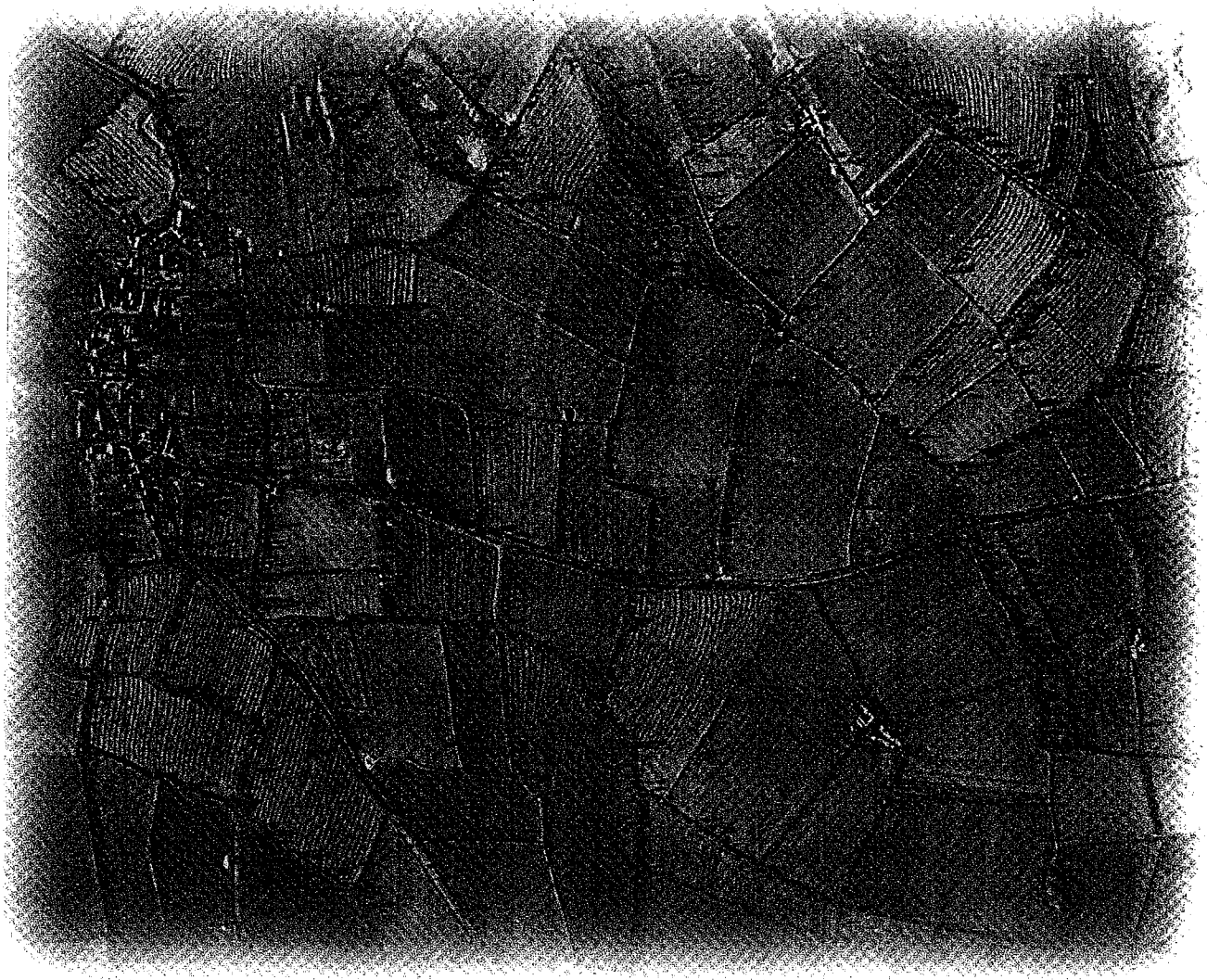


# Property and Values

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ALTERNATIVES TO PUBLIC  
AND PRIVATE OWNERSHIP



EDITED BY  
Charles Geisler and Gail Daneker

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# Vermont Housing and Conservation Board

## A Conspiracy of Good Will among Land Trusts and Housing Trusts

*James M. Libby Jr. and Darby Bradley*

Our current status as a place where beautiful wildlands surround healthy villages and a dynamic culture is something that has been bequeathed to us through the accident of history. Ours is not a task of preserving a pastoral relic, but of recognizing the present balance and figuring out how to make our own accommodations within the flux.

—John Elder, 1996<sup>1</sup>

### Introduction

In 1986, a political coalition of land conservationists and housing advocates formed the Vermont Housing and Conservation Coalition to lobby for a state fund to provide ongoing financial and technical support to nonprofits for protecting working farms and forests, natural areas, and historic resources, and for developing affordable housing. This coalition waged a successful campaign to obtain public resources for conservation and affordable housing by creating the Vermont Housing and Conservation Board, a unique quasi-public foundation that supports a network of community-based nonprofits throughout Vermont. With this success came exciting new models of property ownership, use, and tenure that strike a new balance between private interests and community values. This chapter tells the story of this effort and the lessons that can be drawn from the Vermont experience.

## Overview

Scholars and educators write about the confluence of culture and nature, the conflicts and opportunities arising from human interactions with the natural world.<sup>2</sup> Companions to this expression are thousands of people who work directly with nonprofit land trusts<sup>3</sup> to protect land in perpetuity and those who support them through membership, donations, and land gifts, and by forging new public policy. Land trusts range in size from The Nature Conservancy<sup>4</sup> with its national and global presence to the Richmond Land Trust, which protects farmland and riparian areas in one Vermont town.<sup>5</sup> They are found throughout the United States and use a variety of legal tools and community strategies to protect land for its agricultural, forestry, scenic, recreational, natural, cultural, historic, and archaeological value for generations to come.<sup>6</sup>

Related to the large family of land trusts are nonprofit organizations which develop housing that is perpetually affordable to residents. In this chapter we will refer to these nonprofits as housing trusts.<sup>7</sup> Housing trusts concern themselves with a spectrum of social issues—economics, food, health insurance, child care, jobs, education, affordable housing, and community investment. They focus on distribution of wealth and economic justice. They examine the relationship between landownership and suburban sprawl, urban blight, unemployment, abandonment of cultural and historic resources, racial and social isolation, and the dwindling investment in urban infrastructure, transportation, schools, grocery stores, and industry (Katz 1998). In response, they also employ a variety of legal tools and community strategies to protect homes, neighborhoods, and communities from unwanted economic and political forces.

This chapter is about the common interests kindling between these two movements, a development of particular significance in the state of Vermont. As such, it is a description of public policy and property rights in the interest of better use of urban and rural space and stewardship of community resources in a state known for experimentation. For most city residents, the day when farms, forests, and places to hunt and fish lay within walking distance is but a childhood memory. The development of land on the urban fringe has not only consumed many of America's best rural landscapes, but has also contributed to a loss of vitality in its city centers. The linkage of community development and land preservation addresses both rural and urban issues and could become the common ground that unites city and country dwellers throughout the United States. Nowhere is the experiment to forge the links between city and countryside more advanced than in Vermont. By connecting social, economic, and community issues with land protection, Vermonters may help lead the land trust movement in a new direction.

## The Development of Land Trusts in Vermont

Ethan Allen was Vermont's most famous frontier outlaw and land speculator, but he was not the only visitor who found peace and prosperity in Vermont's mountains. Settlers were attracted to this land between New Hampshire and New York by its forests, farmland, and trading routes to Canada and the British colonies to the south. First as an independent Republic and then as the fourteenth state admitted to the Union in 1791, Vermont's rugged but productive landscape was a good place to experiment with democracy and search for personal, political, and religious freedom (Bellesiles 1993). Early settlements consisted of commercial, residential, and public buildings clustered around town greens, surrounded by productive farm and forest land. In many places, this pattern persists today.

Those traditional settlement patterns, however, have come under increasing pressure. The burgeoning East Coast population following World War II, economic prosperity in southern New England, and the construction of the interstate highway system brought a new generation of residents and tourists to rural Vermont (Sherman 1991). By the early 1960s, people had started to outnumber cows. Subdivisions, recreation development, and land speculation began to change the look and feel of the place. In the early 1970s, Vermont enacted a series of regulatory and tax programs to guide growth and discourage ill-planned and speculative developments. Still, the feeling was that these initiatives alone would not be sufficient to stem the onslaught. Something more was needed to preserve the forested mountains, productive farms, and scenic beauty of Vermont.

That something was found in the land conservation movement. State and federal efforts to acquire large tracts of land as state and national forests began in the early 1900s but increased dramatically in the 1950s (State of Vermont 1995).<sup>8</sup> Private efforts began with The Nature Conservancy (TNC), which first became active in Vermont during the 1960s. TNC helped the state acquire several large tracts of forest land along the main ridges of the Green Mountains. It also enabled the University of Vermont to expand its system of nature preserves. By the late 1990s, TNC had been directly involved in the acquisition and protection of over 120,000 acres of land.

In 1977, Rick Carbin, then the executive director of the Ottauquechee Regional Planning Commission, was searching for new ways to help communities maintain their vitality and sense of identity through novel types of property ownership. Many towns in his region had adopted town plans, but few were willing to take the necessary steps, through zoning or other means, to put those plans into place. Carbin's vision included three parts: a land trust that would protect land through conservation easements voluntarily negotiated with

landowners; a housing organization that would build affordable housing for low and moderate income Vermonters; and an economic development group that would create job opportunities appropriate to the scale of Vermont towns. The economic development group never took off, although some of the ideas were picked up with the creation of a state sustainable jobs fund program<sup>9</sup> and the growth of the socially responsible banking movement later.<sup>10</sup> The housing organization had some success, creating affordable housing for seniors in Woodstock and other communities in the early 1980s. The principal success was in the formation of the Ottauquechee Regional Land Trust, which a decade later would become the Vermont Land Trust (VLT). And two decades later, Carbin's social vision is very much alive at VLT.<sup>11</sup>

Because TNC was already focused on protecting lands of outstanding ecological importance, VLT concentrated on conserving productive farm and forest land. In the early days, it was assumed that most conservation projects would result from charitable donations of conservation easements (development rights) by landowners who could take advantage of the tax deduction. There was no money available to purchase development rights, but with federal tax rates at a very high level, charitable donations of easements could be attractive to wealthy landowners.

Early on, however, Carbin and his Board of Trustees realized that they could sometimes intervene in the marketplace and achieve their conservation goals without relying solely on charity. When an important property in South Woodstock came under contract for sale in 1980, VLT, with \$5,000 in the bank, exercised its right to match the developer's offer of \$1 million.

Using an ingenious system of "charitable creditors"<sup>12</sup> to spread the risk of loss among a large group of South Woodstock residents, VLT bought the property, created a limited development plan that preserved the essential open space, and resold the property subject to conservation easements.<sup>13</sup> VLT managed to recoup its entire investment, planning, and holding costs in the resale, so it never had to call upon the charitable creditors to make up a loss. With that, VLT was off and running.

VLT placed great emphasis on partnerships with local communities and state and federal agencies. One of its first major efforts was to act as a liaison between the National Park Service (NPS) and landowners along the Appalachian Trail in southern Vermont. NPS wanted to establish a permanent trail corridor with a protective buffer. VLT's role was to help the parties negotiate the trail's location and the terms of a conservation agreement without the use of condemnation. Initially NPS planned to acquire a 200- to 1,000-foot-wide corridor outright. Realizing that this would cause a political uproar, VLT persuaded NPS to accept a footpath right-of-way and conservation easements to reach its objectives if the landowner was unwilling to sell a fee interest. Today, protection

of the Appalachian Trail from Maine to Georgia is virtually complete, and the Green Mountain Club is working on protection for The Long Trail, Vermont's premier hiking trail, which runs from Canada to Massachusetts.

VLT also helped to promote the use of conservation easements by the Vermont state government. When the owners of a 1,000-acre tract in Tinmouth wanted to conserve their land, VLT persuaded the State Department of Forests, Parks, and Recreation to jointly accept an easement. State agencies had been given the authority to accept easements since 1968 but had not accepted any due to a concern about stewardship responsibilities (including the administrative cost of monitoring and enforcing easements). In co-holding the easement with the State, VLT agreed to take on the principal stewardship responsibility, including annual monitoring visits. In the event a violation of the easement occurred, the State would stand ready to help enforce the restrictions. The practice of co-holding of easements by the State and land trusts became commonplace after the establishment of the Vermont Housing and Conservation Board in 1987.

### **Birth of the Vermont Housing and Conservation Coalition**

While other states began to experiment with programs to purchase development rights to conserve farmland and open space in the 1970s and 1980s, there was virtually no acquisition money available in Vermont. In 1984, an agricultural policy task force recommended that the State establish a fund to acquire development rights on farms. Vermont was contending with a \$35 million budget deficit at the time, so the idea was placed on the back burner. Similar proposals were advanced during the 1985 and 1986 legislative sessions, but died for the same reason. By the summer of 1986, however, New England's economy was booming and real estate prices were escalating. Land speculation was rampant. It was at that point that VLT and TNC realized that they could not achieve their objectives of protecting farms, productive woodlands, and outstanding natural areas on a continuing basis without financial assistance from the State government. At the same time, they recognized that housing trusts were contending with the same rising market prices, which were making housing less affordable. They also recognized that housing, open space, and the working landscape were all essential parts of livable communities. The idea to form a coalition was born.

VLT and TNC had already hired a lobbyist to help draft and promote legislation that would create a State trust fund to conserve land. They decided to invite affordable housing advocates to build a broader coalition so the fund could promote affordable housing as well. Initially, there was a good deal of



concern among the housing groups, who felt that the conservation organizations might use them politically and then soak up all the available funding for land protection. Some land conservationists were leery about working with homeless advocates who engaged in public demonstrations and civil disobedience to publicize housing problems. However, the groups began to gain confidence in each other, and by the start of the 1987 legislative session, the Coalition had solidified. Its timing proved to be perfect. A speculative boom had fattened the State's coffers. Governor Madeleine Kunin was looking for a bright new initiative to begin her second term in office. Her cabinet was comprised of energetic and dedicated professionals who were willing to take risks and would work with the Coalition. And Vermonters were ready for the enormous appeal that the Coalition would offer. After all, as Senator Scudder Parker, chair of the Finance Committee, said, "it was the first time I've seen a low income advocate and a farmer supporting the same bill" (Libby 1990).

The rest is history but not widely known. In 1987, Vermont legislators appropriated \$3 million in state funds to purchase perpetual interests in land for affordable housing and conservation and created the Vermont Housing & Conservation Board (VHCB). The following year, after a series of public hearings around the state on the future of Vermont<sup>14</sup> (State of Vermont 1988), the Legislature appropriated an additional \$20 million and dedicated a portion of the property transfer tax receipts to the fund. Since that first appropriation, VHCB has been a line item in the state of Vermont's budget, receiving appropriations of general and capital funds from the General Assembly each year. Economic recession returned in the early 1990s, making it more difficult to sustain VHCB's funding. However, despite difficult economic times and lower budgets, the State's commitment to land conservation and affordable housing never wavered.

## Growth of Housing Trusts in Vermont

A key feature of affordable housing is political advocacy on a state and federal level. Federal agencies have helped millions of low and moderate households find affordable housing.<sup>15</sup> State housing finance agencies and private lenders have used homeownership programs to reduce the cost of financing. But even with the billions of dollars appropriated to the Department of Housing and Urban Development (HUD) during the 1970s, the need for affordable housing has always exceeded the resources available. And with the election of President Reagan in 1980, federal subsidies for affordable housing declined and federal tax reform made rental housing less attractive to investors. This widened the affordability gap for tenants and caused state housing coalitions to increase their legislative activity. The affordable housing crisis of the 1980s stimulated

interest in housing trusts in Vermont. Before the Coalition began its work, only a few Vermont nonprofits were rehabilitating multifamily buildings for occupancy by low income households. As a result of political advocacy in the 1980s, there are now regional housing trusts throughout Vermont engaged in this work.<sup>16</sup>

In the mid-1980s, a handful of events changed the affordable housing landscape in Vermont. The City of Burlington capitalized and supported the first housing trust in Vermont structured as a “community land trust”<sup>17</sup> based on the model developed by the Institute for Community Economics<sup>18</sup> (ICE 1982). When owners of federally funded rental housing projects prepaid federally subsidized mortgages, raised rents, and threatened to displace hundreds of low income Vermonters, residents of subsidized projects and mobile home parks began to organize. Housing advocates and legal aid lawyers coined the phrase “at-risk housing” and posed the specter of widespread homelessness. The Vermont Legislature enacted comprehensive landlord-tenant, condominium conversion, and fair housing laws. These events set the stage for community-based development of affordable housing by nonprofits throughout Vermont and ownership options that were neither public nor private in the strict sense. And they illustrated the importance of building perpetual affordability into all housing production programs dependent on public funds. Learning a lesson from land trusts and listening to ICE (Libby 1990), Vermonters chose to build security of tenure into VHCB’s housing programs (contrasted with displacement due to prepayment of mortgages) and perpetual affordability became part of the public’s social “return on investment.”

The Vermont experience reflects both relentless advocacy by political coalitions on behalf of the homeless and mastery of real estate development techniques by housing trusts. Since the 1980s, the new feature of this work was that “developers” were a network of community-based nonprofits. VHCB played a key role in supporting local groups interested in developing perpetually affordable housing by providing them with grants to organize, incorporate, and complete their first projects. VHCB worked closely with regional nonprofits like the Institute for Community Economics to develop a network of housing trusts. At the same time, the Neighborhood Reinvestment Corporation worked with homeowners to establish local housing services programs to rehabilitate houses and revitalize neighborhoods. And as Congress cut and underfunded housing production programs, VHCB funds were even more important in building nonprofit development capacity and supporting affordable housing projects.

A key requirement is that the housing developed with VHCB assistance must be affordable to the residents in perpetuity.<sup>19</sup> This has financial implications, since few housing trusts use financial projections that go beyond the term of the mortgage financing, as well as legal implications, since the owner is

required to plan for occupancy by future households. It also means that projects have much less ability to carry debt service, and this encourages the developer to locate more equity. VHCB funds are used to reduce the development cost of the project (rather than subsidize operating costs) and are often grants rather than loans. Where projects can handle debt service, VHCB loans are unconventional (low or no interest, flexible, long term, and convertible to grants). The loans are often designed to fit the project needs and population served rather than revolve back to VHCB. Thus, VHCB cannot count on substantial amounts of loan repayments to recapitalize its fund. It must wage an annual legislative campaign for state appropriations (with a lot of help from the Coalition) and take advantage of opportunities to compete for federal funds.

To achieve the affordability goals, virtually every housing project matches public funds with private foundation grants, charitable contributions, and other community resources. And both the financing and the ownership of housing projects are governed by new legal mechanisms that maintain community control, affordability, and occupancy by those most in need of housing. These mechanisms include ground leases and housing subsidy covenants filed in the land records, which give housing trusts the right to control occupancy and limit costs. For homeownership units (houses and condominiums), housing trusts have the option to purchase at a price that is based on a limited appreciation formula first developed by ICE. This option is usually exercised by another eligible household and prevents rapid appreciation due to market conditions from making the house unaffordable to the next buyer. On rental projects and mobile home parks, covenants control rents charged by the nonprofit owners so they are based on actual costs and are affordable over the long term. Perpetuity is now part of the state of Vermont's housing policy, and the legal mechanisms developed protect the residents, the community, and the investment. People, policy, and real estate blend together to form a new stick for the bundle of rights that reflects a new social agreement between the community and its residents.

By 1995, housing trusts were active in every region of Vermont. Social service agencies began to rely on housing trusts and VHCB to develop "special needs" housing to complement other social programs. Housing trusts began to take advantage of the federal low income housing tax credit (LIHTC) to encourage private investment in affordable housing through the use of limited partnerships. Though the LIHTC added a level of complexity, cost, and challenge to this work, it allowed housing trusts to expand their production and rehabilitate historic buildings located in village centers including commercial space.

In Hardwick, a small town on the edge of the Northeast Kingdom, nonprofits worked with local government to construct a new building in the downtown district after a devastating fire destroyed a block of historic buildings, and they

rehabilitated existing historic buildings for affordable rental housing. In Burlington, the Burlington Community Land Trust (BCLT) worked with local artisans to provide residential and performance space in an old warehouse. BCLT also helped the local food bank, Legal Aid, health center, and senior center find secure office space in the neighborhoods and purchased and razed an old building to develop a small, neighborhood park. This focus on investment in downtowns and village centers brought new opportunities to expand housing constituencies and develop new collaborations and directions.

## **Lessons from Vermont's Experience**

After 11 years, there is little doubt that Vermont's Housing and Conservation Board has made substantial progress toward the goals enunciated by the legislature in 1987. More than 5,000 units of perpetually affordable housing are now in existence. Over 170,000 acres—3 percent of the state's privately owned open space—have been permanently conserved (VHCB 1999). And the work continues with growing public support, despite the economic recession of the early 1990s and cutbacks in federal housing funding, through a network of private housing and land trusts active in all regions of the state. What are the lessons that can be drawn from Vermont's experience? What have been the strengths of the VHCB program? Where are the weaknesses? and What can be done to overcome them? Vermont, because of its small size, accessible political institutions, and lack of racial diversity may be different from most states. Still, the lessons that follow have broad application elsewhere in the United States.

### ***The Power of Coalitions***

The principal key to Vermont's success has been the coalition of organizations with seemingly contradictory objectives: housing versus open space and the experience, skill, dedication, and good work of their members (Libby 1990).<sup>20</sup> The original idea for a state trust fund was to protect farmland. Later, the proposal was expanded to include protection of wildlife habitat, recreation areas, and historic buildings. Despite a clear need to protect these lands from the pressures of development, it was not until affordable housing was added to the list that the idea captured the attention of the governor and legislative leaders. With this political support and favorable economic times, VHCB was established in a single legislative session.

The wisdom of building a coalition to advocate for housing and conservation has been proven numerous times as program opponents pursued a strategy of divide and conquer. Political priorities, and with them spending priorities, tend to ebb and flow. In the late 1980s, Vermont's dairy industry was

struggling, and legislators wanted to spend more money on farmland conservation. A few years later, when Vermont sank into recession, affordable housing seemed to have greater political appeal, because the projects kept carpenters and materials suppliers busy. At any given time, a land trust or housing trust would find itself arguing against a legislative proposal to earmark more funding for its own area of interest. There seems little doubt that had VHCB been two separate programs, or had the Coalition members not continued to speak with a common voice, VHCB would not have survived the political and economic turmoil of the past decade.<sup>21</sup>

The challenge today is to broaden the Coalition beyond the interests of housing, farming, forestry, wildlife, recreation, and historic preservation. To sustain and revitalize itself, the Coalition must recruit support from other interest groups in Vermont. This is already beginning to take place. Some of the older housing trusts have moved beyond strict housing needs and have become engaged in neighborhood revitalization and community development. Incubator space for new businesses, pocket parks, community gardens, restoration of contaminated sites, and renovation and reuse of historic buildings are contributing to the vitality of Vermont's city and village centers. Some municipal officials now contact both housing and land trusts for their expertise in real estate transactions (their ability to act quickly, their community orientation, and their willingness to act as interim owners while municipalities seek voter approval for ownership and use). This approach was used successfully to buy 40 key acres on the Burlington waterfront from the Central Vermont Railway and raze a building to create a more livable neighborhood in the North End. With growing recognition of the links between urban decay, suburban sprawl, growth pressures, and threats to Vermont's countryside, state and local leaders are talking about the need to encourage reinvestment and revitalization of community centers and are recognizing the role that nonprofits can play. Housing trusts, with their base of community support, volunteers, and professional staff, are poised to play a key role.

For the land trust community, there is a realization that economic and community health is as important as environmental health to Vermont's rural communities. Land trusts are looking for ways to incorporate other societal goals into their projects. For example, in its 700-acre Brassknocker Farm project in East Craftsbury, the Vermont Land Trust donated a parcel of land within the village for the construction of a 24-unit elderly care facility. This created new employment opportunities for this tiny village and allowed local elders to live out their lives within their own community. In 1997, VLT and The Nature Conservancy purchased 26,000 acres of forest lands in northern Vermont from Atlas Timber Company to ensure continued timber harvesting on a sustainable basis. A risky and unprecedented step for both organizations, the Atlas purchase reflected a great opportunity to connect people, industry,

and communities to land conservation. The forest products industry, which is Vermont's largest employer in the manufacturing sector and is vital to the economic health of many rural communities, is potentially threatened because hundreds of thousands of acres of northern forests are up for sale in New England.

In December 1998, land trusts met with the Vermont Food Bank to discuss whether to start a farm to grow vegetables for distribution to food pantries, meal sites, shelters, and senior centers.<sup>22</sup> And the proposed purchase of the Champion Lands in August 1999, discussed in the next section, increases the likelihood that land trusts will strengthen their ties to individuals, businesses, and towns in rural Vermont dependent on large tracts of forest lands for sustenance, economic survival, and recreation. So, the Coalition continues its conspiracy of good will and good work by broadening its base and continuing to complete good, successful projects which reflect values that are important to Vermonters.

### *The Power of Partnerships*

Partnerships now characterize Vermont's housing and conservation programs. At all levels—local, state/nonprofit, nonprofit/local, state/federal, for-profit/nonprofit, and statewide land trust/local land trust—partnerships are being used to achieve VHCB's goals. Take Vermont's goal of farmland conservation. VHCB has a conservation staff of three people, far too few to respond to the 100–150 inquiries received annually from farmers who are interested in selling development rights. The Department of Agriculture, Vermont Land Trust, Upper Valley Land Trust, Addison County Community Trust, and others do the outreach work to give farmers needed information about the program, evaluate the chances that the farm will successfully qualify for funding, prepare the application, serve as liaison between VHCB and the farmer, and, if the application is successful, take the parties through the closing process. In many cases, if the farmer is working with a local land trust or the Department of Agriculture, the Vermont Land Trust provides technical and legal support to the parties.

The partnership between the State and the nonprofit community extends to funding. In farm projects funded in VHCB's first years, most of the money used to purchase development rights came from the state legislature. As the success of the program grew, VHCB and its nonprofit partners began to attract new sources of funding. By 1998, for every \$4 spent on farmland conservation, \$1 comes from the state, \$1 from the federal government block grant programs administered by VHCB, and \$2 from private sources. This allows VHCB to complete 25–35 farm protection projects annually, even though state funding has been cut nearly in half over the past seven years.

Partnerships extend to the stewardship of the conservation easements as well. In farmland projects, the easement is co-held by the sponsoring land trust, Department of Agriculture, and VHCB. The land trust is responsible for monitoring the easement and being the principal contact if the owner needs any approvals or has questions about the terms of the easement. In the event there is an easement violation that is not corrected through voluntary means, the state can join the land trust in bringing an enforcement action against the violation. Having easement co-holders also protects against any single party amending the easement or permitting some unauthorized use without the consent of the others.

The most recent example of a novel and dynamic partnership is the early December 1998 announcement that The Conservation Fund (TCF) had reached agreement with Champion International to purchase 300,000 acres of the Northern Forest in Vermont, New Hampshire, and New York for \$76 million. In what has been called the largest partnership between public and private groups in U.S. history (Daley 1998), the land will be managed for sustainable harvesting of timber and used for recreation (hunting, fishing, hiking, and snowmobiling) and conservation. In Vermont, TCF (in partnership with the Vermont Agency of Natural Resources, the U.S. Fish and Wildlife Service, VLT, and TNC) plans to raise \$26.5 million, starting with a special legislative appropriation of \$4.5 million to VHCB, which Governor Dean supports. The Champion Land represents the largest private land holding in Vermont and includes the Nulhegan Basin, which contains 16 rare or exemplary natural habitats and species and the state's largest deer-wintering area. The deal ends a year of speculation about the land's fate, which has been a critical underpinning of the Northeast Kingdom's timber-based economy (Bazilchuk 1998). Though many commentators have opined about the importance of the land,<sup>23</sup> equally important are the partnerships involved with both the project development and funding and the land trust members who are helping TCF reach its fundraising goals. They show that successful partnerships on the community level lead to larger partnerships and produce new models of land ownership, management, public use, and stewardship.

Partnerships have been equally important in the housing field, especially when communities see affordable housing as part of the larger plan for community and regional growth. In the late 1980s, partnerships developed between residents of federally financed rental projects and teams of professionals assembled by housing trusts. Working with bankers, lawyers, syndicators, and nonprofit developers, 663 families avoided displacement by completing resident buyouts at projects named Dogwood Glen, Northgate, Highgate, Applegate, Westview, and Mountain View. All received financial assistance from VHCB and fulfilled the statutory priority to "prevent the loss of subsidized

housing.”<sup>24</sup> Northgate in Burlington was the first housing project in the nation approved by HUD for resident-purchase under a new federal law and proved to be one of the most complicated real estate transactions VHCB ever financed; the closing binder is 6 inches thick and contains 128 separate legal documents. At least a dozen lawyers were present. As housing trusts developed throughout Vermont, projects and partnerships changed to reflect new circumstances and funding priorities.

With significant input and work from housing trusts, VHCB adopted numerous housing policies and project selection criteria. Those policies now favor purchase and rehabilitation of existing buildings in village centers over new construction in the countryside or suburbs. Rehabilitation may be more expensive and more difficult than new construction, but this priority has encouraged new partnerships among housing trusts, historic preservationists, and municipal officials working to revitalize Vermont’s downtowns. Since Vermont has thousands of historic buildings eligible for listing in the National Register of Historic Places, this effort has much potential and has already begun to bear fruit. VHCB helps housing trusts restore and rehabilitate many outstanding historic structures for affordable residential use, often using historic tax credits and other public funds that leverage private funds raised by groups like the Preservation Trust of Vermont.<sup>25</sup> By obtaining HUD funds to reduce lead-based paint hazards in older homes occupied by children, VHCB has fostered new professional relationships among health care professionals, housing trusts, private landlords, and advocates for children. Together they played an important role in supporting state legislation requiring apartment owners to perform essential maintenance practices to reduce lead hazards in older residential units.<sup>26</sup> These efforts have paved the way for new partnerships while making downtowns more livable and buildings healthier places for children.

## **Obtaining and Administering Federal Funds**

An important VHCB function is the administration of certain federal funds used in housing and conservation projects. These programs include HUD funds for nonprofit organizational costs, affordable housing, and reducing lead paint hazards; AmeriCorps grants to hire members to educate and organize community resources for tenants, homeowners, the homeless, and their families; Housing Opportunities for People with AIDS (HOPWA) grants to help persons infected with the AIDS virus; and federal farmland protection dollars from the U.S. Department of Agriculture and the Natural Resources Conservation Service. In most of these cases, neither the nonprofit partners nor the state agencies charged with housing or natural resource preservation would be able to obtain or administer these funds directly. Instead, the State of Vermont has



taken advantage of VHCB's flexibility as a quasi-public instrumentality (not part of state government) to seek federal funds and has strongly supported VHCB's use of competitive grants received.

VHCB's track record in winning and administering federal funds is impressive and allows VHCB to match state and private funds. This attitude is also found on the nongovernmental side of the partnership. Both land trusts and housing trusts have had great success convincing private foundations to support important projects, and the combined impact of the public (VHCB) and private (trusts) work strengthens the activities of both. Foundation funds are not limited to the large, high-profile deals like Atlas Timber and Champion International but are used for community projects that protect ball fields, scenic and riparian areas, and farms of local importance, close to human activity and commerce. Where local partners are matching public funds and generating strong community support, VHCB's competitiveness for future federal funds improves. And foundations smile when their private funds are matched by the public.

## The Problem of Perpetuity

While protection of the resource is intended to be perpetual and justifies public and private investment, the legal and stewardship lessons surrounding perpetual easements are more complex. Since perpetual restrictions are disfavored in common law, legal hurdles must be overcome by new laws enabling new models of ownership. Historically, legal mechanisms to buy, sell, lease, and own land encouraged the sale of privately-owned land for fair market value in a manner that reflected the economic, social, and power structure of society. Although agricultural leases were recognized by English common law, separating development rights from the fee simple interest to protect the land for agricultural use in perpetuity is a relatively new idea. In Vermont, sale or donation of development rights and conservation restrictions by a deeded easement was codified in 1977.<sup>27</sup> This gave land trusts an important tool to reshape the bundle of rights and give landowners new options to sell real estate while ensuring long-term protection for traditional agricultural and forestry activities—a commercial activity entirely consistent with the community goal of protecting the working landscape.

Other fundamental principles of American jurisprudence and English common law, such as the rules against perpetuities and unreasonable restraints on alienation, conflicted with the goal of making housing affordable in perpetuity. These rules were overcome by Vermont lawyers who developed 99-year, renewable ground leases with resale restrictions (ICE 1982) and the enactment of housing subsidy covenant legislation in 1989.<sup>28</sup> These allowed housing trusts to make a meaningful promise to tenants that they would not be subject to

displacement and allowed first-time homebuyers new ownership options and mortgage financing.<sup>29</sup>

These new legal tools (conservation easements on farm and forest, facade easements on historic buildings, ground leases, and housing subsidy covenants) reflect a choice by Vermonters to balance community values, market forces, and private interests. The new tools do not interfere with commerce: the land is still farmed, the forests are harvested, and houses and condominiums are bought, sold, and occupied. The sale of development rights allows farmers to convert land to cash and reinvest the proceeds in the business, plan for retirement, or transfer the farm to a young farm family without growing subdivisions.<sup>30</sup> These private transactions protect both the natural and the built environments in a manner that will benefit many generations of future Vermonters.

Another difficulty with perpetual conservation easements and affordability covenants is a practical one: the trusts must care for and enforce the community's interest for a very long time. The business of perpetual sustainability is a significant challenge to land trusts. In virtually every conservation easement project, money is raised for a permanent stewardship endowment fund with the income used to monitor, enforce the easement, and educate future owners. In the case of fee ownership, an endowment will help support management of the property. Some organizations have taken the step of placing their stewardship endowment funds in a third party trust, thereby assuring professional management of investments and greater protection from the claims of creditors. Large land trusts preparing for legal enforcement and seeking additional funds for stewardship endowment through capital campaigns and planned giving are advising small land trusts to do the same.

In the long run, stewardship of conservation easements will represent a significant burden. There are currently more than 700 easements in effect in Vermont, a number that is increasing by 100–120 easements annually. Either VHCB or the land trust often retains a right of first refusal and therefore must track changes in ownership. Where the land is still owned by the person who originally sold or donated the easement, easement violations are unlikely. Problems will come with future generations of owners who may not agree with the conservation purposes of the easement. As land trusts grow in number, stewardship responsibilities will become an even greater challenge for the whole movement.

The problem of longevity and stewardship is acute for the affordable housing community. Most housing trusts in Vermont are less than 10 years old, but they have already accumulated a significant number of housing units that must be looked after, including buildings that are subject to deterioration. They have dedicated staff, substantial community support, members, active volunteer boards, professional property managers, and access to public funds. Yet most

housing trusts are understaffed and undercapitalized and may be unpopular in some neighborhoods or communities. Most housing trusts have not developed a strong membership base and extensive links with foundations and private funding sources. Substantial progress must be made in the next 3–5 years to remedy the situation, so that housing trusts and advocacy do not become vulnerable to major shifts in political leadership.

As Vermonters continue to talk about maintaining healthy communities, controlling commercial development, and limiting sprawl, housing trusts have a real opportunity to expand their work and broaden their base of support. And they have much to learn from land trusts in Vermont,<sup>31</sup> which, over the last 25 years have developed relatively strong and stable organizations and realistic plans for endowing project and stewardship work well into the next century.

## **The Real Story Is about People**

As the number of projects continues to mount, the larger impacts on the community are beginning to be revealed. In Brattleboro, the work of the Brattleboro Area Community Land Trust in refurbishing the dilapidated Canal Street district contributed directly to the decision of a major employer to stay in Brattleboro and Vermont. In the Champlain Valley, Northeast Kingdom, and elsewhere, large blocks of conserved farmland are beginning to take shape and have given members of the farm community renewed faith in the future of their industry. In Montpelier, rehabilitation and demolition/replacement of historic buildings along the North Branch revitalized a neighborhood, and the protection of two natural areas completed an important regional trail network.

In Burlington, Vermont's largest city, located on Lake Champlain, the public uses 40 acres of lakeshore protected from development in perpetuity; the Old North End has regained vitality and health due to the work of housing trusts and the city with substantial public and private investment; and the residents of Northgate Apartments put together a \$20 million real estate deal that allowed them to buy their 336-unit home and avoid displacement. In 25 mobile home parks throughout Vermont, hundreds of households have potable water, safe sewage disposal, affordable lot rents, and security of tenure. In Newbury, a small town on the New Hampshire border, community groups have built elderly housing, revitalized the downtown district, and protected important blocks of farmland for agricultural use and canoe camping up and down the Connecticut River. In Bennington and Barre, housing trusts and social service agencies are breathing life into abandoned neighborhood schools to house frail elders and support Head Start parents. In Windsor, a town surrounded by water, a prominent eighteenth-century home was converted to shared housing for the elderly, a 46-acre lake and adjoining natural area were added to a town

park, and Oak Knoll Farm was protected for future agricultural use. Throughout Vermont in large state parks and beaches, small municipal conservation areas, and nature preserves owned by TNC, Vermonters are witnessing the important housing and conservation work done by state agencies, land trusts, and housing trusts with VHCB financial and technical assistance.

Along with statistics about units of affordable housing and acres of land conserved,<sup>32</sup> it is important to remember how VHCB has affected the lives of people and communities. Each project has a personal story: the single mother who now has safe housing and access to good schools for her children; the young farm couple who, after years of renting land, are finally able to purchase their own farm; the children who will always be able to use the local swimming area; the senior citizens who now live in restored historic buildings on the village green. In each case, lives have been changed and dreams have been realized. With the Champion deal, VHCB's impact will be measured by the health and sustainability of ecosystems, deeryards, watersheds, songbirds, game species, wildlands, mountain peaks, and forests and Vermont's ability to sustain traditional uses of a geographical region and economic sector of this rural state.

Yes, the real story is about people and where they live, work, raise families, recreate, and search for peace and relaxation in a crazy world. And it is about their relationship to land that they use (but need not own) and the property rights and values embodied in conservation and public access easements intended to balance and protect a complex bundle of interests, natural and human, economic and social, private and public.

## Conclusion

One could say that for Vermont, the stars have been in alignment for land conservation and affordable housing. A combination of strong political support, a network of nonprofit organizations, good economic conditions (for at least part of the time), luck, and a spirit of collaboration and partnership at all levels have produced impressive results in a relatively short period of time. And those successes have caused other people and interest groups in society to see the importance of housing and conservation to their own communities, industries, and families.

These stars won't remain aligned forever. Downturns in economic conditions, new political leaders who give these needs lower priority, changes in funding sources, and problems of easement stewardship and property management will cause headaches in the future. But the foundation that has already been built, and the enormous degree of public good will that has resulted, give us hope that regardless of which way the political and economic winds blow,

the public will continue to support the efforts of these and other organizations to improve the lives of the people and communities of Vermont.

## Notes

1. At Vermont Land Trust's annual membership meeting on July 19, 1996, Middlebury College professor John Elder used these words to discuss the relationship between human culture and natural history.
2. One need only read *Orion*, a quarterly publication of the Orion Society and the Myrin Institute, to appreciate the contemporary literature, art, and poetry exploring this relationship.
3. In this chapter, we will use the term "land trusts" to mean nonprofits with tax-exempt status under the Internal Revenue Code that as part of their mission work to conserve land by undertaking or assisting direct land transactions—primarily the purchase or acceptance of donations of land or easements. According to a survey conducted by the Land Trust Alliance in 1998, there are approximately 1,213 land trusts operating throughout the United States, Puerto Rico, and the Virgin Islands. The largest number exists in New England (417), but the largest percentage increase during the 1990s took place in the Rocky Mountains, Southwest, and South.
4. The Nature Conservancy has over 900,000 members; has protected over 10,000,000 acres in the United States and Canada; has 1,600 preserves, which is the largest system of nature preserves in the world; and actively works with conservation organizations and governments outside of North America.
5. Located 10 miles southeast of Burlington, Richmond has a population of 4,000. The state of Vermont has a population of less than 600,000.
6. Other tax-exempt, nonprofits like the Preservation Trust of Vermont (PTV), which protects outstanding historic buildings, and The Archeological Conservancy (TAC), which protects prehistoric Native American sites and sites from the historic period (1600 to present) from destructive development, have modified legal tools developed by land trusts to achieve their goals. And in Vermont, both PTV and TAC are beginning to work closely with land trusts and community groups to fulfill common goals through real estate acquisition.
7. The fact that housing trusts construct, rehabilitate, or purchase housing to make units perpetually affordable is a critical distinction and a common link to land trusts. In Vermont, housing trusts receiving assistance from the Vermont Housing and Conservation Board (VHCB) must demonstrate that the housing will continue to be affordable for successive residents to fulfill VHCB's statutory mission. Nationwide, an important cate-

gory of housing trusts includes the 120 local and regional nonprofits set up as “community land trusts” based on the model developed by the Institute for Community Economics in Springfield, Massachusetts.

8. The State of Vermont has a long history of conserving lands for public benefit. However, though it has been active in acquiring conservation lands since 1909, the 1960s and 1970s represented the peak years in terms of acres purchased (State of Vermont 1995).
9. In 1995 Vermont adopted a sustainable jobs strategy and a loan fund to “create quality jobs that are compatible with Vermont’s natural and social environment,” Sustainable Jobs Fund Program 10 Vermont Statutes Annotated, chapter 15A.
10. Both the Vermont National Bank, a commercial lender located in Brattleboro, and the Vermont Community Loan Fund, a nonprofit with tax-exempt status located in Montpelier, have loaned funds to affordable housing and economic development projects throughout the state.
11. “The mission of the Vermont Land Trust is to protect those productive, recreational, and scenic lands that help give Vermont and its communities their distinctive rural character.” And VLT’s 1998 annual report begins by asking the question, “To the people, communities, and industries that have been affected by it, what does land conservation really mean?” (VLT 1998).
12. Supporters are approached and asked whether they will pledge or loan a small amount to cover project costs if sufficient funds are not raised through donations, local support, and sale proceeds if the parcel can be sold with conservation restrictions in place. Where VLT succeeds in its fundraising efforts, the pledges/loans are never collected but if there is a shortfall, VLT has a way to offset the gap between project costs and income.
13. A conservation easement is a type of land deed, a legal document entitled “Grant of Development Rights and Conservation Restrictions,” which is donated or sold to a land trust or public agency. A conservation easement specifically states how much, if any, future residential or commercial-development can occur on a property. It also places restrictions on the future uses of a property’s natural resources (i.e., farmland, woodland, water, wetlands, and/or wildlife) by describing what uses are permitted and what uses are restricted.
14. In September 1997, Governor Kunin launched the Governor’s Commission on Vermont’s Future (the “Costle Commission”) to assess the concerns of Vermont’s citizens on the issue of growth, to establish guidelines for growth, and to suggest mechanisms to help plan Vermont’s future. Thousands of Vermonters attended public hearings and hundreds more wrote to describe those values they held dear and their ideas on how to

maintain those qualities into the future. Commission recommendations were based on four broad goals springing from these values (State of Vermont 1988): to maintain a sense of community; to support our agricultural heritage—the working landscape; to protect environmental quality; and to provide opportunity for all Vermonters to obtain a quality job, a good education, and decent, affordable housing.

15. The term “affordable housing” has two widely accepted definitions. Rental housing is considered affordable if tenants pay no more than 30 percent of their gross income for rent plus utilities (i.e., heat, electricity, gas). This definition is used by most governmental agencies administering federal housing funds. Homes (detached dwellings, condominiums, mobile homes) are affordable if purchasers pay less than 35 percent of gross income for principal, interest, taxes, and insurance.
16. In 1980 there were 3 nonprofits actively developing housing on a regional basis in Vermont. Now there are 20, many receiving financial and technical assistance from VHCB.
17. As discussed in chapter 10 of this book, community land trusts are nonprofit corporations with 501(c)(3) tax-exempt status that are governed by a three-part board (residents, general, and public trustees) and which build or buy houses that will be affordable to residents in perpetuity. For single-family deals, CLTs usually own the land (ground) and lease it to an eligible household, which obtains mortgage financing to buy the house (improvements); the ground lease contains a resale formula which shares appreciation in the house between the owner and the CLT so that the purchase price, at the time of resale, is affordable to the next household. CLTs are membership organizations, and they often take on other community development projects like rental housing and assisting local businesses and social service agencies in finding secure affordable space to rent or buy (ICE 1982).
18. Though ICE has emphasized single-family homes subject to resale restrictions that maintain affordability, it is an important voice for a national housing policy that features “permanently affordable resident or community controlled” housing (ICE 1995).
19. VHCB’s enabling legislation contains a statutory priority for “affordable housing [which] . . . prevents the loss of subsidized housing units and will be of perpetual duration.” Housing and Conservation Trust Fund Act, 10 Vermont Statutes Annotated, chapter 15, section 322.
20. The Coalition included the Low Income Advocacy Council, Affordable Housing Coalition, CAP Directors Association, Coalition of Vermont Elders, Vermont Tenants Inc., Farm Bureau, Legislative Committee of Northeastern Cooperative, Rural Vermont, Vermont (formerly Ottaque-

- chee) Land Trust, The Nature Conservancy, Vermont Natural Resources Council, Preservation Trust of Vermont, Mad River Valley Planning District, Vermont Samaritan, and numerous housing advocates and environmentalists (Libby 1990).
21. Thirteen years after it began, the Coalition continues to wage an effective annual campaign to garner support from Vermonters for VHCB and lobby the legislature for annual appropriations.
  22. Vermonters are thinking about replicating a model from Massachusetts. Food Bank Farm in Hadley is a community supported agricultural (CSA) business that donates half of its harvest, over 100,000 pounds, to emergency food pantries, shelters, and programs for the elderly (Webster 1996).
  23. As Graff notes, "the quantity and quality of the land Champion International put on the market is beyond comprehension. One-third of Essex County is up for sale; the entire shoreline of 15 lakes and ponds; 30 miles of the Nulhegan River and 11 miles of the Paul Stream. It includes over 80 percent of the state's largest deer-wintering areas, one of the most important breeding habitats for migratory songbirds in the Northeast, and 400 miles of snowmobiling trails." (1998:3)
  24. VHCB has worked with Housing Vermont and local housing trusts on 1,800 units of affordable rental housing using equity generated by the Low Income Housing Tax Credit. In the late 1980s and early '90s many of these projects were privately owned, HUD/FmHA-financed, where the owner could prepay the mortgage and convert them to market rate rentals or condominiums. Housing advocates characterized these projects as "at-risk." Later, this term was applied to mobile home parks threatened with closure due to health and safety problems. Since 1987, VHCB has helped housing trusts purchase and rehabilitate 32 such parks, thereby maintaining the safety and affordability of 1,222 mobile homes.
  25. Over the last five years, the Preservation Trust of Vermont and Vermont Land Trust have developed an excellent relationship with the Freeman Foundation, which has invested (granted) \$36 million for land conservation and historic preservation projects located in over 75 percent of Vermont's towns (VLT 1998).
  26. Vermont's law requires all owners of rental property and childcare centers in older buildings to perform essential maintenance practices to reduce the likelihood that children will be harmed by lead-based paint hazards. Lead poisoning, 18 Vermont statutes annotated, chapter 38.
  27. Conservation and Preservation Rights and Interests, 10 Vermont statutes annotated, chapter 34.
  28. Housing Subsidy Covenants, 27 Vermont statutes annotated, section 610.
  29. Housing trusts also convinced the Vermont Housing Finance Agency to



develop fixed rate, 30 year mortgage financing for first-time homebuyers to purchase homes subject to limited appreciation agreements. Called the HOUSE (Home Ownership Using Shared Equity) this has made homeownership a reality for hundreds of buyers.

30. Farmers have historically raised money by selling farmland for commercial or residential development and then had to live with neighbors who often find accepted agricultural practices to be a nuisance and make the business of farming more difficult.
31. The larger land trusts include the Vermont Land Trust, Upper Valley Land Trust, The Nature Conservancy, Green Mountain Club, and Lake Champlain Land Trust. These trusts provide technical and legal support to many local land trusts, conservation commissions, and municipalities interested in completed projects.
32. As of December 1998, VHCB has helped trusts, agencies, and towns develop 5,000 affordable housing units and conserve 306,738 acres of farm, forest, scenic, and natural areas by easements and fee simple. Conserved land consists of 234 farms with 78,471 acres protected by easements and 228,267 acres of forests, recreation, and natural areas. Land trusts have protected an additional 125,000 acres of farm and forest land by easement purchases, donations, and outright acquisitions (VHCB 1999; VLT 1998).

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