



January 7, 2005

Chuck Hodgkinson
Town Hall
P.O. Box 119
Chilmark MA 02535

Re: Community Preservation Fund
Our File No. 2004-530

Dear Mr. Hodgkinson:

You asked about the use of community preservation fund monies to eliminate an invasive reed that disrupts the water flow into a local pond.

Depending on the circumstances, the project may come within an allowable purpose under the Community Preservation Act (CPA). G.L. c. 44B. The CPA provides that monies in the community preservation fund may be used "for the *acquisition, creation and preservation* of open space ... and for the *rehabilitation or restoration* of open space ... *that is acquired or created*" under the act. (Emphasis added). G.L. Ch. 44B §5(b)(2). Open space is broadly defined to include land to protect existing and future well fields, aquifers and recharge areas, watershed land, agricultural land, grasslands, fields, forest land, fresh and salt water marshes and other wetlands, ocean, river, stream, lake and pond frontage, beaches, dunes and other coastal lands, lands to protect scenic vistas, land for wildlife or nature preserve and land for recreational use.

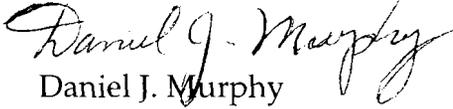
If the eradication project is necessary to protect the pond in its natural state or the surrounding lands, it might qualify as preservation of open space. Preservation is narrowly defined in the act to mean "protection of personal or real property from injury, harm or destruction, but not including maintenance." G.L. c. 44B §2. Preservation projects may be undertaken on any open space properties or assets. If, however, it is considered rehabilitation or restoration, then it may only be undertaken on properties or assets originally acquired or created with community preservation monies. Rehabilitation projects are those involving substantial and extraordinary improvements to the property or asset in order to make it functional for its intended use. G.L. c. 44B §2. You should consult with town counsel to determine whether the project qualifies given the situation being addressed and the nature of the work being proposed.

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You also asked about the requirement that the town allocate a minimum of 10 percent of annual fund revenues to open space purposes. The allocation can be by appropriation and/or reservation and includes all allowable expenditures for open space projects and initiatives. See Section III-A-7 of Property Tax Bureau Informational Guideline Release (IGR) 00-209, *Community Preservation Fund*. For example, all of the following actions from a year's fund revenues would count toward the town's minimum spending allocation for that year: an appropriation to purchase a parcel for water supply purposes, an appropriation to pay debt service on a CPA borrowing authorized to purchase open space, and a reservation to the open space reserve. If the eradication project qualifies, any appropriation for that purpose would also count.

If you have any further questions, please do not hesitate to contact me again.

Very truly yours,


Daniel J. Murphy
Chief, Property Tax Bureau

DJM:KC