

Property Tax Bureau
Informational Guideline Release (IGR) No. 99-208
December 1999

CAPE COD OPEN SPACE ACQUISITION PROGRAM

**Chapter 293 of the Acts of 1998
(Amended by Chapter 127 §211 of the Acts of 1999)**

This Informational Guideline Release (IGR) explains to local officials the requirements, policies and procedures for implementing the Cape Cod Open Space Land Acquisition Program. The IGR reflects technical amendments in the enabling legislation that were made by the legislature as part of the Fiscal Year 2000 state budget. It supplements Division of Local Service Bulletin, *Cape Cod Open Space Land Acquisition Program* (May 1999), which provided initial guidelines for administering the program.

Topical Index Key:

Borrowing
Collection Procedures
Special Funds
Tax Bills

Distribution:

Barnstable County:
Assessors
Collectors
Treasurers
Clerks
Accountants and Auditors
Selectmen/Town Councils
Town Managers/Exec. Secys.

CAPE COD OPEN SPACE ACQUISITION PROGRAM

**Chapter 293 of the Acts of 1998
(Amended by Chapter 127 §211 of the Acts of 1999)**

SUMMARY:

This legislation creates a new open space acquisition program for the towns of Barnstable County. Under its provisions, owners of real property in these towns will be annually assessed, through Fiscal Year 2020, an additional surtax in an amount equal to three percent of the real estate tax levied against those properties. The proceeds of this surtax may be expended, upon appropriation, for land acquisition purposes, only.

The legislation specified that for its provisions to become effective in any Cape Cod town, a majority of that town's voters would have to accept its provisions by ballot. The program became effective in all 15 towns when their respective voters accepted the act at the 1998 biennial state election.

GUIDELINES:

I. LAND BANK SURTAX

A. Effective Period

Land bank surtaxes are to be levied annually, beginning in FY2000 and ending in FY2020.

B. Appearance of Surtax on Tax Bills

During the effective period, every real property tax bill issued by a land bank town, including preliminary, actual, omitted and revised bills, must contain a land bank surtax displayed on the bill as a separate item.

For FY2000, quarterly towns may assess all of the surtax with the actual bills. A quarterly town assessing all of the surtax with the actual bills must allocate the surtax between the two actual quarter installments.

PROPERTY TAX BUREAU

BRUCE H. STANFORD, CHIEF

C. Surtax Amount

The land bank surtax billed on any parcel of real property in any fiscal year is calculated by multiplying the amount of the tax assessed on that parcel for the fiscal year by three percent (3%).

D. Personal Property Taxes

No land bank surtax may be assessed on any personal property account.

E. Districts

A surtax may only be assessed on a town's property tax. If a town contains a district with taxing power, such as a fire or water district, no surtax may be assessed on the district's property tax.

F. Interest on Delinquent Surtax Payments

1. Land bank surtaxes not paid by the due date accrue interest at 14 percent per year.
2. Interest on overdue surtaxes belongs to the town's general fund.

G. Application of Partial Payments

If a taxpayer directs the tax collector how a partial payment is to be applied, the collector must apply the payment in accordance with that direction. Otherwise, the collector may determine how to apply the payment.

H. Collection Remedies

Collectors may enforce collection of the land bank surtax with any or all of the remedies set out in General Laws Chapter 60. Unpaid land bank surtaxes become liens on the real estate. Collectors should ensure that the liens do not terminate by performing timely takings. G.L. Ch. 60 §37; G.L. Ch. 60 §53.

I. Abatements and Exemptions

1. If the tax assessed on a parcel of real property is reduced by an abatement, the land bank surtax must be reduced accordingly. Both the real estate and land bank amounts abated are to be charged to the overlay and to the real estate tax receivable of the fiscal year. The abatement certificate should include a single amount to be applied against the real estate receivable.

2. In the case of personal exemptions, the land bank surtax should be calculated based on the pre-exemption tax amount. The surtax should not be reduced due to the granting of a personal exemption.
3. A paraplegic veteran or a person eligible for a full exemption under G.L. Ch. 59 §5(42) or (43) is subject to the surtax.

Example No. 1:

A taxpayer's property is assessed at \$200,000 in a town with a \$10 tax rate. The town assesses a tax of \$2,000 and a land bank surtax of 3% of \$2,000, or \$60. The assessors then grant a \$50,000 abatement in the value of the property. The taxpayer should receive a tax abatement of \$500 and a surtax abatement of \$15. The assessors should notify the collector that an abatement in the amount of \$515 has been granted against the real estate tax.

Example No. 2:

A taxpayer qualifying for an elderly exemption is assessed at \$200,000 in the same town. The town again assesses a tax of \$2,000 and a land bank surtax of \$60. The assessors then grant a \$500 exemption to the taxpayer. The taxpayer should not receive a reduction in the surtax.

J. Refunds

The total amount of the refund due a taxpayer as the result of an abatement should be applied to the real estate receivable.

Refunds generated as the result of an overpayment or posting error to the Land Bank Fund should be charged to the fund.

K. Surtax Deferrals

Taxpayers who are eligible to defer property taxes under G.L. Ch. 59 §(41A) are not eligible to defer the land bank surtax.

L. Classified Land

1. The land bank surtax assessed on classified forest land under G.L. Ch. 61, agricultural or horticultural land under G.L. Ch. 61A and recreational land under G.L. Ch. 61B is calculated based on the tax generated by the classified value of the property.
2. No surtax is assessed on any withdrawal, roll-back tax or conveyance tax levied on property resulting from its present or former classification under G.L. Ch. 61, 61A or 61B.

II. FUNDS

A. Land Bank Fund

1. Land Bank Account

The accountant in each land bank town must establish and maintain a separate account called the Land Bank Fund. The treasurer may either pool land bank cash or may establish a separate bank account to account for all land bank activity. However, a treasurer who pools cash must allocate interest earned on land bank cash to the Land Bank Fund.

2. Deposits

The following monies must be deposited into the Land Bank Fund.

- a. All monies collected from the land bank surtax,
- b. All proceeds from borrowings made under the authority of the Cape Cod Open Space Program, and
- c. All funds received from the commonwealth or from any other source for land bank purposes.

3. Turnovers

The collector must, at least once each week, pay over to the treasurer all surtax receipts.

4. Investment of Land Bank Fund Monies

The treasurer may invest monies in the Land Bank Fund in the manner authorized for the investment of trust funds under G.L. Ch. 44 §54.

5. Interest

All interest earned on monies deposited in the Land Bank Fund is credited to the fund.

6. Expenditures

a. The Land Bank Fund is an “other special revenue fund subject to appropriation.” Consequently, expenditures may only be made from the fund, regardless of purpose, upon appropriation by town meeting, or in Barnstable, by town council.

b. Monies may be appropriated from the Land Bank Fund for the following purposes:

(1) To acquire land and interests in land for the protection of public drinking water supplies, open space, conservation land and the creation of walking and bicycling trails and of recreational areas. These interests may consist of: (a) land to protect existing and future well fields, aquifers and recharge areas; (b) agricultural lands; (c) forest land; (d) fresh and salt water marshes and other wetlands; (e) ocean and pond frontage, beaches, dunes and other coastal lands; (f) land to protect scenic vistas; (g) land for natural or wildlife preserve; (h) land and easements for trails; and (i) land for recreational use.

(a) All Land Bank Fund monies may be used to acquire land bank property and to make principal and interest payments on bonds and notes issued to pay for those acquisitions.

(b) Matching funds received from the Cape Cod Land and Aquifer Protection Fund may be used to acquire land bank property and to make principal payments on bonds and notes issued to pay for those acquisitions. These funds may not be used, however, to pay interest costs on borrowings.

- (c) Towns may appropriate Land Bank Fund monies for the acquisition of land and interests in land in another town.
 - (2) To pay for maintenance and improvement to real property purchased with proceeds from the Land Bank Fund, except that no more than 3 percent of the Land Bank Fund may be used for those purposes.
 - (3) To provide matching funds under the land conservation program created under G.L. Ch. 132A §11 or under any other state or federal open space acquisition program consistent with the purposes of the Cape Cod Open Space Land Acquisition Program. The availability of funds under the Land Acquisition Program does not affect the eligibility of the town to receive funds under G.L. Ch. 132A §11 or to receive funds from any state or federal open space acquisition program.
 - (4) To pay the following acquisition-related expenses:
 - i. Appraisal costs
 - ii. Expenses for title searches and
 - iii. Closing fees.
 - (5) To pay the costs of preparing, issuing and marketing bonds or notes for borrowings made under the Cape Cod Open Space Acquisition Program.
- c. Appropriations from the Land Bank Fund are subject to the following limitations:
- (1) Matching funds received from the Cape Cod Land and Aquifer Protection Fund may not be used to pay interest costs on such borrowings.
 - (2) Monies may not be appropriated from the Land Bank Fund for the following purposes:
 - (a) To purchase land improved with buildings or other structures or to demolish improvements to land.
 - (b) To pay for administrative services or supplies.

B. Cape Cod Land and Aquifer Protection Fund

1. Establishment

As part of the Cape Cod Open Space Acquisition Program, the Legislature established a grant fund, called the Cape Cod Land and Aquifer Protection Fund, and transferred \$15,000,000 into this fund.

2. Expendable Trust

The Cape Cod Land and Aquifer Protection Fund is an “expendable trust,” as defined in Title 801 §50.02 of the Code of Massachusetts Regulations. An expendable trust is an account established with the state treasurer, into which are deposited monies or other assets and from which disbursements may be made only in accordance with the terms of the trust.

3. Grants from the Cape Cod Land and Aquifer Protection Fund

- a. Beginning in FY2001, each land bank town will be entitled to annually receive a grant of money from the Cape Cod Land and Aquifer Protection Fund. Subject to the availability of monies in the fund, this grant will be in an amount equal to 50 percent of the amount collected by the town in land bank surtaxes during the preceding fiscal year, as certified by the Commissioner of Revenue.
- b. The Commissioner must make his certification by November 15 of each year for the preceding fiscal year.
- c. Grant monies may not be expended for the purchase of properties approved for acquisition on or before September 1, 1998.

III. BORROWING

Land bank towns may issue from time to time general obligation bonds or notes in anticipation of surtaxes to be received under the Cape Cod Open Space Land Acquisition Program. Although debt issued under this program is general obligation debt, the act anticipates that the debt will be repaid from the proceeds of the land bank surtax. The act also suggests, but does not mandate, that towns make every effort to limit costs by participating in pooled loan programs and through cost sharing arrangements.

A. Authorization of Debt

All debt authorized for this program is authorized pursuant to Chapter 293 of the Acts of 1998 and is subject to the provisions of G.L. Ch. 44. Towns may authorize debt on a parcel by parcel basis at the same time that town meeting, or town council in Barnstable, votes to approve specified land areas recommended by the town open space committee.

In the alternative, towns may authorize an aggregate amount of debt for all land bank purchases and then issue debt when specified land areas have been approved for acquisition by town meeting, or town council in Barnstable. Debt authorization requires a two-thirds vote of town meeting, while land acquisition approvals require a majority vote. Consequently, if a town meeting authorizes an aggregate land bank debt amount with a two-thirds vote, subsequent town meetings may approve individual land bank purchases with majority votes, these purchases to be paid for with proceeds from the earlier authorized debt.

Example No. 3

The town open space committee identifies a particular parcel of land to be acquired for \$750,000. On November 1, 1999, town meeting votes to acquire that parcel and authorizes the treasurer, with the approval of the selectmen, to issue debt in the amount of \$750,000 to finance its acquisition.

Example No. 4

On November 1, 1999, town meeting authorizes \$5,000,000 in debt to finance all anticipated land acquisitions under this program. Later town meetings approve the acquisition of 7 parcels costing a total of \$4,950,000. After each parcel acquisition is approved by a town meeting, the treasurer issues bonds or notes in the amount needed to finance that particular acquisition.

B. Temporary and Permanent Borrowing

The Division of Local Services (DLS) recommends that towns initially finance the acquisition of land bank property using temporary debt to ensure that there are no unspent bond proceeds if an acquisition unexpectedly fails to close for any reason. Bond anticipation notes may be issued for land bank purposes in the same manner as any other municipal borrowing and may be cost effective in financing smaller acquisitions. Permanent debt may be issued before or after acquiring land bank property. When bonds are issued in advance of land bank acquisitions, towns should have an inventory of other available eligible parcels and should recognize the risk of incurring an IRS Arbitrage Rebate penalty. If, such a penalty is incurred, however, it should be paid from the Land Bank Fund.

C. Amount Borrowed

Towns should refrain from borrowing the maximum amount of debt that would be supported by the 20-year surtax revenue stream because collection rates and maintenance expenses will reduce the actual amount available for debt service payments.

D. Repayment Term

Land bank communities may make debt service payments on a “level debt service” or “equal principal” basis.” Towns may also choose to repay land bank loans using a schedule that provides for a more rapid amortization of principal.

E. Expiration of Borrowing Authority

The land bank surtax expires on January 1, 2020. As a result, towns must be cautious when issuing bonds that will mature after that date. DLS recommends using shorter terms for bonds issued in future years. For example, a bond issued for 20 years in the year 2002 will be surtax supported for 18 years and will then become an obligation of the general fund until maturity. Towns must consider the fiscal consequences of issuing debt with a maturity date beyond January 1, 2020.

IV. LAND BANK PROPERTY

A. Permissible Uses

1. Any real property interest purchased with Land Bank funds must be retained in a natural, scenic or open condition.

2. Towns may make improvements to properties purchased with Land Bank funds in order to promote recreational activities. Improvements must be consistent with the purposes of the Open Space Acquisition Program.
3. Improvements which promote the following recreational uses are consistent with the Program's purposes: hiking, camping, nature study and observation, boating, golfing, non-commercial youth soccer, horseback riding, hunting, fishing, skiing, swimming, picnicking, private non-commercial flying, including hang gliding, archery and target shooting.

B. Maintenance and Improvement

1. Each town may appropriate from its Land Bank Fund to pay for maintenance and improvement to real property purchased with proceeds from the Land Bank Fund.
2. Appropriations cannot exceed, in aggregate, an amount equal to 3 percent of all monies collected from the land bank surtax or from gifts or grants, not otherwise restricted, made to the Land Bank Fund.

Amounts appropriated for maintenance and improvement should be expended directly from the land bank fund and not transferred to a town department.

Amounts appropriated for maintenance and improvement are considered operational and any unexpended or unencumbered balance should be closed to the Land Bank Fund balance at the end of the fiscal year.

C. Deed Restriction

1. A permanent restriction must be incorporated into the deed of any real property interest purchased with Land Bank funds limiting the use of that interest to a purpose consistent with the purposes of the Program.
2. Deed restrictions made under the Cape Cod Open Space Land Acquisition Program may be enforced in court by:
 - a. The Office of the Attorney General or any state department or agency whose mission or interests relate to environmental protection, including but not limited to the Executive Office of Environmental Affairs, the Department of Environmental Management, and the Department of Fisheries, Wildlife, and Environmental Law Enforcement, and

- b. Nonprofit land trust, created under G.L. Ch. 203, whose purposes pertain to the conservation of land.

D. Ownership

- 1. Real property interests acquired with Land Bank monies must be owned by the particular towns purchasing those properties.
- 2. The board of selectmen or town council may retain the management of these interests with the town or may delegate management to a nonprofit corporation, created under G.L. Ch. 180, or a nonprofit trust, created under G.L. Ch. 203.
- 3. For interests acquired for water protection, the selectmen or council may delegate management to a water company, a water district, a water supply district, or a fire district.
- 4. The proceeds obtained from the sale of any land acquired with Land Bank Funds must be administered pursuant to the requirements of G.L. Ch. 44 §63, which governs the use of town real estate sale proceeds generally.

V. TOWN OPEN SPACE COMMITTEE

- A. The board of selectmen or, in Barnstable, the town council, must appoint a Town Open Space Committee to carry out the provisions of the Cape Cod Open Space Land Acquisition Program with respect to acquiring open space.
- B. The committee may consist of:
 - 1. An existing agency, board, department or commission,
 - 2. A local nonprofit land trust or conservation organization, or
 - 3. Any other persons designated by the selectmen or council.
- C. Town Committee members must serve without compensation.
- D. Interests in real property may be acquired under the Cape Cod Open Space Land Acquisition Program only upon a recommendation by the Town Open Space Committee and a majority vote of town meeting, or in Barnstable, of the town council.

- E. In preparing their recommendations, town committees should consider local and regional open space plans, master plans, and local comprehensive plans, if any.

VI. ANNUAL REPORTING REQUIREMENTS

All land bank communities must annually submit a “Cape Cod Land Bank Fund Report” (State Tax Form LB-1) (Attached) to DLS by October 31. This report details all of the activity of the previous fiscal year.

In addition, Schedule A has been revised to accommodate the reporting of activity related to the Land Bank Fund. A separate column, entitled Open Space Acquisition Fund, has been established in the special revenue section, Part V, under other special revenue.

VII. ACCOUNTING ISSUES

In an effort to segregate all sources of revenue and expenses associated with the land bank surtax into one fund, all activity should be recorded in a special revenue fund. See Section II-A. Revenues recorded in the Land Bank Fund, other than revenues from bond and note proceeds, are subject to appropriation. The following is a list of how certain issues should be treated. In addition, accounting entries for the recording of the commitment, liens and abatements are also included. (Attached).

- A. The assessors will issue a separate notice of commitment for the land bank surtax, which will be recorded by the accountant in the Land Bank Fund.
- B. Collections reported will be recorded directly into the Land Bank Fund.
- C. Amounts received from the Commonwealth’s Cape Cod Land and Aquifer Protection Fund should be recorded in the Land Bank Fund.
- D. All expenditures of land bank funds should be recorded as a direct expenditure in the Land Bank Fund.
- E. Amounts appropriated for maintenance and improvement are considered operational and any unexpended or unencumbered balance should be closed to the Land Bank Fund balance at the end of the fiscal year.

- F. Revenue from bond proceeds should be recorded as another financing source directly to the Land Bank Fund. However, if a project is expected to include land improvements that will take place over a period of longer than one year, a capital project fund may be established.
- G. Short-term notes should be recorded as a liability in the Land Bank Fund.
- H. Amounts appropriated from the Land Bank Fund should be reported on the tax recapitulation sheet as an appropriation from an available fund and should be reflected on Form B-2 tax rate recapitulation submission.

SAMPLE ACCOUNTING ENTRIES

1. **The assessors forward a notice of commitment for FY2000 to the accountant showing a committed real estate tax of \$2,000 and land bank surtax of \$60.**

General Fund

Real estate tax receivable 2000	\$	2000.	
Deferred revenue property tax			\$ 2000.

Other Special Revenue Fund

Land bank surtax receivable 2000	\$	60.	
Deferred revenue land bank			\$ 60.

2. **The taxpayer pays the full amount of the bill for \$2,060.**

General Fund

Cash	\$	2000.	
Real estate tax receivable 2000			\$ 2000.
Deferred revenue property tax	\$	2000.	
Revenue			\$ 2000.

Other Special Revenue Fund

Cash	\$	60.	
Land bank surtax receivable 2000			\$ 60.
Deferred revenue land bank	\$	60.	
Revenue			\$ 60.

3. **The taxpayer pays the entire bill of \$2,060 and applies for an abatement. The assessors grant an abatement of \$500 in the real estate tax and \$15 in the land bank surtax.**

General Fund

Overlay 2000	\$	515.	
Real estate tax receivable 2000			\$ 515.

Other Special Revenue Fund

Note: No adjustment made in land bank fund

4. The collector issues a refund for \$500 for the real estate tax and \$15 for the land bank surtax.

General Fund

Real estate tax receivable 2000	\$	515.	
Cash			\$ 515.

Revenue	\$	515.	
Deferred revenue property tax			\$ 515.

Other Special Revenue Fund

Note: No adjustment made in land bank fund

Return by October 31 to:

**Bureau of Accounts
P.O. Box 9460
Boston MA 02205-9460**

CAPE COD LAND BANK FUND

**Town of _____
Fiscal Year Ended June 30, _____**

1. Report total FY____ land bank surtax committed to collector _____

2. Fund balance from previous report _____

Additions

3. Bonds issued: _____
Date Amount _____

4. Collections from land bank surtax _____

5. 50% reimbursement from state¹ _____

6. Earnings on investments _____

7. Donations _____

8. Other _____

Subtotal _____

Subtractions

9. Land acquisitions _____

10. Principal and interest _____

11. Maintenance and improvement _____

12. Other _____

Subtotal _____

Fund balance June 30, _____

Completed by:

Accountant or Auditor

Date

¹ To be eligible for reimbursement, this report must be submitted by October 31.