

**Achieving Conservation --
A Positive Conservation Policy for Hong Kong**

The Conservancy Association

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Preface

The Conservancy Association is pleased to publish this paper entitled *Achieving Conservation – A Positive Conservation for Hong Kong* for the government's consideration and the public's comment. In this paper we have set out our recommendations for the policy framework as well as the institutional mechanism to achieve conservation. In view of limited land resources and rapid development in Hong Kong, a conservation strategy is urgently needed to achieve conservation of both natural and historical heritage which is a public asset of not just ours but also our future generations.

The Association hopes that this paper will contribute to the formulation of a constructive and effective conservation policy for the HKSAR.

Introduction

World City and Quality of Life

1. The Conservancy Association supports the Chief Executive's vision of Hong Kong as a world city. A world city must be supported by a first class quality of life. An important aspect of quality of life is the conservation of natural and cultural heritage.
2. The Conservancy Association considers that natural and cultural heritage is an invaluable public asset that belongs to society and posterity. It is part of the "social capital" of Hong Kong. Management of this asset in a sustainable manner will not only enhance our quality of life, but also contribute substantially to Hong Kong's competitiveness. Unfortunately, after decades of environmental degradation, these resources are becoming more and more scarce. The conservation of these resources will require a concerted effort by the government and the community.
3. As early as 1980 the Conservancy Association has been a champion of a government conservation policy. In line with the World Conservation Strategy then promulgated by the World Conservation Union (IUCN), the Association published our own Conservation Strategy in 1981. We pointed out some twenty years ago that "the absence of conservation at the policy making level is the most important obstacle to conservation", and advocated anticipatory environmental policies, a cross-sectoral conservation policy and a broader system of national accounting, so as to integrate conservation with development. These principles are as valid now as they were then.
4. In 1993 when the Association published its "Agenda 21 for Hong Kong", and then again in 1996 in response to the Third Review of the 1989 White Paper, the Association made further calls for a Nature Conservation Strategy by the government. Despite a promise by the then Planning, Environment and Lands Branch for a "comprehensive policy on conservation", the current policy framework on conservation remains incomplete and ineffective.
5. With the vision of Hong Kong as a world city now a community consensus, it is time for the SAR to articulate a practical and forward looking conservation policy that befits the first class status Hong Kong aspires to.

A timely strategy for conservation

6. In the Hong Kong Conservation Strategy published in 1981 and the Agenda 21 for Hong Kong in 1993, the Conservancy Association advocated a number of principles in relation to the government's role in conservation as follows:
 - (1) different government agencies should have clear mandates which should specifically include conservation;
 - (2) a permanent mechanism for consultation and coordination of both formulation and implementation of policies;
 - (3) either a new authority be established, or a "cabinet" level unit be formed to ensure coordination and compliance;
 - (4) sufficient financial resources for implementation;
 - (5) empowerment of the community so as to encourage public participation in policy formulation and implementation.
7. Indeed, many of today's problems have been identified twenty years before. Then we called for beaches, shoreline, country parks and scenic spots to be preserved. Pedestrian linkage was emphasised as the solution to local transport problem. We also advocated variable and flexible regulatory regime for utilities to achieve efficiencies, as well as emphasised the importance of enforcement of legislation.
8. Besides nature conservation, cultural and historical heritage has also been emphasised as being an integral part of our environment. In our 1981 submission, for example, we recommended that agriculture should be maintained not just as economic activity but to enrich territorial grain of visual environmental and cultural diversity. Recognising the shortage of space, we advocated the multiple uses of land under the important principle that metropolitan growth should be circumscribed and there should be sufficient space for cultural institutions and activities; indeed, Hong Kong will be a very dull place if all land use is urban.
9. For the Association, therefore, conservation has all along been much more than mere preservation, but is positive and forward looking. Our conception of conservation is in line with the IUCN definition which sees conservation as "the management of human use of the biosphere so that it may yield the greatest sustainable benefit to present generations while maintaining its potential to meet the needs and aspirations of future generations. Thus conservation is positive, embracing preservation, maintenance, sustainable utilisation, restoration, and enhancement of the natural environment."

10. For many years the degradation of the environment has been an important motivation for the conservation effort. Yet the green groups have been a lone voice in the community in calling for an effective policy on conservation. Thankfully, this has changed in recent years with the recognition that the natural environment and our cultural heritage are an important asset of Hong Kong community. Conservation is now no longer the domain of a few green activists, but a value cherished by the community at large. We believe the time has come to design a conservation policy that is positive and genuinely effective.

11. For much of the past decades conservation and development have been seen as being opposed to each other. Such an attitude is outdated. It ought to be changed as the SAR steps into the 21st century. In our view, proactive measures by government for conservation need not be anti-business or anti-development. On the contrary, the business community has in recent years become a vocal champion for better quality of life. The community, at the same time, increasingly aspires to preserve the local identity in its natural and historical setting. Tourists are more and more attracted by eco-tourism. All these point to widespread public support for a sensible government policy on conservation.

Conservation Framework

The present conservation framework

12. The current legal framework for conservation is embodied primarily in the Country Parks Ordinance and the Town Planning Ordinance. In the case of country parks, conservation is the stated objective and this objective is by and large served by the Ordinance. For areas of conservation interests which fall outside country parks, the conservation intention is expressed through zoning the sites as Conservation Area (CA) under the Town Planning Ordinance. Both country parks and CA zones can cover large areas. Within these areas some specific sites may be designated Sites of Special Scientific Interests (SSSI), which provides more stringent control over land use, and hence greater protection of the sites from disturbance. The Agriculture, Fisheries and Conservation Department is the expert department within government for conservation, country park management and the designation of SSSI's.
13. The present framework is, however, too simplistic and often ineffective as far as the conservation objective is concerned.
14. First, such a framework does not cover areas with high conservation value that fall under other zoning. A case in point is areas zoned Agriculture, which may consist of areas of high cultural or ecological value but which would not be protected because conservation is not the stated intention of the Agriculture zone. Similarly, other zoning such as the village zone and the residential zones may contain buildings of high heritage or cultural value which are not protected under their respective zoning.
15. Secondly, even for areas zoned CA or SSSI, the planning intention of conservation may not be realised if the conservation value is progressively diminished, either through willful destruction or as a result of natural degradation. In other words, although conservation is the stated objective, such objective can be defeated either by lack of land management or by failure of enforcement over unauthorised destruction.
16. Thirdly, even if the conservation objective is well served (naturally or through active management), the areas may still yield to development due to competing uses, such as improvement in transport or demand for housing (for example, to accommodate the rising demand for houses for indigenous villagers). There are strong advocates within the government for these competing objectives, all of which are backed by strong policy frameworks. By contrast, the present conservation framework is incomplete and does not provide enough basis for the conservation department (AFCD) to be an effective advocate for the conservation objective commensurate with its value to society.

Re-defining the conservation framework

17. If conservation were to be really achieved, therefore, the conservation framework should be strengthened considerably. Areas of conservation value should not just be “named”. There should be a very strong presumption against development for these areas as well as a mechanism to “make conservation work”.
18. Within the present system, there are indeed some specific areas designated for conservation which does “work” as conservation areas. A good example is the wetland in North West New Territories designated as Ramsar sites. By relating the ecological value of wetland in Mai Po and the surrounding areas to an international conservation authority (the Ramsar Convention), Hong Kong is obliged to preserve the wetland as part of the SAR’s international duties.
19. The Ramsar site designation thus provides for much greater certainty in conservation. It does not simply name the area as having high preservation value, but actually establishes conservation as the key land use objective, a purpose to be achieved, rather than just a description of the present environment. By making Ramsar site protection a duty, there is an implied recognition that the present state of affairs can change through disturbance or natural decay, and that Hong Kong society as a whole has decided to protect the area from destruction.
20. The Ramsar designation sets an example of the conservation objective being put under a strong government policy objective. It follows that the conservation framework can be much strengthened if the principle underlying the Ramsar designation can be extended to other conservation areas. In other words, there should be a strong policy framework underlying Conservation Areas in general, so as to make conservation a positive land use objective which is to be achieved, not the negative, passive and descriptive zoning which it is now.
21. Although not to the same extent as the Ramsar site designation, already there seems to be a recognition within the Administration for more proactive conservation, as exemplified in the concept of “eco-park”. The wetland park in Tin Shui Wai, for example, is being deliberately created for conservation. A similar concept is also being explored in the planning of newly developing areas, such as Yam O and Tai Ho in the north shore of Lantau, and Ng Tung River for the Fanling New Town. These “parks” will, besides serving a recreational function, also be important ecological resources on their own. For the eco-parks, conservation becomes a deliberate land use objective achieved through active management with proper expertise. It represents a higher level of commitment towards conservation than the present CA zoning. It also reflects a recognition that these areas are valuable public assets to be protected.

22. Unfortunately, most of the eco-parks are still only at the drawing board stage. All of these areas, even parts of the Ramsar sites, are still under pressure of development.

An effective conservation framework

23. If sustainable development were to be achieved, an effective conservation framework is needed so as to enable a balance to be struck between the value of conservation and the pressure for development. The principle underlying the Ramsar site designation and the eco-park concept provides a good basis for the formulation of an effective conservation framework. Building on the present framework, a two-level structure for conservation can be envisaged. First, a large part of the present Conservation Areas consist of “wild places” in the remote countryside, which for some reason or others have not been included in the country park boundary. For these areas the present passive and descriptive CA zoning will suffice. In addition, there are areas with high conservation value for which conservation should be taken as an objective to be achieved, not a negative description to deter development. It is for these “higher level” objectives that the conservation framework needs to be strengthened.
24. Under this framework, there is a presumption that all sites identified for conservation will be thus conserved in accordance with some established policy framework. It is to affirm that a value exists for the sites thus identified as worthy of conservation. The rationale for conservation is provided by a number of social values, which give rise to the following six types of conservation areas, all of which having a higher conservation value than the CA zoning.
- (1) Many areas have been designated SSSI’s on account of their ecological significance, hence there may be merit in renaming them “sites of significant ecological value” or some other similar designation.
 - (2) There are areas within Hong Kong which should be preserved simply because of their landscape value, for instance, Tai Long Wan and Wu Kau Tang. Often there are pockets of SSSI within these areas, but even if the larger area does not rank high in ecological terms, it will still be worthy of conservation if there is general recognition of its landscape value. These areas should perhaps be named more specifically as “sites of special landscape value”.
 - (3) A special case of unique landscape value is that of the shoreline. Under the present zoning there is a designation of “coastal protection area” as a special conservation zone, but again the zoning is negative, to deter development rather than achieve conservation. The CPA zoning should thus fall also under the stronger regime of conservation.

- (4) Another type of conservation land use may be described as “sites of significant historical value”. As a land use it can be applied to individual buildings, building lots or whole areas, and thus provides greater coverage than declared monuments or archeological sites which are specific to buildings or confined spots. In particular, a precautionary principle can be extended to specific classes of historical structures, such as pre-War buildings. Just as fishponds are protected by planning control whereby permission has to be sought for all pond filling, all pre-War buildings can be deemed to have conservation value and while demolition is not ruled out, they should all be subject to planning applications.
 - (5) In the rural areas there remains what can be described as “sites of significant rural character”, such as the agricultural land in Lam Tsuen Valley and Long Valley. With or without important habitats or historical monuments, these areas are worthy of preservation because of their rural and cultural character, which in itself is an important heritage.
 - (6) Extending the same concept to non-rural areas, one can envisage a designation of “sites of significant cultural value”, which embodies some local way of life which is valued by the community, for instance, the way of life in Tai O in Lantau and Shanghai Street in Yaumatei.
25. We recommend that the present conservation framework be thus strengthened, to apply both to areas under the Country Park Ordinance and the Town Planning Ordinance. The framework should include the following categories of designations:
- | | |
|-------|---------------------------------------|
| CA | The “default” zoning, same as present |
| CA(1) | Sites of significant ecological value |
| CA(2) | Sites of special landscape value |
| CA(3) | Coastal protection area |
| CA(4) | Sites of significant historical value |
| CA(5) | Sites of significant rural character |
| CA(6) | Sites of significant cultural value |
26. Under this more comprehensive framework for conservation, the value to society of conservation will be recognised and the planning intention will reflect an express desire of society to achieve the conservation objective. For that to be realised, there should be a mechanism, consisting of a variety of means, to implement the stated conservation objectives.

Conservation Strategy: Implementation Options

Certainty of conservation objective

27. One major shortcoming of the present conservation framework is that the planning intention of zonings like CA or Agriculture is often not realised, and if the existing character of the land is degraded, the area may become more suitable for development. This gives rise to the impression that if the agriculture or conservation objective cannot be achieved, or is made to fail, then the value of the site will be enhanced due to the possibility of development. There is thus no incentive to conserve the area; on the contrary, a “hope value” is created for the landowner or developer, for whom the existing land use becomes a barrier. The result is a wearing down of the ecological and cultural value, a loss of the community’s asset.
28. The uncertainty in land use objective is a primary cause for the degradation of our countryside. The removal of this uncertainty is thus an important element in any strategy to make conservation work. For the conservation policy to be effective, therefore, the conservation framework must be complemented by an implementation mechanism. This means providing the means to achieve the planning intention of conservation under the extended conservation framework as described above.
29. The need for practical steps is all the more pronounced in cases where proactive land management is required. While some conservation areas are simply “wild” areas to be left alone, many others require some degree of management to maintain their conservation value, for example, fishponds. In some exceptional cases, the landowner may be already managing the conservation area. The question is how sustainable this is in the long term, as it means leaving the management of a public asset left to a private interest whose main concern may not be conservation. If the conservation objective were to be achieved, some other options have to be considered.

Government resumption or buy out

30. One option is to invite government to buy out the land and to undertake its management. As this implies the surrender of private property to the government, it is an extreme option which should be justified by strong public interest. In practice, therefore, it can be used only sparingly. Nevertheless, we believe there are indeed places of unique conservation and heritage value, of world-class proportion, which command such a high community value that resumption or government buy out is justified; the Ramsar sites and historical monuments, for example. We do not envisage a huge demand on the public coffers for such government buyout. According to the biodiversity study by the Hong Kong University, a mere one per cent

extension of the country parks into existing private land will achieve conservation for a substantial amount of natural habitat.

31. In any case, management by government implies a public sector commitment of a recurrent nature. Although government has a responsibility towards conservation, it can justifiably be asked whether it is appropriate for government to be involved in conservation management on a large scale. Even if government were willing, it might not always be reliable as it could be susceptible to competing demands for different land uses - it should be remembered that government is itself a big developer.

Charitable trusts

32. An alternative is to invite a third party to buy out and manage the land. Some charitable trust, like the Jockey Club, may be persuaded to buy up some sites and turn them into conservation areas. Their management can then be entrusted to appropriate parties such as green groups, as in the case of Mai Po.
33. However, there is a limit to the availability of private funds. Since the object of these funds is typically not conservation, their effort is often sporadic in nature. In any case, these funding may not be applicable to conservation on a comprehensive scale. If conservation were to be genuinely achieved, a more structured approach would be needed.

Development for conservation

34. In some cases the granting of development rights in exchange for conservation may be worth exploring. This is the so-called private public partnership approach: allowing development by the landowner or developer (private sector) in order to provide incentive for them to become a party to conservation (a public sector objective). One oft-cited application of this model is that of the developer building on part of the land and surrendering the rest to the care of the public.
35. In adopting a public-private partnership approach, it must be made very clear at the outset that the objective is conservation and the partnership is merely a means to achieve that. For the conservation objective to be achieved, a number of criteria will have to be met:
 - i. There should be no net loss of ecological or heritage function.
 - ii. The integrity of the habitat or heritage should be enhanced.
 - iii. The development should be undertaken in non-sensitive areas.
 - iv. The development can generate sufficient contributions to a sustainable solution to support the long term management and enhancement of the habitat/heritage.
 - v. The impact of possible cumulative effects of similar cases is fully assessed and deemed acceptable.

- vi. The prerequisites of land use compatibility, adequate infrastructure capacity, acceptable environmental, drainage, traffic and other related impact assessments, should all be satisfied, both during and after construction.
36. Given that the objective is conservation, the above criteria will render the public-private partnership approach a matter of exception, not a matter of course. Care should thus be exercised in sanctioning such a development-for-conservation approach, so as not to encourage speculation of “hope values” in designated conservation areas under the guise of “public-private partnership”.

Non in situ exchange - transfer of development rights

37. Many problematic areas are sites of conservation value where a development right has already existed, such as sites zoned agriculture or for village uses. In these cases, conservation can be achieved through transferring the development right to elsewhere so that no development eventually takes place in the conservation area. In our view, the set up of such a mechanism is of paramount importance in the long-term conservation of ecologically sensitive areas.
38. The transfer of development rights has long been a contentious issue in planning and land management. A number of possibilities exist:
- i. A land-swap option could be explored. This means exchanging some government land elsewhere for the conservation area, for example, re-siting traditional villages. We recognise that this option is limited by the fact that there are competing uses for government land, and that the stock of government land is limited, but we believe it will be worthwhile for sites of high conservation value.
 - ii. Another approach is to upgrade the development potential of areas owned by the same developer elsewhere. This could be in the form of extra plot ratio, or up-zoning of areas which would not otherwise have been allowed. This option implies intensive negotiation with the owner or developer.
 - iii. A market-oriented model can be explored by monetising the development right so that it becomes a commodity which can be freely exchanged. This will have the greatest flexibility but the main difficulty is that of determining the value of the development right in the first place.
39. Whatever the option, it should be emphasised that the transfer of development rights applies only when a development right is established. Thus it can, and should, be applicable to development rights created under the private-public partnership as described above. It should not, however, apply to areas with no prior development rights, such as conservation areas, and the availability of the mechanism should not become a reason for development right to be created.

Nature Conservation Trust and Conservation Bill

40. A more structured way to achieve conservation is through the creation of a Nature Conservation Trust, similar to that of the National Trust of the UK. The merit of the Trust concept is that it will put our natural and cultural heritage into public ownership, and provide a sustainable way to conserve them.
41. To be successful, funding for the Trust is critical. Since government has a responsibility towards conservation, a substantial contribution from the government should be well justified, perhaps as a one-off grant rather than a recurrent expenditure. Another important source will be the private sector's contribution, especially by developers under the private-public partnership approach. As a professional body accountable to the public, the Trust should be a much more effective vehicle in raising funds for its recurrent activities, and hence ensure that the heritage under its care will be managed in a sustainable way.
42. Since the object of the Nature Conservation Trust is, in the broadest sense, to safeguard the community's assets, the best institutional form for the Trust would be to establish it as an independent statutory body, perhaps modeled upon the Community Chest. The legal and institutional basis for the Trust can be provided for under a Nature Conservation Bill, which lays down the authority for the Trust as well as for conservation and lands departments to implement the objectives of conservation.

A sustainable solution

43. Each of the above options may have merits for specific instances. However, in order for the objective of the conservation framework to be achieved, it is important to ensure that they are applied in a sustainable way. Some permanent institutional structure will therefore be needed. In our view, this should best be achieved through making the Nature Conservation Trust and the mechanism for transfer of development rights a permanent structure in the institutional framework for conservation.
44. Although not a "regulator" as such, an effective Nature Conservation Trust will act as Hong Kong's guardian of our scarce natural and cultural heritage. Through the various stakeholders represented on the Trust, the SAR's conservation interests will be safeguarded in a professional manner. It could, for example, provide the necessary guidance over problems such as when private sector initiative would be helpful, or when intervention by the public sector is appropriate.
45. As we stated at the outset, a key purpose of conservation is to enhance our quality of life, so as to ensure that the "Hong Kong world city" continues to develop in a sustainable manner. We believe the conservation policy which we put forward is practical and sustainable, as it is based firmly on the principle of sustainable development.

Sustainable Development And the Wider Picture

46. The definition of sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs” is well known. In order to be effective, sustainable development has to be more than just a set of principles. There should be a strategy and a policy framework on sustainable development. In formulating such a framework, it is essential for Hong Kong to recognise that sustainability cannot possibly be achieved on our own. We are part of a bigger entity, both ecologically and culturally.

Susdev Council and Susdev Bill

47. In practical terms, sustainable development is about quality of life, about seeking to provide the same or better environment and resources for future generations. The Conservancy Association has championed the concept of sustainable development since 1979. The “Agenda 21 For Hong Kong” published by the Association in 1993 opened with the remark: “The catchword in environmental protection up to the next century would probably be sustainability”. We were much encouraged when in 1996 sustainability was made the theme of the government’s Third Review of the 1989 White Paper. The 1999 Policy Address was another big step forward as sustainable development was taken as a guiding principle in government policy making. In particular, the Association welcomes the strengthening of the institutional structure in support of sustainable development, that is, the planned establishment of the Chief Executive’s Council for Sustainable Development - a concept previously proposed by the Association and other green groups.
48. Although the Sustainable Development Council has not yet been established nine months after it was announced, we remain patient and would express our high expectations of the Council. We believe that to be effective, the Council should take the lead to formulate a Sustainable Development Strategy as a joint effort between the government and the community. Only a suitably formulated Sustainable Development Strategy can bring closer the prospects of sustainable development Hong Kong deserves in the 21st century.
49. In our view, one important aspect of this Strategy is the creation of a “Sustainable Development Bill” to provide an overall legal basis for sustainable development. The aim is to ensure that development take place with full regard to sustainability and the long term development needs of the territory in an integrated manner. Such a Bill will not only bring about environmentally acceptable development but also ensure that valuable resources of the SAR are conserved. It will also ensure

that the comprehensive conservation policy as described above will be effectively designed and implemented.

50. Like the Bill of Rights which provides the legal basis for the protection of human rights, a Sustainable Development Bill will not become another level of legal regulation, but rather a tool to ensure the integral nature of development and the SAR's long term interests. Just as the Bill of Rights uphold rather than diminish human rights, a Sustainable Development Bill would facilitate rather than stifle development.

Sustainable development – cross boundary dimension

51. Since 1981 the Association has been advocating joint cooperation with Guangdong in order to achieve sustainable energy, transport and water supplies. The same message was repeatedly reinforced in subsequent statements by the Association.
52. It is clear to us that Hong Kong is not a standalone system, economically, socially or ecologically. In our view, the government's land use strategy, the Territorial Development Strategy Review (TDSR), is flawed, in that it is not sustainable. Our sustainable development strategy must not merely be mitigating measures of environmental and ecological impacts arising from relentless development. There will be little role for sustainability if the assumption is that Hong Kong cannot control its own expansion, and that economic and population growth must continue within the territory of Hong Kong.
53. We submit that the development of Hong Kong under One-County-Two-Systems is not something that can be pre-planned. While Hong Kong's political status as a Special Administrative Region of China is assured for the next forty-seven years, how it relates to the Mainland as a community in its entirety is, and should be, very much an open issue, especially with the economic and social restructuring that can be anticipated with China's entry into the World Trade Organisation.
54. Hong Kong's economic integration with the Pearl River Delta is well known. But we will not live up to our duty as a Special Administrative Region of China if we cannot also contribute to a better quality of life for our partners on the other side of the boundary. We believe there is a very strong case, therefore, for more environmental cooperation between Hong Kong and Guangdong.
55. Accordingly, we would call for a mechanism to be established for the Hong Kong public to be involved in the dialogue between the Hong Kong and Guangdong authorities on cross-boundary environmental matters. For example, there should be clear responsibility and accountability in the institutional mechanisms for carrying out and monitoring the action plans and follow-up actions for the protection of Mirs Bay and Deep Bay, which should be made open to green groups and the public in order to engender meaningful discussion and action by the community.

56. The cooperation between Hong Kong and Guangdong over sustainable development solutions is a complex issue. We call on the SAR government to take up a more positive role and to involve the community in this important endeavour.
57. We suggest that one useful cross-border institution to be set up is a “Pearl River Delta Mayors’ Council” involving leaders of all the cities in the Pearl River Delta to coordinate their policies of conservation and sustainable development. Whereas the Guangdong Provincial Government may take the lead on province-wide policies, the fine-tuning and implementation of such policies are left in the hands of individual city administrations. A Mayors’ Council will undoubtedly enable Hong Kong to better and more efficiently promote cooperation among the cities in the Pearl River Delta.
58. The Conservancy Association will be happy to engage in further discussion with the government on this and other aspects of conservation and sustainable development.

The Conservancy Association

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THE CONSERVANCY ASSOCIATION SINCE 1968

The Conservancy Association was founded in 1968, the longest established local environmental group in Hong Kong. The goal of the Association is to promote the concern for ecology and the protection of the environment, leading to a sustainable ecological system in which all species may live in a harmonious way.

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The Conservancy Association Since 1968

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