
**Massachusetts Department of Revenue
Division of Local Services**

**Community Preservation Fund
Frequently Asked Questions
About
Budgeting, Accounting and Spending
Under the Community Preservation Act**



2007

Workshop B

**Henry Dormitzer, Commissioner
Robert G. Nunes, Deputy Commissioner**

COMMUNITY PRESERVATION FUND
Frequently Asked Questions
About
Budgeting, Accounting and Spending

TABLE OF CONTENTS

FREQUENTLY ASKED QUESTIONS	1
CURRENT IMPLEMENTATION RESOURCES	6
FINANCE PROCEDURES	7
Surcharge Commitment and Billing	7
Surcharge Exemptions	7
Surcharge Collection	9
Community Preservation Committee	10
Community Preservation Fund – Revenues and Expenditures	11
Community Preservation Fund – Appropriation Financing Sources	13
Borrowing	15
Massachusetts Community Preservation Trust Fund	16
Tax Rate	17
Annual Reporting Requirements	18
Accounting Issues	18
Chart 1 – CPA Implementation Check List	20
Chart 2 – CPC Annual Calendar	21
Chart 3 – CPA Fund Allowable Spending Purposes	22
Chart 4 – CPA Fund Financing Sources	23
Chart 5 – CPA State Trust Fund Distribution Example	24
COMMUNITY PRESERVATION ACT – G.L. c. 44B, as amended	25
DEPARTMENT OF REVENUE OPINION LETTERS	34

COMMUNITY PRESERVATION FUND

Frequently Asked Questions

A. CPC ANNUAL BUDGET AND RECOMMENDATIONS

1. What quantum of vote is required for the CPC to make recommendations or take any other action?
2. Does the CPC have to submit its operating budget or project recommendations for review by the finance committee, selectmen, mayor/manager or capital improvement committee before submission to the legislative body for action? Can those officials make any changes in the recommendations or refuse to present the recommendations to the legislative body?
3. Do CPA projects have to be voted in separate articles?
4. Can the CPC use a percentage in its recommendation and can the legislative body vote a percentage, *e.g.*, 10% of revenues for the open space reserve?
5. Can the CPC include investment income as part of the estimated annual revenues when formulating its budget recommendations for the year?
6. What type of expenses may be included in the appropriation for CPC administrative and operating expenses?
7. Can a community ever appropriate from CPA funds without a CPC recommendation?
8. Can the legislative body change the amount of a CPC recommended appropriation or reservation?

B. BORROWING

1. Can a CPA borrowing be authorized against all annual revenues (surcharge and state matching distribution)?
2. Is the limit for a CPA borrowing term 20 years? Who decides the term? The CPC or Treasurer?
3. If the community authorizes a CPA borrowing, does the debt service have to be funded from CPA funds? If the CPC does not make an annual recommendation to fund the debt service, can the municipality appropriate from CPA funds anyway? Does the debt service have to be budgeted separately or may it be budgeted in the treasurer's budget with other debt service?
4. Can we use CPA fund monies to cover the remaining debt service payments on a borrowing for an allowable CPA purpose that was authorized before the CPA was adopted? After the CPA was adopted and not intended to be funded with CPA monies? What about a project that is on the town's capital plan, but has not yet been funded? If the asset acquired is later transferred to the control of a department operating under an enterprise, can the remaining debt service costs be paid from the enterprise fund and the CPA fund reimbursed for prior debt service costs?
5. If the community receives a premium and accrued interest on a CPA borrowing, does it stay with the CPA fund or go to the general fund?
6. Can the community revoke the CPA surcharge if there is debt outstanding? Can the surcharge be collected for one purpose once the CPA is revoked to fulfill the debt obligation only?

C. ACCOUNTING PROCEDURES

1. Are CPA funds subject to all of the other accounting principles or rules that every other fund is subject to?

2. Do CPA appropriations carry over or close out at the end of the fiscal year?
3. How are CPA appropriations closed out?
4. Can the unspent and unencumbered balance of a CPA appropriation be used as a financing source for another CPA project?
5. If the community does not reserve or appropriate any funds, or it appropriates or reserves insufficient funds to meet the 10% requirement for each of the three spending purposes (open space, historic resources and affordable housing,), does the accountant have the authority to make adjustments at the end of the year to establish sufficient reserves?
6. How are donations for CPA purposes treated? Are they kept with the fund or set up as a separate gift account?
7. Does a reimbursement grant received by a community for a CPA acquisition or project belong to the general or CPA fund?
8. Does the amount appropriated to a "budgeted reserve" carryover to the next fiscal year or close to undesignated fund balance?
9. What should the accountant do if revenue collected is less than revenue appropriated and reserved?
10. When completing the revenue section of the tax rate Schedule A-4, column (b), should the accounting officer report total fund reserves and fund balance as reported on the form CP-2?

D. FINANCIAL MANAGEMENT PROCEDURES

1. Do the procurement laws apply to CPA projects?
2. Does the CPC approve all bills for CPA funded projects?
3. If the project involves payment to a non-profit organization, does the accountant authorize payment of the total award, or do they request that individual invoices be submitted to the accountant and paid by the treasurer?
4. If the CPC awards funds to a "Municipal Affordable Housing Trust Fund," does the community just give a lump sum payment to the trust? Does the trust then make payment directly to vendor with no further action required by the community?
5. How should an unpaid bill of a prior year (due to an insufficient appropriation) for CPC administrative expenses be funded?
6. Can CPA funds be used for an interfund borrowing?

E. EXPENDITURE PURPOSES

1. Can CPA billing software or other implementation expenses be charged to the CPA fund?
2. What types of expenditures are considered project expenses?
3. Can CPA funds be used for feasibility studies for possible projects that are not allowable CPA purposes?

4. Can the community spend CPA monies for projects on private property? To provide financing for a private organization's project?
5. Can the community appropriate CPA monies into the Conservation Fund?
6. Can CPA monies be used to fund acquisitions or projects that include non-CPA eligible uses, *e.g.*, land that will be used for open space and a new school, development of mixed income housing?
7. Can the community spend CPA funds to create ball fields for recreational use using town owned land?

COMMUNITY PRESERVATION FUND

Current Implementation Resources

IGRS

- **IGR 00-209 WITH ALL AMENDMENTS (IGR 00-209, AS AMENDED)**
http://www.mass.gov/Ador/docs/dls/publ/igr/2000/00_209amended.pdf,
- **IGR 00-209** *Community Preservation Fund* (12/00)
- **IGR 01-207** *Community Preservation Fund* (Amends IGR 00-209)(9/01)
- **IGR 02-208** *Community Preservation Fund* (Amends IGR 00-209)(9/02)

BULLETINS

- **Bulletin 2000-16B** *Implementation of Community Preservation Fund Finance Provisions* (12/00)
- **Bulletin 2001-09B** *FY2002 Implementation of Community Preservation Act* (9/01)(Sample surcharge calculations with and without exemptions)
- **Bulletin 2002-12B** *Community Preservation Act Amendment and Information* (9/02)(1st year implementation issues and public record status of CPA exemption application information)
- **Bulletin 2003-04B** *Community Preservation Act Implementation and Appropriation Votes* (2/03)(Acceptance votes and sample appropriation motions)
- **Bulletin 2004-16B** *Cape Cod Land Bank and Community Preservation Act* (10/04)(Supersedes Bulletin 2004-13B on same subject)(Conversion of Cape Cod Land Bank to Modified CPA Program)

CPA DATA

Data Bank Reports – Section on CPA data on acceptances, surcharge reports, state trust fund distributions and balance

<http://www.mass.gov/?pageID=dorsubtopic&L=5&L0=Home&L1=Local+Officials&L2=Municipal+Data+and+Financial+Management&L3=Data+Bank+Reports&L4=Community+Preservation+Act&sid=Ador>

CPA INCOME LIMITS

- **Table of Estimated Decile Distributions of Family Income by Area (Metropolitan Statistical Areas and Non-Metropolitan Counties)**
 - Found at <http://www.huduser.org/datasets/il.html>
 - Issued in February or March of each year
 - Measures prior year income trends
 - March 2007 (U.S. Fiscal Year 2007) should be used for FY08 CPA exemptions
 - Massachusetts is found on pages 81 and 82 of document
 - Community Preservation Coalition web site has spreadsheet with household size formula applied by city and town at <http://www.communitypreservation.org/CPAWorksheet2007.pdf>

COMMUNITY PRESERVATION FUND

Finance Procedures

Surcharge Commitment and Billing

(See **Bulletin 2001-09B** for sample calculations)

- Assessed on municipal real estate tax only and shown as separate item in annual tax commitments and bills.
- Assessed on all real estate tax assessments (preliminary, actual, omitted, revised, supplemental, etc.).
 - Reason - CPA provides for surcharge to be collected according to the same schedule as property taxes in the community (quarterly or semi annual).
- Assessed on real estate tax, net of regular property tax exemptions and any adopted surcharge exemptions of (1) \$100,000 residential value, and (2) commercial and industrial property in communities with split tax rates.
- Reductions in committed surcharges due to abatements or exemptions of the underlying real estate tax, or the surcharge itself, are charged to surcharge receivables.
- Surcharges may not be deferred like property taxes (not authorized by CPA).

Surcharge Exemptions

(See **Bulletin 2001-09B** for sample calculations)

- **Surcharge exemptions resulting from real estate tax exemptions.**
 - Full surcharge exemption on parcels fully exempt from real estate tax.
 - Prorated surcharge exemption on parcels partially exempt from real estate tax.

- **Surcharge exemptions adopted as local option.**
 - Exempt status determined as of January 1.
 - Eligibility Requirements.
 - \$100,000 of assessed valuation of Class One, residential property.
 - Applies to real estate tax assessed on first \$100,000 of assessed valuation of all Class One property.
 - Applies to real estate tax assessed on first \$100,000 of the portion of the assessed valuation allocated to Class One of a property classified as multiple use.
 - Class Three, commercial and Class Four, industrial property in community with a classified tax rate.
 - Only applies in a year the community shifts part of its tax levy to business classes, *i.e.*, splits its tax rate.
 - Applies to real estate tax assessed on the portion of the assessed valuation allocated to Class Three and Four of a property classified as multiple use.
 - Property owned and occupied as a domicile of a person who qualifies for low income housing or low or moderate income senior housing.
 - Applicant must be natural person.
 - A person must be 60 or older to qualify as a senior.
 - Applicant must own and occupy property as domicile.
 - Other co-owners may be domiciled elsewhere.
 - Applicant and each co-owner of the domicile must meet income standard for particular co-owner's household type (senior or non-senior) and size.

- Income standard recalculated each year based on area wide median household income established by the United States Department of Housing and Urban Development (HUD).
- Low income is defined as 80% of the median income.
- Moderate income is defined as 100% of the median.
- Adjustments are made for household size based on a standard formula.
- Qualified applicant receives full exemption of surcharge on real estate tax assessed on residential portion of domiciliary property.
- Applicant must apply annually.
- No statutory application deadline or appeal procedure.

Surcharge Collection

- Surcharges collected in same manner as regular taxes, subject to 14% interest if overdue.
 - Interest on overdue surcharges credited to community preservation fund.
- Collected surcharges are turned over to treasurer with regular property tax payments.
- Lien arises as of 1/1 assessment date of FY of surcharge and terminates at same time as that year's tax lien.
- Lien certificates should include standard pre-printed notice that real property in community subject to community preservation surcharge.

Community Preservation Committee

(See **Charts 1 and 2** for CPA and CPC implementation calendars)

- Must be established by by-law or ordinance.
- Membership from 5 to 9 members with required representation from 5 specified municipal boards, commissions or authorities (conservation, planning, recreation, historical commission, housing authority).
- Bylaw or ordinance to specify number of members, term, and mode of selection for any non-statutory members (statutory designated by respective boards).
- Majority of entire membership needed for quorum and majority of quorum may act.
- Must evaluate community preservation needs and make annual recommendations for expenditures from fund monies.
- Must prepare needs study and plan and update annually.
 - Public hearing required on original plan and may be held on annual updated plan.
- Must prepare annual community preservation budget for presentation to legislative body.
 - May make additional recommendations during year if funds available.
- Legislative body actions on recommendations are limited.
 - May approve, reduce or reject recommended amounts.
 - May reserve all or part of amount recommended for specific project to applicable reserve.
 - May not increase recommendations or initiate appropriations from fund monies.
- Must maintain records of actions, budgets and property acquisitions.

Community Preservation Fund Revenues and Expenditures

(See **Chart 3** for allowable spending purposes)

- Special revenue fund.
 - Annual recurring fund revenues.
 - Local property tax surcharges.
 - State trust fund distributions.
 - Non-recurring revenues.
 - Public/private gifts or grants to the fund.
 - Proceeds from bonds and notes.
 - Proceeds of sale of property acquired with fund monies.
 - Damages and penalties from person injuring property acquired with fund monies.
- Invested like trust funds and interest earned remains with fund (not allocated to special purpose reserves created within the fund by legislative body).
- Appropriations for community preservation purposes require both recommendations of Community Preservation Committee and vote by legislative body.
 - Appropriations from any fund financing source, except borrowing, by majority vote unless otherwise required by law.
 - May spend for specified community preservation purposes:
 - Acquire, create and preserve open space.
 - Acquire, preserve, rehabilitate and restore historic resources.
 - Acquire, create and preserve land for recreational use.

- Acquire, create, preserve and support community housing, including provide funds for the community's affordable housing trust fund.
- Rehabilitate and restore open space, land for recreational use and community housing acquired or created with fund monies.
- May appropriate for related purposes:
 - Debt service on loans authorized under G.L. c. 44B for community preservation projects. (Committee recommendation not required).
 - Eminent domain damages if land acquired in that manner.
 - Matching funds for federal/state grants for community preservation projects.
 - Incidental acquisition and borrowing expenses.
- May spend up to 5% of annual fund revenues for administrative and operating expenses of Community Preservation Committee. (Committee recommendation not required).
 - For committee expenses only, not general indirect costs of assessors, collector, treasurer, accounting officer in implementing.
- May not appropriation to supplant current spending on these purposes or maintain any real or personal property.
- Supplemental appropriations from levy, free cash, etc. for community preservation purposes are set up as special purpose appropriations – may not be appropriated directly to the fund (special revenue fund).

Community Preservation Fund

Appropriation Financing Sources

(See **Chart 4** for financing sources and **Bulletin 2003-04B** for sample votes)

- **Annual fund revenues.**

- Annual fund revenues include estimated receipts from surcharge and state trust fund distribution (beginning in second year).
- Each fiscal year, at least 10% of estimated annual fund revenues must be appropriated or reserved for later appropriation for each of the following three categories of community preservation purposes:
 - Open space (excluding recreational uses).
 - Historic resources.
 - Community housing.
- May make appropriations or reservations from estimated annual fund revenues until tax rate set.

- **Other fund financing sources.**

- Fund reserves.
 - Fund balance.
 - Year-end balance resulting from favorable revenues and expenditures.
 - Available upon accounting officer's submission of report of prior year fund activities (*Community Preservation Fund Report* - Form CP-2) to DOR until June 30 close of current fiscal year.
 - May be appropriated for any CPA purpose during the FY.

- Special purpose reserves.
 - Three separate special purpose reserves created within the fund by legislative body's earmarking of annual fund revenues (or fund balance) for later appropriation for one of these purposes:
 - Open space (excluding recreational use).
 - Historic resources.
 - Community housing.
 - Appropriations from special purpose reserves restricted to those purposes.
- Annual budgeted reserve.
 - Created by appropriation of annual fund revenues (or fund balance) for community preservation purposes during the FY.
 - May be appropriated for any CPA purpose during the FY.
 - Unappropriated balance at year-end closes to fund balance.
- Excess bond proceeds.
 - Balance after completion/abandonment of community preservation project for which debt issued.
 - Appropriations from excess proceeds restricted to community preservation purpose for which borrowing authorized for same or longer term than original loan.
- All obligations, including future debt service, must be identified by accounting officer if surcharge revoked.
 - If uncommitted monies sufficient, surcharge ceases next FY.
 - If insufficient, surcharge continues until sufficient monies raised.

Borrowing

(See **Bulletin 2003-04B** for model borrowing language)

- Community may authorize borrowing under the CPA, G.L. c. 44B, §11, to fund certain community preservation acquisitions and projects.
 - General obligation debt.
 - Amount borrowed limited to annual debt service supportable by estimated surcharge revenues over borrowing term.
 - Debt service payable from any fund monies available for purpose.
- Bonds and notes may be issued for those borrowings subject to G.L. c. 44, municipal borrowing statute, as to:
 - Purposes - debt limited to purposes in G.L. c. 44, §§7 and 8.
 - Term of debt for those purposes.
 - Formalities of issuance.
- May issue bond anticipation notes (BANs).
- May use level debt service, equal principal or other repayment schedule.

Massachusetts Community Preservation Trust Fund

(See **Chart 5** for distribution example)

- Funded by surcharges on fees charged to record documents with Registry of Deeds or Land Court.
- Administered by DOR.
- Annual distributions to participating communities made **October 15**.
 - Distribution based on prior fiscal year net surcharge levy.
- Distribution formula has up to three rounds.
 - **Maximum distribution is 100% of prior year net surcharge levy.**
 - First round matching distribution.
 - 80% of fund balance after DOR administrative expenses (capped at 5%).
 - Split evenly among all participating communities.
 - Receive 5-100% of prior year net surcharge levy.
 - Second round equity distribution.
 - Any remaining balance.
 - Distributed to only communities assessing maximum 3% surcharge.
 - Based on formula.
 - Third round surplus equity.
 - Any remaining balance.
 - Distributed to only communities assessing maximum 3% surcharge.
 - Based on equity distribution.

Tax Rate

- Form A-4 must be submitted to document reported fund appropriations, revenues and deficits.
- Amounts appropriated or reserved from estimated annual fund revenues and other fund financing sources are reported on the tax rate recapitulation as appropriations from Community Preservation Fund under Column (e) on page 4.
- Total estimated annual fund revenues and other fund financing sources used are reported under Part IIIB, line 4 on page 2. The amount of estimated annual fund revenues that are unappropriated or unreserved are reported under Part IIB, line 10 on page 2.
- Prior year revenue deficits must be raised from current year's annual fund revenues and included under total prior year revenue deficits reported on Part IIB, line 6 on page 2.
- Setting tax rate fixes amount raised (*i.e.*, appropriated or reserved) from estimated annual fund revenues for the fiscal year.
 - Available sources for appropriations after tax rate set limited to:
 - Fund special purpose reserves: (1) open space, (2) historic resources, (3) affordable housing.
 - Fund balance (upon annual submission of *Community Preservation Fund Report* - Form CP-2) by accounting officer).
 - Borrowing.

Annual Reporting Requirements

- ***Community Preservation Surcharge Report (CP-1)*** (assessors & accounting officer).
 - Due September 15.
 - Required to receive state trust fund distribution.
 - Sent to MDM/TAB.
- ***Community Preservation Fund Report (CP-2)*** (accounting officer).
 - Due October 31.
 - Details fund activities as of June 30 of prior fiscal year.
 - Sent to BOA.
 - Upon submission, reported fund balance becomes available as financing source until June 30 of current fiscal year.
- ***Schedule A*** (accounting officer).
 - Report fund activity in Part V, Special Revenue, “Open Space Acquisition Fund.”

Accounting Issues

(See **IGR 00-209, as amended**, for sample accounting entries)

- Separate commitment notice for surcharge recorded in fund.
- Collections recorded in fund.
- State trust fund distributions recorded in fund.

- Expenditures recorded in fund.
- Abatements and exemptions of committed surcharges charged to surcharge receivables for the year.
- Actual revenues in excess of amount appropriated or reserved during FY close to fund balance at year-end.
- Unspent/unencumbered committee administrative appropriation balances close to fund balance at year-end.
- Unspent/unencumbered appropriation balances close to fund financing source from which appropriation made after notice that acquisition or project is complete (or action by legislative body).
- Bond proceeds recorded as another financing source in fund.
 - May establish capital project fund for projects including improvements over one year.
- Short term notes recorded as liability in fund.
- Unspent/unencumbered fund monies at time surcharge revoked reserved to pay existing obligations, future debt service and revenue shortfalls.

Chart 1
Community Preservation Act Implementation Check List
(FY08 Implementation)

	Action	Officials Involved	Timetable
1.	Notify DOR (MDM/TAB) of Acceptance (See Section I-D of IGR 00-209, as amended)	Clerk	After referendum and before 9/15/2008
2.	Establish CP fund as of 7/1/07	Accounting officer	Summer 2007
3.	Approve CPC by-law/ordinance & appropriate CPC budget Organize committee	Town meeting/council Selectmen/mayor/manager/boards represented on CPC	Before FY08 tax rate set (cannot appropriate/reserve FY08 CP fund revenues for projects after rate set)
4.	CPC develop plan and recommendations Act on CPC recommendations for appropriations/reservations	CPC Town meeting/council	Before FY08 tax rate set (cannot appropriate/reserve FY08 CP fund revenues for projects after rate set)
5.	Report appropriations/reservations/financing sources on FY08 tax recap (Form A-4)	Assessors Accounting officer Clerk CPC	Fall 2007
6.	Assess and bill surcharge	Assessors Collector	Fall 2007
7.	Notify DOR (BOA) of fund balance as of 6/30/08 (CP-2) Notify CPC and local officials of balance available for FY09 appropriations	Accounting Officer	After 7/1/2008
8.	Notify EOEa of FY08 CP projects (CP-3)	CPC	8/15/2008
9.	Notify DOR (MDM/TAB) of FY08 CPA net levy as of 6/30/08 (CP-1) to obtain state matching funds during FY09	Assessors Accounting officer	9/15/2008 deadline

Chart 2 Community Preservation Committee Annual Calendar

	Action	Other Officials Involved	Timetable
1.	Adopt estimate of annual revenues Obtain current balances of fund reserves and determine borrowing capacity	Finance committee/director Accounting officer Assessors Treasurer	November - March
2.	Update CP plan and hold hearing		January - March
3.	Prepare CP budget recommendations: <ul style="list-style-type: none"> • Allocate estimated annual revenues: <ul style="list-style-type: none"> • Fund CPA debt service (counts toward 10% minimum in category) • If modified CPA, fund CCLB* debt service (counts toward open space minimum), then other CPA debt service (counts toward minimum in category) • Fund CPC budget (up to 5%) • Allocate to meet minimums (direct spending on projects or reserves) • If modified CPA and CCLB debt service and CPC budget more than 80% of estimated revenues, met by allocating 50% of balance to historic & 50% to affordable housing • New initiatives • Annual budgetary reserve • Allocate reserves and borrowing capacity 	Treasurer Accounting officer	January - March
4.	Submit recommendations for CPC annual budget/appropriations/reservations	Town meeting/council	March - June
5.	Notify EOE of prior year CP projects (CP-3)		8/15
6.	Obtain updated reserve balances as of 6/30 and determine borrowing capacity Update annual revenue estimate Prepare additional recommendations for appropriations/reservations before rate set	Finance committee/director Accounting officer Assessors Treasurer	July - October
7.	Report appropriations/reservations/financing sources on tax recap (Form A-4)	Assessors Accounting officer Clerk	September - December
8.	Monitor budget expenditures	Accounting officer	Monthly
9.	Obtain reserve balances and determine borrowing capacity Prepare additional recommendations for appropriations after rate set	Finance committee/director Accounting officer Assessors Treasurer	July - October

* CCLB refers to Cape Cod Land Bank

Chart 3 COMMUNITY PRESERVATION FUND ALLOWABLE SPENDING PURPOSES

DEFINITION	OPEN SPACE	HISTORIC RESOURCES	RECREATIONAL LAND	COMMUNITY HOUSING
	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	Building, structure, vessel, real property, document or artifact listed or eligible for listing on the state register of historic places or determined by the local historic preservation commission to be significant in the history, archeology, architecture or culture of the city or town	Land for active or passive recreational use including, but not limited to, the use of land for community gardens, trails, and noncommercial youth and adult sports, and the use of land as a park, playground or athletic field Does <u>not</u> include horse or dog racing or the use of land for a stadium, gymnasium or similar structure	Housing for low and moderate income individuals and families, including low or moderate income seniors Moderate income is less than 100%, and low income is less than 80%, of US HUD Area Wide Median Income
ACQUIRE	Yes	Yes	Yes	Yes
CREATE	Yes		Yes	Yes
PRESERVE Means protect from injury, harm or destruction, not maintenance	Yes	Yes	Yes	Yes
SUPPORT				Yes, includes funding for community's affordable housing trust
REHABILITATE/RESTORE Means remodel, reconstruct or repair (extraordinary, not maintenance) to make property functional for intended use, including improvements to comply with federal, state or local building or access codes or with federal standards for rehabilitation of historic properties	Yes if acquired or created with CP funds	Yes	Yes if acquired or created with CP funds	Yes if acquired or created with CP funds

Chart 4 COMMUNITY PRESERVATION FUND FINANCING SOURCES

	ANNUAL FUND REVENUES	FUND BALANCE	BUDGETED RESERVES	BORROWING
Definition	Annual recurring revenues	Unspent funds generated by favorable operations during the previous FY that are available for appropriation	Funds designated by the legislative body for later appropriation for any CPA purpose during the fiscal year and/or for one of the following specific CPA purposes: (1) open space (excluding recreational), (2) historic resources and (3) community housing	Debt repaid with future fund revenues
Source	<p>Surcharges assessed for FY</p> <p>State trust fund distribution received during FY (beginning in 2nd year of fund operation)</p>	<p>Appropriation turn-backs, including unappropriated balance from any annual budgeted reserve</p> <p>Actual receipts in excess of budgeted revenues</p> <p>Investment interest</p> <p>Miscellaneous non-recurring revenues, e.g., proceeds from sale of community preservation fund acquisitions, damages and fines related to the acquisitions, or public/private gifts/grants for the community preservation fund</p>	Appropriations from annual fund revenues or fund balance	Proceeds from notes, bonds or other debt obligations issued for a CPA purpose
Limitations	<p>Legislative body <i>must</i> appropriate or place in budgeted special purpose reserves at least 10% of each year's annual revenues for each of following CPA purposes: (1) open space (excluding recreational), (2) historic resources and (3) community housing</p> <p>Cannot spend from appropriations until FY begins (i.e., 7/1)</p>	May be appropriated by legislative body for any CPA purpose	<p>Appropriations to a particular reserve require legislative body vote that states the specific dollar amount and source being reserved</p> <p>Appropriations <i>from</i> the annual budgeted reserve may be made for any CPA purpose during the FY only and any unappropriated balance at year-end closes to fund balance</p> <p>Appropriations <i>from</i> a particular special purpose reserve limited to that CPA purpose</p>	<p>Legislative body <i>must</i> specifically authorize borrowing under CPA (G.L. c. 44B)</p> <p>Borrowing limited in amount to debt service payable from estimated surcharge revenues over term</p> <p>Borrowing limited to purposes and terms applicable to municipal borrowing generally under G.L. c. 44 §§7 and 8</p> <p>Appropriations <i>from</i> proceeds remaining after purpose completed or abandoned restricted to a CPA purpose for which borrowing may be authorized for same or longer term than original loan</p>
Availability	Until tax rate set for FY. Once rate set, only budgeted reserves, fund balance or borrowing may be used as financing source.	Any time after accounting officer reports prior FY fund activities and balance to DOR until 6/30 close of current FY	<p>Annual budgeted reserve during FY (i.e. 7/1 to 6/30)</p> <p>Special purpose reserves any time (or after 7/1 for new reservations from annual revenues)</p>	Anytime
Similarity	<p>General fund annual tax levy (taxes, state aid, receipts)</p> <p>Enterprise fund annual revenues (user charges and fees)</p>	<p>Free cash</p> <p>Enterprise fund free cash (retained earnings)</p>	<p>Stabilization fund (i.e., general fund monies reserved for later appropriation for municipal purpose)</p> <p>Enterprise fund budgeted surplus</p>	Other municipal debt

Chart 5 COMMUNITY PRESERVATION STATE TRUST FUND DISTRIBUTION EXAMPLE

- **STATE TRUST FUND BALANCE** **\$20 million**
 - As of 6/30 (after state administrative expenses)

- **TOTAL NET SURCHARGE LEVY** **\$15 million**
 - 10 communities assessed surcharge in FY
 - 8 communities assessed maximum surcharge of 3%

- **AVAILABLE FOR 1ST ROUND MATCHING DISTRIBUTION** **\$16 million**
 - 80% of 6/30 fund balance
 - **Distribution ends after 1st round distribution of 100% match to all participants**
 - \$5 million balance (\$20m – 15m) remains in fund and carries forward to next year

- **WHAT IF 10 COMMUNITIES HAD ASSESSED \$20 MILLION IN SURCHARGES INSTEAD?**
 - First round distribution is pro rated with each community getting 80% of net levy
 - \$16 million (amount available for distribution/\$20 million total net surcharge levy = .80 (80%))
 - \$4 million balance (\$20m -16m) available for **2nd round distribution** to 8 communities that use maximum 3% surcharge

- **AVAILABLE FOR 2nd ROUND EQUITY DISTRIBUTION** **\$4 million**
 - Formula driven using EQV and population to rank participants
 - \$4 million/10 communities receiving matches = \$400,000
 - Every community in state ranked into deciles (highest CP score into lowest decile)
 - 8 communities receive \$400,000 x applicable decile percentage
 - Example 1 - community in 1st decile \$400,000 x 140% = \$560,000
 - Example 2 - community in 10th decile \$400,000 x 50% = \$200,000

- **AVAILABLE FOR 3rd ROUND SURPLUS DISTRIBUTION**
 - Amount remaining after 2nd round equity distribution
 - Example - \$200,000 remaining
 - Divide \$200,000/8 communities receiving equity distribution = \$25,000
 - 8 communities receive \$25,000 x same decile percentage used in equity distribution, (e.g., 140% or 50% as in example above)
 - Any balance remains in fund and carries over to next year

COMMUNITY PRESERVATION ACT

General Laws Chapter 44B

Added by c. 267 of Acts of 2000

Amended by c. 165 of Acts of 2002; c. 46 §38 of the Acts of 2003; c. 491 §2 of the Acts of 2004; c. 38 of the Acts of 2006; c. 289 of the Acts of 2006; c. 393 of the Acts of 2006

Section 1. This chapter shall be known and may be cited as the Massachusetts Community Preservation Act.

Section 2. As used in this chapter, the following words shall, unless the context clearly indicates a different meaning, have the following meanings:-

"Acquire", obtain by gift, purchase, devise, grant, rental, rental purchase, lease or otherwise. "Acquire" shall not include a taking by eminent domain, except as provided in this chapter.

"Annual income", a family's or person's gross annual income less such reasonable allowances for dependents, other than a spouse, and for medical expenses as the housing authority or, in the event that there is no housing authority, the department of housing and community development, determines.

"Community housing", low and moderate income housing for individuals and families, including low or moderate income senior housing.

"Community preservation", the acquisition, creation and preservation of open space, the acquisition, creation and preservation of historic resources and the creation and preservation of community housing.

"Community preservation committee", the committee established by the legislative body of a city or town to make recommendations for community preservation, as provided in section 5.

"Community Preservation Fund", the municipal fund established under section 7.

"CP", community preservation.

"Historic resources", a building, structure, vessel, real property, document or artifact that is listed or eligible for listing on the state register of historic places or has been determined by the local historic preservation commission to be significant in the history, archeology, architecture or culture of a city or town.

"Legislative body", the agency of municipal government which is empowered to enact ordinances or by-laws, adopt an annual budget and other spending authorizations, loan orders, bond authorizations and other financial matters and whether styled as a city council, board of aldermen, town council, town meeting or by any other title.

"Low income housing", housing for those persons and families whose annual income is less than 80 per cent of the areawide median income. The areawide median income shall be the areawide median income as determined by the United States Department of Housing and Urban Development.

"Low or moderate income senior housing", housing for those persons having reached the age of 60 or over who would qualify for low or moderate income housing.

"Maintenance", the upkeep of real or personal property.

"Moderate income housing", housing for those persons and families whose annual income is less than 100 per cent of the areawide median income. The areawide median income shall be the areawide median income as determined by the United States Department of Housing and Urban Development.

"Open space", shall include, but not be limited to, 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.

"Preservation", protection of personal or real property from injury, harm or destruction, but not including maintenance.

"Real property", land, buildings, appurtenant structures and fixtures attached to buildings or land, including, where applicable, real property interests.

"Real property interest", a present or future legal or equitable interest in or to real property, including easements and restrictions, and any beneficial interest therein, including the interest of a beneficiary in a trust which holds a legal or equitable interest in real property, but shall not include an interest which is limited to the following: an estate at will or at sufferance and any estate for years having a term of less than 30 years; the reversionary right, condition or right of entry for condition broken; the interest of a mortgagee or other secured party in a mortgage or security agreement.

"Recreational use", active or passive recreational use including, but not limited to, the use of land for community gardens, trails, and noncommercial youth and adult sports, and the use of land as a park, playground or athletic field. "Recreational use" shall not include horse or dog racing or the use of land for a stadium, gymnasium or similar structure.

"Rehabilitation", the remodeling, reconstruction and making of extraordinary repairs to historic resources, open spaces, lands for recreational use and community housing for the purpose of making such historic resources, open spaces, lands for recreational use and community housing functional for their intended use, including but not limited to improvements to comply with the Americans with Disabilities Act and other federal, state or local building or access codes. With respect to historic resources, rehabilitation shall have the additional meaning of work to comply with the Standards for Rehabilitation stated in the United States Secretary of the Interior's Standards for the Treatment of Historic Properties codified in 36 C.F.R. Part 68.

Section 3. (a) Sections 3 to 7, inclusive, shall take effect in any city or town upon the approval by the legislative body and their acceptance by the voters of a ballot question as set forth in this section.

(b) Notwithstanding the provisions of chapter 59 or any other general or special law to the contrary, the legislative body may vote to accept sections 3 to 7, inclusive, by approving a surcharge on real property of not more than 3 per cent of the real estate tax levy against real property, as determined annually by the board of assessors. The amount of the surcharge shall not be included in a calculation of total taxes assessed for purposes of section 21C of said chapter 59.

(c) All exemptions and abatements of real property authorized by said chapter 59 or any other law for which a taxpayer qualifies as eligible shall not be affected by this chapter. A taxpayer receiving an exemption of real property authorized by said chapter 59 or any other law shall be exempt from any surcharge on real property established under this section. The surcharge to be paid by a taxpayer receiving an abatement of real property authorized by said chapter 59 or any other law shall be reduced in proportion to the amount of such abatement.

(d) Any amount of the surcharge not paid by the due date shall bear interest at the rate per annum provided in section 57 of said chapter 59.

(e) The legislative body may also vote to accept one or more of the following exemptions:

(1) for property owned and occupied as a domicile by a person who would qualify for low income housing or low or moderate income senior housing in the city or town;

(2) for class three, commercial, and class four, industrial, properties as defined in section 2A of said chapter 59, in cities or towns with classified tax rates; or

(3) for \$100,000 of the value of each taxable parcel of residential real property.

(f) Upon approval by the legislative body, the actions of the body shall be submitted for acceptance to the voters of a city or town at the next regular municipal or state election. The city or town clerk or the state secretary shall place it on the ballot in the form of the following question:

"Shall this (city or town) accept sections 3 to 7, inclusive of chapter 44B of the General Laws, as approved by its legislative body, a summary of which appears below?"

(Set forth here a fair, concise summary and purpose of the law to be acted upon, as determined by the city solicitor or town counsel, including in said summary the percentage of the surcharge to be imposed.)

If a majority of the voters voting on said question vote in the affirmative, then its provisions shall take effect in the city or town, but not otherwise.

(g) The final date for notifying or filing a petition with the city or town clerk or the state secretary to place such a question on the ballot shall be 35 days before the city or town election or 60 days before the state election.

(h) If the legislative body does not vote to accept sections 3 to 7, inclusive, at least 90 days before a regular city or town election or 120 days before a state election, then a question seeking said acceptance through approval of a particular surcharge rate with exemption or exemptions, may be so placed on the ballot when a petition signed by at least 5 per cent of the registered voters of the city or town requesting such action is filed with the registrars, who shall have seven days after receipt of such petition to certify its signatures. Upon certification of the signatures, the city or town clerk or the state secretary shall cause the question to be placed on the ballot at the next regular city or town election held more than 35 days after such certification or at the next regular state election held more than 60 days after such certification.

(i) With respect to real property owned by a cooperative corporation, as defined in section 4 of chapter 157B, that portion which is occupied by a member under a proprietary lease as the member's domicile shall be considered real property owned by that member for the purposes of exemptions provided under this section. The member's portion of the real estate shall be represented by the member's share or shares of stock in the cooperative corporation, and the percentage of that portion to the whole shall be determined by the percentage of the member's shares to the total outstanding stock of the corporation, including shares owned by the corporation. This portion of the real property shall be eligible for any exemption provided in this section if the member meets all requirements for the exemption. Any exemption so provided shall reduce the taxable valuation of the real property owned by the cooperative corporation, and the reduction in taxes realized by this exemption shall be credited by the cooperative corporation against the amount of the taxes otherwise payable by or chargeable to the member. Nothing in this subsection shall be construed to affect the tax status of any manufactured home or mobile home under this chapter, but this subsection shall apply to the land on which the manufactured home or mobile home

is located if all other requirements of this clause are met. This subsection shall take effect in a city or town upon its acceptance by the city or town.

Section 4. (a) Upon acceptance of sections 3 to 7, inclusive, and upon the assessors' warrant to the tax collector, the accepted surcharge shall be imposed.

(b) After receipt of the warrant, the tax collector shall collect the surcharge in the amount and according to the computation specified in the warrant and shall pay the amounts so collected, quarterly or semi-annually, according to the schedule for collection of property taxes for the tax on real property, to the city's or town's treasurer. The tax collector shall cause appropriate books and accounts to be kept with respect to such surcharge, which shall be subject to public examination upon reasonable request from time to time.

(c) The remedies provided by chapter 60 for the collection of taxes upon real estate shall apply to the surcharge on real property pursuant to this chapter.

Section 5. (a) A city or town that accepts sections 3 to 7, inclusive, shall establish by ordinance or by-law a community preservation committee. The committee shall consist of not less than five nor more than nine members. The ordinance or by-law shall determine the composition of the committee, the length of its term and the method of selecting its members, whether by election or appointment or by a combination thereof. The committee shall include, but not be limited to, one member of the conservation commission established under section 8C of chapter 40 as designated by the commission, one member of the historical commission established under section 8D of said chapter 40 as designated by the commission, one member of the planning board established under section 81A of chapter 41 as designated by the board, one member of the board of park commissioners established under section 2 of chapter 45 as designated by the board and one member of the housing authority established under section 3 of chapter 121B as designated by the authority, or persons, as determined by the ordinance or by-law, acting in the capacity of or performing like duties of the commissions, board or authority if they have not been established in the city or town. If there are no persons acting in the capacity of or performing like duties of any such commission, board or authority, the ordinance or by-law shall designate those persons.

(b)(1) The community preservation committee shall study the needs, possibilities and resources of the city or town regarding community preservation. The committee shall consult with existing municipal boards, including the conservation commission, the historical commission, the planning board, the board of park commissioners and the housing authority, or persons acting in those capacities or performing like duties, in conducting such studies. As part of its study, the committee shall hold one or more public informational hearings on the needs, possibilities and resources of the city or town regarding community preservation possibilities and resources, notice of which shall be posted publicly and published for each of two weeks preceding a hearing in a newspaper of general circulation in the city or town.

(2) The community preservation committee shall make recommendations to the legislative body for the acquisition, creation and preservation of open space; for the acquisition, preservation, rehabilitation and restoration of historic resources; for the acquisition, creation and preservation of land for recreational use; for the acquisition, creation, preservation and support of community housing; and for rehabilitation or restoration of open space, land for recreational use and community housing that is acquired or created as provided in this section. With respect to community housing, the community preservation committee shall recommend, wherever possible, the reuse of existing buildings or construction of new buildings on previously developed sites.

(3) The community preservation committee may include in its recommendation to the legislative body a recommendation to set aside for later spending funds for specific purposes that are consistent with community preservation but for which sufficient revenues are not then available in the Community Preservation Fund to accomplish that specific purpose or to set aside for later spending funds for general purposes that are consistent with community preservation.

(c) The community preservation committee shall not meet or conduct business without the presence of a quorum. A majority of the members of the community preservation committee shall constitute a quorum. The community preservation committee shall approve its actions by majority vote. Recommendations to the legislative body shall include their anticipated costs.

(d) After receiving such recommendations from the community preservation committee, the legislative body shall then take such action and approve such appropriations from the Community Preservation Fund as set forth in section 8 [should probably read "6"], and such additional appropriations as it deems appropriate to carry out the recommendations of the community Preservation committee.

(e) For the purposes of community preservation and upon the recommendation of the community preservation committee, a city or town may take by eminent domain under chapter 79, the fee or any lesser interest in real property or waters located in such city or town if such taking has first been approved by a two-thirds vote of the legislative body. Upon a like recommendation and vote, a city or town may expend monies in the Community Preservation Fund, if any, for the purpose of paying, in whole or in part, any damages for which a city or town may be liable by reason of a taking for the purposes of community preservation.

(f) Section 16 of chapter 30B shall not apply to the acquisition by a city or town, of real property or an interest therein, as authorized by this chapter for the purposes of community preservation and upon recommendation of the community preservation committee and, notwithstanding section 14 of chapter 40, for purposes of this chapter, no such real property, or interest therein, shall be acquired by any city or town for a price exceeding the value of the property as determined by such city or town through procedures customarily accepted by the appraising profession as valid.

A city or town may appropriate money in any year from the Community Preservation Fund to an affordable housing trust fund.

Section 6. In every fiscal year and upon the recommendation of the community preservation committee, the legislative body shall spend, or set aside for later spending, not less than 10 per cent of the annual revenues in the Community Preservation Fund for open space, but not including land for recreational use, not less than 10 per cent of the annual revenues for historic resources and not less than 10 per cent of the annual revenues for community housing. In each fiscal year, the legislative body shall make such appropriations from the Community Preservation Fund as it deems necessary for the administrative and operating expenses of the community preservation committee, but the appropriations shall not exceed 5 per cent of the annual revenues in the Community Preservation Fund. Funds that are set aside shall be held in the Community Preservation Fund and spent in that year or later years, but funds set aside for a specific purpose shall be spent only for the specific purpose. Any funds set aside may be expended in any city or town in the commonwealth. The community preservation funds shall not replace existing operating funds, only augment them.

Section 7. Notwithstanding the provisions of section 53 of chapter 44 or any other general or special law to the contrary, a city or town that accepts sections 3 to 7, inclusive, shall establish a separate account to be known as the Community Preservation Fund of which the municipal treasurer shall be the custodian. The authority to approve expenditures from the fund shall be limited to, the legislative body and the municipal treasurer shall pay such expenses in accordance with chapter 41.

The following monies shall be deposited in the fund: (a) all funds collected from the real property surcharge or bond proceeds in anticipation of revenue pursuant to sections 4 and 11; (b) all funds received from the commonwealth or any other source for such purposes; and (c) proceeds from the disposal of real property acquired with funds from the Community Preservation Fund. The treasurer may deposit or invest the proceeds of the fund in savings banks trust companies incorporated under the laws of the commonwealth, banking companies incorporated under the laws of the commonwealth which are members of the Federal Deposit Insurance Corporation or national banks, or may invest the proceeds in

paid up shares and accounts of and in co-operative banks or in shares of savings and loan associations or in shares of federal savings and loan associations doing business in the commonwealth or in the manner authorized by section 54 of chapter 44, and any income therefrom shall be credited to the fund. The expenditure of revenues from the fund shall be limited to implementing the recommendations of the community preservation committee and providing administrative and operating expenses to the committee.

Section 8. (a) The fees of the registers of deeds, except as otherwise provided, to be paid when the instrument is left for recording, filing or deposit shall be subject to a surcharge of \$20. The fees for so recording, filing or depositing a municipal lien certificate shall be subject to a surcharge of \$10. The surcharges shall be imposed for the purposes of community preservation. No surcharge shall apply to a declaration of homestead under chapter 188. No surcharge shall apply to the fees charged for additional pages, photostatic copies, abstract cards, additional square feet for the filing and recording of plans or for additional or required marginal references.

(b) The fees of the assistant recorder, except as otherwise provided, to be paid when the instrument is left for registering, filing or entering with respect to registered land shall be subject to a surcharge of \$20. The fees for so registering, filing or entering a municipal lien certificate shall be subject to a surcharge of \$10. The surcharges shall be imposed for the purposes of community preservation. No surcharge shall apply to a declaration of homestead of chapter 188. No surcharge shall apply to the fees charged for additional lots shown on plans, for indexing instruments recorded while a petition for registering is pending, for additional certificates of sewer assessments, for old age assistance liens, for duplicates and for photocopies.

(c) All surcharges on fees collected pursuant to this section shall be forwarded to the Massachusetts Community Preservation Trust Fund, established in section 9.

Section 9. (a) There shall be established and set up on the books of the commonwealth a separate fund, to be known as the Massachusetts Community Preservation Trust Fund, for the benefit of cities and towns that have accepted sections 3 to 7, inclusive, and pursuant to said sections 3 to 7, inclusive, have imposed a surcharge on their real property tax levy, subject to any exemptions adopted by a municipality. The fund shall consist of all revenues received by the commonwealth: (1) under the provisions of section 8; (2) from public and private sources as gifts, grants and donations to further community preservation programs; (3) from damages, penalties, costs or interest received on account of litigation or settlement thereof for a violation of section 15; or (4) all other monies credited to or transferred to from any other fund or source pursuant to law.

(b) The state treasurer shall deposit the fund in accordance with the provisions of section 10 in such manner as will secure the highest interest rate available consistent with the safety of the fund and with the requirement that all amounts on deposit be available for withdrawal without penalty for such withdrawal at any time. All interest accrued and earnings shall be deposited into the fund. The fund shall be expended solely for the administration and implementation of this chapter. Any unexpended balances shall be redeposited for future use consistent with the provisions of this chapter.

(c) The state treasurer shall make all disbursements and expenditures from the fund without, further appropriation, as directed by the commissioner of revenue in accordance with said section 10. The department of revenue shall report by source all amounts credited to said fund and all expenditures from said fund. The commissioner of revenue shall assign personnel of the department as it may need to administer and manage the fund disbursements and any expense incurred by the department shall be deemed an operating and administrative expense of the program. The operating and administrative expenses shall not exceed 5 per cent of the annual total revenue received under the provisions of said section 10.

Section 10. (a) The commissioner of revenue shall annually on October 15 disburse monies from the fund established in section 10 to cities and towns that have accepted sections 3 to 7, inclusive, and notified the commissioner of their acceptance. The community shall notify the commissioner of the date and terms on which the voters accepted said sections 3 to 7, inclusive. The municipal tax collecting authority shall certify to the Commissioner the amount the municipality has raised through June 30 by imposing a surcharge on its real property levy and shall certify the percentage of the surcharge applied.

(b) The commissioner shall multiply the amount in the fund by 80 percent. This amount distributed in the first round distribution shall be known as the match distribution. The first round total shall be distributed to each city or town accepting said sections 3 to 7, inclusive, in an amount not less than 5 per cent but not greater than 100 per cent of the total amount raised by the additional surcharge on real property by each city or town. The percentage shall be the same for each city and town and shall be determined by the commissioner annually in a manner that distributes the maximum amount available to each participating city or town.

(c) The commissioner shall further divide the remaining 20 per cent of the fund in a second round distribution, known as the equity distribution. The commissioner shall determine the equity distribution in several steps. The first step shall be to divide the remaining 20 per cent of the fund by the number of cities and towns that have accepted said sections 3 to 7, inclusive. This dividend shall be known as the base figure for equity distribution. This base figure shall be determined solely for purposes of performing the calculation for equity distribution and shall not be added to the amount received by a participant.

(d) Each city and town in the commonwealth shall be assigned a community preservation rank for purposes of the equity distribution. The commissioner shall determine each community's rank by first determining the municipality's equalized property valuation per capita ranking, ranking municipalities from highest to lowest valuation. The commissioner shall also determine the population of each municipality and rank each from largest to smallest in population. The commissioner shall add each equalized property valuation rank and population rank, and divide the sum by two. The dividend is the community preservation raw score for that municipality.

(e) The commissioner shall then order each municipality by CP raw score, from the lowest raw score to the highest raw score. This order shall be the CP rank for each municipality. If more than one municipality has the same CP raw score, the municipality with the higher equalized valuation rank shall receive the higher CP rank.

(f) After determining the CP rank for each municipality in the commonwealth, the commissioner shall divide all municipalities into deciles according to their CP ranking, with approximately the same number of municipalities in each decile, and with the municipalities with the highest CP rank shall be placed in the lowest decile category, starting with decile 1. Percentages shall be assigned to each decile as follows:

decile 1	140 per cent of the base figure.
decile 2	130 per cent of the base figure.
decile 3	120 per cent of the base figure.
decile 4	110 per cent of the base figure.
decile 5	100 per cent of the base figure.
decile 6	90 per cent of the base figure.
decile 7	80 per cent of the base figure.
decile 8	70 per cent of the base figure.
decile 9	60 per cent of the base figure.
decile 10	50 per cent of the base figure.

After assigning each municipality to a decile according to their CP rank, the commissioner shall multiply the percentage assigned to that decile by the base figure to determine the second round equity distribution for each participant.

(f) Notwithstanding any other provision of this section, the total state contribution for each city or town shall not exceed the amount raised by the municipality's surcharge on its real property levy.

(g) When there are monies remaining in the trust fund after the first and second round distributions, and any necessary administrative expenses have been paid in accordance with section 6, the commissioner may conduct a third round surplus distribution. Any remaining surplus in the fund may be distributed by dividing the amount of the surplus by the number of cities and towns that have accepted this chapter. The resulting dividend shall be the surplus base figure. The commissioner shall then use the decile categories and percentages as defined in this section to determine a surplus equity distribution for each participant.

(h) The commissioner shall determine each participant's total state grant by adding the amount received in the first round distribution with the amounts received in any later round or rounds of distributions, with the exception of a city or town that has already received a grant equal to 100 per cent of the amount the community raised by its surcharge on its real property levy.

(1) Only those cities and towns that adopt the maximum surcharge allowed by this chapter shall be eligible to receive additional state monies through the equity and surplus distributions.

(2) If less than 10 per cent of the cities and towns in the commonwealth have accepted sections 3 to 7, inclusive, and imposed and collected a surcharge on their real property levy, the commissioner may calculate the state grant with only one round of distributions, or in any other equitable manner.

(j) After distributing the trust fund in accordance with this section, the commissioner may keep any remaining funds in the trust for distribution in the following year.

Section 11. A city or town that accepts sections 3 to 7, inclusive, may issue, from time to time, general obligation bonds or notes in anticipation of revenues to be raised pursuant to section 3, the proceeds of which shall be deposited in the Community Preservation Fund. Bonds or notes so issued may be at such rates of interest as shall be necessary and shall be repaid as soon after such revenues are collected as is expedient. Cities or towns that choose to issue bonds pursuant to this section shall make every effort to limit the administrative costs of issuing such bonds by cooperating among each other using methods including, but not limited to, common issuance of bonds or common retention of bond counsel. Except as otherwise provided in this chapter, bonds or notes issued pursuant to this section shall be subject to the applicable provisions of chapter 44. The maturities of each issue of bonds or notes issued under this chapter may be arranged so that for each issue the amounts payable in the several years for principal and interest combined shall be as nearly equal as practicable in the opinion of the officers authorized to issue bonds or notes or, in the alternative, in accordance with a schedule providing for a more rapid amortization of principal.

Section 12. (a) A real property interest that is purchased with monies from the Community Preservation Fund shall be bound by a permanent deed restriction that meets the requirements of chapter 184, limiting the use of the interest to the purpose for which it was acquired. The deed restriction shall run with the land and shall be enforceable by the city or town or the commonwealth. The deed restriction may also run to the benefit of a nonprofit, charitable corporation or foundation selected by the city or town with the right to enforce the restriction.

(b) Real property interests acquired under this chapter shall be owned and managed by the city or town, but the legislative body may delegate management of such property to the conservation commission, the historical commission, the board of park commissioners or the housing authority, or, in the case of interests to acquire sites for future wellhead development by a water district, a water supply district or a

fire district. The legislative body may also delegate management of such property to a nonprofit organization created under chapter 180 or chapter 203.

Section 13. The community preservation committee shall keep a full and accurate account of all of its actions, including its recommendations and the action taken on them and records of all appropriations or expenditures made from the Community Preservation Fund. The committee shall also keep records of any real property interests acquired, disposed of or improved by the city or town upon its recommendation, including the names and addresses of the grantor's or grantees and the nature of the consideration. The records and accounts shall be public records.

Section 14. Notwithstanding the provisions of any general or special law to the contrary, every city and town may accept sections 3 to 7, inclusive, and may thereupon receive state grants under section 10. A city or town that accepts said sections 3 to 7, inclusive, shall not be precluded from participating in state grant programs.

State grant programs may include local adoption of this chapter among the criteria for selection of grant recipients. Funds in the Community Preservation Fund may be made available and used by the city or town as the local share for state or federal grants upon recommendation of the community preservation committee and the legislative body, as provided for in section 5, if such grants and such local share are used in a manner consistent with the recommendations of the community preservation committee.

Section 15. (a) A person who, without permission, knowingly carries away or steals, mutilates, destroys, damages, causes to be damaged or cuts any tree, shrub, grass or any other portion of real property purchased by a city or town with funds derived from this chapter shall be liable to the city or town in tort for such actions.

(b) Damages, including punitive damages for willful or wanton violation of this chapter or any rule or regulation issued or adopted hereunder, may be recovered in a civil action brought by the city or town or, upon request of the city or town, by the attorney general. The city or town or, upon request of the city or town, the attorney general, may bring an action for injunctive relief against any person violating this chapter or any rule or regulation issued hereunder. The superior court shall have jurisdiction to enjoin violations, to award damages and to grant such further relief as it may deem appropriate.

(c) Any damages, penalties, costs or interest thereon recovered pursuant to this section shall be deposited into the Community Preservation Fund of the city or town in which the violation occurred.

Section 16. (a) At any time after imposition of the surcharge, the legislative body may approve and the voters may accept an amendment to the amount and computation of the surcharge, or to the amount of exemption or exemptions, in the same manner and within the limitations set forth in this chapter.

(b) At any time after the expiration of five years after the date on which sections 3 to 1, inclusive, have been accepted in a city or town, said sections may be revoked in the same manner as they were accepted by such city or town, but the surcharge imposed under section 3 shall remain in effect in any such city or town, with respect to unpaid taxes on past transactions and with respect to taxes due on future transactions, until all contractual obligations incurred by the city or town prior to such termination shall have been fully discharged.

Section 17. The commissioner of revenue shall have the authority to promulgate rules and regulations to effect the purposes of this chapter.



May 22, 2006

Holly Morris, Chair
Community Preservation Committee
Town Hall
878 Tremont Street
Duxbury, MA 02332-4499

Re: Community Preservation Fund
Our File No. 2006-177

Dear Ms. Morris:

This is in response to your letter asking whether certain revenues derived from the use of land acquired with Community Preservation Act (CPA) monies belong to the community preservation fund. Specifically, you asked about rent received from a grower who is leasing a cranberry bog and proceeds from the sales of trees grown on a tree farm. Both properties were acquired with fund monies and are managed by the Conservation Commission. In our opinion, the monies belong to the town's general fund.

As a general rule, all municipal revenues regardless of source belong to the general fund and are available for expenditure for any valid municipal purpose after appropriation by the municipality's legislative body. G.L. c. 44, §53. There are numerous statutes, however, that create exceptions to that general rule, *i.e.*, they segregate particular revenues from the general fund into a separate special revenue fund and dedicate those monies for particular spending purposes. The CPA creates such a special revenue fund, the community preservation fund, and credits the following revenues to it: (1) monies collected from the local surcharge, (2) proceeds from community preservation borrowings, (3) funds received from the Commonwealth or any other source for community preservation purposes, (4) proceeds from the disposal of real property acquired with community preservation funds, and (5) damages and penalties from persons who knowingly damage properties acquired with community preservation funds. G.L. c. 44B, §§7 and 15(c).

Neither the proceeds from the sale of trees or rental income from the bog come within these particular revenue items. The sale of severed trees, which are personal property, are not funds received for community preservation purposes, which we believe means gifts, grants or donations from the state or other public or private sources given to further community preservation programs. Also see, G.L. c. 44B, §14. Moreover, while a lease can be considered a disposition of real property in some instances, we think disposal for purposes of G.L. c. 44B, §7 means the sale of the fee interest of real property acquired with community preservation monies.

Holly Morris, Chair
Community Preservation Committee
Town of Duxbury
Page Two

First, the section applies to the disposition of "real property," rather than real property or any interest therein. In addition, proceeds from the sale of municipal real property are not general revenue, but are credited to a separate fund for use for capital purposes. G.L. c. 44, §63. This provision seems intended to similarly restrict the proceeds from the sale of these properties, but for other community preservation purposes instead.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathleen Colleary". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC



December 6, 2004

Colleen Wilkins
Finance Director
Town of Lincoln
16 Lincoln Road
Lincoln MA 01773

Re: Community Preservation Act Borrowings
Our File No. 2004-464

Dear Ms. Wilkins:

This responds to your letter about borrowings authorized under the Community Preservation Act (CPA). Specifically, you asked whether such borrowings are limited to amounts that can be repaid by future local surcharge revenues.

The CPA authorizes communities to "issue ... general obligation bonds or notes in anticipation of revenue raised" by assessing a property tax surcharge. G.L. c. 44B §11. In our opinion, the language "in anticipation" of surcharge revenue is intended by the legislature to limit the amount a community may borrow under c. 44B for community preservation purposes. We do not think a community may issue such debt unless the annual debt service on that particular borrowing, and any previously authorized community preservation borrowings, can be accommodated within the annual surcharge revenues the community can reasonably anticipate raising over the borrowing term at that time. If for some unforeseen reason the monies raised from annual surcharges alone should later prove insufficient, however, the debt service is to be paid from any other fund monies available for that purpose.

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



March 3, 2003

Holly Morris, Chair
Community Preservation Committee
Town Hall
878 Tremont Street
Duxbury, MA 02332-4499

Re: Community Preservation Fund
Our File No. 2003-29

Dear Ms. Morris:

You asked whether debt incurred under the Community Preservation Act (CPA) to acquire a parcel of land a portion of which will be used for water supply purposes may be covered by the water enterprise fund. We understand that the parcel in question was acquired for multiple purposes and that it has now been determined that a portion is suitable for a water supply well. If the land for the well site and appropriate buffer zone was not originally placed under the custody and management of the water department, we assume that town meeting will now vote to do so. G.L. Ch. 40 §15A.

Once the land becomes a water service asset, we think the acquisition cost may be paid from water enterprise revenues. The enterprise may also reimburse the community preservation fund for any monies appropriated from that fund in a prior year that are attributable to the portion of the land that is an enterprise asset.

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



October 23, 2006

Jennifer Dopazo
Town Counsel
Town of Brookline
333 Washington Street
Brookline, MA 02445

Re: Community Preservation Act – Implementation Expenses
Our File No. 2006-371

Dear Ms. Dopazo:

You asked about the use of community preservation fund monies for implementation expenses.

We do not believe community preservation fund monies may be used to pay for administrative or operating expenses incurred by general government departments, such as the assessors, treasurer/collector, accounting officer, town counsel or others, in implementing the Community Preservation Act (CPA). G.L. c. 44B. The CPA provides that monies in the community preservation fund may be used for certain categories of allowable projects and "for the administrative and operating expenses of the community preservation committee." G.L. c. 44B, §6 (emphasis added). Also see G.L. c. 44B. ("The expenditures from the fund shall be limited to ... providing administrative and operating expenses to the committee.")(emphasis added). We read the language as limiting the use of fund monies for administrative and operating purposes to those incurred by the community preservation committee itself in carrying out its statutory duties.

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

Very truly yours,

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC



February 20, 2007

Stuart Saginor
Executive Director
Community Preservation Coalition
33 Union Street, 4th Floor
Boston, MA 02108

Re: Community Preservation Act – Membership Dues
Our File No. 2006-412

Dear Mr. Saginor:

You asked whether cities and towns that adopt the Community Preservation Act (CPA) and become members of the Community Preservation Coalition may pay their membership dues from CPA monies. You state that the coalition is a non-profit organization that assists cities and towns implement the CPA by providing educational information, technical assistance and training to local officials. It also advocates and lobbies for the CPA. The coalition is planning to become a membership organization and expects member communities may wish to fund their dues from the CPA monies annually appropriated for use by the local community preservation committee (CPC).

In our opinion, CPA fund monies may be used for that purpose. The CPA provides that monies in the community preservation fund may be used for certain categories of allowable projects and "for the administrative and operating expenses of the community preservation committee." G.L. c. 44B, §6. Also see G.L. c. 44B, §7. ("The expenditures from the fund shall be limited to ... providing administrative and operating expenses to the committee.") Administrative and operating expenses would typically include expenditures for professional and clerical staff salaries, supplies, materials or equipment, consultants and contractual services that support CPC operations during the year. In other words, the types of expenditures usually funded in the annual budgets of municipal boards, committees and departments.

Municipalities or their officers join many statewide and national organizations that engage in educational and advocacy activities for which they pay annual dues. The dues would ordinarily be considered an annual operating expense of the board, committee or department most directly associated with the purposes of the organization, e.g., membership in the state association of finance committees would be funded from the finance committee's annual budget, in the state association of assessing officers, in the assessors' annual budget, etc. Therefore, we think the dues for any city or town that decides to join the coalition could be paid from the CPC's annual budget.

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

Very truly yours,

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC



February 9, 2007

Mary Ellen Gattoni
342 Main Street
Norfolk, MA 02056

Re: Community Preservation Act
Our File No. 2006-230

Dear Ms. Gattoni:

This is in reply to your letter questioning certain appropriations from the Community Preservation Fund that were voted by the Town of Norfolk at its 2006 annual meeting. You question whether Community Preservation Act (CPA) monies may be used to fund these projects. G.L. c. 44B. We apologize for the delay in responding.

The CPA is relatively new and as is usually the case, there are many issues regarding its interpretation and application with respect to particular projects. Many of the questions are very fact specific so we generally defer to municipal counsel to advise about the appropriateness of any given expenditures. The reason is that under the law, all CPA spending decisions are made locally and we do not have the power to invalidate any municipal appropriations from CPA fund monies (or any other municipal financing source). From the general information presented, however, the projects in question would appear to come within the purposes of the statute.

Monies in the Community Preservation Fund may be used "for the acquisition, creation and preservation of open space; for the acquisition, preservation, **rehabilitation and restoration** of historic resources; for the acquisition, **creation and preservation** of land for recreational use; for the **acquisition, creation**, preservation and **support** of community housing; and for the rehabilitation or restoration of open space, land for recreational use and community housing that is acquired or created" under the act. (Emphasis added). G.L. c. 44B, §5(b)(2).

The first appropriation you question is to assist town residents and employees make a down payment on a home within the town. We understand there are various programs that provide such financial support to low and moderate-income persons seeking to own a home and in exchange, the municipality acquires an affordable housing restriction on the unit. As a result, the home becomes part of the community's affordable housing stock. This type of program would appear to be eligible for CPA funding since acquisition of property interests for affordable housing – in this case an affordable housing restriction – is clearly an allowable

purpose. Even if a restriction is not being acquired under this program, the statute allows monies to be used in support of affordable housing. Support is not defined in the statute, but it could include a broad range of programs to provide affordable housing. We think the statute contemplates that these programs result in additional affordable housing units in the community, but some have interpreted it to allow support or assistance to individuals needing affordable housing as well.

The second appropriation is for the restoration of an historic building owned by the Norfolk Grange, which is a private, non-profit organization. Rehabilitation or restoration of historic properties is an allowable purpose. There is nothing in the CPA that prohibits the use of funds for this project simply because the property is privately owned. However, under the Anti-aid Amendment to the Massachusetts Constitution, public funds cannot be given or loaned to private individuals or organizations for their private purposes. Mass. Const. Amend. Article 46 §2, as amended by Article 103. Any expenditure must be to advance a public purpose. The preservation of historic assets is generally understood to have legitimate public purposes. Both the federal and state governments, for example, have various historic grant programs, which include grants to non-profit organizations. www.sec.state.ma.us/mhc/mhcidx.htm. Typically, these programs result in the public acquiring an historic preservation restriction or receiving some other benefit to ensure that the grant is for public rather than private purposes. For example, in an anti-aid case involving state monies given to a non-profit group to rehabilitate the U.S.S. Massachusetts for use as a memorial and museum, the Supreme Judicial Court found the expenditure was for a public purpose because the property would be open to the public as a place to contemplate and honor those who died in the service of their country and to educate school children, who were admitted free of charge, about history. *Helmes v. Commonwealth*, 406 Mass. 873. In the case of the Grange property, we understand the town will acquire an historic preservation restriction and the organization must use the funds received in exchange to finance the rehabilitation. In other words, it appears the town is receiving an interest in the property to ensure that its investment of public funds benefits the public through the preservation of a piece of the town's history.

The last appropriation was to create and preserve recreational facilities at a town owned pond. From information provided, the Community Preservation Committee and Recreation Department sought the monies to restore the pond and beach area and to make it suitable for recreational purposes, such as swimming, picnicking and boating. Apparently, the pond was once used for swimming and fishing, but it was closed many years ago due to contamination from poor drainage in the area. You claim that the monies will actually be used to build a water treatment plant near the pond. We are obviously not in a position to evaluate that claim, although the \$85,000 appropriated would not seem sufficient to build such a facility. In any event, given that the site is not currently used for recreational purposes, any expenditure to restore the pond and beach area would probably qualify as creation of a recreational asset.

Creation is not defined in the act, but its ordinary and generally understood meaning is bringing into being, causing to exist or production. American Heritage Dictionary 338 (2nd New College Edition 1985); Black's Law Dictionary 440 (4th ed. 1968). Creation could include a number of activities, such as a wholly new use, conversion from one use to another, or restriction of future use, that effectively cause property not used for recreational purposes to become a recreational asset. Even if the appropriation were for some sort of treatment facility or other improvement designed to prevent further contamination of the pond, it might possibly qualify as preservation, which the act defines as protection of property from injury, harm, or destruction.

If ten taxpayers believe particular expenditures are unlawful, they can bring suit to enjoin the municipality from spending those funds. G.L. c. 40, §53. Ultimately, the voters may consider whether they believe local officials are acting appropriately with respect to implementing the CPA, or carrying out any municipal responsibility.

I hope this information is helpful.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathleen Colleary". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC



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.

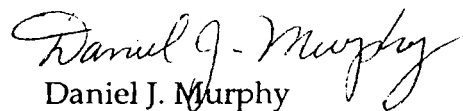
If the eradication project is necessary to protect the pond in its natural state or the surrounding lands, it might qualify as preservation of open space. Preservation is narrowly defined in the act to mean "protection of personal or real property from injury, harm or destruction, but not including maintenance." 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.

Chuck Hodgkinson
Town of Chilmark
Page Two

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



April 28, 2005

Charles J. Zaroulis, Esq.
Tyngsborough Town Counsel
40 Church Street – Suite 500
Lowell MA 01852-2686

Re: Community Preservation Fund
Our File No. 2005-154

Dear Mr. Zaroulis:

You asked about the use of community preservation fund monies for weed control on a great pond or lake not owned by the town.

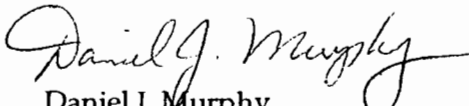
Depending on the circumstances, the project might qualify for funding under the Community Preservation Act (CPA). G.L. c. 44B. Any property interest acquired using CPA monies must be owned by the city or town, G.L. c. 44B §12(b), but spending fund monies on assets owned by other governmental entities or private parties is not necessarily prohibited. Any such spending, however, must be for an allowable purpose under the act and meet the same standard as any other municipal expenditure, *i.e.*, serve a valid public purpose and not otherwise be impermissible under state law.

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.

Therefore, eradication or control of weeds, or other invasive plant species, might qualify as preservation of open space if necessary to prevent harm to a water body, such as where they disrupt water flow into a pond or lake in its natural state or the surrounding lands. 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, the scope of the work involved does not meet that definition, it would be considered rehabilitation or restoration and in this case, could not be undertaken because the pond was not 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.

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



August 25, 2004

Stephen D. Anderson, Esq.
Anderson & Kreiger LLP
43 Thorndike Street
Cambridge MA 02141-1764

Re: Community Preservation Act – Housing Authority Acquisition of Affordable Housing
Our File No. 2004-308

Dear Mr. Anderson:

You asked whether the Town of Acton may appropriate community preservation funds to assist the Acton Housing Authority acquire condominiums that will be subject to affordable housing restrictions. The town plans to provide \$200,000 of the necessary funds, with \$300,000 being obtained from other sources. The housing authority will own and maintain these units and rent them to income eligible persons.

We believe a municipality may appropriate community preservation fund monies to assist a local housing authority acquire property for affordable housing purposes. As your analysis indicated, however, the issue presented is a difficult one given certain language in the Community Preservation Act (CPA). The CPA establishes a special community preservation fund with dedicated revenues for the purpose of giving cities and towns additional financial resources to support the preservation and expansion of open space, historic structures and landscapes, recreational land and affordable housing. With respect to affordable housing, the CPA provides that monies in the community preservation fund may be used "for the *creation, preservation and support* of community housing ... and for the *rehabilitation or restoration* of such ... community housing ... *that is ... created*" under the act, with preference to be given wherever possible to "the adaptive reuse of existing buildings or construction of new buildings on previously developed sites." (Emphasis added). G.L. Ch. 44B §5(b)(2). It does not provide that fund monies may be used for the "acquisition" of affordable housing, but elsewhere in the same section, acquisition is a purpose for which fund monies may be used with respect to the other community preservation assets.

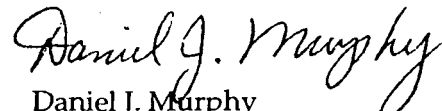
We agree that it is difficult to reconcile the omission of "acquisition" from the list of affordable housing purposes for which CPA monies may be spent with the overall purpose of the act and more specifically, the means by which a municipality expands its supply of affordable housing, *i.e.*, by acquiring affordable housing restrictions on privately owned housing units or having its housing authority acquire and operate publicly owned units. Even though both means involve acquiring property interests, we doubt the legislature intended to preclude communities from using fund monies for these purposes. Therefore, we have come to conclude in the context of allowable spending purposes, "acquisition" of an asset may have been intended to refer to municipal ownership of the fee or other possessory interest tantamount to outright ownership. We think this interpretation allows communities to undertake the range of activities contemplated by the legislature, although we recognize it is somewhat problematic.

Under that view, municipalities could still use fund monies to restrict the future use of a property, but it would be considered "creation" of the community preservation asset, which is included in the list of allowable purposes for all categories of such assets. Creation is not defined in the act, but its ordinary and generally understood meaning is bringing into being, causing to exist or production. American Heritage Dictionary 338 (2nd New College Edition 1985); Black's Law Dictionary 440 (4th ed. 1968). Creation could include a number of activities, such as new construction, conversion from one use to another, or restriction of future use, that effectively "cause" property to become a community preservation asset. We think such restrictions are acquired under the act for purposes of G.L. c. 44B §12(b), which means the municipality must own them.

A municipality could also use CPA monies to assist a housing authority increase its affordable housing stock under this view. We think it is significant that the legislature used the term "support" in the list of affordable housing purposes for which CPA monies may be spent. That term does not appear in connection with the allowable spending purposes for open space, historic resources or recreational land, nor is it defined. A housing authority is a separate body politic and corporate organized for the purpose of owning and operating the public affordable housing stock within a municipality and as you note, the municipality is authorized to provide its authority with a broad range of financial and other assistance. G.L. c. 121B §§19 and 20. "Support" in the context of municipal expenditures ordinarily means to provide funds for a particular activity, including operating expenses. See, for example, G.L. c. 71 §34 regarding the annual appropriation "for the support of public schools." We think that definition certainly describes the nature of the financial assistance a municipality is authorized to provide to its housing authority and therefore, we have taken the position that CPA funds may be used for that purpose. Informational Guideline Release 00-209, Section III-A-6-b. Funds appropriated by the municipality for that purpose are essentially a grant to the authority. In such cases, the municipality is simply providing financing and does not have to own the property. The property is being purchased using CPA monies, however, and therefore, we think it must be bound by an affordable housing restriction. G.L. c. 44B §12(a). If the authority sells the property at a later time, this will ensure the property will continue to be part of the community's affordable housing stock.

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



July 26, 2004

Molly Flender, Chair
Chilmark Housing Committee
P.O. Box 119
Chilmark MA 02535

Re: Community Preservation Act – Affordable Housing Projects
Our File No. 2004-275

Dear Ms. Flender:

This letter is in response to your letter of June 28, 2004 and confirms your discussion with a member of the Division's legal staff that monies raised under the Community Preservation Act (CPA) may be used to create affordable housing in mixed-use developments.

With respect to affordable housing, the CPA provides that monies in the community preservation fund may be used "for the *creation, preservation and support* of community housing ... and for the *rehabilitation or restoration* of such ... community housing ... *that is acquired or created*" under the act. (Emphasis added). G.L. Ch. 44B §5(b)(2). "Preservation" is defined quite narrowly to mean protection of property from injury, harm or destruction, but not including maintenance. G.L. Ch. 44B §2. The act does not specifically define the terms "creation" or "support," but we presume the Legislature intended the terms to be given their ordinary and generally understood meaning. In the case of "creation" that would mean bringing into being, causing to exist or production, which could include new construction or restriction of an existing unit. American Heritage Dictionary 338 (2nd New College Edition 1985); Black's Law Dictionary 440 (4th ed. 1968). "Support" in the context of municipal expenditures generally means to provide funds for a particular activity, including operating expenses. See, for example, G.L. Ch. 71 §74 regarding the annual appropriation "for the support of public schools." We do not see anything in these provisions that would preclude a community from using CPA funds to create, preserve or support affordable housing units in a mix-use development so long as those funds are used just for those units.

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



August 23, 2004

Molly Flender, Chair
Chilmark Housing Committee
P.O. Box 119
Chilmark MA 02535

Re: Community Preservation Act – Affordable Housing Projects
Our File No. 2004-275 (2nd letter)

Dear Ms. Flender:

This letter is in response to your letter of August 11, 2004 regarding the use of Community Preservation Act (CPA) fund monies. We had confirmed in our letter of July 26, 2004 that fund monies may be used to create affordable housing in mixed-use developments. You now ask whether they may be used for the same proportionate share of planning, infrastructure and other pre-development costs.

We think CPA fund monies may be used for a proportionate share of any costs associated with or incidental to creating affordable housing on the site, *i.e.*, costs that would ordinarily be considered part of the construction project. These would include, for example, costs such as site surveys, environmental assessments, architectural and engineering fees, permit processing fees, legal and accounting fees, and similar expenses that are typically included in an appropriation for a municipal construction project. Since developers are usually required to install certain infrastructure in order to obtain local approvals for a project, we think those expenses would also generally be considered to be part of the construction project.

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

Very truly yours,

A handwritten signature in cursive script that reads "Daniel J. Murphy".

Daniel J. Murphy
Chief, Property Tax Bureau

DJM:KC



June 11, 2002

Marie Chiofolo, Acting Chairman
Community Preservation Committee
1 Liberty Lane
Norfolk MA 02056

Re: Community Preservation Act
Our File No. 2002-379

Dear Ms. Chiofolo:

You asked that we review a list of eleven projects that the town's Recreation Department proposes financing with monies raised under the Community Preservation Act (CPA) and advise whether the town may do so. It appears that a number of the projects may involve installations and improvements to one or more existing town recreational facilities. We do not know all of the details for each project, but we can offer general guidelines to assist you evaluate whether a proposal may be financed with community preservation fund monies.

With respect to recreational purposes, the CPA provides that monies in the community preservation fund may be used "for the *acquisition, creation and preservation* of land for recreational use ... and for the *rehabilitation or restoration* of such ... land for recreational use ... *that is acquired or created*" under the act. (Emphasis added). G.L. Ch. 44B §5(b)(2). "Acquisition" can include obtaining a fee or lesser interest in the land, including a lease, and "preservation" is defined quite narrowly to mean protection of property from injury, harm or destruction, but not including maintenance. G.L. Ch. 44B §2. The act does not specifically define the term "creation," but we presume the Legislature intended the term to be given its ordinary and generally understood meaning as bringing into being, causing to exist or production. American Heritage Dictionary 338 (2nd New College Edition 1985); Black's Law Dictionary 440 (4th ed. 1968). Only those recreational properties acquired or created with fund monies may be rehabilitated or restored using such monies.

Accordingly, we think the town may spend fund monies to do the following:

1. Acquire real property and develop it as a recreational site.
2. Acquire an existing recreational site and rehabilitate or restore it as needed.
3. Develop a recreational use on any real property owned by the town before adoption of the CPA, or acquired with other municipal funds, that is not already dedicated to recreational use.

Marie Chiofolo, Acting Chairman
Community Preservation Committee
Town of Norfolk
Page Two

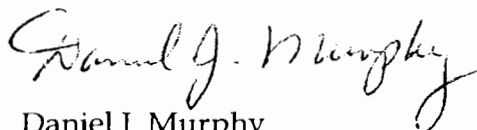
4. Make particular improvements on recreational property owned by the town before adoption of the CPA, or acquired with community preservation or any other municipal funds, for the limited purpose of protecting the property from injury, harm or destruction. This might include such projects as repair or replacement of a roof to protect a structure from damage from the elements or installation of a sprinkler system to protect it from fire damage. It does not include ordinary maintenance or upkeep of the property, nor improvements intended to enhance or extend its use or life.

Community preservation fund monies cannot ordinarily be used to simply replace equipment, or install additional equipment, amenities or improvements, on an existing recreational property. Equipment and improvements can be financed with fund monies, however, where they are an integral part of a project that qualifies as the creation, preservation, rehabilitation or restoration of recreational land. This would include any equipment and amenities acquired or installed:

1. During the original development of a new recreational site on land acquired for that purpose with community preservation funds.
2. During the original development of a new recreational site on property owned by the town before adoption of the CPA, or acquired with other municipal funds, that is not already dedicated to recreational use.
3. During the rehabilitation or restoration of a recreational site acquired or developed with fund monies.
4. For the protection of the property from physical harm.

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

Very truly yours,



Daniel J. Murphy
Chief, Property Tax Bureau

DJM/KC



March 3, 2003

Rocco J. Longo
Town Manager
Town Hall
878 Tremont Street
Duxbury, MA 02332-4499

Re: Community Preservation Fund
Our File No. 2003-24

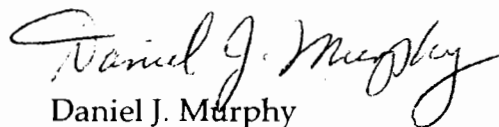
Dear Mr. Longo:

You asked whether the Town of Duxbury may appropriate community preservation fund monies to the conservation fund established by G.L. Ch. 40 §8C. Under that statute, cities and towns may appropriate monies into the fund, which the conservation commission may then spend without further appropriation, or other legislative body action, for various purposes including the acquisition of the fee or other interest in land for open space or other conservation purposes.

We think that the town may use community preservation fund monies to fund all or part of an annual appropriation to the conservation fund, but any expenditure of such monies remains subject to the restrictions imposed by the Community Preservation Act (CPA). G.L. Ch. 44B. This means the conservation commission may spend them only for those purposes that are authorized by both G.L. Ch. 40 §8C and the CPA. In this case, it appears you plan to use the monies solely for the acquisition of land for allowable CPA purposes and to place deed restrictions on any such acquisitions as required by the CPA. G.L. Ch. 44B §12. To ensure that intent is carried out, any town meeting vote appropriating the funds should expressly include those conditions.

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

Cc: Friend Weiler, Chair, Conservation Commission
Holly Morris, Chair, Community Preservation Committee