Separate But Equal?
A Comparison of Land Conservation and Affordable Housing Nonprofits
in Three Towns on Cape Cod, MA

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ABSTRACT

Over the past two decades, the United States government has scaled back its involvement in and funding of domestic policy issues. This withdrawal of government funds and initiative has left a void in the leadership on many public policy issues. This void has largely been filled by nonprofits that have taken responsibility for funding and operating public initiatives that the government once supported. However, despite their increased importance in policy issues, many nonprofits are operating with fewer resources than before due to the government’s withdrawal.

In this thesis I investigate two public issues, land conservation and affordable housing, and the nonprofits which promote them in three towns on Cape Cod, MA: Chatham, Orleans and Harwich. This thesis asks, what are the differences in how these two nonprofit sectors have compensated for the reduction in government funding and involvement? What explains those differences? How could these differences be minimized? An examination of the land conservation and affordable housing nonprofit sectors in the three towns illustrated that answering the above questions involves analyzing the differences between both the operational structures of the two nonprofit sectors, as well as the motivations of local residents for supporting these two sectors.

There are differences in rationale between why people support land conservation and why they support affordable housing. These differences are transferred into the level of community support for the nonprofits, which promote those two causes. However, that crucial community support is dependent not only on the motivations community members have for endorsing these organizations, but also on how the nonprofits structure themselves and operate within their communities to influence these motivations. I argue that a change in structure of the nonprofit affordable housing sector in the three towns will help to mitigate the differences in levels of community support due to the differences in rationale for supporting the respective causes.
Acknowledgements

In order to research this thesis, I contacted many individuals working in affordable housing and land conservation on the Lower Cape. I was amazed at how responsive people were to my requests for interviews. No one failed to get back to me. All met with me when I asked for it and spoke to me for much longer than I anticipated. The respective enthusiasm, energy, and belief in their work astounded and inspired me. They clearly love what they do. Some took valuable time out of their workdays; some invited me into their homes, all were eager to discuss a unique place about which we all cared so passionately: Cape Cod.

Many thanks to the following: Heather McElroy from the Cape Cod Commission for being so helpful with information on the Cape Cod Land Bank, and providing me with endless town plans to read. Paul Ruchinskas from the Cape Cod Commission for allowing me to interview him, impromptu, and providing me with contact names of affordable housing experts on the Lower Cape. D. Isabel Smith for inviting me into her home for an interview and providing me with my own free copy of Cape Cod at Three Miles an Hour. Tim Buhler for taking time out of his workday to speak with me, and provide me with endless ideas for Chapter 5. Susan Leaven, who took time out of her workday to speak with me, and whom I gained endless respect for after attending a Harwich town meeting on affordable housing. Kristin Anders for taking time out of her workday to speak with me, and for having the great idea of inviting Coleman Yeaw to our meeting. Coleman Yeaw for his excellent information and inspired vision for Chatham. Vincent Ollivier for inviting me into his home and providing me so many quotable quotes. Ed Rubel for allowing me to interview him in his office and speaking to me much longer than the thirty minutes that I promised him the interview would take. Valerie Foster and Vickie Goldsmith for sharing their workday with me. Cheryl Gayle, Don Keeran, and Chris Austin for their valuable information and insights.

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110 Pleasant Street: Beatrice, Sarah Jo, and Shinu for the support, the motivation, the companionship, and the endless laughs. Gausri, for agreeing to hold “thesis meetings” at a moment’s notice and providing me with endless patience and good advice.

Mom, Dad, Mary, Ellen, and Kyra — for reasons too innumerable to mention here.
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CHAPTER 1: Introduction

I began the inquiry for this thesis last summer on Cape Cod, MA while I was living with my parents at their house in the town of Orleans. My parents have been part time residents of the Cape for close to twenty-five years. In my lifetime, I have witnessed the astounding changes in the built landscape in the eight towns that constitute the Lower Cape: Brewster, Harwich, Chatham, Orleans, Eastham, Wellfleet, Truro, and Provincetown. What were once mostly rural communities dotted with locally owned businesses, unpaved single lane roads, and modest Cape Cod style homes have been transformed in recent decades. In their place now stand thickly settled towns characterized by the modern conveniences of big box retail and large all-season “McMansions” with manicured lawns and professional landscaping. Formerly sleepy roads now need traffic lights and widening, grocery shoppers no longer bike or walk down to the local general store, but drive to their pick of several Super Stop & Shops. What was once a place a world apart from the mainland no longer feels very distinct from towns you might find in the vicinity of Boston. These changes in the built environment have meant changes in the human population, as well. Kids that I grew up with whose parents were artists, carpenters, or shop owners are finding themselves priced off-Cape by the rising costs of living.

Long term Cape residents can be frequently heard bemoaning these changes. Development is said to be overtaking the landscape, making open space scarcer, and raising both land and home prices. When I was in Orleans last summer, newspaper articles and town meetings seemed to focus exclusively on two issues: preservation of open space1 and affordable housing2.

Before last summer, I never questioned the virtuosity of land conservation. I mostly just spent my summers on the Cape; I have never had to make my living there.

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1 Open space conservation refers to “unimproved” land that is taken off the tax assessor’s role and preserved as open space for passive recreation.

2 Affordable housing is designed to house low and moderate income households. Massachusetts, including the towns on the Cape, uses a definition of low and moderate income set by the Federal Department of Housing and Urban Development (HUD). Moderate income households are defined as those making 80% of a region’s median income level, whereas low income is defined as those earning 60% or less of a
For me, the preservation of the natural landscape was a valid concern because it is why I, as well as my parents, enjoyed the Cape so much. Consequently, land conservation was an issue about which I was well aware. My parents pay an annual tax surcharge to the Cape Cod Land Bank, which is allocated towards town acquisition of open space. The town bought ten acres of land at the end of my parent’s street in the late 1980s. Over ten acres of land across the street from their home had been donated by a private owner to the Orleans Conservation Trust, the nonprofit land trust in the town. A former sailing camp at the end of their street has a conservation restriction on it held by the trust. Three homeowners in a neighborhood adjacent to my parents sold portions of their land to the Trust, in order to retain a permanent buffer of open space around their own homes. The Orleans Conservation Trust is a visible presence in the town. They sell a cookbook at the Cottage Street Bakery, a popular local establishment, where we go for breakfast on Sunday mornings. Trust stickers are affixed to the front doors of many local businesses and the rear windows of many cars. My parents also have friends who have donated parcels to the Trust and/or are directly involved in the trust’s operation.

Affordable housing, on the other hand, seemed to be a “new” cause. This summer there were many newspaper articles and town meetings focusing on the “affordability gap” which refers to the difference between what homebuyers can reasonably afford and what homebuyers have available to them. The “affordability gap” reportedly widened in the 1990s when the rise in the cost of housing far outpaced the rise in wages making the Cape unaffordable to entry level teachers, artists, and others, including individuals who had grown up on the Cape. In the past two years in Orleans, Habitat for Humanity built two new homes on the main road, Route 28. Also in the last couple of years, Habitat began soliciting for donations of money and volunteers at my parents’ church. Before I began my research, Habitat for Humanity was the only affordable housing nonprofit that I, or my parents, were aware of that was active in Orleans. This, as will be detailed in Chapter 5, turned out not to be true.

My impression was that despite the great concern for affordable housing, little of it was being constructed in Orleans. Habitat’s projects housed just two families. Land

region’s median income. Against this state definition, a unit is determined to be affordable if no more than 30% of the household’s income is being spent on housing costs.
conservation, on the contrary, seemed to be much more successful with both the town, the private Orleans Conservation Trust, and local residents actively participating in open space preservation resulting in the conservation of many acres each year. Curious about the dual concerns of open space conservation and affordable housing and bringing to these issues the perspective of a prospective urban planner, I began this thesis with the hypothesis that land conservation was causing the affordable housing crisis. I was curious to discover if the setting aside of land as open space in perpetuity was causing the price of housing and development of available land to rise to such a degree that it was what had created the affordable housing crisis. Was one being pursued at the expense of the other?

This theory was soon squashed. Over the course of the spring semester, I traveled to Cape Cod numerous times to interview those active in both land conservation and affordable housing. After these interviews it seemed clear that the people involved in affordable housing and land conservation on both the public and private levels view the two subjects as separate and distinct issues. Despite the fact that land is a valuable resource to both sectors, no one interviewed believed that land conservation caused the lack of affordable housing, or even felt that one was being pursued at the expense of the other. The more likely reason for the rise in housing prices was that land was being developed at a rapid rate due to a booming national economy, which raised the demand for second homes. The rapid development resulted in land becoming an ever scarce resource, which further raised both the demand and the price for it. The result was that median home prices increased at staggering rates in the latter half of the 1990s, widening the “affordability gap”.

Although these interviews disproved my initial theory, they did give me a sense of the very different ways that affordable housing and land conservation are approached by the nonprofits designed created to pursue each goal. From various sources, I got the sense that the lines between the public and private entities concerned with land conservation were blurred. In many towns on the Cape, members of local private land trusts hold identical positions on the town open space committees. In one town, Falmouth, the private open space committee actually is the public open space committee. This seemed troubling to me. Public open space committees are charged with allocating
the funds earned from the Land Bank tax. In some instances it appears that decisions about these public funds are either made, or heavily influenced by private entities, and are therefore potentially removed from the public approval process generally needed for the distribution of public funds. This murky line between the private land conservation trusts and the public open space committees led me to question whether land conservation was at an unfair advantage over affordable housing. Affordable housing does not have the same nonprofit structure as its counterparts in land conservation. There is no parallel affordable housing nonprofit working along with the public local affordable housing committees. Instead there are regional nonprofits who have taken responsibility for adding affordable units in a number of towns. The close, reciprocal relationship between the public and private land conservation entities seemed largely absent in the affordable housing sector. I wondered what accounted for these differences in approach to the two issues.

I began to review literature on the subject of nonprofits and their role in American domestic policy. I learned that since the Reagan administration in the 1980s, government funding for public issues has been cut back. This withdrawal of government funds and initiative has left a void in the leadership on many public policy issues. This void has largely been filled by nonprofits that have taken responsibility for issues that the government has pulled away from.

These trends are evident on Cape Cod. In the 1960s, government made several bold moves on the Lower Cape in the fields of land conservation and affordable housing. In 1961, the federal government established the Cape Cod National Seashore, protecting more than 27,000 acres of natural, scenic and recreational resources in six Lower Cape towns: Provincetown, Truro, Wellfleet, Eastham, Orleans, and Chatham. In addition, the state built low income housing developments such as Tonset Woods in Orleans, which consists of 100 one-bedroom apartments for elderly or persons with disabilities, and 11 units of family housing. In recent decades, the government has not made any initiatives similar in scale or scope to those accomplished in the 1960s.

The academic literature on the nonprofits reports that given this government withdrawal, some nonprofits manage to be quite successful at promoting their agendas. Jackson-Elmore and Hula report that "critical local and regional decisions are
increasingly being influenced by nonprofit organizations that have taken on quasi-governmental (and at times quasi-market) functions.” This suggests that the success of the land conservation trusts in allying themselves and their goals with the public land conservation entities represents more of a best case scenario for a nonprofit than a situation that should be condemned as corrupt. I wondered whether it would be possible for the nonprofit affordable housing sector to follow the lead of the land conservation trusts, in order to achieve the influential relationship the land trusts have with their local governments. In addition, I wondered if it was possible for affordable housing nonprofits to garner the enthusiastic support and active involvement of local communities in a manner similar to the conservation trusts.

These thoughts led me to my ultimate thesis questions: what are the differences in how these two nonprofit sectors have compensated for the reduction in government funding and involvement in their causes? What explains those differences? How could those differences be minimized?

In order to answer these questions, I examined the rationales for public support of various land conservation and affordable housing nonprofits operating on Cape Cod, as well as how these organizations are structured. I wondered if the differences between the organizational structure of land conservation and affordable housing nonprofits could be narrowed or eliminated, would the disparity in the success rates of these two sectors change or be reduced? Or, are the rationales for public support of the two sectors so disparate, that a change in the organizational structure of affordable housing nonprofits would have a negligible effect on their relative success?

**Methodology of Town Selection and Research**

I selected three towns on Lower Cape Cod to investigate as case studies: Chatham, Orleans, and Harwich. These three towns on the Cape were selected for two major reasons: (1) My parents are residents of Orleans and I am very familiar with the town, as well as the nearby towns of Chatham and Harwich. (2) these towns are adjacent to one another so that relative location is not likely to factor into any differences that might exist among them. As was mentioned, these two public issues were chosen because open space conservation and affordable housing currently receive a lot of
attention in Cape Cod newspapers and at town meetings. And there are nonprofits in place that deal with both.

My research on these three towns sheds light on how community-based organizations operate in a small town environment. In these small towns, the institutional "players" are few and their workings and machinations can be more easily divined and the web of networks more easily unraveled than in large, more complex urban environments filled with many more interests.

I began the research for this thesis by compiling statistics related to land conservation and affordable housing in the eight towns on the Lower Cape: Brewster, Chatham, Harwich, Orleans, Eastham, Wellfleet, Truro, and Provincetown. (See Table 1.1) Of the eight towns, Chatham, Orleans and Harwich were among the top four towns in number of acres owned by private land trusts as conservation land. This ranking indicated the likely presence of active private land trusts. Chatham and Orleans are the two at the top of the land conservation table while Harwich had the fourth highest amount. Interestingly, Eastham actually has the third highest amount, but it has a significant amount of acreage owned by the National Park Service as part of the Cape Cod National Seashore. For this reason, I chose not to study Eastham. I was more interested in towns where local parties, either through town government or nonprofits, were the major actors in land conservation.

I next looked at the number of affordable housing units in the eight towns on the Lower Cape. Of the eight towns the 1990s, Harwich added the highest number of affordable units (108). Orleans added 34 units which was close to the amount added by Eastham (38) and Wellfleet (40) and Chatham added the fewest number of affordable units (1). I initially thought that further investigation would reveal stark differences in affordable housing nonprofits in the three towns. After interviewing key administrators in the three towns, I discovered that Harwich's high number of 40B units was due to the work of regional nonprofit developers and property managers. These same nonprofits which worked so effectively in Harwich could easily have worked in Chatham and Orleans, as well.
Table 1.1: Land Conservation and Affordable Housing Statistics in Orleans, Harwich, and Chatham

<table>
<thead>
<tr>
<th>Town</th>
<th>Total Acreage in Town (acres)</th>
<th>Total Open Space in Town (acres)</th>
<th>Total Town Owned Open Space (acres)</th>
<th>Total Trust Owned Open Space (acres)</th>
<th>% of town open space owned by Trusts (acres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chatham</td>
<td>10,163</td>
<td>1,264</td>
<td>603</td>
<td>403</td>
<td>32%</td>
</tr>
<tr>
<td>Harwich</td>
<td>13,395</td>
<td>990</td>
<td>735</td>
<td>255</td>
<td>26%</td>
</tr>
<tr>
<td>Orleans</td>
<td>8,922</td>
<td>1,081</td>
<td>194</td>
<td>520</td>
<td>52%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year Round Housing Units in Town</th>
<th>Total Chapter 40B units</th>
<th>% of Total Housing Units that are Chapter 40B</th>
<th>Total number of Chapter 40B Units added 1990-2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990-2000</td>
<td>3,596</td>
<td>121</td>
<td>3.36%</td>
</tr>
<tr>
<td>2000-2008</td>
<td>5,862</td>
<td>241</td>
<td>3.65%</td>
</tr>
<tr>
<td>2008-2010</td>
<td>3,317</td>
<td>256</td>
<td>7.72%</td>
</tr>
</tbody>
</table>

Source: Cape Cod Commission and Mass GIS

Armed with these facts and statistics, I next spent several weeks on Cape Cod interviewing those involved in affordable housing and land conservation. This included a trip to the Cape Cod Commission to review Local Comprehensive Plans and Open Space Plans for the three towns. At the Commission, I interviewed the affordable housing specialist, Paul Ruchinskas, and the land protection specialist, Heather McElroy. I then visited the town planners for Harwich and Orleans. Chatham is currently interviewing for a new planner. I also met and spoke with representatives from the three towns’ land trusts and open space committees, as well as the three towns’ affordable housing committees. I attended an affordable housing committee meeting in Harwich. Finally, I met with representatives of the major affordable housing nonprofits active in the three towns: Habitat for Humanity, Harwich Ecumenical Council for the Homeless, Lower Cape Cod Community Development Corporation, Housing Land Trust for Cape Cod, and the Interfaith Council for the Homeless.

I also conducted a literature review regarding nonprofits in affordable housing and land conservation. From this I learned about the current trend in American government to withdraw direct involvement in domestic social areas in favor of the role of nonprofits in these issues. With this information, I then looked to determine how the Cape’s land conservation and affordable housing nonprofits were compensating for the loss of government initiative. In this thesis, I argue that affordable housing nonprofits in the three towns on Cape Cod must adopt some of the practices of the land conservation
nonprofits if they want to have access to increased levels of public and private funding and community support.

Structure of Chapters

The second chapter provides information on the historic role of nonprofits in America, as well as their place in current domestic social policy. I include information on the history and criticism of land conservation trusts and affordable housing nonprofits, which relates more specifically to the case histories in chapters 3-5. These chapters discuss each of the case study towns, including background information on Cape Cod and the concerns over open space conservation and affordable housing, a discussion of active land conservation nonprofits and how they operate, and a discussion of active affordable housing nonprofits and how they operate. Chapter 6 contains my conclusions to my main research question: What are the differences in how various nonprofit sectors have compensated for the reduction in government funding and involvement? What explains those differences? How could these differences be minimized?
CHAPTER 2:

History and Critical Literature Relating to Nonprofits

Introduction

Nonprofits have played a public and social role in this country from the very beginning of its history. However, over the course of the centuries, the relationship between the government and the nonprofit sector has transformed. What was initially a relationship of cooperation and mutual gain in the nineteenth century became one of separation by the start of the twentieth century. The period from the New Deal in the economically depressed 1930s to the promises of the Great Society in the 1960s and 70s was one of expansion in government programs paralleled by a growing nonprofit sector which worked, in part, to carry out the government’s programs and received funding for doing so. The perceived inability of central government planning in areas of social responsibility has since given rise to the view that these issues can be handled best at the local level. So, beginning in the 1980s and continuing to the present, a shrinking of the government’s previously broad involvement in public and social issues has resulted in an increased emphasis on the role of the nonprofit sector. Issues that in earlier times may have been considered obligations of the state are now being handled by churches, grassroots and other community based organizations that have picked up where the government left off. However, these organizations are faced with less government funding than in the past and less direct government involvement. Consequently, nonprofits find themselves having to work with government to establish a place in local, state, or federal policy for the issues that the particular nonprofit wishes to promote. This requires the formation of strong relationships between the nonprofit and the government, between the nonprofit and other nonprofits, and between the nonprofit and the community within which it works.

A contemplation of how these relationships are established and sustained will be the focus of the examination of the Land Conservation and Affordable Housing policies in the three subject towns on Cape Cod in Chapters 3 and 4.
Facts About the Nonprofit Sector

The ability to form a nonprofit organization is thought of as a basic right in America, not a privilege granted by the government. Therefore, organizations can form and function as nonprofit entities without receiving the approval of the state. As a nonprofit organization, these entities are tax exempt as long as they have an organizing instrument, governing rules, and regularly chosen officers. Nonprofit organizations are separate from the government, governed by private boards of directors and are considered part of the private sector. Tax exempt organizations are divided into two groups: primarily public serving organizations, and member-serving organizations. Both classes are exempted from taxes on their income, but only public-serving organizations are able to receive contributions from individuals, foundations, and corporations on which the donors can claim tax deductions. The main reason for this benefit is that these groups are providing public goods that otherwise would have to be paid for by the government. Most of the primarily public-serving nonprofit organizations in the United States qualify for tax-exemption under section Section 501(c)3 of the Internal Revenue Code.

Nonprofits are not only volunteer, many are fully managed by paid staff. However, the boards of nonprofits are normally (but not always) made up of volunteers and many use volunteers to carry out their work.

History of Nonprofits in the United States

According to Lester Salamon, the roots of today’s nonprofits began in the Colonial period of American history. What Salamon refers to as the “traditional American values” of individualism, aversion to centralized power, and separation of Church and State took hold during this period and became the moral underpinning of Colonial associations that provided public services to citizens that the government did

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4 Ibid., 310.
5 Ibid.
6 Ibid., 296.
7 Ibid., 297.
8 Ibid., 298.
9 Ibid., 281.
not. Salamon postulates that the formation of these voluntary associations struck a balance between the extremes of individualism on the one hand and dependence on monarchial power on the other. He writes that “It provided a way to confront common problems while still retaining a significant measure of individual initiative.”

During the first century of this nation’s history the relationship between these private associations and the government was characterized by collaboration. It was during the period between the Civil War in the 1860s to the Great Depression in the 1930s that the idea emerged of a separate and distinct private nonprofit sector. This change occurred during the rise of the robber baron industrialists in the late nineteenth century who pushed for a business atmosphere in America that was unrestrained by social or political concerns. The rise of the wealthy industrialists was accompanied by a massive growth in personal fortunes and an ideal of what should be done with that wealth. Salamon writes that these industrial tycoons “married the ideas of Social Darwinism with Christian concepts of charity to make it a religious and social obligation on those whose natural superiority enabled them to amass great wealth to contribute this wealth to society.” As a result a “powerful ideology of voluntarism” took shape that wedged a divide between the public and private spheres. Salamon reports that “nonprofit organizations came to be defended not simply as useful supplements to public action, but as superior vehicles for meeting public needs.”

The New Deal programs of the 1930s and 40s changed the perception that public services should be provided by the private sector. However, it was not until the Great Society programs of the 1960s and 70s that the nineteenth century concept of the public and private sector working collaboratively to solve social problems reemerged. The Great Society was marked not only by a massive expansion in the Federal government,

10 Ibid.
11 Ibid., 282.
12 Ibid., 281.
13 Ibid., 284.
14 Ibid., 287.
15 Ibid.
16 Ibid.
17 Ibid., 286.
18 Ibid., 287.
19 Ibid., 288.
but also by an expansion in the number of nonprofits designed to work with these new federal programs.  

According to Salamon, at the start of the Reagan administration in 1981, there was little understanding among political leaders or the public about the role nonprofits were playing in the programs of the Great Society or about how financially important the federal government had become to the nonprofit sector. In efforts to shrink back “Big Government,” the Reagan administration slashed government programs which resulted in fiscally straining nonprofits. Nonprofits that relied on federal community development funding faced 70% cuts during the 1980s. In statements that echoed the sentiments of the robber baron period of the turn of the twentieth century, Reagan called for a separation of the public and private sector and a renewed faith in the nobility of volunteerism.

Salamon writes that, since the 1980s, “Nonprofit organizations have found themselves smothered in the conservatives’ embrace, as right-wing defense of the nonprofit sector has come to be used as a rationale for eliminating the crucial support on which the nonprofit sector has come to depend.” Nonprofits play a critical role in President George W. Bush’s domestic policy. The White House website details the President’s “Compassion Agenda” which focuses on an increased role of “faith-based and community organizations” and a decreased role of the Federal government. According to the online document, “Too often the government has ignored or impeded the efforts of faith-based and community organizations. Their compassionate efforts to improve their communities have been needlessly and improperly inhibited by bureaucratic red tape and restrictions placed on funding.” Bush, continuing the trend begun in the Reagan administration sees social and public issues being tackled by an active, community-based nonprofit sector. According to Bush’s press releases regarding

20 Ibid., 289.
21 Ibid., 305.
22 Ibid.
24 Ibid., 123.
25 Salamon and Anheier, 306.
this matter it is because these local, community organizations are comprised of “people who care,” implying that the large government agencies are impersonal, bureaucratic, and indifferent.27

Although the populations targeted in Bush’s Compassion Agenda are the needy, including those in need of affordable housing, the idea of an empowered nonprofit sector is manifest in other public issues like land conservation as will be detailed below. Cynthia Jackson-Elmore and Richard C. Hula write about the ascendancy of nonprofits in their essay “Emerging Roles of Nonprofit Organizations.” These authors claim that “Unmistakably, critical local and regional decisions are increasingly being influenced by nonprofit organizations that have taken on quasi-governmental (and at times quasi-market) functions. Jackson-Elmore and Hula writes that nonprofits are initiating and formulating public policy and are devising new ways to respond both economically and politically to the municipalities in which they live.28

Thus, through the recent course of social history in the United States, the shift towards an emphasis on the nonprofit sector’s role in tackling social and public issues, coupled with cutbacks in government, has resulted in stiff competition among nonprofits to garner attention from the local, state, and Federal government and to assert their agendas with these authorities.29 The public and private sector must work together as much as they ever did, but today the success of a nonprofit in achieving its goals seems to rest more on the political, organizational, and, particularly, fundraising skills of its members and/or staff than on the merits of its policy.

Nonprofits and Land Conservation

Basic Facts About Land trusts

The most common type of nonprofit active in land conservation in the United States is conservation land trusts.30 Land trusts are private nonprofit organizations

27 Ibid.
29 Koschinsky, 119.
established to protect land and water resources for the public benefit. Usually the resources have natural, recreational, scenic, historic, or productive value. Land trusts can be local, regional, statewide, or national in scope and are largely funded through membership dues and donations. They vary in size from small land trusts operated by volunteers to organizations with professional staffs that own and manage thousands of acres.

Land trusts protect land in three ways: 1. establish protective conservation easements; 2. oversee land through trust ownership and management of land reserves; 3. assist in transactions by acquiring property and then reselling or transferring it to a government agency. A conservation easement places protective restrictions on future uses of land and assigns responsibility to the land trust to enforce these protections in perpetuity, even when the ownership of the land changes.

There are several reasons why an individual would want to donate land to a land trust rather than a government: landowners may not want to deal with government “red tape”; landowners may want the sale to be confidential which it would not be if it was sold to a municipality; government acquisitions may be too constrained by rules to meet the estate planning needs of potential sellers; or land trusts may be able to move faster in a competitive market than the private sector which is slowed down by public votes and other approval processes. Finally, many landowners, believe that a land trust will do a better job at conserving their land than a public entity, and that there is a greater chance that the land will be conserved in perpetuity which would not always be the case with town owned land.

Land trusts have been used in New England to protect large areas of remaining natural beauty. They have been employed on Cape Cod in various land conservation programs.

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32 Ibid., 626.
33 Ibid., 625.
History and Criticism of Land Conservation and Land Trusts

The history of the land conservation movement and land trusts is marked by themes that persist until the present day: influential patronage, well-coordinated nonprofit organizations, strong and effective relationships with government, and the ability to gather broad based support.

In 1890, Charles Eliot, a Boston landscape architect and son of the President of Harvard, warned that the Massachusetts countryside was at risk. He wrote, “Several bits of scenery which possess uncommon beauty and unusual refreshing power are in daily danger of destruction.” Eliot called for the establishment of a privately-funded tax-exempt association to protect Massachusetts’ natural and historical treasures. In 1891, an act of the Massachusetts Legislature created the Trustees of Public Reservations, a private, voluntary organization which protected parcels of open space by acquiring deeds and then opening the property to the public. It was the nation’s first land trust and predated the National Park Protection Act of 1894. Interestingly, the first private land trust was created by the government.

Eliot was part of a wider movement of conservationists in the United States concerned about the exploitation of the nation’s natural resources. These individuals came together to form organizations to lobby the government to protect land through government stewardship. In 1909, President Theodore Roosevelt, influenced by the writings of naturalists, particularly John Muir and Gifford Pinchot, his Chief of Forestry, worked with many individuals and conservation organizations to form the National Conservation Commission which was charged with drawing up long-range plans for preserving national resources. Pinchot later joined other conservationists to establish the National Conservation Association, another private organization funded by private donations and staffed by professionals, which aimed to educate citizens and the federal government on conservation issues.

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34 De Alessi, 48. (12
35 Ibid.
36 Ibid.
38 Ibid.
From its early beginnings, the land conservation movement was spurred on by concerned individuals coming together to form privately funded organizations in order to work together with the government to accomplish mutual goals. Part of their success was due to their strategy of convincing government and members of the American public that the protection of natural resources was a cause that served everyone. Pinchot wrote in his work, *The Fight for Conservation*, "The natural resources of the Nation exist not for any small group, not for any individual, but for all of the people — in other words, that the natural resources of the Nation belong to all the people." Although it is difficult to assess, surely another part of the movement's success was the social and political prominence of its proponents. Eliot was the son of the President of Harvard, Charles W. Eliot who, himself, later became active in the National Conservation Association. Pinchot worked in the Theodore Roosevelt administration and was a founding member of the Progressive Party and later a governor of Philadelphia. These themes of well-placed individuals coming together to use their influence to direct public policy is a hallmark of the land conservation movement and will reappear in my discussion of conservation land trusts in the three towns on Cape Cod.

Today land trusts are an increasingly important presence in the conservation movement. In 2000 there were over 1,200 Land Trusts in the United States, up from just 100 in the 1960s; over 1 million people belonged to a Land Trust. The Nature Conservancy, founded in the 1950s with the motto "conservation through private action," is the largest Land Trust in America. It owns over 14 million acres of open space in North America and has an operating budget in excess of $300 million. Leigh Raymond and Sally Fairfax in their essay, "The Shift to Privatization: A cautionary essay," argue that this surge in the number of Land Trusts is due to the current emphasis in environmentalism on preventing sprawl. Preserving wildlife habitat, watersheds, and

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40 Ibid.
41 De Alessi, 48.
42 Ibid.
44 Raymond and Fairfax, 623.
natural systems necessitates crossing multiple property lines making the protection of private land essential to achieving the anti-sprawl goal.

In addition to combating sprawl, others have argued that private stewardship and market-based initiatives can improve on the results achieved through government programs such as zoning codes and other land use regulations. However, these private market-based initiatives are not a substitute for public action, but supplement already existing programs. Raymond and Fairfax assert that “Traditional, coercive public controls over private land use appear to have reached a limit of sorts…. Some new ideas and options have taken a place beside these more traditional approaches, expanding the array of methods for affecting private land use, and making the tenure arrangements on private lands a more complicated mix of public and private claims and entitlements.”

The new ideas Raymond and Fairfax are referring to are the methods and operations of private land trusts. The authors claim that government has not withdrawn from the land conservation arena since Federal, State, and local governments still regulate private land use. Tax policy and government appropriations also provide the incentives and resources that make land conservation possible. However, Land Trusts provide government with logistical support, advocacy, direction for the selection of parcels, and advice on the dispensing of public funds. It is not uncommon for a Land Trust to share the cost of a parcel with a municipality or to purchase a parcel and then turn it over to a municipality for a nominal fee or even at no cost. Michael De Alessi author suggested that the “lack of bureaucratic constraint makes land trusts exceedingly good at complementing, supplementing, and implementing public open-space agendas.”

Yet, Raymond and Fairfax warn of the possible dangers of these practices. The procedures are removed from public scrutiny, public accountability, and public participation and choices are frequently made by privately selected boards. In other words, land use decisions are being made, not by public process, but by private land trusts working sometimes with the input of government officials, and other times on their

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45 Ibid., 610.
46 Ibid., 616.
47 Ibid., 636.
48 Ibid.
49 De Alessi, 49.
50 Raymond and Fairfax, 636.
own initiative. Raymond and Fairfax claim, "Things are getting more complex and fragmented, not less so, as the line between public and private continues to blur."\(^{51}\)

However, it is precisely the blurring of these lines that has enabled land conservation trusts to carry out their mission in the three towns considered here, as will be shown in greater detail in Chapter 4. The Trusts have been able to pool their considerable resources with the local government to acquire land that is held in joint ownership with the town. They have board members who work in key positions in local government, facilitating the sharing of information and decision making. They have targeted large land-holders needing to sell off parcels and have worked with them in the planning of their estates, using government tax laws to their advantage. They have successfully organized lobbying efforts for tax resources to be used for land conservation. Their methods may be outside the realm of public participation, but, as will be shown in Chapter 4, their efforts to generate good will and gather support from their respective communities have been fruitful. I will argue further that their successes should serve as a "best case" model for their counterparts in the nonprofit affordable housing sector.

**Affordable Housing and the Nonprofit Sector: the "Third Sector"**

In a 1996 article in the Journal of Urban Affairs, Langley Keyes states that "Nonprofit organizations are central to the delivery of affordable housing in many parts of the United States. Community Development Corporations (CDCs), religious organizations, and nonprofits working with the homeless, the elderly, and the disabled have assumed a leading role in the production and management of low income housing."\(^{52}\) [390]

This fact is consistent with a trend articulated two years earlier by John E. Davis in his book on the importance of nonprofits in the production of affordable housing in America, *The Affordable City: Toward a Third Sector Housing Policy*. In this work, Davis claims that since the 1980s a new model of affordable housing production and ownership has emerged that is "a clear alternative to the more familiar models of both the

\(^{51}\) Ibid., 635.

market and the state: a non-market alternative to the for-profit rentals and market-priced homeownership of the private sector; a private alternative to the publicly owned projects of metropolitan housing authorities or the military.\textsuperscript{53} Davis calls this new model the “third sector approach” to affordable housing.\textsuperscript{54}

The “third sector” consists of a web of interdependent relationships between nonprofits who work towards meeting public and social needs. These nonprofits either develop or buy affordable units and then sell, rent or manage them. Unlike the large-scale public housing projects of the post World War II decades, these initiatives are privately developed and managed. However, because they are operated by nonprofits focused on public issues, the projects do not participate in the market, but remain affordable in perpetuity through deed restrictions or management policies of the nonprofit.

This “third sector” in housing arose because of the cuts in the Federal government’s grants to affordable housing during the Reagan administration.\textsuperscript{55} As a response, municipalities were forced to look for alternative sources of funding. Concurrently, the “affordability gap” between the income needed to purchase or rent a home and the income earned by an average household grew wider.\textsuperscript{56} In the face of these conditions, the need to maintain affordable units over the long-term became a priority, as did implementing various models of privately-owned, price-restricted housing designated to be affordable in perpetuity.\textsuperscript{57} Among these models were deed-restricted, owner-occupied houses, community land trusts, limited equity condominiums, limited equity cooperatives, mutual housing associations, and nonprofit rental housing.\textsuperscript{58} Nonprofits rose to prominence in their ability to deliver these types of much needed housing.

According to Davis, housing within this private, non-market domain has three characteristics:

- “Private Ownership. The title to the home is held by an individual, family, or a private corporation, but not a state or a municipality.

\textsuperscript{54} Ibid.
\textsuperscript{55} Ibid.
\textsuperscript{56} Ibid., 3.
\textsuperscript{57} Ibid., 4.
- Socially Oriented. The property's primary purpose is to meet a social need of the occupants, not to accumulate wealth.
- Price Restricted. A deed restriction is placed on the home so that it will be either rented or sold at an affordable price established by a formula not by the market. Its affordability must be in perpetuity."59

According to Davis, municipalities who adopt this "third sector" approach have directed an increasing proportion of their scarce resources towards various models of privately owned, socially oriented, and price-restricted housing.60 A "third sector" housing policy tends to promote and increase a municipality's reliance on nonprofit, community-based organizations to produce and preserve affordable housing.61 Davis argues this is because political, financial, or legal constraints may limit a municipality's ability to develop, own or manage housing units with long term affordability.62 Nonprofits, Davis claims, can obtain funds, pursue projects, and take risks that governments cannot.63

Julia Koschinsky further adds that the third sector housing approach is based on a belief in "the particular ability of community-based housing organizations to promote democratic participation, local accountability, and neighborhood control."64 Third sector housing theorists argue that community-based housing organizations "facilitate trust, reciprocity, cooperation and empowerment, and a shared sense of community, identity, and norms" in the communities in which they exist.65

However, Koschinsky places a caveat on the above claim saying that, in the absence of federal funding, nonprofits are forced to make their first priority not the welfare of the community but fund-gathering.66 Koschinsky calls this the "commercialization" of nonprofits.67 She cites authors who claim that there is an

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58 Ibid.
59 Ibid., 6.
60 Ibid.
61 Ibid., 7.
62 Ibid., 13.
63 Ibid.
64 Koschinsky, 118.
65 Ibid., 121.
66 Ibid., 128.
67 Ibid.
inherent conflict between capital and community. Any organization that is dependent on outside sources of capital must serve these sources threatening its ability to prioritize community participation and control, and to provide for long term affordability.\textsuperscript{68} Furthermore, Koschinsky cites statistics that she claims show that the increased "nonprofitization" of local, state, and national low-income housing policies has been accompanied by an increase in unmet low-income housing needs.\textsuperscript{69} Koschinsky argues that these unmet housing needs could be rectified by an increase in federal funding.\textsuperscript{70} However, absent that, nonprofits are left to raise their own funds with little to no help from the government.

\textit{Conclusions}

As will be shown in the case studies, the land conservation sector in these towns dealt with the lack of government funding, partly, with the successful passing of the Cape Cod Land Bank Act. This act resulted in an annual real estate tax surcharge, the proceeds of which are allocated towards open space preservation. The successful passing of the act came from the persistent efforts of the local land conservation trusts to build voter support for the act in their communities. This money is under the stewardship of the town and does not directly go to land conservation nonprofits. However, the nonprofits have managed to cultivate strong relationships with local town governments and communities, so that the distribution of land bank funds frequently goes towards projects which the nonprofits have either initiated or taken a partnership role in.

The success of these local land conservation trusts has been their ability to build trust, reciprocity, cooperation, and community empowerment in their relationships with the state, the local government, and the community at large. Their success has brought them both private and public capital, influence in town politics, and a general sense of mutual interest and shared ideology from the greater community. How they have done so will be the subject of the chapter 4.

The affordable housing sector in the three Cape towns lacks a steady annual source of income from their local governments similar to the Cape Cod Land Bank.

\textsuperscript{68} Ibid., 118.
\textsuperscript{69} Ibid., 127.
However, as will be detailed in Chapter 5, there is an opportunity to implement one in the proposed Community Preservation Act (CPA). In order to gather voter support for such an initiative, the affordable housing sector will have to improve their ability to “facilitate trust, reciprocity, cooperation and empowerment, and shared sense of community, identity, and norms” in their relationships with neighborhood abutters, local taxpayers, and local government officials. In order to do this, they should look to the experience of the land conservation trusts working in the same towns as a model. The extent to which they can recreate the success of the land conservation trusts will be investigated in Chapters 5 and 6.

70 Ibid., 129.
CHAPTER 3: Background Information of the Case Studies

Background Information

My case studies consider how nonprofits work to advance their respective agendas in the three towns on Cape Cod, MA. The first section of this chapter details the two public issues that dominate the local papers, town meetings, and coffee shop conversation on the Cape these days: land conservation and affordable housing. The second section of this chapter provides background information on the three case study towns: Chatham, Orleans, and Harwich. The next two chapters will present, respectively, the nonprofit organizations engaged in land conservation and those active in affordable housing in these towns. The focus of the examination will be how these nonprofits interact with the local governments, how they utilize the tools of government for their own objectives, and how they relate to the communities in which they work.

The Cape’s Dual Crisis: Disappearing Open Space and Lack of Affordable Housing

Cape Cod is a 396 square mile body of land, which juts out like a bent arm from the southeastern shore of Massachusetts into the Atlantic Ocean. Renowned for its miles of ocean front shoreline, freshwater lakes and inland forests, the Cape is a vacation destination for millions every summer including tourists and owners of second homes. It is also home to more than 222,000 year-round residents who live in the fifteen towns that make up Barnstable County. The attractiveness of its natural landscape and the small-town character of most of its communities have led to explosive population growth and residential development over the past two decades. From 1980 to 1990 the population of Barnstable County grew by 26% while the population of Massachusetts as a whole grew by only 5%. From 1990 to 2000, the population grew by 19.1%, as compared to 5.5% statewide. The implication is clear: open space is rapidly disappearing.

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72 Ibid.
74 Ibid.
Accompanying this unprecedented development is an increasing anxiety among residents and others who love the Cape that the region’s unique natural attributes and small town way of life are in jeopardy. Despite a recessionary lull in the real estate markets in the late 1980s and early 1990s due to a scarcity of mortgage funds, the broader-based American economic boom which began in the mid-1980s and continued through the 1990s eventually fueled an explosion in the Cape’s real estate market. This was particularly seen in purchases of second homes, which resulted in a rise in home and land prices. The number of housing units on the Cape more than doubled from 1970-2002 from 65,676 to an estimated 153,501.75 The median cost of a home has risen dramatically in recent years. The median cost of housing on Cape Cod in 2000 was $182,000, up 62% from 1995 while wages have gone up only 20%.76 Despite the economic downturn of the last eighteen months, 2002 marked the third straight year of 20% appreciation in single-family home sale prices.77 Perhaps this is due in part to the transfer of capital out of the depressed equity markets into the robust realty markets. Thus, residential development had the double effect of decreasing the amount of undeveloped open space in each town and increasing the housing affordability gap — the difference between housing costs and the proportion of one’s income that can be reasonably allocated to pay for housing — for seasonal workers, retired couples on fixed incomes, and some year round-residents.

According to the 2002 Regional Policy Plan (RPP) of the Cape Cod Commission, more than 35,500 acres were developed on the Cape between 1971 and 1991, and more than 15,000 additional acres were developed in the last decade alone.78 To combat the loss of further land, the RPP proposes that 50% of the undeveloped land on the Cape (as of 1996) be preserved forever as open space, in order to “preserve the rural character, scenic amenities and ecological integrity of the Cape... The open space vision is more than just an acreage target; it is a future in which open space, largely in its natural form, remains the dominant feature of the landscape.”79 Every town on the Cape has a private

75 Ibid.
76 Ibid., 118.
77 Paul Ruchinskas, Comprehensive Permit Effective Affordable Housing Tool on the Cape (Barnstable, MA: Cape Cod Commission, 31 Jan. 2003).
78 Ibid., 62.
79 Ibid., 63.
conservation land trust, which works to protect open space through acquisition of parcels and conservation easements. Every town now also has an open space committee which mirrors the work of the Land Trusts but does so in the public sector using public resources and adhering to public procedures.

In addition to the fear of rapidly disappearing open space, is a rising anxiety among Cape Codders that many year round residents are being priced off Cape. A Barnstable County Affordable Housing Needs Analysis prepared by the Lower Cape Cod Community Development Corporation in 1999 reported that 7 out of 10 year-round residents could not afford median priced housing. In addition, according to the report, approximately 46% of the Cape’s year-round population was classified as low income.80

In November 2000, the regional newspaper, The Cape Cod Times, ran a week-long series “Crisis at Our Doorstep,” which documented the severity of the housing affordability gap for homeowners and renters alike. Among the facts reported were: more than 1,000 rental units had been lost since 1990 resulting in soaring rental prices; Cape Cod ranked seventh in the nation for home appreciation, the first six places were held by Silicon Valley and surrounding areas of California; and the Cape is projected to become the fastest growing county in New England in the next 25 years.81 The impact of this crisis can be seen in land values. The Cape Cod Commission in 1999 found that average home prices for Barnstable County rose 22% from 1998 to 1999, nearly double the state’s price increase of 12%.82 The National Association of Home Builders which measures an area’s income level with housing costs concluded that a household with the Cape median household income ($47,700 in 2000) could not afford a median priced home ($182,000 in 2000).83 According to these sources, the high cost of living has forced many residents off-Cape to more affordable locations and has left many local businesses facing severe worker shortages. One article in the Cape Cod Times series, “Strangers In Our Own Land” asserted that “Cape Cod’s character is changing as the

80 Ibid., 118.
82 Ibid.
region’s traditional workers — artists, cooks, marine scientists and health workers — are joining a quiet exodus over the bridge [to the mainland].”

Currently, this growing concern is being addressed at several levels. First, there are housing authorities in each town that work under the statewide agency, the Department of Housing and Community Development. These housing authorities are agents of the state, and work autonomously from local government. Next, there are also affordable housing committees designed to deal with the subject at the local level. In addition, scattered around the Cape are nonprofits aimed at providing affordable housing. Many are the “faith-based” nonprofit organizations espoused by President Bush and are finding they are increasingly relied upon by towns to add affordable units in the towns in which they are active, using private resources.

Background on the Three towns:

The three towns that I researched for my case studies are Chatham, Orleans, and Harwich. Basic facts about each town including their location, form of local government, and major industry are detailed below.

Chatham is on the southeastern shore of Cape Cod. It was settled in 1656 and incorporated in 1712. It lies with the Atlantic Coast to its east and Nantucket Sound to its south. Its only land border is Harwich to its north and west. Originally a farming community, it later turned to deep sea fishing which is still an important source of the town’s revenue, as is tourism.

Orleans is located at the southeast elbow of Cape Cod. It is bordered by Eastham on the north, the Atlantic Ocean on the east, Chatham and Harwich on the south, and Brewster and Cape Cod Bay on the west. Settled in 1642, incorporated in 1797, it was originally an agricultural village that turned to tourism in the twentieth century.

Harwich is also on the southeastern shore of Cape Cod. It is bordered by Dennis on the west, Brewster and Orleans on the north and Chatham on the east, and Nantucket Sound on the south. It was settled in 1665 and incorporated in 1694. Although originally a maritime town, by the late nineteenth century, it turned to cranberry farming and tourism which remain important components of its economy today.  

Figure 3.1: Map of the Location of the Three Towns on Cape Cod

All three towns have a five member board of selectmen elected for three-year overlapping terms who are the executive officers of the town. The board serves as the chief goal-setting and policy-making agency. They delegate the responsibility for the daily administration of the town’s business to a town administrator. All three towns operate under the town meeting form of government. Once a year, the citizens meet to discuss the articles in a town meeting warrant and pass or reject them. The warrant includes a number of articles that have an impact on the financial condition of the town, as well as individual voters in terms of local property taxes. Most funds spent by the

town are voted at this meeting. The board of selectmen has the authority to appoint committees to deal with special interests of the town.

In addition to the local governments, on Cape Cod there is a regional planning body called the Cape Cod Commission (CCC). The CCC was created in 1990 by an Act of the Massachusetts General Court and confirmed by a majority of Barnstable County voters. The Commission was established as a regional planning and regulatory agency with a threefold remit: to prepare and implement a regional land use policy plan for all of Cape Cod, to review and regulate Developments of Regional Impact (DRIs) and to recommend designation of certain areas as Districts of Critical Planning Concern (DCPC). DRIs are development projects that due to their size, location, or character, affect more than one community. DCPCs are areas of critical value to Barnstable County that require special protections to preserve and maintain them. The Commission is made up of 19 members representing each of Barnstable County’s 15 towns as well as the County Commissioners, minorities, Native Americans, and a governor’s appointee. They are citizen-volunteers who guide a professional staff to plan for Cape Cod’s future growth, to provide technical assistance to towns, to review and vote on major developments and to act as the Commission’s liaison to their communities.88

Framework of the Analysis

In order to understand the land conservation and affordable housing programs for the three towns, I use the framework put forth by Schuster and de Monchaux in their essay “Five Things to Do.”89 In this essay, Schuster and de Monchaux postulate that there are five “and only five” distinct tools available to the government in any area of government intervention.90 By tools of action, the authors are referring to the “generic tools that can be found in a state’s [either local, state, or national] toolbox of possible actions.”91 This tools approach will be used for the discussion of affordable housing and

90 Ibid. 3.
91 Ibid.
land conservation initiatives because it provides a framework for a comparative analysis of the strategies used by the nonprofits in Chatham, Orleans and Harwich to further these two public interests.\(^92\) De Monchaux and Schuster classify the tools as: \textit{ownership and operation; regulation, incentives (and disincentives); establishment, allocation, and enforcement of property rights; and information.}\(^93\)

Schuster and de Monchaux define the five tools as the following:

\textit{Tool 1: Ownership and operation.} The state/nonprofit may choose to implement policy by direct ownership and operation. For example, the federally owned and operated Cape Cod National Seashore is a land conservation program by which the federal government owns and manages a large portion of the Cape Cod coastline. De Monchaux and Schuster summarize this tool simply as “the State will do X.”\(^94\)

\textit{Tool 2: Regulation.} The state may regulate the actions of other actors. For example, the state of Massachusetts requires that each community in the commonwealth have 10% of its building stock devoted to affordable housing. De Monchaux and Schuster describe regulation as “You must (or must not) do X.”\(^95\)

\textit{Tool 3: Incentives (and disincentives).} The state/nonprofit may create incentives or disincentives to attract “other actors” to act in accordance with a particular policy goal. For example, the government offers tax incentives to private landowners who donate their land to a town/nonprofit. De Monchaux and Schuster describe incentives (and disincentives) as “If you do X, the state will do Y.”\(^96\)

\textit{Tool 4: Establishment, allocation, and enforcement of property rights.} In his essay “The Redefinition of Property Rights as a Tool for Historic Preservation,” John J. Costonis writes that “Government can stimulate desired social policies by defining property rights in ways that facilitate behavior in the private sector that is consistent with these

\(^{92}\) Ibid., 8.
\(^{93}\) Ibid, 5.
\(^{94}\) Ibid., 6.
\(^{95}\) Ibid.
policies." For example, towns allow landowners to place conservation restrictions on their properties, permitting the landowner to remain on the land. In return for this action on the landowner, the town gives a property tax deduction on the parcel of land in the conservation restriction. De Monchaux and Schuster describe this as "You have a right to X, and the state will enforce that right."  

**Tool 5: Information.** The state/nonprofit can "collect and distribute information intended to influence the action of others". The use of information can further the causes of land conservation and affordable housing. For example, the Cape Cod Commission, the regional governing body of Cape Cod, compiles statistics on land conservation and affordable housing and makes them available on their website along with reports relating to the need for more conservation land and affordable housing. De Monchaux and Schuster describe this as "You should do X" or "You need to know Y, in order to do X."  

Nonprofits also have use of the tools of information, ownership and operation, and incentives. In addition, they are frequently affected by the two tools available to the government only: regulation and enforcement of property rights. In executing public programs, nonprofits draw upon these tools, as well as resources (e.g., cash, personnel and capital). Furthermore, the nonprofits may also establish a "particular institutional arrangement" in the structure of the nonprofit itself or an affiliate. My examination of land conservation and affordable housing nonprofits will focus particularly on the resources available to nonprofits and, in some instances, how these resources were created, and, in other instances, how these resources could be expanded.

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96 Ibid.
98 Schuster and de Monchaux, 6.
99 Ibid., 5.
100 Ibid., 6.
Figure 3.2: Chart of the Three Elements Available to Towns and Nonprofits to Pursue Public Policy

**Towns**

**Tools:**
- Ownership and Operation
- Incentives
- Regulation
- Property Rights
- Information

**Resources:**
- Cash (including taxes)
- Personnel
- Capital

**Institutional Arrangements:**
- Open Space Committees
- Affordable Housing Committees

**Nonprofits**

**Tools:**
- Ownership and Operation
- Incentives
- Information

**Resources:**
- Cash
- Personnel
- Capital

**Institutional Arrangements:**
- Nonprofits themselves
CHAPTER 4:
Land Conservation Trusts in Orleans, Chatham, and Harwich

Introduction

This chapter focuses on land conservation nonprofits in Chatham, Orleans and Harwich. The first section introduces the main actors in land conservation nonprofits in the three towns: land conservation trusts. The second section details the institutional arrangements on the public side of land conservation that work with land conservation nonprofits to acquire and manage land. It documents how the blurring of lines between the public and private sector have benefited the land trusts. The third section focuses on the resources available to those nonprofits to accomplish their goals, particularly the Cape Cod Land Bank. The fourth section focuses on the tools of government that affect the nonprofits, as well as the tools that the nonprofits themselves can use to conserve more land. The fifth section analyses how land conservation nonprofits have used their tools, particularly the tool of information to penetrate their communities and gather support for their objectives. This widespread support for land conservation from individual communities resulted in the passing of the Cape Cod Land Bank Act which provides to each town a steady stream of funds for land conservation, and aids the land trusts in accomplishing their goals.

Land Conservation Nonprofits in Chatham, Orleans and Harwich

The most prominent nonprofit land conservation organizations active in Chatham, Orleans, and Harwich are private conservation trusts: the Chatham Conservation Foundation (CCF), the Orleans Conservation Trust (OCT) and the Harwich Conservation Trust (HCT).

The Chatham Conservation Foundation, founded in 1962, is the oldest land trust on the Cape and is in the hands of five year-round residents who volunteer as trustees, officers and an executive committee. Founded in 1970, the Orleans Conservation Trust is the second oldest land trust on Cape Cod and is the largest private landowner in Orleans. The Harwich Conservation Trust, founded in 1988 by citizens concerned with the rapid
pace of development in the town, is also a volunteer-only organization and is the youngest land trust on the Cape.

All three trusts concentrate on preserving open space. If they acquire an improved piece of land, they will remove the house. "We are not interested in being landlords," claims Vincent Ollivier, Environmental Consultant for the Orleans Conservation Trust. All three focus on buying land to be used for conservation and passive recreation, rather than for parks or playing fields.

In the instance of land conservation trusts, the three tools in its power supplement the state’s, creating a favorable synergistic effect. As one Chatham town open space official told me, "we are able to conserve at least twice as much land than if either of us [the Trust or the town] were working alone."102

To better understand how the tools can be used by the government and the land trusts, I will first detail the organizational entities that work with land conservation trusts in the public sector and then turn to the resources available to both public and private entities.

Land Conservation Institutional Structure at the Local Level

Governments may create separate organizational structures designed to carry out their programs, such as they did as a result of the Land Bank Act. As a result of this Act, each town in Massachusetts is required to create an open space committee, to serve without compensation, whose role it is to identify and negotiate open space purchases. In the three towns, the board of selectmen appointed a seven member (in Harwich it has nine members) open space committee to deal with land bank purchases. The selectmen appoint the committee members for three-year overlapping terms. The committees have variations on the same name. In Chatham, it is the Open Space Committee. In Orleans, it is the Open Space/Land Bank Committee. In Harwich, it is the Real Estate, Open Space, and Land Bank Committee. For the purposes of this discussion, they will all be referred to as simply the open space committee.

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101 Vincent Ollivier, interview by author, Mr. Ollivier's home in Orleans, MA, 27 March 2003.
Although each of these land trust states that it is not affiliated with town government, there is actually a very fluid working relationship between the committees and their town’s respective conservation trust. In Chatham and Harwich, board members of the town land trusts are committee members of the town open space committees. In Chatham, this is explicitly intentional. Coleman Yeaw from the Chatham Conservation Foundation says, “Because the Foundation had been in this business since 1963 and has purchased or received donations of over 500 acres worth more than $40 million (a low number in my opinion) the Land Bank Committee [formed in 1998] asked the selectmen to appoint an officer of the Foundation to the Land Bank Committee so that we could benefit from their experience.”

In Harwich, D. Isabel Smith, Vice President and founding member of the Harwich Conservation Trust (HCT) is Chairman of the Harwich Open Space Committee. The HCT and Harwich Open Space Committee have three joint meetings a year. Meanwhile, in Orleans, Vincent Ollivier is the Environmental Consultant, de facto Executive Director of the Orleans Conservation Trust (OCT) and a former Chairman of the Orleans Land Bank/Open Space Committee. He says that the Chairman of the Land Bank/Open Space Committee goes to OCT meetings and vice versa.

These collaborations between the public and private entities are almost always fruitful. Coleman Yeaw claims that, as a result of the close association between the Foundation and Open Space Committee in Chatham, “we have made two purchases where we shared the cost 50/50 and split the land evenly. Thus we removed from development twice as much land as would have been possible using Land Bank money alone.” In Harwich, efforts to buy a 45-acre, $610,000 parcel were split with the town putting up $500,000 and the HCT putting up $110,000. Currently, the HCT is engaged in a fundraising campaign to buy a 42 acre, $7 million parcel along the Monomoy River. The town has agreed to contribute $3.5 million and the HCT will contribute the

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103 Ibid.
104 D. Isabel Smith, interview by author, Mrs. Smith’s home in Harwich, MA, 25 March 2003.
105 Ollivier, 22 March 2003.
106 Ibid.
108 Heather McElroy of the Cape Cod Commission supplied to the author data on all open space purchases with Land Bank funds in the three towns.
other half. This free flow of information between the public and private entities allows the private land trusts to act quickly on the purchase of an available parcel which might otherwise be lost if the seller were forced to wait through the slow public approval process. Orleans Town Planner, George Meservey, remarks that while “there is no formal relationship between the OCT and the Open Space Committee, OCT is very aggressive and is represented by people who serve on various town boards and committees.” This statement highlights another advantage of land conservation trusts. In the tradition of Charles Eliot and Gifford Pinchot, the members of these land conservation trusts have infiltrated other divisions of government and yield influence in their respective communities beyond just land conservation. Not only will these individuals bring to their work on land conservation a broader perspective, they will also bring the interests of land conservation to the other boards and committees on which they serve.

Resources

In addition to the tools of action already discussed, governments and nonprofits also have access to other resources. In the strictest sense of the word, the land trusts offer a tremendous resource to the town because their members, many of whom are resident voters, are enthusiastic supporters of land conservation, are very knowledgeable about local land parcels, and can provide the town with a wealth of experience in land conservation. Furthermore, land trusts can acquire conservation land that the town wishes to conserve without the town having to spend one cent.

However, the largest government cash resource available for land conservation on the Cape in the past five years has been the Cape Cod Land Bank tax. In 1998, all fifteen towns on Cape Cod voted to adopt a 3% real estate property tax surcharge thereby establishing the Cape Cod Land Bank. According to the Land Bank Act, each town’s tax revenues is to be placed in a reserve fund to be used by the town for the purpose of “acquiring land and interests in land for the protection of public drinking water supplies, open space, and conservation land, the creation of walking and bicycling trails and the

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110 Ibid.
111 George Meservey, phone interview by author, 24 March 2003.
creation of recreational areas." The State gives matching grants to municipalities on the Cape that acquire land for open space and recreation. The Act also stipulates that a deed restriction shall run with the land limiting its use to the purposes of its acquisition.

The Land Bank tax has positively affected the works of the land trusts by providing the trusts with a purchasing partner for prospective acquisitions. "The Land Bank has been a tremendous windfall for us," says Vincent Ollivier from the OCT. Mrs. Smith from the HCT commented that it had been a boon. This was not unexpected. Amongst the biggest proponents of the Land Bank Act were representatives from the local town trusts who felt that the private organizations could not continue to act alone with their own resources. D. Isabel Smith, founding member of the Harwich Conservation Trust was among the Land Bank Act’s lobbyists. She lobbied the government and members of her community. "It took twelve year of hard work to pass the land bank," she recounts. It went through two votes on the local level before eventually being voted in. In Chatham, the Land Bank brings in about $750,000 each year for land conservation. The town currently has $1.6 million in reserve money brought in from the Land Bank tax. Harwich and Orleans voted to issue general obligation bonds in anticipation of revenues to be received from the Land Bank tax. Susan Leaven and George Meservey, town planners of Harwich and Orleans both said that the revenue received from issuing bonds will be used to buy land “for the next few years.”

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113 Ibid.
114 Ibid.
117 Ibid.
120 Ibid.
122 Ibid.
By pooling their collective money, trusts and towns have been able to purchase land that would be too expensive for either individually. In 1997, the OCT set a goal for themselves of conserving 200 additional acres by the year 2000 for the town’s 200th anniversary. They successfully conserved 180 acres through the help of the Land Bank. But the Land Bank has put land conservation trusts at a comparative advantage over their counterparts in other public sector nonprofits, like affordable housing. D. Isabel Smith of the HCT remarks, “We’re the only ones who have any money.”

Of course, land trusts themselves have private sources of capital and, by virtue of their 501(c)(3) status, are able to raise more money all of the time. Vincent Ollivier from the OCT claims that the greatest strength of the organization is that “We have many well-to-do members who take the environment very seriously.” Several years ago HCT received a $3 million endowment from a private donor. All of the organizations also engage in fundraising efforts. The HCT organizes wine tastings, golf tournaments, and cocktail parties to raise money. They also sell a trail guide for land owned by them entitled, Cape Cod at Three Miles an Hour, the proceeds of which go to HCT. OCT benefits from a cookbook authored by a local baker which is sold in local bookstores. Proceeds from sales of the cookbook which Vincent Ollivier estimates have totaled about $13,000 to date go to OCT. This capacity to fundraise gives a trust the capacity to pool its resources with a town government’s land bank funds to protect open space.

Tools of Nonprofits and Government Tools Affecting Nonprofits

The three tools of government available to the nonprofit trusts, ownership and operation, incentives and information, augment the efforts of local government. As part of the Land Bank Act’s matching funds policy, a town must write an Open Space plan

123 Ollivier, 27 March 2003.
125 Ollivier, 27 March 2003.
126 Leaven, 26 March 2003.
prioritizing open space parcels that the town wishes to acquire.\textsuperscript{130} In the plans that I read for Harwich and Orleans (Chatham has yet to update their plan), there was an open acknowledgment that the town open space committees work virtually in tandem with the conservation trusts.\textsuperscript{131} With these three tools, the land trusts become a private sector counterpart to the public sector’s programs.

\textit{Ownership and Operation}

Land Trusts exist to own and hold land in trust. The land trusts in the three towns have all accomplished this. As of January 2003, the Chatham Conservation Foundation owns more than 500 acres worth about $40 million.\textsuperscript{132} The Orleans Conservation Trust owns nearly 520 acres of land also valued at approximately $40 million.\textsuperscript{133} The Harwich Conservation Trust has secured approximately 255 acres of protected open space.\textsuperscript{134} These acquired lands include conservation restrictions held by the trusts. The trusts all acknowledge that the Land Bank Funds made possible by the Land Bank tax have been a tremendous aid enabling them to buy parcels that they could not have afforded on their own.

These public and nonprofit entities work together in another important way. Since, in the three towns, the trusts predate the open space committees, the trusts have several more years, in some instances decades, of experience over their public counterparts. All three trusts have combed over the available and potentially available land in their respective towns. HCT, after its founding in 1987, began a rating system called the Priority Open Space Project that prioritizes parcels based on location, topography and other pertinent qualities.\textsuperscript{135} This process also includes an assessment of the property value by an independent appraiser.\textsuperscript{136} The HCT then proceeded to go after its priority parcels. The Harwich open space committee has consulted HCT’s priority list

\textsuperscript{130} Heather McElroy, personal interview by author, Cape Cod Commission offices in Barnstable, MA, 5 March 2003.
\textsuperscript{131} Orleans Conservation, Recreation and Open Space Plan, (Orleans, MA, 1994), p. 78.
\textsuperscript{132} Yeaw, personal interview, 27 March 2003.
\textsuperscript{133} Ollivier, 27 March 2003.
\textsuperscript{135} Smith, 25 March 2003.
\textsuperscript{136} Ibid.
for its own efforts. D. Isabel Smith of both HCT and the town’s open space committee report that, of the top ten “most wanted” parcels in 1987, HCT has acquired (in many cases with the help of the town’s land bank funds) the top seven.\(^{137}\) CCF has a similar approach to selecting land.\(^{138}\)

There is a shared vision between the trusts and the towns regarding land conservation, partly because in each town there is so much cross-over between the personnel making up the two entities, but also because both the towns and the trusts have the same end goal in mind – to conserve as much land as possible. Furthermore, there is a shared sentiment expressed by everyone interviewed that even with as much success as the town and the trusts have had, the amount of land conserved is still just a drop in the bucket.

There are certain advantages to a land trust owning and operating a parcel rather than a town. By law, Land Bank money cannot buy an “improved parcel.”\(^{139}\) Therefore, if there is a house or any other structure on the land, Land Bank funds cannot be used to purchase it. Land trusts have no such restrictions and in these instances, it is preferable for the town to have the land trust step in and buy the “improved” portion of a parcel with its funds. Town owned parcels usually entail public access, parking lots, and sometimes walking trails.\(^{140}\) Trust parcels can be inaccessible and quite small. It is very uncommon for a town to buy a one acre parcel ensconced in a neighborhood, but not uncommon for a land trust to do so. Finally, there is no guarantee when a town buys a piece of conservation land that it will forever be maintained as such. Harwich is recently considered converting a parcel that has been owned by the town for 60 years from conservation land to residential development.\(^{141}\) However, if land is owned by a conservation trust, it is almost completely assured that the land will stay undeveloped forever.

What else can nonprofit groups do that town agencies cannot? First, they can work quietly and confidentially with landowners, forging relationships patiently (sometimes hard to do in government circles) that may result in open space protection

\(^{137}\) Ibid.
\(^{138}\) Yeaw, personal interview, 27 March 2003.
\(^{139}\) “Cape Cod Land Bank Act.”
\(^{140}\) Ollivier, 27 March 2003.
through a land donation. Second, these groups are an attractive alternative for landowners skeptical about working with "government." Nonprofits are not susceptible to the same type of political pressure to which a town agency may be subjected, such as converting town conservation land to another use. Private trusts can work much more quickly than towns which are subject to a sometimes cumbersome public process of voting for approval to purchase land. Trusts on the other hand, remarks OCT's Ollivier, are "able to strike while the iron's hot" before a prospective parcel goes off the market.142

In addition, there is an additional benefit attached to land conservation that, generally speaking, conserved land makes developed land more valuable. Therefore, there is unmistakable self-interest in some donations of land to land trusts, and the trusts take advantage of that fact. Coleman Yeaw of the CCF claims that if there is a property the Foundation is interested in, their first step is the neighbors and see if they can raise money from the neighbors for the parcel.143 In 2001, OCT went to the neighbors of a $900,000, 5 acre parcel to raise funds and were able to collect $400,000.144 In addition, claims OCT's Ollivier, it is not uncommon for neighbors to contact OCT if an adjacent parcel goes on the market.145

Regulations

Although nonprofits do not possess the tool of regulation, it is possible that a specific regulation or set of regulations set by the government could affect the work of nonprofits. In the instance of land conservation in the three towns, Harwich and Orleans have zoning bylaws directed towards the protection of open space in the planning of new subdivisions. These affect the trusts only in the sense that they add to the total number of acres of conserved land in a town which is the ultimate goal of the trust. Orleans has protected 3.5 acres through these methods.146 Harwich has been more successful, protecting 175 acres.147 Chatham does not have an open space bylaw.148

141 Leaven, 26 March 2003.
142 Ollivier, 27 March 2003.
143 Yeaw, personal interview, 27 March 2003.
144 Ollivier, 27 March 2003.
145 Ibid.
146 Meservey, 24 March 2003.
147 Leaven, 26 March 2003.
Tangentially, the trusts have used regulations as a fundraising device. Vincent Ollivier talks about the concept of “perceived open space.”¹⁴⁹ “Perceived open space” is open space that is not zoned as such and could be developed at any time. Frequently, adjacent property owners think that the space is zoned as conservation land and take for granted that it will always be open. Ollivier claims that the Orleans Conservation Trust uses “perceived open space” as a means to getting landowners whose property abuts the open space to raise money for the purchase of the open space by OCT.¹⁵⁰

Property Rights

The establishment, allocation and enforcement of property rights is a tool available to the local government. However, land conservation trusts participate in the success of this tool by holding conservation restrictions and easements and leases. Conservation Restrictions (CRs)- CRs are voluntary, yet binding, legal agreements between a landowner and the trust. The landowner is offered incentives, through estate tax and federal income tax deductions and property tax relief, to keep the parcels in an undeveloped state. The owner keeps control over the land, while the holder of the restriction promises to enforce the terms of protection. Perpetual or temporary restrictions are considered. All conservation restrictions have to be signed off by the town selectmen. If it does get town approval, then property valuation will be reduced by as much as 90% for lands under permanent restriction.¹⁵¹ Therefore, CRs are also an incentive tool that can be used by the trusts. Interestingly, according to Heather McElroy, land conservation specialist at the Cape Cod Commission, this tax deduction is technically illegal under IRS code.¹⁵² However, it has, so far, gone unchallenged.

Lease- The Trust could lease private land for open space. Leases are effective in their flexibility and “trial-run” aspects. A landowner who is reassured by the community’s responsible management of the leased land may be more willing later to cooperate on a more permanent arrangement, such as a donation in fee or conservation restriction.

¹⁴⁹ Ollivier, 27 March 2003.
¹⁵⁰ Ibid.
¹⁵¹ Orleans Conservation, Recreation and Open Space, 69-74.
Leases are recorded in the Registry of Deeds and remain in force until their expiration date, even if the land’s title is conveyed. Land leased to trusts is typically relieved of property tax obligations. 153

Access Easements- Easements may be constructed to link open space parcels or to create view sheds. If privacy loss is significant and fair market value is reduced, the Town can lower the tax assessment on the affected parcel accordingly. Therefore, access easements must be approved by the selectmen. 154

In summary, land trusts serve as valuable intermediaries in preserving open space through less expensive means than outright acquisition through conservation restrictions, leases, and access easements. The benefits to landowners of these property rights tools are that the landowners get the same tax incentives that they would have had, had they given these rights to the government. However, since they are working through the private land trusts, the property owners do not have to allow for public access on to their properties. In addition, a CR, lease, or easement does not have to cover all of the property or prohibit all use or development.

Incentives

Land trusts, by virtue of their 501(c)(3) status are tax exempt nonprofit organizations. This enables them to utilize tax incentive tools in much the same way that the town offers tax incentives. Among the rationales behind offering a tax break to a donor of land, or cash to a nonprofit, is that it saves the government from having to spend money that it ordinarily would have had to spend, in order to achieve a public purpose. However, J. Mark Schuster points out that “any tax-based incentive, no matter what its purpose, erodes the tax base and results in fewer resources available to the state and/or costs redistributed in the form of higher taxation.” 155 However, the Association for the Preservation of Cape Cod conducted a report on the cost of services associated with various land uses in three towns on Cape Cod including Brewster which borders Harwich

152 McElroy, 5 March 2003.
153 Orleans Conservation, Recreation and Open Space, 69-74.
154 Orleans Conservation, Recreation and Open Space, 69-74.
and Orleans. The conclusions of the report were that town expenses on costs of services always exceed revenues generated by residential properties, whereas revenues always exceed expenses generated by open land. In other words, open land does not require town sponsored services like roads and education that would be required if that same land was developed for year-round housing. Thus, the report concludes, conservation land saves a town money in costs of services. Therefore, again, there is a mutual interest between the trusts and the town because trusts conserve land and the town saves money.

Below are listed the primary methods of land donation to a conservation trust that result in a tax benefit to the donor.

**Donations**- the landowner give the entire interest in a property (fee simple title) to the trust or town. The donor is relieved of future property taxes because ownership is relinquished. The donor may receive income tax deductions amounting to the appraised fair market value of the land. There are no capital gains, brokers’ fees or gift taxes for this gift of property. The landowner may also donate part of the property in different years or donate undivided interests in the entire property over successive years in order to maximize income tax benefits.  

**Bequests**- Property can be given for public use to a trust or a town after the landowner’s death if his or her will specifies such a disposition. This technique allows the landowner full use and enjoyment of the land during his or her lifetime, while removing the asset from estate tax obligations at the time of death. There are no income tax or property tax savings using this approach and the community gets no immediate use of the property. Moreover, there is also no assurance that the landowner’s will not be altered before he or she dies.

**Remainder Interest/Reserved Life Estate**- A landowner can give or sell land to a town or trust while retaining the right to live on or use the property for the rest of his or her life. The landowner keeps “a reserved life estate,” while transferring the remainder interest to the town. The landowner receives a charitable deduction for the value of the land minus

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157 Orleans Conservation, Recreation and Open Space, 69-74.
the value of the life estate. The landowner typically must still pay property taxes and maintenance costs. Reserved life estates are used by elderly landowners who still need their home, but not their land. Benefits to the community include immediate access to the property and knowledge that, eventually, full control will result.\textsuperscript{159}

**Options/Right of First Refusal** - An option is a right, but not an obligation, to purchase a property at an agreed upon price at a specific time. Options allow a town or a land trust the time needed to raise funds for a parcel it knows it wants to acquire. Options are particularly useful in times of development pressure and rising realty markets because they lock in a price and take the land off the market. The town pays a nominal price for the option itself to indicate genuine intent, and records the option. Landowners derive no tax incentives from this technique, but many landowners would prefer to sell their property for conservation than for development.\textsuperscript{160}

Many private citizens have utilized these incentives offered by the government via the land trusts, as well as the conservation restrictions, leases, and easement options discussed above to reduce their tax burdens. As was already mentioned, some landowners would prefer to work with the private land trusts rather than the towns so that the property transactions can be handled more confidentially than would be the case in the public review processes of the town. Taking advantage of this fact, land conservation trusts have been diligent about marketing themselves as vehicles through which these incentives can be easily used in their communities. Using their myriad connections, land conservation trusts have successfully canvas their communities distributing information about their goals and procedures.

**Information**

A conservation trust augments a town’s efforts to conserve land by promulgating informational pamphlets, holding lectures, publishing newsletters, maintaining websites, or sponsoring events. HCT’s website provides “how to” information on becoming a member of HCT, donating to HCT or giving a conservation restriction. It also provides an online version of their quarterly newsletter, as well as articles on which sites are

\textsuperscript{158} Ibid.

\textsuperscript{159} Ibid.
currently being negotiated for acquisition. HCT has a pamphlet that can be handed out to prospective members with much of the same information on how to become a member and/or give a donation. As a result of these outreach efforts, 1,000 people belong to HCT. OCT and CCF also have informational pamphlets, but neither has a website. OCT's information programs tie into efforts by the town. The town has sponsored evening programs on conservation restrictions and other tax-based incentives. The town's information on these incentives, published in their open space plan, includes the possibility of donating land, a conservation restriction, an easement and a lease to the OCT as well as to the town.

As was mentioned earlier, the research that trusts produce on the land parcels in the town is a useful source of information not only for the trust, but also for the town. Vincent Ollivier maintains GIS parcel maps of the entire Town of Orleans which provides useful information on land location and ownership. These maps make it easier to view which parcels are already owned by OCT and which parcels should be targeted by the trust for acquisition.

Yet another source of information is the Compact of Cape Cod Conservation Trusts. This nonprofit organization serves as an umbrella group for all of the land trusts operating in the fifteen towns on Cape Cod. The paid staff of five people provides to the trusts technical assistance and expertise, including legal advice and environmental consulting on matters relating to planning, land acquisition and management, and nonprofit administration. In addition, the Compact links each trust to its counterparts across Barnstable County. The Compact does its own independent studies of prospective land acquisitions and prioritizes parcels most in need of protection. It passes this information on to the local land trusts. The Compact raises money from grants and donations but does not own land itself. It spends its funds helping the local trusts. According to Heather McElroy, land protection specialist for the Cape Cod Commission, Mark Robinson, Executive Director of the Compact, "knows everything that is going on in every town." McElroy reports that sometimes the Compact will give a loan to a local private trust that is short funds in acquiring a parcel.

160 Ibid.
Another information source provided by the private land trusts is the connections the trust’s many members have in their respective communities. These networks and connections of individuals who learn about prospective land going on the market, elderly people looking to plan their estates, etc., allows a trust to act quickly. They are able, as Ollivier puts it, “strike while the iron’s hot.” These personal connections forged through social, professional, and political interactions within their respective communities, have resulted in what can generally be characterized as wide-spread support for the trusts. The Land Bank Act was passed in each of the three towns on the first try\(^{161}\), and second tries indicating the high level of support for land conservation in these towns. Vincent Ollivier reports that 70% of voters in Orleans voted in favor of the Land Bank Act, which was the highest percentage on Cape Cod.\(^{162}\) Ollivier attributes this success to the trusts being proactive about getting their message out in their communities regarding the benefits of land conservation and how individual community members can help land trusts achieve their goals.\(^{163}\)

**Conclusions**

The lines between the public town open space committees and their private sector counterparts, the land conservation trusts, are blurred. This blurring has worked to the advantage of the land trusts. Many of the same individuals staff both entities, the goals of the two bodies — to conserve land — are the same, and the resources available to the open space committee in the form of the Cape Cod Land Bank have aided the private land trusts in accomplishing their goals. Much of the success of the land conservation trusts can be attributed to the trust’s successful use of the tool of information. Trust members hold positions on town open space committees, as well as other positions of local government, facilitating the flow of information between the public and private sectors. Trust members also disseminate informational materials and hold lectures and social events educating the larger community about land conservation and the work of the trusts. This successful permeation of their communities resulted in the passing of the

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161 The Land Bank Act in its first incarnation in the fall of 1997 passed in the eight towns of the Lower Cape, but was defeated in the Middle and Upper Cape towns.
163 Ibid.
Cape Cod Land Bank Act in 1998 which has brought to the towns funds previously unavailable and caused the formations of town open space committees. The towns of Chatham, Orleans and Harwich have conserved almost 500 acres since 1998 using Land Bank funds. These open space committees with the resources of the Cape Cod Land Bank have proved to be extremely valuable in aiding the private trusts in their mission to conserve land.
CHAPTER 5:

Affordable Housing Nonprofits in Orleans, Chatham, and Harwich

Introduction

This chapter reviews the programs of the affordable housing nonprofits in Orleans, Chatham, and Harwich. The first section examines the differences between affordable housing and land conservation. The second section focuses on the affordable housing actors in the three towns, as well as on the increased role of nonprofits to deliver affordable housing in the towns, and the resources available to those nonprofits to accomplish this mission. The third section highlights the tools of government that affect the nonprofits, as well as the tools that are in the power of the nonprofits to add more affordable units.

Affordable Housing and Nonprofits

In Chapter 2, I quoted a “third sector” housing theorist, Julia Koschinsky, who argues that community-based housing organizations “facilitate trust, reciprocity, cooperation and empowerment” in the communities in which they work.¹⁶⁴ This statement is very true for land conservation nonprofits in Chatham, Orleans and Harwich. However, affordable housing nonprofits have had only mixed success in accomplishing the above objectives in the three towns. Like land conservation trusts, the primary goal of the most prominent affordable housing nonprofits is to acquire property, either developed or undeveloped, which affordable housing nonprofits then sell or manage. However, there are some key differences between the two types of nonprofits which undermine the affordable housing nonprofits’ capacity to facilitate trust, reciprocity, cooperation and empowerment.

There are stark differences in how land conservation and affordable housing is received by neighbors of prospective projects. Land conservation usually enhances adjacent property values, whereas affordable housing may do the opposite. Land conservation does not bring new, unknown people to a neighborhood. Affordable housing not only brings in new residents, but these residents are always of low and moderate incomes, prompting complaints of NIMBY-ism. An affordable housing project may be denser than what is acceptable under current zoning, potentially harming the natural environment and/or altering the character of a neighborhood. Land conservation helps save the natural environment. None of the above factors help to facilitate trust and cooperation between affordable housing projects and their surrounding communities. Susan Leaven, town planner for Harwich, can understand the NIMBY-ism. She says that, “Given all of the unknowns in a project, we are usually asking people to take a giant leap of faith.”\(^{165}\) Coleman Yeaw, chairman of the community preservation committee in Chatham gives this blunt assessment, “Affordable housing is not easy, period. The costs associated with it are high and it offends a large number of people.”\(^{166}\)

In this chapter, I examine the programs of affordable housing nonprofits active in Chatham, Orleans and Harwich employing the same framework of tools, resources, and organizational structure as was used in the previous chapter. The same tools: ownership and operation, incentives and information which are available to land conservation trusts are also available to affordable housing nonprofits. They are also affected by the tools of the government, particularly the tools of regulation and incentives. The discussion below will show that a more effective use of the tools by these nonprofits through informational outreach, in a manner similar to land conservation trusts, would enhance their ability to maximize the tools of ownership and operation, as well as incentives. This achievement will better serve both affordable housing nonprofits in their capacity to add units, as well as the interests of the town government and residents.

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\(^{165}\) Susan Leaven, personal interview by author, Harwich Town Offices in Harwich, MA, 26 March 2003.  
\(^{166}\) Coleman Yeaw, interview by author, Chatham Town Offices in Chatham, MA, 27 March 2003.
Affordable Housing Actors in Chatham, Orleans and Harwich

In each town there are three types of entities working towards adding more units for low and income homeowners: state entities, town government entities and nonprofit organizations.

At the state level, the Massachusetts Department of Housing and Community Development (DHCD) concerned with public and assisted housing, as well as community development. It is not uncommon for DHCD to administer programs and funds on behalf of HUD. The Division of Public Housing and Rental Assistance includes the Bureau of Housing Management which oversees the operation and management of 254 local housing authorities statewide. In addition, there are the town government entities: Orleans, Chatham, and Harwich each have a housing authority which reports to DHCD and is autonomous from the town government. These housing authorities work with the town to obtain land for affordable housing development and will work with local nonprofits who act as developers or partners in these projects.

In April 2000, a Cape-wide Housing Summit brought together builders, developers, consumers, citizens and policy makers to try and develop model programs and policies that could be implemented locally to increase the number of affordable housing units available on Cape Cod. Out of this summit came the formation of local affordable housing committees appointed by the selectmen in each town. In Chatham, it is called the Affordable Housing Committee; in Orleans, it is called the Orleans Housing Task Force; and, in Harwich, it is called the Housing Committee. The goal of each is to assess its Town’s housing needs; review local, state and federal programs aimed at enabling low and moderate income persons to secure adequate homes; and recommend policy and programs for meeting its town’s housing needs. The housing committees consist of seven members appointed by each town’s Board of Selectmen for three year overlapping terms.

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167 "Division of Public Housing and Rental Assistance," Massachusetts Department of Housing and Community Development home page, 10 May 2003 <http://www.state.ma.us/dhcd/components/public/default.htm> (19 April 2003).

168 Ibid.

The third type of entity working in the subject towns are nonprofit organizations. These nonprofits consist of faith based and secular organizations funded from mostly private sources. There are four such organizations active in Chatham, Orleans and Harwich.

**Habitat for Humanity of Cape Cod** (HHCC) is “an ecumenical housing ministry that seeks to eliminate homelessness and substandard housing by making decent affordable shelter available.” Habitat’s homes are built with volunteer labor and donations of materials, supplies, land and services. Habitat sells each home, with a no-interest mortgage, to a low-income family who is without adequate shelter. The family becomes an active Habitat partner contributing many hours of “sweat equity” during the construction of their home. HHCC was organized in 1988 and is affiliated with Habitat for Humanity International. The selection process which decides who gets to live in a Habitat home is “intensive” and involves recommendations from local churches, a willingness on the part of the family to participate in the construction and an ability to make mortgage payments. Habitat uses both a paid staff and volunteers.

**Harwich Ecumenical Council for the Homeless** (HECH) was founded in 1990 to develop solutions to homeless problems for families living in Harwich and the adjacent towns. HECH was founded by a group of Harwich clergy and lay people. HECH owns rental properties in the same manner as a private landlord and rents them at an affordable rate to households they deem qualified for affordable units. HECH uses both a paid staff and volunteers.

**Lower Cape Cod Community Development Corporation** founded in 1992 has a housing program which includes creating rental housing through rehab and new construction. Their programs include rehabilitation loan programs, managing a substance abuse recovery home, and organizing affordable rental and owner housing development.

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171 Ibid.
172 Ibid.
173 Ibid.
174 Ibid.
projects. Lower Cape CDC targets their housing to those making at or below 80% of median income. Lower Cape CDC has a paid staff.\textsuperscript{176}

**Housing Land Trust for Cape Cod** is a relatively new organization designed to provide affordable housing for “the community in an environmentally sensitive manner through the reuse of existing properties, the acquisition of suitable land and through the adoption of practices that support the protection of the Cape’s fragile environment and the preservation of its natural resources.”\textsuperscript{177} The Housing Land Trust has an all-volunteer staff.

Affordable housing nonprofits work with state housing authorities and town committees to develop units through new construction and rehabilitation programs. However, there are also nonprofits such as HECH which have moved to work outside of the framework of the town government by buying properties and renting them to low income residents much as a private landowner would. There is not as much cross-over in personnel or information between the private nonprofits and the public affordable housing committees as exists in the relationships of their counterparts in land conservation.

There are reasons why towns prefer nonprofits to develop affordable housing. Vickie Goldsmith of Habitat for Humanity, mentioned several reasons: “greater maneuverability and an ability to build up experience and professionalism.”\textsuperscript{178} For example, affordable housing nonprofits, like their counterparts in land conservation, can act much more quickly than a town. Therefore, a homeowner would be more willing to sell a home or piece of property to a ready-to-buy nonprofit than to a town where the homeowner may be forced to wait six months for a town vote for which the outcome would be uncertain.

Nonprofits can ensure that a property will stay affordable in perpetuity. Don Keeran of the Housing Land Trust for Cape Cod says that “Of the affordable housing being created, there wasn’t the certainty of permanence. Many units fell through the cracks because there was nothing legally requiring them to sell the units at affordable

prices.” Nonprofits, on the other hand, generally make sure that the units they build as affordable, stay so.

Furthermore, not all towns feel that providing affordable housing is their responsibility so that function is left to whoever will take it on. George Meservey, town planner of Orleans says “I think everyone will agree that the provisions of public services are the responsibility of municipalities. It is not established that municipalities should be responsible for providing affordable housing.” If towns do not feel that it is their responsibility, then the job of adding more affordable units falls upon the state or nonprofits. Lastly, another major reason that towns and housing authorities prefer that nonprofits add affordable units is due to the lack of government financial resources available to add these units.

Resources

As was mentioned in chapter 2, the last two decades have been marked by a severe reduction in federal involvement in public issues such as affordable housing. Coincidental with this scaling back was a widening in the housing affordability gap. These trends have intensified the need for affordable housing particularly in places like Cape Cod. Only one affordable unit was created in Chatham during the 1990s. When asked why this was, Valerie Foster, Executive Director of the Chatham Housing Authority replied simply, “No money.” All of the six most active affordable housing nonprofits in Chatham, Orleans and Harwich have been formed in the last fifteen years, indicating an increased reliance on affordable housing nonprofits to take the initiative in providing new units. Vickie Goldsmith, Executive Director of Habitat for Humanity, recalls that “The tap [of money] turned off in 1989 and nonprofits got created. There is funding available to nonprofits that is not available to government entities.” Using the funding available to nonprofits is a primary reason why towns turn to the nonprofits for construction, development, and management of affordable housing projects. If nonprofits can foot the bill for adding low-income units, it frees the town from having to expend its

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179 Don Keeran, phone interview by author, 2 April 2003.
180 George Meservey, phone interview by author, 24 March 2003.
181 Valerie Foster, interview by author, in Valerie Foster’s office at the Chatham Housing Authority, 27 March 2003.
own limited resources and from having to ask its residents to help replenish those resources through taxes.

Tim Buhler of the Orleans Housing Authority claims that “there are a million places for nonprofits to get money for affordable housing.” However, Buhler notes that many of these are state and federal sources and towns prefer that nonprofits develop the affordable housing in their towns using private funding rather than state or federal funds. The primary reason is that nonprofits do not have to adhere to the “prevailing wage” law. The Davis-Bacon Act of Congress requires minimum wages and benefits to be paid on government construction, alteration, and/or repair contracts in excess of $2,000. The Act requires that the minimum wages shall be based upon the wages found to be “prevailing” for the corresponding classes of laborers employed on projects of a “character similar” in the city, town, village or other civil sub-division of the state in which the work is to be performed. On the Cape, this means that the local government must pay local, non-union laborers the same union wages that exist in Boston. Valerie Foster, Executive Director of the Chatham Housing Authority (CHA), estimates that if the CHA were to use a public developer for a prospective project it would cost $10 million. If CHA were to hire a private nonprofit developer, the project would cost $3-$4 million.

Nevertheless, Vickie Goldsmith of Habitat for Humanity says that the cost of land is the greatest obstacle towards adding more affordable units. This sentiment was expressed by everyone interviewed for this thesis. The greatest resource of land for nonprofits is the towns themselves who donate land for affordable units and then pass the construction and management of the site onto a nonprofit. Vickie Goldsmith reports that with 90% of Habitat’s projects, the land is donated by the towns. However, she warns that there is a dearth of municipally owned parcels appropriate for affordable housing

183 Tim Buhler, interview by author, Tim Buhler’s offices at the Orleans Housing Authority, 25 March 2003.
184 Ibid.
186 Foster, 27 March 2003.
188 Ibid.
development, which increasingly will force nonprofits to enter the private land market. Unfortunately, Land Bank funds cannot be used to combat this problem because those monies can only be used to purchase “unimproved” land, strictly for conservation. Yet, there is an alternative.

The Massachusetts Community Preservation Act (CPA), approved by the state Legislature in 2000, allows cities and towns to institute a property tax surcharge and use the money to acquire open space, create affordable housing, and preserve historic sites. Under the law, communities must spend a minimum of 10% of the surcharge income on each of three goals: open space, affordable housing and historic preservation. The remaining 70% can be allocated for any combination of the allowed uses. The act also creates a significant state matching fund of more than $25 million annually which will serve as an incentive to communities to take advantage of the provisions of this legislation. All the decisions are local and local people must vote by ballot to adopt the CPA. So far, the only town on the Cape that has done so is Chatham. Coleman Yeaw of the Chatham Open Space Committee was integral to getting the CPA passed last year. He reports that:

Under the CPA we can purchase developed land and un-develop it, or use part for affordable housing and part for open space. Open space acquisition is definitely low on the priority list compared to historic preservation and community housing. As a matter of fact we don’t have an open space proposal to go to Town Meeting in May. We are reserving 10% for open space and recommending 4 projects for $405,000 (46%) for historic preservation and $327,000 (37%) for community housing; $45,000 (5%) for recreation and $13,000 for administration.

Yeaw claims that the close vote of 828-800 that passed the CPA in Chatham was won by showing residents all of the “big money amounts that were all going off-Cape. Affordable housing was the key [to its being passed].” Yeaw says that they will give

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189 Ibid.
191 Ibid.
192 Ibid.
193 Ibid.
194 Ibid.
195 Coleman Yeaw, email to the author, 22 March 2003.
the funds to a nonprofit organization such as the Lower Cape CDC to buy property for affordable housing.197

Orleans did not pass the CPA and Harwich has yet to investigate it thoroughly. The act is a tough sell in most Cape communities claims Paul Ruchinskas, affordable housing specialist at the Cape Cod Commission, because the residents are already being taxed for the Cape Cod Land Bank.198 George Meservey, town planner for Orleans, corroborates this, “We’re on the hook about the Land Bank. Orleans is not ready to do the CPA.”199 However, that does not mean that Orleans will never pass the act. According to Don Keeran of the Association for the Preservation of Cape Cod, “It could get passed. It took two times to pass the Land Bank. It’s a tough economic climate. All towns will be looking at Chatham to see how it goes there. Chatham will serve as the inspiration.”200

Absent a steady, dependable income stream from government sources, affordable housing nonprofits must make fund-raising a primary component of their daily operations. All of the nonprofits apply for grants from foundations and make fund-raising appeals to local churches, businesses and individuals. Most participate in an annual Housing with Love Walk, a fundraising walk-a-thon across the Cape to raise money for affordable housing. However, all of the nonprofits must rely on the generosity and goodwill of their volunteers who frequently serve the organizations without any compensation. Habitat for Humanity relies on volunteers to fundraise, construct the homes and donate materials. They also use volunteers to select families to live in Habitat’s homes and work with those families before and after construction to counsel them on financial and home-care matters. Orleans affordable housing advocate, Chris Austin, says that, “We have a true wealth on the Cape of retired people. These people are retired executives who need an outlet for that creativity. They let us use those assets. They give us volunteer expertise and money.”201

197 Ibid.
198 Paul Ruchinskas, interview by author, Mr. Ruchinskas’ offices at the Cape Cod Commission in Barnstable, MA, 5 March 2003.
199 Meservey, 24 March 2003.
200 Keeran, 2 April 2003.
201 Chris Austin, phone interview by author, 4 April 2003.
However, not all nonprofits have been able to avoid government funding entirely. HECH and the Lower Cape CDC have used state funding provided by the HOME Consortium.\textsuperscript{202} The HOME Consortium consists of the Cape's 15 towns. Barnstable County, through the Cape Cod Commission, serves as its lead entity. Since 1994 the Consortium has been allocated over $6.1 million in federal HOME Investments Partnership funds.\textsuperscript{203} The HOME Program has provided funding for acquisition and rehabilitation of rental housing, homeowner repairs, rental assistance and first-time homeownership.\textsuperscript{204} The nonprofits must reapply for this funding annually.

Like land conservation trusts, affordable housing nonprofits play a key role in the three Cape towns in regards to promoting their cause. However, unlike land conservation trusts, affordable housing nonprofits do not have a dedicated stream of income, like the Cape Cod Land Bank, which provides funds to the nonprofit or its government counterpart to carry out their goals. An income stream could be made available to the nonprofits if the CPA was passed. This lack of funding is particularly frustrating because while the government is withdrawing involvement in, and funds for, affordable housing, they are concurrently maintaining pressure on towns and their corresponding nonprofits through regulations and incentives to add affordable units.

\textit{Tools of Affordable Housing Nonprofits and Government Tools Affecting the Nonprofits}

As with land conservation trusts, the only tools available to affordable housing nonprofits are ownership and operation, incentives, and information. However, the government's tools also affect the work of the affordable housing nonprofits, particularly the tools of regulation and incentives.

\textit{Ownership and Operation}

Affordable housing nonprofits like their counterparts in land conservation have the capacity to own and operate properties. Ownership and operation of affordable housing takes on several forms. In some instances, the nonprofit owns the house or

\textsuperscript{202} Rubel, 28 March 2003 and Cheryl Gayle, phone interview by author, 1 April 2003.
\textsuperscript{204} Ibid.
apartment unit and rents it to a low or moderate income household. In other instances, the nonprofit owns the land on which the housing is constructed. In still other cases, the nonprofit owns the first right of refusal when a homeowner wishes to sell his/her house.

Habitat for Humanity is almost always given the land on which they construct their homes. Frequently, a town is the donor of the parcel. Habitat constructs the home and then sells it to a pre-selected buyer with a no interest mortgage. Habitat then owns the mortgage on the house and retains the right of first refusal when the home goes on the market.20s

But not every nonprofit thinks that homeownership is the answer to the problem of the “affordability gap.” Cheryl Gayle, housing specialist at the Lower Cape CDC claims that “rentals are our priority right now - it is our #1 issue. It does not build equity and is not the American dream, quote un-quote, but it is ideal for kids right out of high school and for seniors who do not want to take care of a home.” Ed Rubel, Executive Director of Harwich Ecumenical Council for the Homeless (HECH) concurs. According to Rubel, “Rentals are more cost effective than homeownership because the renters do not have to pay principal, insurance, taxes, interest.” In 1995, HECH embarked on a home-buying program to acquire rental properties, both to provide affordable housing to clients, and to generate income for other programs. At the time, the organization was providing rental assistance money to its clients. However, market conditions – with rents up some 30-40%, and mortgage interest rates relative low – allowed HECH to purchase property for lower carrying costs than the rent it was paying private landlords to house its client families. They also went to bank foreclosures and bought up property relatively cheaply. HECH currently owns 27 pieces of property with 37 rental units.

The Housing Land Trust for Cape Cod is a new organization with almost no track record. However, its intention is to own land and construct and rent/sell a home on that land. The Housing Land Trust will retain ownership of the land and sell the house at an

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206 Gayle, 1 April 2003.
207 Rubel, 28 March 2003.
209 Ibid.
210 Rubel, 28 March 2003.
211 Ibid.
affordable rate to a buyer who will sign a ninety-nine year lease for the land. If the home were to go on the market, the Housing Land Trust would be notified and they would have control over the resale of the home.\textsuperscript{212} If the homeowner defaulted on his/her mortgage, the Housing Land Trust has the first right to pay the defaulted loan.\textsuperscript{213}

However, each of the nonprofits listed above is hindered in its goal to own and operate or own and sell affordable housing by a lack of funds in an exploding real estate market. This shortage of financial resources becomes a particular problem for nonprofits, as well as town governments and their residents when faced with the regulations set by the state government.

\textit{Regulations}

Housing nonprofits, like their counterparts in land conservation, do not possess the tools to regulate. However, the Chapter 40B regulation in Massachusetts affects affordable housing in both the public and private sectors.\textsuperscript{214} Massachusetts General Law 40B, the Comprehensive Permit Law, is more commonly known as the “anti-snob zoning” law.\textsuperscript{215} This law requires that each municipality in the Commonwealth reserve 10\% of their housing stock as affordable for low and moderate income families. Chapter 40B allows developers to circumvent local zoning and permitting fees if at least 25\% of the housing in a project is designated as affordable.\textsuperscript{216} The purpose of 40B is to increase the supply and improve the regional distribution of low and moderate income housing by allowing a limited suspension of existing local regulations.\textsuperscript{217} The process works as follows: a developer of a 40B project brings a proposal before the local Zoning Board. If the application for the permit is denied or granted with conditions which would make building uneconomical, the applicant may appeal the board’s decision to the state level Housing Appeals Committee.\textsuperscript{218} If less than 10\% of a municipality’s total housing units

\textsuperscript{212} Keeran, 2 April 2003.
\textsuperscript{213} Ibid.
\textsuperscript{215} Ibid.
\textsuperscript{216} Ibid.
\textsuperscript{217} Ibid.
\textsuperscript{218} Ibid.
are affordable then there is a presumption on the state’s part that there is a substantial housing need which outweighs local concerns and a comprehensive permit may be granted by the state to the developer.  

On the Cape, not one town has achieved the 10% goal required by 40B. However, Paul Ruchinskas, Affordable Housing Specialist of the Cape Cod Commission, released a report in January 2003 concluding that the Chapter 40B comprehensive permit process has been an important tool for affordable housing development on the Cape. According to the report, 27% of the Cape’s affordable housing units (1,047 of 3,914) have been developed through the comprehensive permit process (statewide the statistic is 20%). The median size for 40B developments was 17 units, while the average size was 24 units.

The degree of support for 40B from those working to promote affordable housing in Chatham, Orleans and Harwich is decidedly mixed. Cheryl Gayle, of the Lower Cape CDC says that “it needs to be restructured so people don’t feel ambushed.” Chris Austin of Interfaith Council concurs. “I am conflicted,” she says. “Some obey the rules, others don’t. One project didn’t incorporate the percentage of affordable units. There is no enforcement. I am still for it, but if there are any loopholes, people take advantage of it.” Don Keeran of the Housing Land Trust for Cape Cod feels that with 40B there is “more potential for harm than it produces in benefits. It is able to skirt environmental regulations which increases animosity in the towns. When it is used responsibly by nonprofits to achieve 100% affordable units then it is justified. Its spirit is shown at its best. But when the developer uses it to just to get by at the bare minimum, the developer is really just holding the town hostage.” George Meservey, town planner for Orleans, concurs. “You spend a lot of time creating a regulations structure that addresses many

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219 Ibid.
220 Paul Ruchinskas, Comprehensive Permit Effective Affordable Housing Tool on the Cape (Barnstable, MA: Cape Cod Commission, 31 Jan. 2003).
221 Ibid.
222 Ibid.
223 Gayle, 1 April 2003.
224 Austin 4 April 2003.
225 Keeran, 2 April 2003.
issues and then a developer comes in with 40B. It’s like a star baseball player who lives by his own rules.”

HECH, the Lower Cape CDC, and Habitat for Humanity have not used 40B in the three towns - partly because they do not want to generate bad will with neighbors, partly because they have not had the opportunity to use it, and partly because, as Ed Rubel, Executive Director of HECH says, “it’s expensive to pay for all of the appeals and we don’t have that kind of money.”

Incentives

A state incentive designed to promote affordable housing is Executive Order 418. Executive Order 418 is a program to give priority in awarding over $364 million in annual discretionary funds to those cities and towns that the Director of DHCD has determined are taking steps to increase the supply of housing for individuals and families across a broad range of incomes. Communities that attain “housing certification” will receive a 10% scoring bonus when applying for competitive discretionary grant programs and non-competitive and/or rolling applications discretionary grant funds. Communities without housing certification are not eligible to receive the non-competitive, un-scored, rolling application discretionary grant funds. Communities must request housing certification annually and can receive certification either through demonstration of new housing unit production or through completion of a checklist of proactive steps demonstrating that it is planning, removing barriers and creating a positive atmosphere for housing development. Susan Leaven, Harwich Town Planner, says that “Executive Order 418 scares us more than Chapter 40B [into being proactive about affordable housing] because of the potential loss of that grant money.” Leaven reports that in fiscal year 2002 Harwich did not get certified and therefore did not receive that money.

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227 Rubel, 28 March 2003.
229 Ibid.
230 Ibid.
231 Ibid.
233 Ibid.
Both Executive Order 418 and Chapter 40B serve as incentives to the towns to be more proactive about affordable housing. Angelo LaMantia, Affordable Housing Committee member in Harwich, warns of not complying with Executive Order 418. “Currently we have $650,000 coming in from state grants; it’s the tip of the iceberg. We could get much more. When we apply for state grants, we lose points if we are not trying to add more affordable units. School salaries will have to go up and so our taxes will have to go up.”

Harwich Affordable Housing Committee Chairman Ed McManus also says that Chapter 40B gives towns the incentive to add more affordable units before a developer attempts to push a “40B project down our throats.” Interestingly, in the nearby town of Barnstable, the State actually turned down a developer’s 40B appeal. According to McManus, “The State said [to Barnstable] we can see you are making a good faith effort to provide affordable housing and so we will deny this appeal.” In this instance, the state saw that the town was making good progress in affordable housing and denied a developer’s attempt to use an incentive to circumvent local zoning.

The incentives set by the state government stimulate the towns to take the initiative with affordable housing. The towns, in turn, involve the nonprofits in achieving their goals of adding more affordable units. However, it is questionable how many town voters are aware of the potential damage of Chapter 40B and the potential benefits of Executive Order 418. At a Harwich Housing Committee meeting on March 27, 2003 over fifty Harwich residents were in attendance and not one knew of Executive Order 418, and only a few had accurate information on Chapter 40B. Increased awareness in communities of these regulations and the incentives they offer to increase affordable units could serve affordable housing advocates, including nonprofits, in gathering support for their goals.

For example, nonprofits, by virtue of their 501(c)(3) status have incentives via the government that they can offer to potential donors. Individuals or businesses that donate money, homes, land, etc. to a nonprofit can use the donation as a tax deduction. The Lower Cape CDC has received a couple of homes through this method. Cheryl Gayle,

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234 Angelo LaMantia, comments at Harwich Housing Committee, Recreation Center in Harwich, MA, 27 March 2003.
235 Ed McManus, comments at Harwich Housing Committee, Recreation Center in Harwich, MA, 27 March 2003.
housing specialist at the CDC says that “It is not infrequent down here for people to buy a home, and then gut it or tear it down. A couple of people have sold their homes to us at below market rate to get a tax deduction. In Truro, a couple donated a house, the cost to move it to a new site, and put in a foundation. Of course, they claimed it all as a tax deduction.” The opportunities for individuals to use these incentives exist. However, the short track record suggests that either the public is aware of the incentives, but is loathe to contribute land, property, and cash to a cause that may negatively affect their property values, neighbors’ property values, or current character of their neighborhoods, or that there is little knowledge on the part of the public of these incentives.

Information

Awareness of incentives such as those described in the last section could be increased through public information outreach. All of the nonprofit organizations examined in this thesis maintain websites and have informational pamphlets which detail how to donate cash or property to the organizations. However, affordable housing advocates could use an approach similar to the one taken by land conservation advocates who have held information sessions in the towns to disseminate information on the incentives to property owners for land conservation. In that instance, the private land trusts worked with the local open space committees in organizing the sessions. Affordable housing nonprofits could work with affordable housing committees to share information on the incentives available for affordable housing. This has not yet been done in any of the towns, to my knowledge. In addition, marketing materials like the Orleans Conservation Trust stickers affixed to cars and businesses could be employed by affordable housing nonprofits to raise the profiles of these organizations.

Vickie Goldsmith of Habitat for Humanity says that “Politically, this is the most favorable time for affordable housing. It is all over the newspapers.” Orleans affordable housing advocate, Chris Austin concurs saying, “Now is the time. Communication is good. Towns are talking about it, towns are talking to each other.” Perhaps trying to capitalize on the favorable political environment, affordable housing

236 Gayle, 1 April 2003.
nonprofits recently began wide-spread mailing campaign to Lower Cape residents. Since I started writing this thesis, several solicitation letters including donation cards arrived in my parents’ mailbox. This is the first time they received such mailings.

Conclusions

Affordable housing nonprofits have taken a more prominent role in the three towns in recent decades as government has withdrawn its funding and involvement in the issue and as the “affordability gap” on the Cape has widened. Towns prefer that nonprofits develop and manage affordable housing because nonprofits are not tied to the same regulations regarding wages, bidding processes, and funding sources as are their counterparts in the public sector. However, unlike land conservation which gathered enough local, voter support for the passage of the Cape Cod Land Bank Act and its accompanying property tax surcharge for open space protection, affordable housing has no consistent stream of income. This condition leaves affordable housing nonprofits scrambling for resources. However, there is an alternative in the proposed Community Preservation Act (CPA) which, through an additional property tax surcharge, would direct a steady stream of income for affordable housing to the town’s each year. Of the three towns, only Chatham has passed the CPA and the town will use the funds allocated to affordable housing in conjunction with a nonprofit.

As this chapter shows, affordable housing nonprofits have within their power, the use of tools which could help them gather more support for their cause. Nonprofits (and town affordable housing committees) have the power to disseminate facts about affordable housing, as well as information about the tax incentives that are available from the government to donors of cash and property to towns or nonprofits for affordable housing. Using the tool of information, nonprofits (and towns) also have the power to communicate to town voters that there are incentives from the state to adding more affordable units. Adding more affordable units will help the towns avoid the “dreaded” Chapter 40B and potentially bring in grant dollars from Executive Order 418. Increased support from the community for affordable housing would hopefully result in increased ownership and operation of affordable units by nonprofits. Ultimately, increased voter

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238 Austin, 4 April 2003.
support for affordable housing could result in the town residents voting for the passing of the CPA. CPA funds could be used by either nonprofits or towns to add more affordable units.

I will argue in the next chapter that affordable housing nonprofits are not using the tools in their power to their greatest advantage. These nonprofits can look to the experience of the land conservation trusts to improve their use of the tools available to them. Emulating the trusts will not give affordable housing nonprofits the same level of support or success as that enjoyed by the conservation trusts because the motivations for support of the respective causes are too different. However, I believe, that an adoption of some of the tactics used by the land conservation trusts will help the affordable housing nonprofits to achieve greater success than they are currently experiencing.
CHAPTER 6: Finding and Analysis

I began this thesis asking the questions: What are the differences in how various nonprofit sectors have compensated for the reduction in government funding and involvement? What explains those differences? How could these differences be minimized? In order to examine that question, I analyzed the differences between both the structures of the affordable housing and land conservation nonprofit sectors, as well as the motivations of local residents for supporting these two sectors in three towns on Cape Cod.

The case studies reveal, not surprisingly, that the level of local support for a nonprofit sector can be critical in that sector's ability to overcome the reduction in government funding and involvement. Members of land conservation trusts, through persistent, successful lobbying of their friends and neighbors, gathered enough voter support for the passing of the Cape Cod Land Bank Act. The passing of this Act brought with it the implementation of a 3% property tax surcharge which yields funds to towns for the protection of open space, as well as the mandatory formation of town open space committees charged with the dispersal of these funds. By successfully fighting for the passage of this act, the land conservation trusts, in effect, succeeded in delivering government financing and involvement to their cause that would not have been available if the act had not passed.

The nonprofit affordable housing sector, on the other hand, has experienced greater difficulty in building support for an initiative similar in idea to the Cape Cod Land Bank: the Community Preservation Act (CPA). The CPA would involve another property tax surcharge. The act mandates that 30% of the funds from the tax be spent in equal amounts on land conservation, historic preservation, and affordable housing. The remaining 70% of the funds can be allocated in any portion to each of the three issues. The CPA was not passed in Orleans and has been all but ignored in Harwich. It successfully passed in Chatham, thanks to the persuasive efforts of one man, Coleman Yeaw, who convinced his neighbors of the benefits of the act as a source of State matching grant funds to the town, as well as of funds for affordable housing. Still, in
Chatham, the initiative barely passed the town vote. Therefore, the affordable housing sector lacks the more or less reliable source of funds and involvement that is enjoyed by the land conservation sector. Why did voters in the three towns enthusiastically pass one property tax surcharge, the Cape Cod Land Bank tax, and reject, ignore, or barely pass the other, the Community Preservation Act tax?

There are differences in rationale between why people support land conservation and why they support affordable housing. These differences are transferred into the level of support for the nonprofits that promote these two causes. And thus, these differences affect how well the nonprofit sector is able to “facilitate trust, reciprocity, cooperation and empowerment, and a shared sense of community, identity, and norms” in the communities in which they exist. However, that crucial community support is dependent not only on the motivations community members have for endorsing these organizations, but also on how the nonprofits structure themselves within their communities to influence these motivations. I will argue that a change in structure of the nonprofit affordable housing sector could or would help to mitigate these differences in levels of community support due to the differences in rationale for supporting the respective causes.

Structure and Motivations in the Land Conservation Sector

The level of support for land conservation flows, in part, from the operational structure of the land conservation trusts. The trusts, consisting only of volunteers, exist in each town; trust members solicit their friends and neighbors for membership in, financial support of, and gifts or sales of land parcels to the organization. The close ties between trust members and the communities in which they live provide trusts with “insider knowledge” of the planning and settling of estates, as well as pending sales of land. This allows the trusts to “strike while the iron’s hot” and negotiate with landowners to work with the trusts and keep the trusts in mind during the planning of their estates and the sale or donation of their land. This information advantage is further augmented by the fact that in the three towns, trust officers frequently hold key positions on town committees, including open space committees. This close association with town government provides trusts with information on town planning priorities and allows trusts
the opportunity to influence the allocation of land bank funds towards parcels the trust is interested in preserving.

However, in addition to their operational structure, the level of support enjoyed by the trusts from their communities is also due to the attractiveness of the cause, which the trusts promote. There are several reasons that local landowners are likely to support land conservation, and thus land conservation trusts. Among the motivations for support include the fact that in a region renowned for the beauty of its landscapes, but threatened by over-development, land conservation protects the area’s natural attributes. A preserved landscape is an amenity for landowners and visitors to the Cape. By giving their money, energy, and land to these trusts, individuals are also protecting the environment and quality of the local water supply, both of which are at risk from too much development. Correspondingly, these individuals are endorsing work that will prevent increases in local traffic and density. Related to this is the notion that there is a certain sense of *noblesse oblige* on the part of landowners who support land conservation. In other words, landowners who feel fortunate enough to be able to enjoy the natural beauty of Cape Cod feel a sense of obligation to “give back” to the community in the form of supporting a land trust.

A more cynical assessment of the rationales for supporting land conservation is that landowners that work to conserve land in their towns are doing so mostly out of self-interest. For example, when land is protected as open space in a market where demand for that land is high, it makes the remaining developable land an even scarcer resource. Therefore, land conservation drives up the property values of the other landowners in town. In addition, when a landowner’s property is surrounded by preserved open space, the property will usually be more highly valued by a tax assessor than if it were surrounded by developable open space. This is because the conserved land serves as a buffer between the landowner’s home and the noises, sights, and smells of neighbors. Therefore, there is clearly self-interest involved in a landowner’s decision to donate or sell land parcels surrounding his/her home to a town or land trust. Self-interest also explains why neighbors will often pool their resources together in order to purchase an undeveloped parcel adjacent to their land, and then sell or donate that parcel to a land trust or town. Finally, local landowners may support trusts that protect the Cape’s natural
beauty because it is this beauty that attracts tourists. Many local residents derive their livelihood from the tourism industry and so it is in their best financial interest to support land conservation.

**Structure and Motivations of the Affordable Housing Sector**

The structure of affordable housing nonprofits differs from land conservation trusts. Each town has a local trust, whereas the affordable housing nonprofits act regionally, working in several towns at once. Land trusts are volunteer only, whereas most of the affordable housing nonprofits each have paid staff with volunteers. Perhaps because the affordable housing nonprofits are not active in each town and are not staffed with volunteers from each town, there is less overlap between the nonprofits and the local affordable housing town committees. The blurring of lines between the public and private sectors that exists between the land trusts and town open space committees are largely absent in the affordable housing sector. This obstructs the flow of information between nonprofits and the towns and makes for a less consistent relationship between the two.

In addition, when examining the relationship between land conservation trusts and the communities in which they work, there appears to be much less cooperation between community residents and the affordable housing sector. Unlike the land conservation trusts, there is little outreach to the community of potential donors in the form of upscale events such as wine tasting, golf tournaments, or cocktail parties. These types of events bring individuals of the community together for the cause of land conservation, create visibility for the cause and the organization running the event, and provide a forum in which to distribute information about the cause, and, perhaps most importantly, raise money for the organization. Why these types of events are not organized by affordable housing nonprofits is unclear. Is it because there is a lack of widespread support for the affordable housing that attendance at such an event would be poor? Do the constituents of affordable housing nonprofits differ in interests and tastes so much that such events would not appeal to them? Do affordable housing nonprofits feel that the “snob factor” associated with such events run contrary to their ultimate mission, which is to serve the underprivileged? Or is it possible that, as some land conservation advocates have
suggested, the affordable housing nonprofits are poorly organized and generally not "proactive?"

This uneasy relationship between the affordable housing sector and local communities is also due to the fact that affordable housing is a much tougher sell to a community than land conservation. This is because property owners see few motivations for supporting affordable housing, particularly if a proposed project is to go on land adjacent to their property. I witnessed how difficult it is for a town affordable housing committee to convince a neighborhood to accept a proposed affordable housing project at a Harwich Housing Committee meeting on March 27. From the start of the meeting, there was palpable tension between the committee and the members of the community in attendance. The meeting discussed a proposed affordable housing development which will add thirty-nine affordable units on nine acres in a residential neighborhood. No one from the community condemned the idea of affordable housing, or even that Harwich needed it. However, no one wanted it where the town wanted to put it: on land abutting the properties of those in attendance. The development was to be placed on currently undeveloped land, which irritated neighbors who claimed that the development was destroying a "beautiful, natural habitat." Others protested that the water quality in the neighborhood would be adversely affected by the development. One neighbor was anxious that the traffic associated with so many new units would bring too much traffic to their currently quiet neighborhood where children play. Still others complained that the increased density of the development proposed by the town conflicted with the one acre zoning in the adjacent neighborhood. In addition, neighbors worried about the architecture of multi-family units in contrast with the single-family homes of the adjacent streets. One irate man whose property abuts the development warned all of those in attendance that the new development would reduce all of their property values. He demanded compensation for the losses from the town. All of the concerns voiced at the meeting are common worries about affordable housing by the abutting neighbors. It may harm the environment and the aquifer, negatively affect the architectural character of the neighborhood, create unwanted density and traffic, and lower property values. These are valid concerns, but they frustrate an affordable housing nonprofit's ability to successfully
"facilitate trust, reciprocity, cooperation and empowerment" in the communities in it works.

Proponents of affordable housing are usually motivated by a strong sense of *noblesse oblige*, spurred on by religious convictions or a sense that it is the "right thing to do." But such individuals are rare. There is a distinct "us vs. them" attitude in the affordable housing sector. At the Harwich housing committee meeting, two members of the committee grew so fed up with attendees opposing the project that one snapped at the crowd, "If you don’t know that there is a housing crisis in this town, you've got your head in the sand!" Another board member accused all of the attendees of being NIMBYs (Not In My Back Yard) and instructed them to go home and replay their voiced complaints from the meeting in their heads in order to understand what NIMBYs they were. Needless to say, such comments did not convince the community members in attendance that the project was a good idea, nor did it make them very sympathetic to the difficult task facing the members of the housing committee. How can the affordable housing sector overcome these challenges from communities to their projects? Can they replicate the successes of the land conservation sector?

In the last chapter, I argued that the affordable housing sector needed to make better use of the tools in their power, particularly the tools of information and incentives. Many local residents in the three towns seem to be ignorant of the incentives for adding additional affordable units in a town. Residents have inaccurate information about Chapter 40B, and most are unaware that 40B can be prevented if a town is making an effort to meet its affordable housing obligations. In addition, Executive Order 418, which provides a town with the opportunity to apply for state grants, if they obtain housing certification, is all but unknown to local voters. Furthermore, the accessory apartment bylaw, which exists in Orleans and Harwich, has never been used in either town. I believe that this is because homeowners are simply unaware that the bylaw exists, and are unlikely to wade through the dense book of bylaws either online or at the town hall, in order to learn about it. My own parents have an accessory apartment, but did not realize that it could be rented out legally.

Finally, there are tax incentives available to property owners donating homes or land to be used as affordable housing. However, these incentives are rarely taken
advantage of. Undoubtedly, this is partly due to the tenuous support for affordable housing detailed above, but it is also due to the fact that it simply does not occur to landowners to do so. This is because it does not occur to the towns or affordable housing nonprofits to approach property owners to ask them to do so. Not one representative of the affordable housing sector I interviewed knew of any attempts by the sector to approach property owners and ask them to involve the affordable housing sector in the planning of their estate or the selling of their home or land. This seemed particularly foolish to me because in recent years it was common place for individuals to purchase homes and then proceed to tear down or gut the existing home in order to erect a newer, larger, custom-made one. These smaller, older homes could have been moved and reused as affordable housing. However, in the three towns this rarely, if ever, happened. Therefore, the tool of disseminating information to local residents about incentives and possibilities for donations of cash and property could help the affordable housing sector both build support for its cause, as well as create new affordable units. However, who will take the initiative for this task?

I believe that a change in the operational structure of the nonprofit affordable housing sector is the answer. Affordable housing nonprofits should adopt an operational structure similar to that of the local land conservation trusts. The affordable housing nonprofits that currently exist in the three towns are regional in scope. Their staff members and volunteers might all live in Eastham, but are working on a project in Harwich. Locally administered affordable housing nonprofits would likely have greater influence within their communities to raise money, gain support, and distribute information about incentives for low and moderate income housing. Projects in their communities could then be constructed, sold, or managed by more experienced nonprofits like Habitat, the Lower Cape CDC, or HECH. Chatham has taken a first step in this direction, recently voting to form such a nonprofit organization. I believe these town-based nonprofits could then work as conduits of information between the larger nonprofits and the communities. They could also work with their respective town’s affordable housing committee in the same manner as land trusts and open space committees.
These changes in operational structure will not allow the affordable housing nonprofits to replicate the success and degree of community support enjoyed by the land conservation trusts. The rationales for community members to support the two sectors are too disparate. However, I believe that the differences between affordable housing nonprofits and land conservation nonprofits can be mitigated by changes in operational structure. Lessening these differences might result in increased funds, political influence, and community support for affordable housing. However, it is up to affordable housing proponents to be proactive and get organized in each community. Ed Rubel of Harwich Ecumenical Council for the Homeless quotes a prominent member of the land trust community who says, “We (land trusts) have organized and gotten our act together to get land and we’ve been very successful. Affordable housing now needs to do the same.”
## Figure 6.1: Chart of Motivation for and Structure of Land Conservation and Affordable Housing Nonprofits

<table>
<thead>
<tr>
<th>Motivation</th>
<th>Land Conservation</th>
<th>Affordable Housing</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Property values</strong></td>
<td>- Property values will rise</td>
<td>- Does not raise property values and may even lower them</td>
</tr>
<tr>
<td><strong>Property owner</strong></td>
<td>- Property owner self-interest</td>
<td>- Some opportunities for property owner self-interest</td>
</tr>
<tr>
<td><strong>Noblesse oblige</strong></td>
<td>- Noblesse oblige</td>
<td>- Noblesse oblige</td>
</tr>
<tr>
<td><strong>Amenity</strong></td>
<td>- Amenity</td>
<td>- Could prevent 40B</td>
</tr>
<tr>
<td><strong>Current property</strong></td>
<td>- Current property owners generally feel land conservation is a worthy cause</td>
<td>- Current property owners are generally wary of all of the unknowns associated with affordable housing</td>
</tr>
<tr>
<td><strong>Does not stress</strong></td>
<td>- Does not stress the aquifer or harm the natural environment, it actually protects them</td>
<td>- May stress the aquifer and harm the natural environment</td>
</tr>
<tr>
<td><strong>Protects</strong></td>
<td>- Protects the Cape’s natural beauty which helps the tourism industry</td>
<td>- Does not protect the Cape’s natural beauty, but may provide homes for those servicing the tourist industry</td>
</tr>
<tr>
<td><strong>Does not increase</strong></td>
<td>- Does not increase the traffic in and density of a neighborhood</td>
<td></td>
</tr>
<tr>
<td><strong>Structure</strong></td>
<td><strong>Local land trust</strong></td>
<td><strong>Regional entities</strong></td>
</tr>
<tr>
<td><strong>All volunteer staff</strong></td>
<td><strong>Close association between land trusts and local government</strong></td>
<td><strong>Most have some paid staff with volunteers.</strong></td>
</tr>
<tr>
<td><strong>Upscale benefits</strong></td>
<td><strong>Solicit for donations via mail</strong></td>
<td><strong>Inconsistent relationships between nonprofits and local government</strong></td>
</tr>
<tr>
<td><strong>Solicits for</strong></td>
<td><strong>Solicits for donations and volunteers via religious institutions, but does so in local businesses</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Donations of property</strong></td>
<td>generally come from towns (rarely from individuals)</td>
<td><strong>Bean suppers and walk-a-thons</strong></td>
</tr>
<tr>
<td><strong>Does not solicit</strong></td>
<td></td>
<td><strong>Solicit for donations via mail</strong></td>
</tr>
<tr>
<td><strong>Donations</strong></td>
<td></td>
<td><strong>Donations of property generally come from towns (rarely from individuals)</strong></td>
</tr>
<tr>
<td><strong>Does not solicit</strong></td>
<td></td>
<td><strong>Solicits for donations and volunteers at church</strong></td>
</tr>
</tbody>
</table>
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