



Bulletin

2004-13B

CAPE COD LAND BANK AND COMMUNITY PRESERVATION ACT

TO: Barnstable County: Assessors, Collectors, Treasurers, Accounting Officers, Clerks, Finance Directors, Selectmen, Town Councils and Town Managers

FROM: Gerard D. Perry, Deputy Commissioner
Division of Local Services

DATE: August 2004

SUBJECT: Conversion from Cape Cod Land Bank Program to Community Preservation Act

This *Bulletin* explains an outside section in the Fiscal Year 2005 state budget that allows towns in Barnstable County to terminate their participation in the Cape Cod Open Space Land Acquisition Program (Cape Cod Land Bank) and replace it with acceptance of the Community Preservation Act (CPA), with some modifications. Chapter 149 §298 of the Acts of 2004. Both programs dedicate monies from a local property tax surcharge, and other sources, to a fund for special spending purposes.

Replacing the land bank program with a modified CPA requires approval of the town's legislative body and a referendum question at a regular municipal or state election. The town's participation in the land bank program ceases at the end of the fiscal year in which the referendum is approved and the modified CPA then takes effect the next year. Any balance in the land bank fund on June 30 is transferred to the community preservation fund. The Open Space Committee is abolished and the town must establish a Community Preservation Committee by by-law. The three per cent land bank surcharge becomes a community preservation surcharge and the year after it is first assessed, the town is eligible to receive state matching funds on the same basis as other CPA communities. The town also generally becomes subject to the provisions of the CPA. Annual debt service on land bank borrowings may be paid from community preservation fund revenues, even if that results in less than 10% of annual revenues being spent on each of two other CPA spending categories: historic resources and affordable housing, as ordinarily required.

Towns are not required to adopt the modified CPA option. They may continue to assess a surcharge under the land bank program through FY2020, the year the surcharge ends. They may also adopt the regular CPA independently and assess both a land bank and community preservation surcharge. If a town adopts the modified CPA option, however, it may not later adopt the CPA independently. In addition, a town that independently adopts the CPA may adopt the modified CPA option, which will terminate the land bank surcharge and make the town subject to the modified provisions. Towns adopting the modified CPA option may not revoke their acceptance, or amend the surcharge amount, until after FY2020.

Attached are more detailed guidelines explaining the acceptance of, and transition to, the modified CPA.

To assist towns in evaluating the modified CPA option, we have also included two charts. Chart 1 identifies the features of the CPA that are modified if this option is adopted. Chart 2 compares the key features of the CPA and land bank programs.

Please note that according to the Elections Division in the Office of the Secretary of State, the Secretary must receive written notice by 5:00 p.m. on September 3, 2004 for an acceptance referendum to appear on the November 2, 2004 state election ballot. Chapter 149 §298(c) of the Acts of 2004; G.L. Ch. 54 §42C.

Any questions you have should be directed to the Property Tax Bureau legal staff at 617-626-2400.

OPTION TO REPLACE CAPE COD LAND BANK
WITH
MODIFIED COMMUNITY PRESERVATION ACT
Chapter 149 §298 of the Acts of 2004

For guidance on administering the Community Preservation Act (CPA) generally, refer to Property Tax Bureau Informational Guideline Release (IGR) 00-209 (as amended) *Community Preservation Fund*. In addition, specific implementation issues that have arisen since the CPA was enacted, most of which apply to towns adopting the modified CPA option, are addressed in Bulletins 2003-04B, 2002-12B, 2001-09B and 2000-16B. All materials are available on our web site: www.mass.gov/dls .

A. ADOPTION

Adoption of the modified CPA requires approval of both the legislative body of the town and the electorate at the next regular municipal or state election.

1. Legislative Body

Town meeting or town council must first approve adoption of Chapter 149 §298 of the Acts of 2004 by majority vote. The following or similar language may be used:

VOTED: That the town adopt Section 298 of Chapter 149 of the Acts of 2004, which allows the town to replace the Cape Cod Open Space Land Acquisition Program with the Community Preservation Act and dedicate the three per cent property tax surcharge currently being assessed through fiscal year 2020, along with state matching funds that will be available to the town under the Community Preservation Act, to a special “Community Preservation Fund” that may be appropriated and spent for certain open space, historic resources and affordable housing purposes, effective for the fiscal year beginning on July 1, _____.

2. Referendum

a. Referendum Schedule

Once the legislative body approves adoption of the statute, an adoption referendum must be placed before the voters at the next regular municipal election held more than 35 days, or the next regular state election held more than 60 days, after the approval.

b. Question Form

The referendum question presented to the voters must read as follows:

Shall the Town of _____ adopt Section 298 of Chapter 149 of the Acts of 2004, as approved by (town meeting/town council), a summary of which appears below?

c. Question Summary

The following summary must appear underneath the question:

Acceptance of Section 298 of Chapter 149 of the Acts of 2004 means the Community Preservation Act shall effectively replace the Cape Cod Open Space Land Acquisition Program. There shall be no additional excise on real property levied other than the current 3 per cent levied for the provision of the Cape Cod Open Space Land Acquisition Program. Acceptance of this section shall allow the community to access state matching funds up to 100 per cent of the excise on real property currently levied, which was previously unavailable to the town.

d. Question Approval

The question is approved and the statute adopted if a majority of the voters voting on the referendum question vote “yes.”

3. Effective Date

The Cape Cod Land Bank (CCLB) terminates at the end of the fiscal year in which the statute is adopted and the modified CPA takes effect at the beginning of the next year.

4. Notification of Adoption

The clerk must notify the Municipal Data Management/Technical Assistance Bureau if the statute is adopted. (See attached “Notification of Acceptance”). The notification should be made as soon as practicable after the referendum election. For the community to receive distributions from the state trust fund, it must be received not later than September 15 of the fiscal year following the close of the fiscal year the CPA surcharge is first assessed. The assessors and accounting officer will also have to submit a *Community Preservation Surcharge Report* (Form CP-1) by September 15 of each year. See IGR 00-209 (as amended), Section VII.

B. TRANSITION PROVISIONS

1. Community Preservation Surcharge

A community preservation surcharge of three per cent is assessed on real estate, beginning in the fiscal year after the year the act is accepted. All provisions of the CPA regarding the surcharge calculation, assessment, billing and collection apply. See IGR 00-209 (as amended), Section II.

2. Community Preservation Fund

The community preservation fund is established on July 1 of the year the modified CPA takes effect. The accounting officer must abolish the CCLB fund and transfer the balance as of June 30 to the community preservation fund. The amount transferred will then be considered the community preservation fund balance available for appropriation for CPA spending purposes during the first fiscal year the modified CPA is in effect. The accounting officer should first report that balance to the Bureau of Accounts on Form CP-2, with a notation that it reflects a CCLB fund transfer. See IGR 00-209 (as amended), Section III-A-8-b.

Any revenues received after June 30 that would have been credited to the CCLB fund are credited to the community preservation fund.

3. Community Preservation Committee

The Open Space Committee established under the CCLB program terminates upon adoption of the statute. The town must enact a by-law establishing a Community Preservation Committee (CPC). See IGR 00-209 (as amended), Section IV.

The CPC should be established as soon as possible since no community preservation fund appropriations and borrowings may be made without its recommendation.

4. Land Bank Fund Appropriations and Borrowings

After the statute is adopted, the town may not make any further appropriations from CCLB fund monies or authorize any new CCLB borrowings.

The town may spend appropriations voted from the CCLB fund before adoption of the statute, however. Those appropriations will not be considered in determining compliance with the minimum spending requirements of the CPA. Debt for a CCLB borrowing authorized before adoption may be issued any time before the referendum is approved. Annual appropriations for payment of debt service on previously authorized borrowings will qualify toward meeting the town's annual minimum spending requirement for open space. See Section C-2 below.

5. **Community Preservation Fund Appropriations and Borrowings**

The town may not make any appropriations from a CPA financing source, including borrowing, until the community preservation fund is established on July 1 of the year the modified CPA goes into effect and the CPC is established and makes spending recommendations.

C. **MODIFICATIONS**

1. **Surcharge**

A town may not amend the surcharge percentage, or adopt any of the three optional CPA surcharge exemptions until after FY2020, when the CCLB program is scheduled to terminate. Ordinarily, a CPA community may amend the surcharge or exemption options any time after acceptance.

2. **Annual Minimum Spending**

A town may appropriate, upon recommendation of the CPC, annual community preservation fund revenues to pay the annual debt service on all CCLB borrowings authorized on or before June 30, 2005. Ordinarily, each year, a CPA community must appropriate or reserve for later appropriation at least 10 per cent of annual fund revenues for each of three categories of community preservation purposes: (1) open space (excluding recreational use), (2) historic resources and (3) affordable housing. The amounts appropriated each year to cover CCLB debt service will qualify toward meeting the town's annual minimum spending requirement for open space. If the funds needed to cover that debt service exceed 80% of the annual revenues, however, the town will meet its minimum spending requirements for historic resources and affordable housing by appropriating or reserving 50% of the remaining revenues for each purpose.

3. **Revocation of Adoption**

A town may not revoke its adoption of this section until after FY2020, when the CCLB program is scheduled to terminate. Ordinarily, a CPA community may revoke its acceptance after five years.

**TO RECEIVE DISTRIBUTIONS FROM STATE TRUST FUND, ACCEPTANCE MUST
BE REPORTED NOT LATER THAN SEPTEMBER 15 OF THE FISCAL YEAR
FOLLOWING THE CLOSE OF THE FISCAL YEAR SURCHARGE FIRST ASSESSED**

(City/Town)

**NOTIFICATION OF ACCEPTANCE
Chapter 149 §298 of the Acts of 2004
(Modified Community Preservation Fund)**

The Commissioner of Revenue is hereby notified that the Town of _____,
by action of its legislative body on _____, _____, and referendum on
_____, _____, has accepted Sections 298 of Chapter 149 of the Acts of 2004, which
replaces the Cape Cod Land Bank with the Community Preservation Act, with modifications,
effective for fiscal year _____.

(City/Town Clerk)

(Date)

PLEASE ATTACH A CERTIFIED COPY OF EACH VOTE AND SUBMIT TO:

**Municipal Data Management/Technical Assistance Bureau
Division of Local Services
P.O. Box 9569
Boston MA 02114-9569**

Chart 1 Modified Community Preservation Fund (CPA) Features

	CPA	Modifications for Conversions of CCLB
Adoption	<ul style="list-style-type: none"> • Legislative body acceptance/Initiative petition, and • Referendum 	<ul style="list-style-type: none"> • Legislative body acceptance, and • Referendum
Surcharge Amount	Up to 3% of real estate tax, as reduced by abatements and exemptions	3% of real estate tax, as reduced by abatements and exemptions
Surcharge Exemptions	3 optional surcharge exemptions: <ul style="list-style-type: none"> • Residential exemption • Commercial/industrial exemption, if split rates • Low income persons/Low & moderate income seniors 	No optional exemptions
Fund Revenues	<ul style="list-style-type: none"> • Annual surcharges • Annual state matching distribution • Gifts and grants • Proceeds from sale of real estate acquired with fund monies • Fines for damage to real estate acquired with fund monies 	Same
State Matching Funds	<ul style="list-style-type: none"> • Annual distributions from dedicated revenue stream (recording fee surcharges) • Amount up to 100% of prior FY surcharge net levy 	Same
Fund structure	Multiple financing sources (like enterprise fund) <ul style="list-style-type: none"> • Annual revenues (estimated surcharges and state matching distribution) available for appropriation or reservation until tax rate set for fiscal year • Fund balance (free cash) • Special purpose reserves for open space, historic resources and affordable housing 	Same
Spending Purposes	<ul style="list-style-type: none"> • Acquisition, creation and preservation of open space • Acquisition, preservation, rehabilitation and restoration of historic resources • Acquisition, creation and preservation of recreational land • Creation, preservation and support of affordable housing • Rehabilitation and restoration of open space, recreational land and affordable housing acquired or created with fund monies 	Same

	CPA	Modifications for Conversions of CCLB
Minimum Spending Requirements	10% annual revenues must be appropriated or reserved for each of three categories: open space, historic resources, affordable housing	Same, except that if payment of CCLB debt service is more than 80% of annual revenues, must only appropriate 50% of the balance for historic resources and the other 50% for affordable housing
Property Maintenance Expenses	No	Same
Administrative Expenses	Up to 5% of annual revenues for committee expense (not general implementation expenses)	Same
Borrowing	<ul style="list-style-type: none"> • General obligation borrowing for same purposes & terms as Ch. 44 • Annual debt service for borrowings authorized under act paid from any fund monies 	Same
Fund administration	<p>Community Preservation Committee of 5-9 members, including one representative from:</p> <ul style="list-style-type: none"> • Conservation Commission • Historical Commission • Planning Board • Board of Park Commissioners • Housing Authority <p>Committee prepares plan and makes spending recommendations</p>	Same
Surcharge Amendment	<ul style="list-style-type: none"> • Percentage and surcharge exemptions may be amended • Legislative body vote and referendum required 	No amendments permitted until after FY2020
Revocation	<ul style="list-style-type: none"> • After 5 years • Legislative body vote and referendum • Surcharge assessed until fund obligations paid 	No revocation permitted until after FY2020
Tax Rate recap	<ul style="list-style-type: none"> • Estimated revenues/appropriations reported (Form A-4) • Deficits raised 	Same

Chart 2 Comparison of Community Preservation Fund (CPA) and Cape Cod Land Bank (CCLB) Features

	CPA	CCLB
Adoption	<ul style="list-style-type: none"> • Legislative body acceptance/Initiative petition, and • Referendum 	Referendum
Surcharge Amount	Up to 3% of real estate tax, as reduced by abatements and exemptions	3% of real estate tax, as reduced by abatements
Surcharge Exemptions	3 optional surcharge exemptions: <ul style="list-style-type: none"> • Residential exemption • Commercial/industrial exemption, if split rates • Low income persons/Low & moderate income seniors 	No exemptions
Fund Revenues	<ul style="list-style-type: none"> • Annual surcharges • Annual state matching distribution • Gifts and grants • Proceeds from sale of real estate acquired with fund monies • Fines for damage to real estate acquired with fund monies 	<ul style="list-style-type: none"> • Annual surcharges • Annual state matching distribution • Gifts and grants
State Matching Funds	<ul style="list-style-type: none"> • Annual distributions from dedicated revenue stream (recording fee surcharges) • Amount up to 100% of prior FY surcharge net levy 	<ul style="list-style-type: none"> • Annual distributions from fixed appropriation until exhausted • Amount equal to 50% of prior FY surcharge collections
Fund structure	Multiple financing sources (like enterprise fund) <ul style="list-style-type: none"> • Annual revenues (estimated surcharges and state matching distribution) available for appropriation or reservation until tax rate set for fiscal year • Fund balance (free cash) • Special purpose reserves for open space, historic resources and affordable housing 	Actual receipts (receipts reserved for appropriation fund)
Spending Purposes	<ul style="list-style-type: none"> • Acquisition, creation and preservation of open space • Acquisition, preservation, rehabilitation and restoration of historic resources • Acquisition, creation and preservation of recreational land • Creation, preservation and support of affordable housing • Rehabilitation and restoration of open space, recreational land and affordable housing acquired or created with fund monies 	<ul style="list-style-type: none"> • Acquire open space (vacant land) • Improve acquired land to use for recreational purposes

	CPA	CCLB
Minimum Spending Requirements	10% annual revenues must be appropriated or reserved for each of three categories: open space, historic resources, affordable housing	None
Property Maintenance Expenses	No	Up to 3% of fund to maintain and improve acquisitions
Administrative Expenses	Up to 5% of annual revenues for committee expense (not general implementation expenses)	None permitted
Borrowing	<ul style="list-style-type: none"> • General obligation borrowing for same purposes & terms as Ch. 44 • Annual debt service for borrowings authorized under act paid from any fund monies 	<ul style="list-style-type: none"> • General obligation borrowing for same purposes & terms as Ch. 44 • Principal on annual debt service for borrowings under act paid from any fund monies • Interest on annual debt service for borrowings under act paid from local fund revenues only (not state matching funds)
Fund administration	<p>Community Preservation Committee of 5-9 members, including one representative from:</p> <ul style="list-style-type: none"> • Conservation Commission • Historical Commission • Planning Board • Board of Park Commissioners • Housing Authority <p>Committee prepares plan and makes spending recommendations</p>	<p>Open Space Committee appointed or designated by selectmen or town council</p> <p>Committee makes spending recommendations</p>
Surcharge Amendment	<ul style="list-style-type: none"> • Percentage and surcharge exemptions may be amended • Legislative body vote and referendum required 	Not permitted
Revocation	<ul style="list-style-type: none"> • After 5 years • Legislative body vote and referendum required • Surcharge assessed until fund obligations paid 	Not permitted – Surcharge assessed for 20 years (FY2000-2020)
Tax Rate recap	<ul style="list-style-type: none"> • Estimated revenues/appropriations reported (Form A-4) • Deficits raised 	Not shown