restoration techniques of concern to the local conservation community. These concerns revolved around whether material dredged from shipping channels could safely be placed in subsided former wetlands to raise elevations and spur plant growth. Concerns also included what the appropriate planning and permitting processes should be for such “beneficial reuse” projects. The Conservancy started with a test project in Sonoma County and followed through with additional projects in adjacent Marin County.

The Sonoma Baylands project—designed by hydrologist Philip Williams who worked on dozens of Conservancy restorations over decades—was an experiment on 348 acres.⁶³ The land was owned by the Conservancy, and included a perimeter levee built by the US Army Corps of Engineers.⁶⁴ Restoration crews filled the site with clean dredged sediment from the nearby Petaluma River channel and Port of Oakland, restoring elevations on the former hay farm to just below mean

⁵⁹ The Coastal Conservancy and other conservation organizations continue to fund acquisitions around the slough area. For example, the Coastal Conservancy recently funded acquisition of a nearby farm that was causing sediment problems for wildlife in the slough. See Sand Hill Farms Acquisition, State Coastal Conservancy Staff Recommendation, Project No. 16-003-01, Mar. 24, 2016, http://scc.ca.gov/webmaster/ftp/pdf/scabb/2016/1603/20160324Board07_Sand_Hills_Farm_Acquisition (last visited Mar. 5, 2018). For additional information about conservation, recreation, and restoration efforts, see ELKHORN SLOUGH, <http://www.elkhornslough.org/watershed/index.htm> (last visited Mar. 6, 2018).

⁶⁰ Telephone Interview with Mark Silberstein, Director Elkhorn Slough Foundation (Aug. 29, 2016).

⁶¹ Telephone Interview with Janet Diehl, *supra* note 40.

⁶² *Id.*

⁶³ Telephone Interview with Philip Williams, *supra* note 15.

⁶⁴ For additional information, see Sonoma Baylands Acquisition and Enhancement, State Coastal Conservancy Staff Recommendation, Project No. 88-024 (on file with the State Coastal Conservancy).

sea level.⁶⁵ The levee was subsequently breached, tidal flows and habitat values restored, and ownership transferred to the U.S. Fish and Wildlife Service.⁶⁶ Once all these goals were accomplished, the Conservancy funded monitoring of restoration progress and sharing of the results.⁶⁷

Based on these experiences in Sonoma County, the Conservancy was well prepared to help restore a nearby, larger Marin County site in a similar fashion. Here, efforts to restore the former Hamilton Army Airfield were faltering after years of decontamination work and permitting problems when the Conservancy stepped in to keep the project moving.⁶⁸ Between 2008 and 2011, crews succeeded in placing approximately 6 million cubic yards of dredged material, primarily from the Port of Oakland, on the site. The material had to be barged, slurried, piped, and then sprayed on site to raise the land elevation to levels suitable for creating

⁶⁵ See generally Sonoma Baylands Public Access, State Coastal Conservancy Staff Recommendation, Project No. 88-024, Dec. 11, 2003, http://scc.ca.gov/webmaster/ftp/pdf/sccbb/2003/0312/0312Board06_Sonoma_Baylands.pdf.

⁶⁶ For a full discussion of the Sonoma Baylands Project, see Laurel Marcus & Marcia Grimm, *The Sonoma Baylands Project: Creating an Environmental Benefit Out of the San Francisco Bay Dredging Crisis*, 2 HASTINGS W.N.W. J. ENVTL. L. & POL'Y 121 (1995). The article discusses the long-fought bureaucratic hurdles that were overcome to transform the area into a productive wetland:

The final victory occurred in a particularly grand fashion. In December of 1993, President Bill Clinton endorsed the Project as a part of the Port's dredging effort. In the wake of large-scale military base closures, the Port was seen as especially vital to the local economy. The dedication and hard work of Congressional Representatives, most particularly Ron Dellums (and Lee Halterman of his staff), gave the Baylands the boost it needed. A White House task force was created to move forward the dredging and the Project. Local Corps staff, many of whom had long supported the Project despite the reluctance at their headquarters, formed a partnership with the Conservancy that has since brought the Project to construction.

Id. at 125. Researchers consider the project "a turning point in Bay restoration efforts" in that it resolved conflicts between federal, state and local regulatory agencies and the region's shipping ports. See *Bay Restoration*, AQUARIUM OF THE BAY PIER 39, <https://bayecotarium.org/about/the-bay-institute/bay-restoration/> (last visited Oct. 20, 2017).

⁶⁷ For a discussion of the monitoring agreement, see Sonoma Baylands Wetlands Restoration Demonstration Project Monitoring, State Coastal Conservancy Staff Recommendation, Project No. 88-024-01 (Oct. 21, 2010), http://scc.ca.gov/webmaster/ftp/pdf/sccbb/2010/1010/20101021Board17_Sonoma_Baylands_Monitoring.pdf (last visited Jan. 27, 2018).

⁶⁸ The Conservancy had prepared the groundwork for this project through the beneficial use of dredge spoils for projects in Sonoma. This process took years of coordination with regulators, the environmental community and Congress to allow the beneficial use of dredge spoils. Generally, these kinds of activities would fall to regulatory agencies responsible for water quality or land use permitting, but what was needed was an organization that could connect regulated entities with environmentally beneficial projects. In this way, non-regulatory approach to land use and environmental regulation is needed to save precious public resources and allow for a public discussion of how public benefit is achieved. For a discussion of this background, see Christopher B. Busch, et al., *Taming Adversarial Legalism: The Port of Los Oakland's Dredging Saga Revisited*, 2 N.Y.U. J. LEGIS. & PUB. POL'Y 179 (1999).

14 GOLDEN GATE UNIV. ENVIRONMENTAL LAW J. [Vol. 10

tidal marsh. All these preparations enabled them to breach the perimeter levee and allow tidal waters back onto the property in 2014.

The project represents one of the largest beneficial reuse of dredged sediment ever at a wetland restoration site in California.⁶⁹ On both this project and its predecessor, partners viewed the Conservancy's efforts as essential in terms of addressing missing pieces.⁷⁰ Today, a new site at nearby Bel Marin Keys continues this tradition of experimentation with delivering dredged sediment from the Bay to restoration sites.⁷¹

The third major example of Conservancy action on wetlands occurred in Southern California, where less than ten percent of historic wetlands remain.⁷² Here, the Conservancy provided the kind of regional-level planning to address significant wetland or habitat losses that regulators and private foundations often cannot or will not fund.

The resulting Southern California Wetlands Recovery Project⁷³ is an eighteen-agency coalition staffed by the Conservancy. The project began by developing a regional plan that included where wetlands should be fostered, how they should be restored, how to maximize available

⁶⁹ Ariel Rubissow Okamoto & Kathleen M. Wong, *Natural History of San Francisco Bay*, CAL. NAT. HIST. GUIDES 246-255 (2011).

⁷⁰ Telephone Interview with Phillip Williams, *supra* note 15.

⁷¹ Telephone Interview with Matt Gerhart, Program Manager, State Coastal Conservancy (Aug. 25, 2016). For a discussion of the sediment issue, see Ariel Rubissow Okamoto, *Hamilton Done, But More to Do*, 23 ESTUARY MAG. (June 2014), <http://www.sfestuary.org/hamilton-done-but-more-to-do/>.

⁷² Telephone Interview with Joan Cardellino, South Coast Project Manager, State Coastal Conservancy (Sept. 12, 2016).

⁷³ For a discussion of the genesis of the project see Hartmann, *supra*, note 18. The project was first conceived as a mitigation clearinghouse, but this idea was unpopular. See Southern California Wetland Clearing House Conservancy Project, File No 96-008-01 (on file with the State Coastal Conservancy). The final project design was a compromise between environmentalists and other agencies which did not want to create a mitigation bank to subsidize additional wetland infill, and the Conservancy's need for funding and mitigation sites for development projects in Southern California.

The agencies refused to embrace mitigation banking as a joint goal and the very proposal made the environmental community livid. The environmentalists believed that the creation of mitigation banks might offer an excuse for even greater enforcement latitude and laxness. If banks were in existence, then regulators might be more readily coaxed into allowing mitigation instead of holding the line by refusing to permit non-water dependent activities and insisting on avoidance and minimization in cases of water-dependent activities.

The Coastal Conservancy found itself squarely in the middle of a squall. Although it has an independent board, its annual budget is proposed by the Resources Agency and the Conservancy's Executive Officer reports to the Resources Secretary. While cautious about mitigation banks and how they would appear to the Conservancy's local constituents, the Conservancy's Executive Officer, Michael Fisher, saw the potential of Wheeler's proposal as a magnet for funds.

Hartman, *supra*, note 18, at 945-46.

funding, and how to cooperate with existing stakeholder planning efforts.⁷⁴

Since its launch in 1997, the Conservancy has sustained the Southern California project with \$110 million in grants (out of a total \$631 million spent by the effort at-large). In all, the project has completed 206 wetlands projects between Point Conception in Santa Barbara County and the Mexican border, restored nearly 5,000 acres, and acquired and protected 8,246 acres.⁷⁵ These acreages bring the Southern California project close to the scale of the San Francisco Bay projects described later in this article,⁷⁶ and demonstrate the Conservancy's ability to stay involved⁷⁷ and plan across large landscapes.

Today, the project and the Conservancy are in the midst of a three-year planning process to provide a 100-year integrated vision for all of the coastal wetlands (more than 100 individual sites) between Point Conception and Mexico, accounting for potential levels of accelerated sea-level rise, land use and ownership, and species needs.⁷⁸

B. CONNECTING THE COAST'S PARKS AND HABITATS WITH TRAILS

While some coastal landscapes, such as wetlands, are highly sensitive to human disturbance, other landscapes, such as beaches and bluffs, are well-suited to trails and coastal access points. Providing the state's populace with coastal access has remained at the core of the Conservancy's mission. This public access has also helped build awareness of the benefits of coastal protection, conservation, and restoration.

During the Conservancy's frugal early years, improving coastal access often meant little more than building a stairway down a bluff to a secluded beach. Today the Conservancy regards these sorts of short spur trails as part of a much broader vision. As the Conservancy has expanded in both jurisdiction and budget over the decades, its approach toward public access and trail building has increasingly hinged on connectivity and a holistic, rather than piecemeal approach.

The notion of creating a continuous coastal trail from Oregon to Mexico was included in the original legislation that created the California Coastal Commission (the Commission) in 1976, and even before that in Proposition 20 in 1972. But it was not until 1999 that the California

⁷⁴ *Id.*

⁷⁵ SOUTHERN CALIFORNIA WETLANDS RECOVERY PROJECT: CELEBRATING 15 YEARS (2014), http://scwrp.org/wp-content/uploads/2014/12/FINAL-120414-wetlands_report_12-3_sprds.pdf.

⁷⁶ See *infra* text accompanying note 85.

⁷⁷ Telephone Interview with Greg Gauthier, Program Manager, State Coastal Conservancy (Aug. 16, 2016).

⁷⁸ See S. CAL. WETLANDS RECOVERY, <http://scwrp.org/strategy/> (last visited Mar. 8, 2018).

16 GOLDEN GATE UNIV. ENVIRONMENTAL LAW J. [Vol. 10

Coastal Trail received official recognition, earning it state support, a mandate for completion, and assigning the Conservancy the task.⁷⁹

Seventeen years later the trail is well on its way, with 700 of a total 1,230 miles now completed.⁸⁰ Its current state is a network of beaches, trails, and highway corridors. A typical segment is found in Sonoma County: from the northernmost point above Sea Ranch to the Marin County border at Bodega Bay, the Coastal Trail follows beaches and bluffs for sixty percent of its run, and the shoulder of Highway 1 for the remaining forty percent.⁸¹

According to a 2003 report, additional acquisition, construction, and improvements statewide are likely to cost more than \$300 million, and much of that will flow through the Coastal Conservancy.⁸² Other long-term partners in the effort include the Commission, State Parks, and the Sebastopol-based nonprofit Coastwalk (now known as California Coastal Trail Association), which have been instrumental in securing legislative and financial backing for the trail.⁸³

Today, the Coastal Trail provides a literal and figurative focal point on the coast with its influence extending well beyond the confines of a sandy beach or bluff-top path to surrounding lands and the halls of Sacramento. Its name alone serves as an organizing principle for achieving conservation dollars, and its unified nature helps promote buy-in and partnership among myriad partners.⁸⁴

Several other long trails reflect the Conservancy's public access mandate and ability to bridge local jurisdictions and property lines with publicly accessible trails and the establishment of regional conservancies (see next section). In Northern California, these include a 500-mile-long San Francisco Bay Trail (begun in 1989 and seventy percent complete) and a 550-mile Bay Area Ridge Trail (also begun in 1989 and now sixty seven percent complete). In the Bay Area, the Conservancy has even worked to promote access to the water itself through a network of launch

⁷⁹ In 1999, the Governor designated the California Coastal Trail as California's Millennium Legacy Trail. See Historical and Statutory Notes to Gov. Code, § 65080.6 (West 2017). Authorization to develop the California Coastal Trail was placed into the Coastal Conservancy's enabling legislation in 200. Pub. Res. Code § 312408. The Coastal Act also provides protection for development of the trail. Pub. Res. Code, § 30609.5 (2017) (prohibiting the sale or transfer of State lands between the first public road and the sea).

⁸⁰ Telephone Interview with Tim Duff, Program Coordinator for Coastal Trail (Aug. 16, 2016).

⁸¹ CALIFORNIA COASTAL TRAIL, <http://www.californiacoastaltrail.info/cms/pages/main/index.html> (last visited Sept. 14, 2016).

⁸² CAL. STATE COASTAL CONSERVANCY COMPLETING THE CALIFORNIA COASTAL TRAIL, 24-25 (2003), https://scc.ca.gov/webmaster/ftp/pdf/pub/coastal_trail_report.pdf.

⁸³ Telephone Interview with Tim Duff, *supra* note 80.

⁸⁴ Telephone Interview with Neal Fishman, *supra* note 38.

and landing sites for human-powered craft known as the San Francisco Water Trail (begun in 2005 over thirty launch sites have since been created).⁸⁵ Similar large-scale trails are underway in Southern California. All these region- and state-linking trails are enabled in large part by the Conservancy's financial, logistical, and scientific support, and embody the agency's ongoing commitment to continuously improving public access to the California coast.

C. RAMPING UP REGIONAL AND LANDSCAPE-SCALE CONSERVATION

Two areas of California's coast have called for special attention in the last forty years, in the form of new region-specific conservancies under the Conservancy. The San Francisco Bay Area Conservancy Program and the Santa Ana River Conservancy Program were established due to increasing need for natural resource restoration and protection in both of those areas.⁸⁶ Both expanded and enhanced the Conservancy's legal jurisdiction inland and upland from coast.

⁸⁵ See S.F. WATER TRAIL, <http://sfbaywatertrail.org/map/> (last visited Oct. 20, 2017); S.F. ESTUARY P'SHIP STATE OF THE ESTUARY REPORT, (2015), http://www.sfestuary.org/wp-content/uploads/2015/10/SOTER_2.pdf.

⁸⁶ Telephone Interview with Amy Hutzler, Deputy Executive Officer, State Coastal Conservancy (Aug. 15, 2016). The San Francisco Bay Conservancy was established within the Coastal Conservancy because "the Bay Area is already acknowledged in the Coastal Conservancy's enabling statute as a region of special needs." California Bill Analysis, Senate Committee, 1997-1998 Regular Session, Senate Bill 1048, CA B. An., S.B. 1048 Sen. (The legislation recognized the need for a "coherent regional approach" to conservation planning within the bay area as scientists became increasingly aware of the interconnected nature of the Bay Area watersheds). A coalition of Bay Area environmental groups such as the Bay Area Open Space Council pushed the legislation forward to create habitat linkages around the bay. See San Francisco Bay Area Conservancy Program, State Coastal Conservancy Staff Recommendation, Project No. 06-039 (Oct. 9, 2006), http://scc.ca.gov/webmaster/ftp/pdf/scbb/2006/0610/1006Board07_SF_Bay_Area_Conservancy_Prog.pdf. For information about the Open Space Council, see BAY AREA OPEN SPACE COUNCIL, <http://open-spacecouncil.org/about/> (last visited Mar. 8, 2018).

With respect to the Santa Ana River, see Pub. Res. Code § 31171:

(b) The Santa Ana River region is home to one of the fastest growing populations in the nation, which is expected to grow from its current five million residents to ten million residents by 2050.

(d) Despite vast areas of parkland in the region, many communities in San Bernardino and Riverside Counties are park poor, with less than three acres of green space per 1,000 residents. This is particularly true in the communities that were built out before the development boom of the past few decades. As more working-class families moved to the area in search of jobs, the population in these older neighborhoods swelled but public resources for parks and recreation were not invested proportionally to the growth.

(f) The establishment of the Santa Ana River Conservancy Program will provide the state with the necessary structure to plan and implement restoration and preservation

18 GOLDEN GATE UNIV. ENVIRONMENTAL LAW J. [Vol. 10

The idea of a stand-alone Bay Area Conservancy came from John Woodbury of the Bay Area Open Space Council.⁸⁷ The council needed a regional entity with the authority and funds to connect open space and parklands planning and acquisitions in a fast-growing metropolitan region. Former Conservancy deputy director Neal Fishman suggested setting it up within the State Coastal Conservancy, both to avoid having to create an all new agency and to get it up and running more quickly.

In 1997, Senator Byron Sher carried a bill at the request of the Bay Area Open Space Council to create the San Francisco Bay Area Conservancy Program.⁸⁸ After it was signed into law by Governor Pete Wilson later that year, the Conservancy had new jurisdiction over ridgetops, upper watersheds, and natural lands in all nine Bay Area counties, instead of just the margins of the Bay and immediate watersheds.

Farther south, the Santa Ana River Trail had been under development for several decades, spanning three counties and connecting seventeen cities. In 2006, Californians passed Proposition 84,⁸⁹ allocating \$45 million dollars to the Conservancy for Santa Ana River trail projects and \$10 million dollars to each of the three counties the trail traverses with the remaining \$15 million dollars split among them.⁹⁰

This investment reflected early recognition of the importance of the Santa Ana River, the largest watershed in Southern California, to the state. The watershed drains a 2,650-square-mile area and flows from the San Geronio Wilderness Area through San Bernardino, Riverside, and Orange counties, and into the ocean at Huntington Beach.⁹¹ Seven million people live in the watershed, including many underserved communities that lack access to parks.⁹²

projects and recreation opportunities, and enhance the overall condition of the Santa Ana River.

⁸⁷ John Woodbury, *San Francisco Groups Drive Toward an Ambitious 25-Year Goal*, 19 CAL. COAST AND OCEAN 12, http://scc.ca.gov/webmaster/coast_ocean_archives/1904.pdf.

⁸⁸ Cal. Stat. Chap. 896 (S.B. 1048) (1997) (codified at Pub. Res. Code §§ 31160, et seq.).

⁸⁹ “Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006”, Initiative Measure (Prop. 84, § 1, approved Nov. 7, 2006, eff. Nov. 8, 2006) (codified at Pub. Res. Code § 75001, et. seq. (2017)).

⁹⁰ Pub. Res. Code, § 75050(i) (projects developed in consultation with local government agencies participating in the development of the Santa Ana River Parkway).

⁹¹ See PATRICK MITCHELL, *SANTA ANA RIVER GUIDE: From Crest to Coast - 110 miles along Southern California's Largest River System* (2006).

⁹² See, e.g., Santa Ana River Parkway, State Coastal Conservancy Staff Recommendation, Project No. 07-097 (Oct. 13, 2007) (recommending the development of a coastal access ways along the river) http://scc.ca.gov/webmaster/ftp/pdf/scobb/2013/1306/20130620Board3B_Santa_Ana_River_Pkwy_Trail_Ex3.pdf. The lack of adequate recreational opportunities was one of the main reasons for creation of the conservancy as repeated in the house and senate bill analyses. See, e.g., Pub. Res. Code § 31171(d); Senate Floor Analysis of Senate Bill 1390 (2013-14 Reg. Sess.) at 5 (May 25, 2014) (“many communities in that watershed have poor access to park space and the Santa Ana

Building on the Proposition 84 investments and recognizing the important conservation work that needed to be done along the river, the Santa Ana River Conservancy Program was created in 2014 by legislation shaped in the Senate Natural Resources Committee.⁹³ In conjunction with completing the trail, Santa Ana River Conservancy projects include preserving open space, protecting wildlife habitat, agricultural lands, and water quality, as well as providing educational opportunities and public access.⁹⁴ The trail and the adjacent restoration and preservation efforts are now referred to as the Santa Ana River Trail and Parkway.

These two regional conservancies, and their associated trail and conservation projects, represent Conservancy efforts. In addition, they connect key California population centers to the natural world.⁹⁵

D. REACHING INLAND INTO THE WATERSHEDS

Coastal areas are not isolated from their watersheds; what happens upstream affects coastal beaches, lagoons, estuaries and marshes, and the ocean. Recognizing this important connection, the Conservancy has supported communities throughout the state in efforts to improve entire watersheds. Resulting projects have restored river floodplains, daylighted buried streams in urban communities, and removed entire dams to return migrating fish to headwaters streams.

In Northern California, the Napa River is a good example of this approach. The river meanders for fifty miles through wine country, downtown Napa, ranch and agricultural lands, and Napa-Sonoma marshes before entering San Francisco Bay.⁹⁶ The city was built on the river's floodplain. After twenty major floods and millions of dollars of property damage, the Napa County Flood Control District asked the United States Army Corps of Engineers (Army Corps) to widen, deepen, and wall off the river through downtown Napa.⁹⁷ Residents and environ-

River faces a number of water management issues); Assembly Floor Analysis, Senate Bill 1390 (2013-14 Reg. Sess.) at 7 (Aug 18, 2014).

⁹³ 214 Stats. Ch. 562 (codified at Pub. Res. Code §§ 31170, et seq.).

⁹⁴ Telephone Interview with Julia Elkin, Project Manager, State Coastal Conservancy (August 11, 2016).

⁹⁵ *The Conservancy at 40: Santa Ana River Trail and Santa River Conservancy Program*, CAL. STATE COASTAL CONSERVANCY, <http://scc.ca.gov/2016/08/02/the-conservancy-at-40-santa-ana-river-trail-and-santa-ana-river-conservancy-program> (last visited Aug. 18, 2016).

⁹⁶ For an illustrated overview of the Napa Valley, see ROBIN M. GROSSINGER, ET AL., *NAPA VALLEY HISTORICAL ECOLOGY ATLAS: EXPLORING A HIDDEN LANDSCAPE OF TRANSFORMATION AND RESILIENCE* (2012).

⁹⁷ For a history of flood control initiatives on the river dating back to the infamous 1862 California floods, see *The History of Floods*, NAPA COUNTY, <https://www.countyofnapa.org/1094/The-History-of-Floods> (last visited Mar. 8, 2017).

20 GOLDEN GATE UNIV. ENVIRONMENTAL LAW J. [Vol. 10]

mentalists had a different idea. A 400-member coalition (of citizens, regulatory agencies, and others) opposed to a traditional channelization project came up with their own plan for a “Living River”—one that would help reduce flood damage but also provide habitat and not ruin the river.⁹⁸ The alternative design needed hydraulic modeling, which the Conservancy covered with a \$50,000 grant.

The new design was adopted by the Army Corps, and the Conservancy continued to support the “Living River” project, which stretches for seven miles from Highway 29 at the south end of town to just upstream of downtown. With another \$50,000 Conservancy grant in 1997, the city returned 600 acres of leveed-off grazing lands to floodplain. This transition allowed the river’s flows to dissipate, helping lower water surface elevations downtown by several feet during flood events.⁹⁹

Three years later, with a grant of close to \$1.7 million, the Conservancy helped the Napa flood control district acquire another 193 acres of rangeland, giving back more floodplain to the river.¹⁰⁰ And in 2004, it granted the state Wildlife Conservation Board \$160,000 to acquire yet another 242 acres of rangeland contiguous with the 600 acres restored in 2001.¹⁰¹ Today, the Living River project is a national model for using an environmental restoration approach to achieve flood risk reduction.¹⁰²

More recently, the Conservancy expanded its efforts in the Napa River watershed, both upstream and downstream of the Living River project area. It provided \$1 million dollars to help the state acquire 9,460 acres of the Napa-Sonoma marsh complex and close to \$3 million dollars for restoration.¹⁰³ Upstream, the Conservancy has spent nearly \$2 million dollars to replace fish barriers and river-constricting culverts, and to revegetate and restore more reaches of the river.¹⁰⁴ In the Rutherford reach, landowners gave up vineyard land for widening and restoration.¹⁰⁵

⁹⁸ For a discussion of the “living river” approach, see Ebb and Flow, *Living River” Flood Control for Napa*, CAL. COAST & OCEAN 33, 34 (Spring 1997), http://scc.ca.gov/webmaster/coast_ocean_archives/1301.pdf.

⁹⁹ Napa River Flood Reduction and Wetland Restoration Project Coastal Conservancy Project Summary, File No. 97-012 (2000) (on file with the State Coastal Conservancy). See also, Robin Meadows, *Napa Survives Wet Winter with Dry Feet*, ESTUARY NEWS MAG. 15 (June 2017), <http://www.sfestuary.org/wp-content/uploads/2017/04/EstuaryNewsJun2017-v10pages.pdf>.

¹⁰⁰ *Id.*

¹⁰¹ Stanley Ranch Wetland Acquisition, Coastal Conservancy Staff Recommendation, File No. 03-161, (2004) (on file with the State Coastal Conservancy).

¹⁰² Telephone Interview with Ann Riley, former Watershed and Stream Restoration Advisor, San Francisco Bay Regional Water Quality Control Board (Aug. 13, 2016).

¹⁰³ Telephone Interview with Richard Wayman, *supra* note 51.

¹⁰⁴ *Id.*

¹⁰⁵ Rutherford Reach Restoration Project, Coastal Conservancy Staff Recommendation, File No. 04-068 (2004) (on file with the State Coastal Conservancy). The project required significant trust for both private landowners and state funders. Landowners were required to sign agreements

A second project in Monterey County underscores another aspect of Conservancy efforts to support upper watershed protection, create living rivers, and address complex infrastructure challenges to fish health such as dams. The Carmel River flows for thirty-six miles to the Pacific Ocean, through evergreen forest, chaparral, coastal prairie, and sand dunes. Once one of the state's best steelhead streams, it is also the principal water supply for the Monterey Peninsula. But, by the early 1990s, its steelhead population had declined from an estimated 12,000 to 20,000 fish to just a few hundred.¹⁰⁶

In 1997, the National Marine Fisheries Service (NMFS) listed the Central Coast steelhead as a threatened species, citing water diversions, dams, poor habitat, and overfishing as causes of the decline.¹⁰⁷ One of the biggest problems for fish on the river was the San Clemente Dam, built eighteen and a half miles from the coast in 1921. By the 1990s, the old dam had almost completely silted in, and the steelhead that managed to navigate the fish ladder over the dam then had to swim through the sludge-filled reservoir behind it to reach their spawning habitat upstream.¹⁰⁸

After the Department of Water Resources Dam Safety Division declared the dam unsafe, the owner and local water utility, California American Water (CAW), proposed reinforcing it with a new "cast-in-place" concrete wall.¹⁰⁹ But NMFS objected to that proposal due to its potential impacts on steelhead.¹¹⁰ If the dam collapsed and released all its sediment downstream, it would destroy critical fish habitat.

The Conservancy helped resolve this impasse. Between 1998 and 2003, the Conservancy funded the design of a comprehensive restoration

cooperating with the evaluation and design of the restoration and eventually with preservation of the improvements made with public funds. Public funders required faith in the assurance provided by landowners in the early phases of the project that they wanted to follow the project through restoration. Staging of the negotiated landowner agreements took continued persistence and demonstration that a restored river would provide benefits to adjacent vineyards and communities.

¹⁰⁶ Peter Fimrite, *Lessons for California as a Dam Falls and a River Moves*, S.F. CHRONICLE (Mar. 4, 2016), <http://www.sfchronicle.com/science/article/Lessons-for-California-as-a-dam-falls-and-a-river-6871888.php> (last visited July 9, 2017).

¹⁰⁷ Carmel River Restoration Program, Coastal Conservancy Staff Recommendation, File No. 02-090 (2003) (on file with the State Coastal Conservancy).

¹⁰⁸ A history of the dam's impact on Southern California Steelhead is contained in the National Marine Fisheries Services' biological opinion and incidental take permit authorizing demolition of the dam. For the biological opinion, see *Biological Opinion*, U.S. DEPT. OF COMM., June 3, 2013 http://www.westcoast.fisheries.noaa.gov/publications/recovery_planning/salmon_steelhead/domains/south_central_southern_california/nmfs_bo_carmel_river_reroute_and_dam_removal_6-3-13.pdf.

¹⁰⁹ State Coast Conservancy San Clemente Dam Technical Assistance Staff Recommendation, File No. 07-004 (2007) (on file with the State Coastal Conservancy).

¹¹⁰ Carmel River Restoration Program, Coastal Conservancy Staff Recommendation, *supra*, note 107.

22 GOLDEN GATE UNIV. ENVIRONMENTAL LAW J. [Vol. 10]

plan for the ninety-acre lagoon at the river mouth. The Conservancy also secured \$4 million dollars in funding from the California Department of Transportation to construct a project that would recreate historic sloughs and wetlands to support migrating steelhead.

Conservancy efforts to tackle the dam itself began in 2003. At that time, it granted the Planning and Conservation League Foundation (PCLF) \$300,000 to develop a conceptual design for restoring habitat to help the steelhead and the California red-legged frog (a federally listed threatened species under the Endangered Species Act)¹¹¹ recover, in conjunction with modifying or removing the dam.¹¹² The Conservancy worked with NMFS and the PCLF to develop an alternative project that would reroute a half-mile section of the river into San Clemente Creek, and use the abandoned reach for sediment storage.¹¹³ Allowing the sediment to erode downstream was not an option because of the potential impacts on steelhead and the increased risk of flooding; hauling the sediment offsite would have been prohibitively expensive.

In this example, the Conservancy did not balk at the costs or complexities. Along with several partners, the Conservancy helped fund the difference between CAW's dam bolstering plan and the rerouted river project. The Carmel River project is an example of the scale and scope of a project that cannot be done by regulation.¹¹⁴ In general, dam deconstructions are incredibly slow and costly, and there is little incentive for dam owners to update dams that no longer generate revenue, even if impacts on fish and other public resources continue.¹¹⁵

The San Clemente Dam was removed in the summer of 2015. The total bill came to \$83 million dollars, with CAW contributing \$49 million dollars; the Conservancy \$9.2 million; other state and some federal agencies \$21 million dollars; and the balance from nonprofit and mitigation funds.¹¹⁶ The largest dam removal project in the state to date, San Clemente may become a model for other dams that have filled in and create momentum for similar projects along the coast. The steelhead now have

¹¹¹ 16 U.S.C. § 1531 et seq. (2017).

¹¹² Carmel River Restoration Program, *supra* note 107.

¹¹³ *Id.*

¹¹⁴ Telephone Interview with Richard Wayman, *supra* note 51.

¹¹⁵ Joe Geever & Julia Chunn-Heer, *Moving Beyond the Dam Era*, SURFRIDER FOUND., <http://www.surfrider.org/coastal-blog/entry/moving-beyond-the-dam-era> (last visited Sept. 15, 2016). See Michael Pyle, *Beyond Fish Ladders: Dam Removal as a Strategy for Restoring America's Rivers*, 14 STAN. ENVTL. L.J. 97 (1995).

¹¹⁶ San Clemente Dam Removal Project, Project File No. 07-004 (on file with the State Coastal Conservancy). Slightly different figures were reported in the media. Bettina Boxall, *\$84-Million Removal of a Dam on Carmel River Set to Begin*, L.A. TIMES (June 23, 2013), <http://articles.latimes.com/2013/jun/23/local/la-me-dam-removal-20130624> (last visited Mar. 8, 2018).

unimpaired access to more than twenty-five miles of spawning and rearing habitat on the Carmel River.¹¹⁷

E. WEAVING SPACE FOR NATURE AND SHORE VISITS INTO THE URBAN FABRIC

Few ideas are more central to California's Coastal Act and to every action taken by the Conservancy than opening the coast to the people. Along the Pacific, the challenges have often included gaining access through private property or building and maintaining trails across eroding cliffs. In California's urban centers, the challenge has been defending and creating spaces between high-rises and office parks and reclaiming urban shores for parks, habitats, and trails. If people can get to the coast, people will continue to cherish it. Almost ninety-five percent of California's thirty-seven million people live in urban environments, and seventy-five percent live near the coast.¹¹⁸ More may need to move toward the coast as climate change and drought increase air temperatures in interior valleys.¹¹⁹

Conservancy work in urban areas has included: cleaning urban rivers and streams; keeping pollution away from public beaches; building trails and bikeways that link homes to schools, businesses, parks, and natural areas. In addition, the work includes restoring natural areas with projects that offer jobs to local residents and provide career training for youth; developing parks in densely populated neighborhoods; assuring that low-income residents have access to natural areas; and reviving more than 100 declining or degraded urban waterfronts.

In Fort Bragg, located on California's North Coast, the Conservancy funded the town's purchase of part of the former Georgia-Pacific lumber mill, opening views and trails along more than three miles of the city's waterfront.¹²⁰ This purchase has smoothed the city's adjustment to a new

¹¹⁷ Telephone Interview Richard Wayman, *supra* note 51; San Clemente Dam Removal Project Description, Coastal Conservancy (on file with the State Coastal Conservancy).

¹¹⁸ See Press Release, Cal. Nat. Res. Agency, California Announces Commitments to Address Ocean Acidification and Other Threats to Coastal Communities and Ecosystems at United Nations Oceans Conference (June 6, 2017), <http://resources.ca.gov/wp-content/uploads/2017/06/Press-Release-California-Announces-Commitments-to-Address-Ocean-Acidification.pdf>.

¹¹⁹ CAL. DEPT. OF WATER RES., PERSPECTIVES AND GUIDANCE FOR CLIMATE CHANGE ANALYSIS (Aug. 2015), http://www.water.ca.gov/climatechange/docs/2015/Perspectives_Guidance_Climate_Change_Analysis.pdf.

¹²⁰ Fort Bragg Waterfront Acquisition, Coastal Conservancy Staff Recommendation, File No. 07-004 (2007) (on file with the State Coastal Conservancy); Fort Bragg Waterfront Acquisition (Phase I), Coastal Conservancy Staff Recommendation, File No. 05-005 (May 18, 2005), http://scc.ca.gov/webmaster/ftp/pdf/scb/2005/0505/0505Board04_Fort_Bragg_Waterfront.pdf.

24 GOLDEN GATE UNIV. ENVIRONMENTAL LAW J. [Vol. 10

economy based more on visitor services than resource extraction.¹²¹ In Southern California, urban waterfront-restoration projects once centered on public piers and commercial-fishing facilities are now shifting to urban greening projects.¹²²

On a statewide scale, in 2013 the Conservancy launched its “Explore the Coast Program” to encourage California residents to visit the shore. Through three grant rounds, the Conservancy has awarded more than \$4 million dollars to support more than 150 projects. These grants include funding transportation for school groups and families from inland areas to the ocean and San Francisco Bay, as well as opportunities for people from underserved communities and those with disabilities to visit the coast.

In the San Francisco Bay Area metropolitan area, one of the Conservancy’s largest, longest, and most complex multi-partner urban projects involved the acquisition and restoration of 15,000 acres of former salt production ponds owned by Cargill Inc. (formerly Leslie Salt Company). This patchwork of green, blue, and orange shoreline ponds had been off-limits to the public and more familiar to locals as an airplane vista than a public park. With the help of myriad partners, the Conservancy is now overseeing the restoration of this industrial landscape as well as the development of miles of levee-top trails open to the public, all within a few miles of eight million people.¹²³

Coming up with a restoration plan to convert this former salt-making landscape into wetland habitat serving not only endangered species and shorebirds, but also people, may have been the Conservancy’s most challenging task. The resulting plan, broken into multiple phases over fifty years and developed by experts with enormous stakeholder input, is engaging the Conservancy in what is widely regarded as one of the largest landscape-scale, science-based experiments in “adaptive manage-

¹²¹ After redevelopment of the site, the public will enjoy the 4.5-mile trail that is already well used. Nearby cable steps allow access to a previously inaccessible pocket beach. The acquisition opened a historic Fishermen’s Cemetery, Johnson Rock and a scenic overlook of the ocean. Local artisans have installed benches at the site. See <http://scc.ca.gov/2016/05/26/the-conservancy-at-40-years-fort-bragg/> (last visited July 10, 2017).

¹²² These projects take a variety of approaches to urban greening: from pocket parks to allow recreation in dense neighborhoods to low impact development projects to capture storm water and provide vegetation along urban streets. For an example of these kinds of projects, see Willowbrook Parkway Project, Coastal Conservancy Staff Recommendation, File No. 15-023 (Feb. 2, 2017), http://scc.ca.gov/webmaster/ftp/pdf/sccb/2017/1702/20170202Board08_Willowbrook_Parkway.pdf.

¹²³ Ariel Rubissow Okamoto and Kathleen M. Wong, NATURAL HISTORY OF SAN FRANCISCO BAY, *supra* note 69, at 262-68; Ariel Rubissow Okamoto, *Into the Breach, Baylands Reborn*, BAY NATURE MAGAZINE 35-38 (July-Sept. 2013). For current information concerning the South Bay Salt Pond, see SOUTH BAY SALT POND RESTORATION PROJECT, http://www.southbayrestoration.org/Project_Description.html (last visited Mar. 8, 2018).

2018] *CHERISHING THE COAST: CALIFORNIA GOES LONG* 25

ment” on the planet.¹²⁴ Without the relationships, credibility, and trust among myriad federal, state and local partners developed by the Conservancy over the years in the region, such an ambitious landscape conversion project would never have been possible.

In June 2016, the Conservancy gained a powerful new tool for completing many of the projects it is engaged in around San Francisco Bay when the passage of Measure AA¹²⁵ funded a new regional San Francisco Bay Restoration Authority through a \$12 regional parcel tax.¹²⁶ Conservancy staff are now helping to administer the Restoration Authority and define its grant making criteria.

V. COASTAL PROTECTION FORTY YEARS BACK AND FORTY YEARS AHEAD

Looking back, one can only imagine what California’s coast might have looked like today without the Coastal Act of 1976 and the Conservancy. Instead of the vast extent of bluffs, beaches, forests, campgrounds, and trails open to visitors in 2017, the coast would very likely have hosted more casinos, golf courses, hotels, spas, businesses, free-ways, and private homes.

Of course, not all impacts have been halted by California’s constellation of coastal and water-quality management institutions. Not every law and every statute launched that day back in 1976 has been perfectly realized.

For every accomplishment described in this story, there were as many projects that fell short in some way of the original grand vision for California’s coast. Over time, the State has seen incremental losses in places neither the Commission nor the Conservancy could influence.

More recently, the socio-political context of government efforts to protect environmental quality and conservation has changed too. Between 1980 and 2000, restoration work had almost unilateral support by government and the public. Today, the path to the realization of a project often includes controversy and lawsuits. The big-government, big-picture, landscape-scale planning that the Conservancy was so successful at

¹²⁴ For a fuller description of the negotiation process and goal development for the project, see SOUTH BAY SALT POND RESTORATION PROJECT, http://www.southbayrestoration.org/Project_Description_archive.html (last visited Mar. 8, 2018).

¹²⁵ The San Francisco Bay Restoration Authority approved this tax measure to place on the ballot January 13, 2016, before voters at the election on June 7, 2016, see Parcel Tax, Measure AA, BALLOTPEdia (June 2016), [https://ballotpedia.org/San_Francisco_Bay_Restoration_Authority_%E2%80%9CClean_and_Healthy_Bay%E2%80%9D_Parcel_Tax,_Measure_vAA_\(June_2016\)#Path_to_the_ballot](https://ballotpedia.org/San_Francisco_Bay_Restoration_Authority_%E2%80%9CClean_and_Healthy_Bay%E2%80%9D_Parcel_Tax,_Measure_vAA_(June_2016)#Path_to_the_ballot) (last visited Mar. 8, 2018).

¹²⁶ See Gov’t Code, Title 7.5, created by AB 2954 (2008), Cal. Sess. L. Ch. 690 (2008).

26 GOLDEN GATE UNIV. ENVIRONMENTAL LAW J. [Vol. 10

in the 1990s did not last due to the balkanization of the environmental community and special interests in nearly every project.¹²⁷ Two examples include the Conservancy's Malibu Beach restoration,¹²⁸ stalled by environmental lawsuits but then completed, and the Ballona wetlands restoration in Los Angeles, opposed by local environmental groups with a different restoration agenda, resulting in enormous additional project costs.¹²⁹

It is common that disagreements cannot be overcome and projects stall or fall apart due to fear of and resistance to proposed changes in land use. One Conservancy project at the mouth of the Salinas River was stopped by local farmers who perceived the project as "anti-agriculture."¹³⁰ Another project, an effort to reduce the effects of intense urban development in the Temecula-Murrieta watershed of the Santa Margarita River, was stopped by local building interests. The Conservancy learned from both "failures" and now does much more advance work around potential conflicts.¹³¹

Beyond the social and political challenges, there have also been technical failures in projects, where local wetland, stream, or habitat conditions simply did not improve after Conservancy projects were carried out on the ground. These challenges have led the Conservancy to include more measurable and quantifiable objectives in its projects to allow better tracking of outcomes.¹³²

There is also marketing "failures," not unusual in public agency work. With respect to the Bracut Marsh, for example, the anticipated demand for a mitigation bank at Humboldt Bay did not work out eco-

¹²⁷ Telephone Interview with Philip Williams, *supra* note 15.

¹²⁸ See, e.g., *La Costa Beach Homeowner' Ass'n v. Cal. Coastal Comm'n*, 101 Cal.App.4th 804 (2002) (upholding Coastal Commission acceptance of an off-site mitigation of property owners' view that corridor conditions would maximize public access to the coast) and *La Costa Beach Homeowners' Ass'n v. Cal. State Coastal Conservancy*, CA Sup. Ct. case no. BS063275 (filed May 12, 2000).

¹²⁹ For an outline of the history of the Ballona wetland restoration, see BALLONA WETLANDS RESTORATION PROJECT ENV'T'L IMPACT STATEMENT ES1-ES4, <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=149710&inline> (last visited Mar. 8, 2018).

¹³⁰ Telephone Interview with Jeff Haltiner, *supra*, note 49. Similar challenges to restoration were raised by the California Farm Bureau in connection with the restoration of the Salt River in Humboldt County.

¹³¹ Telephone Interview with Jeff Haltiner, *supra* note 49.

¹³² The Conservancy calls for measurable and quantifiable objectives in its strategic plan: <http://scc.ca.gov/about/strategic-plan/>. The Conservancy also requires grantees to include post-project monitoring of restoration projects using the California Rapid [Wetland] Assessment Method visit <http://www.cramwetlands.org/> (last visited Mar. 8, 2018). For older projects it has instituted its own project monitoring of all capital projects (restoration and public access) to ensure that projects are delivering their intended purposes for the duration of the 20-year grant agreement and requires entities that own lands acquired with Conservancy help to submit regular monitoring reports.

nominally.¹³³ In terms of providing a return for investment, the State is better at providing a public good such as a predictable and stable mitigation mechanism than it is at marketing and selling mitigation properties.

Finally, from a larger species-restoration perspective, many listed and protected species continue to decline today, despite all the work done to save them.¹³⁴ However, these species declines may not be for lack of trying on an individual project level but more for a lack of political will and restoration at the scale necessary to truly recover species health.¹³⁵

Looking ahead, implementation of the Coastal Act over the next forty years presents new and unparalleled challenges: climate change and rising sea levels. No political or economic shift from the status quo could have exerted as ubiquitous an effect on Conservancy activities and priorities. Impacts are projected to be so considerable that the state legislature gave the Conservancy new authorities to tackle them.¹³⁶

A coast is constantly eroding and changing and requires ongoing management and restoration.¹³⁷ But the zone of wetlands, creek mouths, sloughs, and floodplains protected and enhanced by California's coastal agencies and partners remains an invaluable first line of defense against a rapidly rising sea level, increasingly severe storms and stronger waves. If it were not for all this work, those responsible for protecting coastal California would be awaiting a western version of Hurricane's "Sandy" and

¹³³ The failure of the project is an illustration of the difficulty with publicly-owned land banks. From a practical perspective, the public receives the ecological services of the bank regardless of its use as mitigation for other development. There is little incentive for a conservation organization to actively market the mitigation opportunities where such market may encourage the destruction of other valuable ecosystem services; community development organizations and other governmental entities that have a different public mission may be a better vehicle for reclaiming abandoned properties.

¹³⁴ Jeffrey J. Rachlinski, *Noah by the Numbers: An Empirical Evaluation of the Endangered Species Act Noah's Choice: The Future of Endangered Species*, 82 *CORNELL L. REV.* 356 (1997). The classic example is the continued effort to save Delta Smelt in the Sacramento delta despite continued demand for water and other uses. For a history of the litigation over delta smelt, see Kristina Alexander, *Biological Opinions for the Sacramento-San Joaquin Delta: A Case Law Summary*, CONG. RESEARCH SERV. (Mar. 13, 2014), <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R41876.pdf>; *San Luis & Delta-Mendota Water Auth. v. Jewell*, 747 F.3d 581, 596 (9th Cir. 2014) ("over the past decade, the delta smelt population has been decimated even relative to these depleted levels, with a measured decline since 2000 of up to three orders of magnitude below historic low.").

¹³⁵ For the description of a local example, see Joe Eaton, *No Scapefish from the Drought Wars*, *ESTUARY NEWS*, (Dec. 2016), <http://www.sfestuary.org/estuary-news/no-scapefish/> (last visited Oct. 20, 2017). For a broader discussion, see JOHN A. WIENS, *ECOLOGICAL CHALLENGES AND CONSERVATION CONUNDRUMS* (2016).

¹³⁶ See 2012 Stats. 611 (codified at Pub. Res. Code § 31113) (authorizing the Conservancy to address impacts of climate on resources within the coastal region).

¹³⁷ Telephone Interview Philip Williams, *supra* note 15.

28 GOLDEN GATE UNIV. ENVIRONMENTAL LAW J. [Vol. 10

“Katrina” with greater approbation. More people and property would be in the path of disaster.

Still, the Conservancy, the Commission, and their local partners have built so many widely used public trails and coastal access points it is hard to conceive of such extreme changes in the future. Will the Bay Trail ringing San Francisco really continue to flood like many low spots now do during a king tide? Will thousands of acres of newly restored tidal habitats drown as the U. S. Geological Survey projects?¹³⁸ Must cities and shoreline communities make room for habitats to migrate upland or otherwise migrate within the narrow band between developed waterfronts and upper watersheds?¹³⁹ It is a lot to do very fast.

Adapting to this brave new world requires a new approach to environmental conservation. Historically, species protection and habitat acquisition targeted resources of current ecological value. Priorities were based on a future similar to the past. This is no longer the case for the planet, let alone California.

Addressing this challenge demands a new land-acquisition strategy. The Conservancy needs large, contiguous blocks of land that allow species to move to or up the coast. These blocks must contain a range of microclimates so species can move around in them. If all else fails, the public and its institutions must decide whether to help relocate or save species that cannot survive or help themselves.¹⁴⁰

Saving San Francisco Bay’s wetlands—while integrating this more natural infrastructure into necessary upgrades to transportation, water delivery, wastewater treatment, and other infrastructure—will be a huge challenge. The urgency of acting soon is widely recognized by the community of shoreline landowners and managers. The long lead times required for large capital projects is up against an anticipated rapid increase in the rate of sea-level rise around the year 2050.¹⁴¹

¹³⁸ U.S. GEOLOGICAL SURV., <http://www.werc.usgs.gov/project.aspx?projectid=238> (last visited Mar. 8, 2018).

¹³⁹ “In general, over the next century we expect climate change and other drivers to create a more dynamic landscape, with the location and nature of baylands habitats shifting more frequently than in the recent past.” See, *The Baylands and Climate Change: What Can We Do*, S.F. ESTUARY INST. & AQUATIC SCIENCE CTR. 41 (2015), http://www.sfei.org/sites/default/files/biblio_files/Baylands_Complete_Report.pdf.

¹⁴⁰ Telephone Interview with Sam Schuchat, *supra* note 55. See also Healey et al., *Perspectives on Bay-Delta Science and Policy*, *State of Bay-Delta Science*, 14 S.F. ESTUARY & WATERSHED SCI. (Dec. 2016), <http://escholarship.org/uc/item/7jz6v535>; Kathleen M. Wong, *Options for Orphan Species*, ESTUARY NEWS (Dec. 2016), <http://www.sfestuary.org/estuary-news/orphans/>.

¹⁴¹ *Living with a Rising Bay*, S.F. BAY CONSERVATION AND DEV. COMM’N, (2011), <http://bcdc.ca.gov/BPA/LivingWithRisingBay.pdf>; CAL. OCEAN PROTECTION COUNCIL, *RISING SEAS IN CALIFORNIA, AN UPDATE ON SEA-LEVEL RISE SCIENCE* (Apr. 2017), <http://www.opc.ca.gov/webmaster/ftp/pdf/docs/rising-seas-in-california-an-update-on-sea-level-rise-science.pdf>.

2018] *CHERISHING THE COAST: CALIFORNIA GOES LONG* 29

To help local municipalities address this looming threat, the Conservancy launched a “Climate-Ready” grant program in 2013. The program provides money, staff, expertise, and networking to help small cities and towns think more proactively about climate-change effects on their coasts and communities. Grant rounds to date have been hugely oversubscribed—a good thing because the Conservancy sees local government as at the forefront of local adaptation.¹⁴²

In early 2017, threatened changes in federal participation in climate change planning and environmental protection have increased the level of uncertainty about the nation’s quality of life and the planet’s health in the future.¹⁴³ Faced with this unsettled and ever-shifting landscape, California and the Conservancy are uniquely positioned to lead the way forward.

Looking back in conclusion to this story of the Conservancy’s growth and evolution over forty years, some key elements of its success stand out. Most obvious, perhaps, may be the Conservancy’s proactive approach to coastal planning and problem solving, its commitment to building local stewardship, and its flexibility as the scope of environmental and restoration activities evolved with new science and new challenges. Behind the scenes, however, other elements of the Conservancy’s success likely include its willingness to take risks to get bigger, better, or more sustainable projects, and to think big, across large landscapes, organizational silos, and jurisdictional boundaries. Finally, the Conservancy also rarely chooses the easiest or most direct path to a goal—pursuing partnerships and collaborations instead. As many acquisition and restoration projects take decades to produce healthy species, robust ecosystems, and ongoing public stewardship, sticking to projects despite long time-

¹⁴² *Marin Bay Waterfront Adaptation and Vulnerability Evaluation*, MARIN COUNTY, <https://www.marincounty.org/main/baywave/vulnerability-assessment> (last visited Oct. 20, 2017).

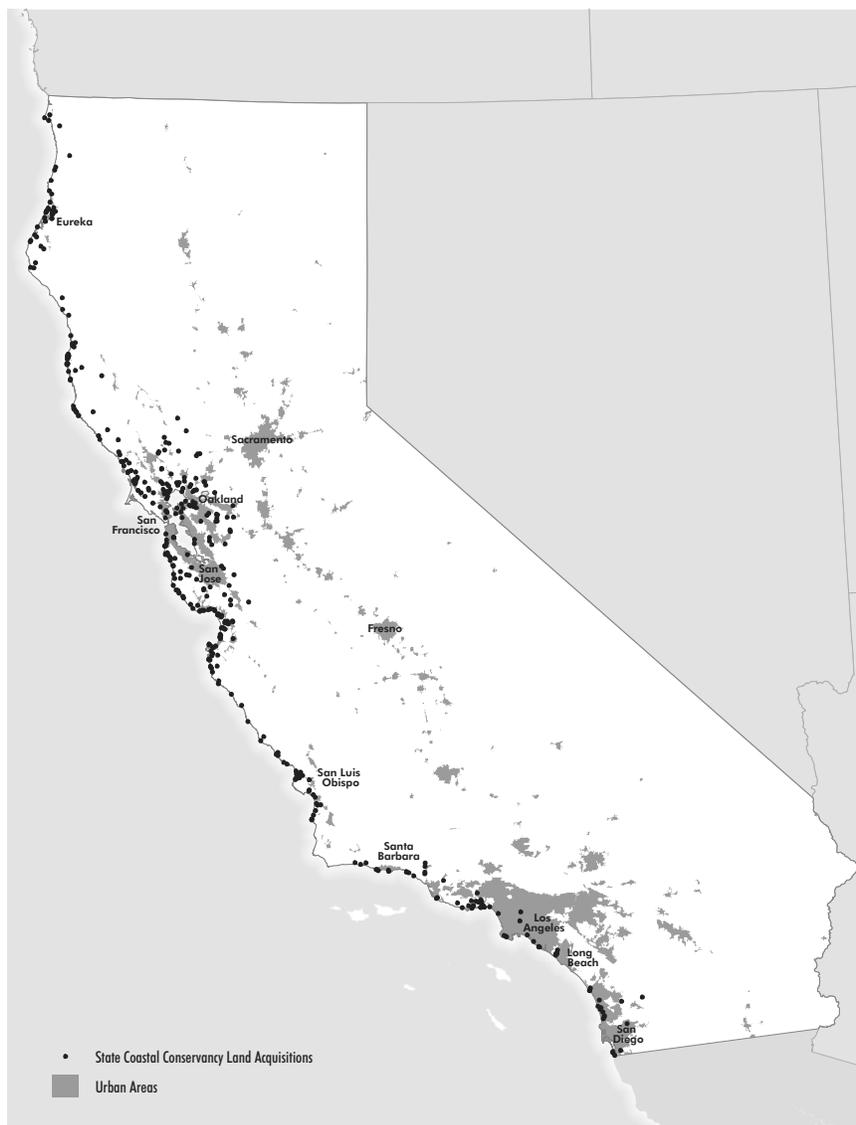
¹⁴³ Perhaps the most significant recent indication of this is the President’s decision to withdraw from the Paris Climate Accords. See Michael D. Shear, *Trump Will Withdraw U.S. from Paris Climate Agreement*, N.Y. TIMES (June 1, 2017), <https://www.nytimes.com/2017/06/01/climate/trump-paris-climate-agreement.html> (last visited Feb. 15, 2017). For a discussion of the potential effects of climate change on our future, see *Climate Issue*, N.Y. TIMES MAG. (Apr. 19, 2017), <https://www.nytimes.com/2017/04/19/magazine/our-climate-future-is-actually-our-climate-present.html?ref=collection%2Fissuecollection%2Fmagazine-index-20170423&action=click&contentCollection=magazine®ion=rank&module=package&version=highlights&contentPlacement=1&pgtype=collection> (last visited Mar. 8, 2018). Projected effects were documented in the Climate Change Center, *Our Changing Climate 2012 Vulnerability & Adaptation to the Increasing Risks from Climate Change in California* (2012) and a new study is currently underway. A SUMMARY REPORT ON THE THIRD ASSESSMENT FROM THE CALIFORNIA CLIMATE CHANGE CENTER, <http://www.energy.ca.gov/2012publications/CEC-500-2012-007/CEC-500-2012-007.pdf>. For a discussion on the fourth California Climate Assessment, see *Research and Tool Development*, CAL. NAT. RES. AGENCY, <http://resources.ca.gov/climate/safeguarding/research/> (last visited July 10, 2017).

30 GOLDEN GATE UNIV. ENVIRONMENTAL LAW J. [Vol. 10

lines and repeated challenges may have been the most consistent secret of the Conservancy's success.

In the years ahead, anyone hiking, driving, or sailing along the coast of California will continue to be astounded by its untouched extent. It is this treasure—this natural, wildlife-filled yet publicly accessible zone where the continent and its western watersheds meet the Pacific—that is the invaluable gift of the Coastal Zone Management Act, the Conservancy and its partners, to the public.

ALL PROJECTS



KEY PROJECTS

