

Massachusetts Department of Revenue *Division of Local Services*

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Community Preservation Fund

Budgeting and Finance Issues

Prepared for Community Preservation Coalition Workshop – November 2007

COMMUNITY PRESERVATION FUND Implementation Resources

The community preservation act (CPA), G.L. c. 44B, establishes a special fund with dedicated revenues to provide communities with additional financial resources to expand their open space, historic, recreational and community housing assets. The act sets out five categories of purposes for which fund monies may be spent in relation to these assets. The primary local revenue source for the fund is a new tax: an annual real estate tax surcharge that communities may impose at any rate up to 3%. In the second year of implementation and thereafter, communities also receive a distribution from a state trust fund to supplement their surcharge revenues. The trust fund also has a recurring financing source: surcharges on fees paid to record documents at the registry of deeds.

The Department of Revenue is authorized by the act to issue implementation guidelines and regulations. The Division of Local Services (DLS), which carries out the Department's responsibilities in the area of municipal taxation and finance, has issued guidelines (Informational Guideline Releases (IGRs)) and other information addressing the municipal finance provisions of the CPA. All materials are available on our web site: www.mass.gov/dls.

DLS 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)*

DLS 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)

**DLS
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 Committee

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

- 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 annual updated plan.
 - Must prepare annual community preservation budget and present 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)

(See Chart 5 from **IGR 00-209** and **Bulletin 2003-04B** for model language for 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 Chart 5 from **IGR 00-209** and **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.

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 EOE 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		March - June
5.	Notify EOE of prior year CP projects (CP-3)	Town meeting/council	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	Yes
PRESERVE Means protect from injury, harm or destruction, not maintenance	Yes	Yes	Yes	Yes
SUPPORT	Yes	Yes	Yes	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
SAMPLE VOTES FROM COMMUNITY PRESERVATION FUND FINANCING SOURCES

SOURCE

Annual revenues

VOTE

- To appropriate \$10,000 from FY2008 Community Preservation Fund revenues for _____.
- To reserve \$250,000 from FY2008 Community Preservation Fund revenues for FY2008 Community Preservation Fund purposes (FY2008 Budgeted Reserve)
- To reserve \$100,000 from FY2008 Community Preservation Fund revenues for Open Space.

- To appropriate/transfer \$75,000 from Community Preservation Fund balance to _____.

- To appropriate/transfer \$75,000 from FY2008 Community Preservation Budgeted Reserve to _____.

- To appropriate/transfer \$75,000 from Community Preservation Fund Open Space Reserve to _____.

- To appropriate/transfer \$10,000 from Community Preservation -- Parcel X Land Acquisition Loan balance to _____.

SAMPLE COMMUNITY PRESERVATION PROGRAM APPROPRIATION VOTE

ARTICLE: TO SEE IF THE TOWN WILL VOTE TO ACQUIRE BY PURCHASE OR EMINENT DOMAIN A PARCEL OF LAND DESCRIBED AS ASSESSORS MAP 30 LOT 125 CONSISTING OF APPROXIMATELY 25.2 ACRES FOR OPEN SPACE PURPOSES UNDER THE COMMUNITY PRESERVATION ACT, AND TO APPROPRIATE OR TRANSFER FROM THE COMMUNITY PRESERVATION FUND ANNUAL REVENUES OR AVAILABLE FUNDS, OR TO AUTHORIZE THE TREASURER WITH THE APPROVAL OF THE SELECTMEN TO BORROW UNDER THE COMMUNITY PRESERVATION ACT, A SUM OF MONEY TO FUND SUCH ACQUISITION, OR TAKE ANY OTHER ACTION RELATIVE THERETO.

MOTION: I move that the town authorize the Conservation Commission to purchase a parcel of land described as Assessors Map 30 Lot 125 consisting of approximately 25.2 acres for open space purposes under the Community Preservation Act and to fund such acquisition, that \$5,000,000 be appropriated with \$400,000 to be appropriated from FY08 Community Preservation Fund revenues, \$100,000 to be transferred from the Community Preservation Fund Open Space Reserve, \$1,000,000 to be transferred from the Community Preservation Fund balance and that \$3,500,000 be borrowed by the treasurer, who is authorized with the approval of the selectmen, to issue any bonds or notes that may be necessary for that purpose, as authorized by General Laws Chapter 44B §11, or any other general or special law, for a period not to exceed 20 years.

CPA FINANCING SOURCES

Available to communities during FY08 budget cycle

Charts 6 and 7 show the CPA financing sources available at different points during the FY08 and FY09 budget cycles for communities that adopted and implemented the CPA in FY02-07 (Chart 6), or adopt it for initial implementation in FY08 (Chart 7). Cities and towns will adopt their FY08 budgets in the spring of 2007 and may adjust them up to the time they set the tax rate in the fall of 2007. In towns, the annual budget is usually adopted at the Annual Town Meeting held in March-June. In cities, the city council would consider and act on the budget at one or more meetings held before July 1. Tax rates are set in the fall, with communities using a semi-annual payment system expected to set them in September and October, and communities using the quarterly system in November and December.

In the context of the CP fund and spending proposals the CPC will present for FY08, communities can appropriate or reserve the estimated FY08 fund revenues up to the time they set their FY08 tax rate in the fall of 2007. After the rate is set, they can only approve new spending or reservations from any available CP reserves or authorize debt for acquisitions and certain other projects. Available CP reserves would be any (1) fund balance (as of 6/30/07 and reported by accounting officer), (2) special purpose reserves (Open space, Historic resources and Community housing) and (3) year's budgeted reserve (see explanation below).

NOTE: The surcharge and state matching monies are not separate and distinct financing sources for appropriation or reservation purposes. The total amount the community anticipates collecting from the two receipts makes up the estimated annual fund revenues for the year. Also, once a fiscal year ends, any annual revenues that were not appropriated or reserved flow into the fund balance and become part of that available funding source after the accounting officer reports it. They are no longer a separate and distinct funding source.

Upon recommendation of the CPC, communities may do the following using the estimated annual fund revenues for any fiscal year until the tax rate for that year is set:

1. **Appropriate them for specific acquisitions or projects, CPC operating expenses, debt service on CP borrowings**, etc. (e.g., Voted: to appropriate \$100,000 from FY08 CP Fund revenues for X purpose)
2. **Reserve them for later appropriation for one of the following three categories of CPA purposes:**
 - (a) Open space (excluding recreational) (e.g., Voted: to reserve \$100,000 from FY08 CP fund revenues for open space purposes, *i.e.*, to the CP Fund Open Space Reserve)
 - (b) Historic resources
 - (c) Community housing.
3. **Reserve monies for later appropriation for any CPA purpose during that FY** (e.g., Voted: to reserve \$250,000 from FY08 CP fund revenues for CP fund purposes during FY08 (*i.e.*, to the FY08 CP Fund Budgeted Reserve).

NOTE: Amounts in an annual budgeted reserve may be transferred by the legislative body upon CPC recommendation to fund any allowable CP purpose until 6/30. Any balance at the end of the fiscal year closes to the CP fund balance and becomes part of that funding source after the accounting officer reports it. This is a way to give communities the flexibility to use the funds during the year, particularly if they did not have specific proposals in mind before the rate is set. Communities can vote annual revenues into the reserve up until the rate is set, and transfer them from the reserve to a spending purpose any time during the FY (*e.g.*, transfers can be made from the FY08 budgeted reserve any time from 7/1/07 to 6/30/08).

On a practical level, some communities may prefer to wait until after October 15 when the state match is in hand to place any unappropriated or unreserved annual revenues into a budgeted reserve. That way the community can use a firm revenue figure and avoid the possibility that it appropriates and reserves more than is actually collected, *i.e.*, run a deficit in the fund at year end that has to be covered by next year's revenues. That timing may not work for many communities, however, particularly those that set rates in September and October and towns that do not typically have a fall special town meeting.

Regardless of the timing, the CPC would recommend that the legislative body place an amount equal to the difference between the estimated annual revenues and the amount actually appropriated and reserved for CPA purposes in the year's budgeted reserve, *e.g.*, if town budget officials estimate total FY08 fund revenues will be \$1,000,000, the CPC can vote to recommend that the city or town vote to reserve FY08 CP fund revenues for CP fund purposes during FY08 in an amount equal to the difference between \$1,000,000 and the amount appropriated and reserved to date. After all other recommendations have been disposed of by the meeting, this recommendation could then be moved with the now known specific dollar amount.

Chart 6

CPA FINANCING SOURCES

Sources available during FY08 budget cycle for communities that first assessed surcharge in FY02-FY07

COMMUNITIES THAT IMPLEMENTED SURCHARGE IN FY02-FY06

COMMUNITIES THAT IMPLEMENTED SURCHARGE IN FY07

Spring 2007 Annual Town Meeting/City Council Budget Meeting

- **FY08** CP fund revenues (amount available = estimated (1) FY08 surcharges and (2) 10/15/2007 state trust fund distribution based on FY07 net surcharge levy as of 6/30/2007) (cannot spend appropriations made from this source until 7/1/07)
- **FY08** CP fund revenues (amount available = estimated (1) FY08 surcharges and (2) 10/15/2007 state trust fund distribution based on FY07 net surcharge levy as of 6/30/2007) (cannot spend appropriations made from this source until 7/1/07)
- CP fund balance (amount available = balance as of 6/30/06 less appropriations & reservations made at meeting held since balance reported by accounting officer. Amount reflects favorable FY06 fund activity, including FY06 surcharge/trust fund revenues above the amounts appropriated & reserved at the time the FY06 rate was set.)
- **FY07** CP budgeted reserve balance if any
- CP open space, historic resource, community housing reserve balances if any
- CP borrowing
- **FY07** CP budgeted reserve balance if any
- CP open space, historic resource, community housing reserve balances if any
- CP borrowing

Any Special Town Meeting/City Council Meeting Held Before 7/1/2007

- Same sources as available before 7/1 to the extent not already appropriated or reserved at previous meetings
- Same sources as available before 7/1 to the extent not already appropriated or reserved at previous meetings

Any Special Town Meeting/City Council Meeting Held After 7/1/2007 and Before FY08 Tax Rate Set

- FY08 CP fund revenues not appropriated or reserved at previous meetings
- CP fund balance (amount available = balance as of 6/30/07 less any appropriations & reservations made at meeting held since balance reported by accounting officer. Amount reflects 6/30/06 balance not appropriated or reserved during FY07 and favorable FY07 fund activity, including FY07 surcharge/trust fund revenues above the amounts appropriated & reserved at the time the FY07 rate was set)
- **FY08** CP budgeted reserve balance if any (Unappropriated FY07 reserve was closed to fund balance as of 6/30/07)
- CP open space, historic resource, community housing reserve balances if any
- CP borrowing
- FY08 CP fund revenues not appropriated or reserved at previous meetings
- CP fund balance (amount available = balance as of 6/30/07 less any appropriations & reservations made at meeting held since balance reported by accounting officer. Amount reflects favorable FY07 fund activity, including FY07 surcharge/trust fund revenues above the amounts appropriated & reserved at the time the FY07 rate was set)
- **FY08** CP budgeted reserve balance if any (Unappropriated FY07 reserve was closed to fund balance as of 6/30/07)
- CP open space, historic resource, community housing reserve balances if any
- CP borrowing

Any Special Town Meeting/City Council Meeting Held After 7/1/2007 and After FY08 Tax Rate Set

- **EXCEPT FY08 FUND REVENUES**, same sources as available before tax rate set to the extent not already appropriated or reserved at previous meetings. (FY08 fund revenues not appropriated or reserved at time FY08 tax rate set are not available until they become part of the 6/30/08 fund balance and are reported by accounting officer.)
- **EXCEPT FY08 FUND REVENUES**, same sources as available before tax rate set to the extent not already appropriated or reserved at previous meetings. (FY08 fund revenues not appropriated or reserved at time FY08 tax rate set are not available until they become part of the 6/30/08 fund balance and are reported by accounting officer.)

Chart 7

CPA FINANCING SOURCES

Sources available during FY08 budget cycle for communities that first assess surcharge in FY08

Any Town Meeting/City Council Meeting Held Before FY08 Tax Rate Set

- FY08 CP fund revenues not appropriated or reserved at any previous meetings held since CPA referendum approved (FY08 surcharges only as first state trust fund distribution will not be received 10/15/2008, *i.e.*, during FY09)(cannot spend appropriations made from this source until 7/1/07)
- FY08 CP budgeted reserve balance if any created by reservations made at any previous meetings
- CP open space, historic resource, community housing reserve balances if any created by reservations made at any previous meetings
- CP borrowing
- **EXCEPT FY08 FUND REVENUES**, same sources as available before tax rate set to the extent not already appropriated or reserved at previous meetings. (FY08 fund revenues not appropriated or reserved at time FY08 tax rate set are not available until they become part of the 6/30/08 fund balance and are reported by accounting officer.)

Any Special Town Meeting/City Council Meeting Held After FY08 Tax Rate Set

Sources available during FY09 budget cycle

Spring 2008 Annual Town Meeting/City Council Budget Meeting

- FY09 CP fund revenues (amount available = estimated (1) FY09 surcharges and (2) 10/15/2008 state trust fund distribution based on FY08 net surcharge levy as of 6/30/08)(cannot spend appropriations made from this source until 7/1/08)
- **NO FUND BALANCE AVAILABLE UNTIL 1ST YEAR OF FUND OPERATION ENDS ON 6/30/08**. Any FY08 estimated fund revenues that were not appropriated or reserved at time FY08 rate was set are not available until they become part of the 6/30/08 fund balance and are reported by accounting officer.
- FY08 CP budgeted reserve balance if any
- CP open space, historic resource, community housing reserve balances if any
- CP Borrowing

Any Special Town Meeting/City Council Meeting Held Before 7/1/2008

- Same sources as available before 7/1 to the extent not already appropriated or reserved at previous meetings

Any Special Town Meeting/City Council Meeting Held After 7/1/2008 and Before FY09 Tax Rate Set

- FY09 CP fund revenues not appropriated or reserved at previous meetings
- FY09 CP budgeted reserve balance if any (Unappropriated FY08 reserve was closed to fund balance as of 6/30/08)
- CP fund balance (amount available = balance as of 6/30/08 less any appropriations & reservations made at meeting held since balance reported by accounting officer. Amount reflects favorable FY08 fund activity, including FY08 surcharge/trust fund revenues above the amounts appropriated & reserved at the time the FY08 rate was set)
- CP open space, historic resource, community housing reserve balances if any
- CP Borrowing
- **EXCEPT FY09 FUND REVENUES**, same sources as available before tax rate set to the extent not already appropriated or reserved at previous meetings. (FY09 fund revenues not appropriated or reserved at time FY09 tax rate set are not available until they become part of the 6/30/09 fund balance and are reported by accounting officer.)

Any Special Town Meeting/City Council Meeting Held After 7/1/2008 and After FY09 Tax Rate Set

- **EXCEPT FY09 FUND REVENUES**, same sources as available before tax rate set to the extent not already appropriated or reserved at previous meetings. (FY09 fund revenues not appropriated or reserved at time FY09 tax rate set are not available until they become part of the 6/30/09 fund balance and are reported by accounting officer.)

Case Study 1

FY07 Implementation - Appropriations/Reservations Reported on FY07 Tax Rate

ESTIMATED FY07 FUND REVENUES = \$1,000,000 based on:

- \$1,000,000 surcharges (net of two adopted exemptions)
 - 10% minimum spending requirement for year = \$100,000

- **9/25/06 Special Town Meeting/City Council Meeting** - Appropriates/reserves \$350,000 from FY07 revenues as follows to begin planning and ensure compliance with 10% minimum spending requirements:
 - \$50,000 *CPC FY07 operating expenses*
 - \$100,000 *open space reserve*
 - \$100,000 *historic resources reserve*
 - \$100,000 *community housing reserve*

- **11/13/06 Special Town Meeting/City Council Meeting** – Actions from available financing sources are:
 - \$650,000 in FY07 fund revenues not appropriated at previous meeting based on estimate of \$1,000,000
 - *Appropriates \$400,000 from FY07 revenues to purchase open space parcels*
 - *Appropriates \$200,000 from FY07 revenues for FY07 CP budgeted reserve*
 - **Total appropriated: \$600,000**
 - Borrowing (none voted)

- **12/10/06** Community sets FY07 tax rate using:
 - **\$950,000** from FY07 fund revenues to cover \$950,000 in appropriations and reservations
 - \$50,000 unappropriated and unreserved reported on tax rate recap (not available during FY07)

- **1/28/07 Special Town Meeting/City Council Meeting** –Actions from available financing sources are:
 - FY07 CP budgeted reserve of \$200,000
 - Open space, historic resources, community housing reserve balances of \$100,000 each
 - Borrowing
 - *Authorizes \$1,000,000 borrowing for rehabilitation of historic town hall (20 years)*

ESTIMATED FY08 FUND REVENUES = \$1,925,000 based on:

- \$1,025,000 surcharges (assumes property tax levy growth of 2.5%)
- \$900,000 state trust fund (assumes 90% match)
 - 10% minimum spending requirement for year = \$192,500

- **5/14/07 Annual Town Meeting/City Council Meeting** – Actions from available financing sources are:
 - FY08 fund revenues (but cannot spend appropriations from this source until 7/1/07)
 - *Appropriates \$75,000 CPC FY08 operating expenses*
 - *Appropriates \$195,000 open space reserve*
 - *Appropriates \$100,000 FY08 debt service on historic borrowing*
 - *Appropriates \$95,000 historic resources reserve*
 - *Appropriates \$195,000 community housing reserve*
 - *Appropriates \$1,000,000 FY08 CP budgeted reserve*
 - **Total appropriated: \$1,660,000**
 - FY07 CP budgeted reserve of \$200,000 (none appropriated)
 - Open space, historic resource, community housing reserve balances of \$100,000 each (none appropriated)
 - Borrowing (none voted)

- **6/24/07 Special Town Meeting/City Council Meeting** – Actions from available financing sources are:
 - \$265,000 in FY08 fund revenues not appropriated at previous meeting based on estimate of \$1,925,000 (none appropriated)
 - FY07 CP budgeted reserve balance of \$200,000 (none appropriated)
 - Open space, historic resource, community housing reserve balances of \$100,000 each
 - *Appropriates \$50,000 from open space reserve for conservation restriction*
 - Borrowing (none voted)

FY07 OPERATIONS end as of 6/30/07

- Actual surcharge revenues = \$975,000 (compared to \$950,000 budgeted when rate set)
- Unencumbered/unspent appropriations = \$210,000 (\$10,000 CPC budget and \$200,000 CP budgeted reserve)

Available balances until 6/30/08

- Fund balance available for appropriation for any community preservation purpose = +/- **\$235,000** (the actual amount determined by accounting officer will reflect other accounting adjustments, interest on revenues, etc.)
- Open space reserve balance of \$245,000 (\$50,000 6/30/07 balance + \$195,000 reserved from FY08 fund revenues at previous meeting)
- Historic resources reserve balance of \$195,000 (\$100,000 6/30/07 balance + \$95,000 reserved from FY08 fund revenues at previous meeting)
- Community housing reserve balance of \$295,000 (\$100,000 6/30/07 balance + \$195,000 reserved from FY08 fund revenues at previous meeting)

10/15/07 FY08 STATE TRUST FUND DISTRIBUTION = \$975,000 (100% match of FY07 net surcharge levy)

- **Total Estimated FY08 Fund Revenues Now = \$1,998,750** (\$1,925,000 estimate used in spring + \$75,000 additional revenues from higher distribution than originally estimated - \$1,250 less surcharge revenues than originally estimated after increasing actual FY07 levy of \$975,000 by now anticipated 5% growth in property tax levy)
 - 10% minimum spending requirement for year now = \$198,875

• **11/01/07 Special Town Meeting/City Council Meeting.** Available financing sources are:

- Fund balance of \$235,000
- FY08 budgeted reserve balance of \$1,000,000
- Open space reserve balance of \$245,000
- Historic resources reserve balance of \$195,000
- Community housing reserve balance of \$295,000
- Borrowing
- **If FY08 tax rate not set** - \$338,750 in FY08 fund revenues not appropriated at previous meetings (based on new estimate of \$1,988,750 total for year)

Case Study 2

FY07 Implementation - No Appropriations/Reservations Reported on FY07 Tax Rate

ESTIMATED FY07 FUND REVENUES = \$1,000,000 based on:

- \$1,000,000 surcharges (net of two adopted exemptions)
- 10% minimum spending requirement for year = \$100,000
- **12/10/06** Community sets FY07 tax rate using:
 - \$0 from FY07 fund revenues to cover \$0 in appropriations and reservations
 - \$1,000,000 unappropriated and unreserved reported on tax rate recap (not available during FY07)
- **1/28/07 Special Town Meeting/City Council Meeting** – Available financing sources are:
 - Borrowing (**only**)
 - *Authorizes \$1,00,000 borrowing for rehabilitation of historic town hall (20 year)*

ESTIMATED FY08 FUND REVENUES = \$1,925,000 based on:

- \$1,025,000 surcharges (assumes property tax levy growth of 2.5%)
- \$900,000 state trust fund (assumes 90% match)
 - 10% minimum spending requirement for year = \$192,500
- **5/14/07 Annual Town Meeting/City Council Meeting** – Actions from available financing sources are:
 - FY08 fund revenues (but cannot spend appropriations from this source until 7/1/07)
 - *Appropriates \$75,000 CPC FY08 operating expenses*
 - *Appropriates \$195,000 open space reserve*
 - *Appropriates \$100,000 FY08 debt service on historic borrowing*
 - *Appropriates \$95,000 historic resources reserve*
 - *Appropriates \$195,000 community housing reserve*
 - *Appropriates \$1,000,000 FY08 CP budgeted reserve*
 - ***Total appropriated: \$1,660,000***
 - Borrowing (none voted)
- **6/24/07 Special Town Meeting/City Council Meeting** – No action from following available financing sources:
 - \$265,000 in FY08 fund revenues not appropriated at previous meeting based on estimate of \$1,925,000
 - Borrowing

FY07 OPERATIONS end as of 6/30/07

- Actual surcharge revenues = \$975,000 (compared to \$0 budgeted when rate set)
- Unencumbered/unspent appropriations = \$0
- Fund balance = +/- **\$975,000** (the actual amount determined by accounting officer will reflect other accounting adjustments, interest on revenues, etc.)

Available balances until 6/30/08

- Reservations by accounting officer to meet FY07 minimum spending requirement are:
 - *\$97,500 (10% of fund balance) to open space reserve*
 - *\$97,500 (10% of fund balance) to historic resources reserve*
 - *\$97,500 (10% of fund balance) to community housing reserve*
- Fund balance available for appropriation for any community preservation purpose = **\$682,500**

10/15/07 FY08 STATE TRUST FUND DISTRIBUTION = \$975,000 (100% match of FY07 net surcharge levy)

- **Total Estimated FY08 Fund Revenues Now = \$1,998,750** (\$1,925,000 estimate used in spring + \$75,000 additional revenues from higher distribution than originally estimated - \$1,250 less surcharge revenues than originally estimated after increasing actual FY07 levy of \$975,000 by now anticipated 5% growth in property tax levy)
 - 10% minimum spending requirement for year now = \$198,875

- **11/01/07 Special Town Meeting/City Council Meeting.** Available financing sources are:
 - Fund balance of \$682,500
 - FY08 budgeted reserve balance of \$1,000,000
 - Open space and community housing reserve balances of \$292,500 each (\$97,500 6/30/07 balance + \$195,000 reserved from FY08 fund revenues at previous meeting)
 - Historic resources reserve balance of \$192,500 (\$97,500 6/30/07 balance + \$95,000 reserved from FY08 fund revenues at previous meeting)
 - Borrowing
 - **If FY08 tax rate not set** - \$338,750 in FY08 fund revenues not appropriated at previous meetings (based on new estimate of \$1,988,750 total for year)



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 "Kathleen" written in a larger, more prominent script than the last name "Colleary".

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,

A handwritten signature in black ink that reads "Daniel J. Murphy".

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,

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

Daniel J. Murphy
Chief, Property Tax Bureau

DJM/KC



February 20, 2007

Marjorie McGinnis
Town Administrator
Town Hall
9 Montague Road
Leverett, MA 01054

Re: Community Preservation Acquisitions
Our File No. 2006-427

Dear Ms. McGinnis:

You asked several questions about restrictions placed on real estate interests acquired under the Community Preservation Act (CPA). We can provide the following general information, but we do not have any particular expertise in this area of law so we recommend that you consult your town counsel for advice on the particular transactions you are planning.

First, you asked whether a separate instrument is needed to place a restriction on a real property interest purchased using CPA monies. The statute requires that the interest be bound by a permanent restriction that limits the use to the community preservation purpose for which it was acquired and meets the requirements of G.L. c. 184, §12(a). Based on our review of G.L. c. 184, §31, which is the section that defines conservation, historic and affordable housing restrictions, we do not think a separate document is necessary if the deed transferring ownership to the town specifies the use to which it will be put. The reason is that section generally defines each type of restriction as "a right ... in any deed, will or other instrument executed by or on behalf of" the landowner that limits use of or acts on the land. (Emphasis added).

Your second question is whether the town can hold a restriction in real property, with the fee interest held by another entity such as a land trust. The CPA defines a real property interest as "a present or future legal or equitable interest in or to real property, including easements and restrictions." G.L. c. 44B, §2. This means that a community can use fund monies to acquire an interest that is less than the fee interest in a property, such as conservation or other restriction.

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".

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC



May 23, 2002

Jay Gonzalez, Esq.
Palmer & Dodge
111 Huntington Avenue
Boston, MA 02205-9494

Re: Community Preservation Act
Our File No. 2002-345

Dear Mr. Gonzalez:

This letter confirms your discussion with a member of the Division's legal staff regarding the use of monies raised under the Community Preservation Act (CPA) for projects in a community's capital plan.

In our opinion, community preservation fund monies may be used to finance a project that has been incorporated into a community's capital plan but for which no appropriation has yet been made. In that case, there are no municipal funds currently committed to the project and therefore, we do not think the "no-supplanting" provision of the act applies. That provision prohibits using community preservation funds to replace "existing" operating funds. G.L. Ch. 44B §6.

You also asked whether community preservation fund monies may be used for the preservation of any open space, historic resources, recreational land or community housing acquired or created before adoption of the act or with other municipal funds. We believe initiatives that come within the definition of preservation under the act are not limited to properties or assets originally acquired or created with community preservation monies. That limitation applies to rehabilitation or restoration projects only. The act narrowly defines preservation to mean "protection of personal or real property from injury, harm or destruction, but not including maintenance." In our view, preservation would encompass activities such 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. More substantial improvements intended to adapt the structure for another use, increase its useful space or extend its useful life would not come within that definition.

If you have any further questions on this matter, 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

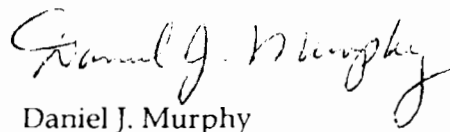
4. Make particular improvements on recreational property owned by the town before adoption of the CPA, or acquired with community preservation or any other municipal funds, for the limited purpose of protecting the property from injury, harm or destruction. This might include such projects as repair 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,

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

Daniel J. Murphy
Chief, Property Tax Bureau

DJM/KC

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



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,

A handwritten signature in black ink that reads "Daniel J. Murphy".

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 black ink that reads "Daniel J. Murphy".

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.

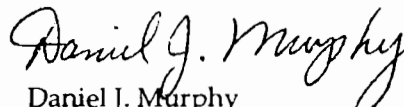
Stephen D. Anderson, Esq.
Anderson & Kreiger LLP
Page Two

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



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.

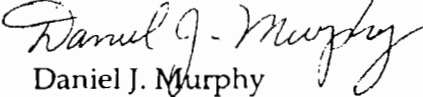
If the eradication project is necessary to protect the pond in its natural state or the surrounding lands, it might qualify as preservation of open space. Preservation is narrowly defined in the act to mean "protection of personal or real property from injury, harm or destruction, but not including maintenance."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

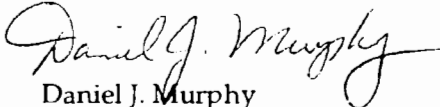
Depending on the circumstances, the project might qualify for funding under the Community Preservation Act (CPA). G.L. c. 44B. Any property interest acquired using CPA monies must be owned by the city or town, G.L. c. 44B §12(b), but spending fund monies on assets owned by other governmental entities 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



Massachusetts Department of Revenue Division of Local Services

Alan LeBovidge, Commissioner Gerard D. Perry, Deputy Commissioner

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,

A handwritten signature in black ink, appearing to read "Kathleen Colleary".

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.

Mary Ellen Gattoni
Page Three

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,



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,

A handwritten signature in black ink, appearing to read "Kathleen Colleary".

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC

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 abatement 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 10. 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.