

CONSERVATION

EXEMPLARY CONSERVATION FINANCE INITIATIVES

CAPITAL IN THE

JAMES N. LEVITT, EDITOR

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Editor:

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EXEMPLARY
CONSERVATION
FINANCE
INITIATIVES

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THE MASSACHUSETTS COMMUNITY PRESERVATION ACT

A Case Study in Fostering Intergovernmental Partnership in Conservation Finance

Matthew Zieper

A pastoral landscape known as the Common Pasture, parts of which remain virtually unchanged since the first English settlers came to this part of Massachusetts in 1615, lies just 40 miles north of Boston, straddling the boundary between the City of Newburyport and the Town of Newbury. Nellie Aikenhead (2006) describes the Common Pasture as follows:

The City of Newburyport, the Essex County Greenbelt Association (Greenbelt) and the Trust for Public Land (TPL), a national nonprofit conservation organization, announced today the acquisition and permanent protection of the 169-acre Gutierrez property, also known as the “Wet Meadows.” . . . The land is part of the historic Common Pasture, which is a mix of open farmland, wetlands, and forested uplands. The 123 acres of the Wet Meadows land located in Newburyport was purchased by the City, and the 46 acres in Newbury were purchased by Greenbelt. Working at the City’s request and as part of a coalition to conserve the threatened and historically significant Common Pasture landscape, TPL negotiated an agreement to purchase the Wet Meadows in May. Since then, project partners have been working to assemble the \$500,000 in funding needed to complete the purchase.

Funding for the acquisition came from a mix of city, state, and private sources. The City of Newburyport appropriated up to \$392,000 in Community Preservation Act funds for the purchase and associated costs, \$205,000 of which will be reimbursed through a Self-Help grant from the Commonwealth of Massachusetts. Greenbelt raised \$88,700 in private funds and received a \$45,000 Conservation Partnership Grant from the Commonwealth for the purchase of the land in Newbury. . . .

The Wet Meadows is one of the largest remaining pieces of the historic Common Pasture, which once stretched across Newbury, Newburyport, and West Newbury. While much of the original landscape has been lost to development over the years, more than 700 acres remain in their historic state as natural and agricultural land. The values of the area are recognized by many, including the Commonwealth of Massachusetts, TPL, Greenbelt, the Parker River Clean Water Association, the City of Newburyport and the Town of Newbury, all of which are part of a coalition formed to protect the area.

With a combination of nearly 1,500 acres of unfragmented open fields, working farms, tidal streams, and upland forest, the Common Pasture is a treasured part of the natural and cultural heritage of Essex County. Maintaining the integrity of this landscape has been a challenging task, with constant development pressures looming around every corner. At the heart of the effort to save the Common Pasture has been a series of land conservation projects totaling 300 acres that were spearheaded by the Trust for Public Land. Project completion relied heavily on funding made possible by the Community Preservation Act (CPA), a landmark state law that fosters intergovernmental partnerships in support of conservation finance.

Such innovations in land conservation are not new to Massachusetts, which has a long and proud history as the home to the first public park, the first land trust, and the first local land bank in the United States. The CPA should be hailed as another milestone in Massachusetts' conservation story. In less than a decade, the CPA has become the embodiment of a strong intergovernmental partnership, yielding more than \$500 million worth of new public investments in land conservation, as well as affordable housing and historic preservation.

It is remarkable that the CPA has thrived, being passed into law in town after town, in a state where a 1980s tax revolt led to the passage of strict limits on property taxation known as Proposition 2 ½.¹ Despite this anti-tax legacy, nearly 40 percent of the state's 351 cities and towns have chosen to impose new property taxes to support community preservation efforts. These municipalities are spurred on by generous state matching funds and the flexibility to utilize their CPA funds in a manner tailored to their individual needs, free from state regulation. While many of these communities are typical fast-growing suburbs, others are small rural towns seeking to protect working forests, or smaller urban centers hoping to revitalize themselves by transforming former brown-field sites into parks, or turning neglected industrial properties along forgotten rivers into bustling, clean, and attractive urban riverfront districts.

This chapter presents a detailed review of the history of the CPA and how it became law in Massachusetts, including its key provisions, the impact of the law, what accounts for CPA's success, and lessons learned that may be applicable to public land conservation efforts elsewhere in the Americas.

¹ Proposition 2 ½ is a state law that limits local property tax increases by Massachusetts municipalities. It was passed by a voter-approved ballot petition in 1980 and went into effect in 1982. The name of the initiative refers to the 2.5 percent annual limit on the increase in taxes that a municipality is permitted. It is similar to other tax revolt measures across the United States.

EARLY HISTORY OF THE MASSACHUSETTS COMMUNITY PRESERVATION ACT

The CPA is the result of nearly two decades of hard work devoted to passing legislation that would give all 351 Massachusetts cities and towns the tools to preserve their special characters in the face of growth and development. While the commonwealth had enjoyed healthy growth since World War II, beginning in the 1980s communities that had long been blessed with a beneficial mix of farms and forests, historic town centers, and compact patterns of development were finding that they no longer recognized themselves. Some communities wanted to protect working farms, others to protect historic buildings from being razed, and still others to provide affordable housing to enable the sons and daughters of long-time residents to remain close to home.

The concept of a statewide enabling authority that will preserve special community character had its original inspiration in the Nantucket Islands Land Bank (1983), the first program of its kind in the United States. This land conservation program was created to acquire, hold, and manage important open space resources and endangered landscapes of Nantucket Island for the use and enjoyment of the general public. The land bank levies a 2 percent real estate transfer tax (RETT) on the sale price of a property. The program was conceived by Nantucket's planning commission, adopted by the voters of Nantucket, and established by a special act of the Massachusetts legislature (Massachusetts General Court 1983).²

By early 1985, Representative Roger Goyette (D-New Bedford) filed the first bill in the Massachusetts legislature to grant all cities and towns the same authority enjoyed by Nantucket—the ability to levy a RETT to fund land conservation (Associated Press 1985). The proposed bill generated a flurry of attention, but ultimately failed to become law. Over the next two years, the legislature was flooded with a wide range of land bank proposals based on the RETT model. Some provided universal enabling authority for all cities and towns. Others were targeted at a specific city or town via a so-called home-rule petition. With the exception of a land bank for Nantucket's neighboring island, Martha's Vineyard, none of these proposals became law.

THE REAL ESTATE TRANSFER TAX AND LAND CONSERVATION

Since the establishment of the Nantucket Islands Land Bank, state and local governments across the United States have sought to emulate Nantucket's experience and establish local funds for land conservation using a RETT. While it is levied on the value of real estate sold, a share of the sales price is often exempted in an attempt to spare lower income first-time homeowners or buyers with lower incomes. Revenues can fluctuate wildly depending upon market conditions, but can be substantial in very busy or high-priced markets. Supporters of the transfer tax cite the nexus between real estate sales and the loss of land to development. This argument is obviously focused on new construction and becomes more tenuous in the case of pre-existing homes.

² A real estate transfer tax may be imposed by a state, county, or municipality on the privilege of transferring real property within that jurisdiction. It is usually reflected as a percentage of the total value of property conveyed.

Opponents protest that the burden of supporting open space preservation should not fall solely on the shoulders of participants in the real estate market. In their eyes, everyone in a community should pay through a broad-based tax. Finally, and most important, the National Association of Realtors formally opposes the RETT, and has in a number of instances contributed significant resources to defeat land conservation measures, as was the case with the Cape Cod Land Bank ballot measure in January 1998 (National Association of Realtors 2003).

Voters have demonstrated strong support for RETT ballot measures, approving 23 of 32 (72 percent) nationwide since 1983, which is slightly below the 77 percent approval rate for all land conservation ballot measures (Massachusetts General Court 1998). The geographic range of these RETT ballot measures has been very limited, however, encompassing a dozen jurisdictions in just four states. Nineteen of the successful measures took place in seasonal resort communities like Martha's Vineyard and Nantucket, including the five towns that make up the Hamptons region of New York (three measures in each town), and Crested Butte, Colorado.

In addition, a handful of local governments—Harford County, Maryland, and the towns of Red Hook and Warwick, New York—each with a long track record of local farmland preservation, have also passed such measures. Both Red Hook and Warwick mounted campaigns costing tens of thousands of dollars to counteract opposition by real estate brokers; each town narrowly passed their measures, with 51 and 52 percent support, respectively.

In these examples, the local governments sought and received individual authority from their state legislatures to levy a RETT. In the two states that provided enabling authority to levy a RETT for land conservation to a broader range of local governments, the approval rate has been abysmal. In Washington State, for example, voters rejected seven of eight county measures, with only affluent San Juan County casting an affirmative vote. Voters also defeated the Georgia Heritage Fund in 1998, the only statewide RETT ballot measure in the country.

While this initial multiyear battle to create land banks was unsuccessful, it planted the seeds that would one day lead to today's CPA. Supporters of land conservation and affordable housing began to work side by side as allies in the effort to preserve local community character and quality of life. While affordable housing and land conservation are often seen as conflicting issues, supporters of this dual approach wisely recognized that open space and affordable housing were both essential ingredients to vibrant, successful communities.

One of the champions of this joint focus on land conservation and affordable housing was Representative Robert A. Durand (D-Marlborough), a newcomer to the Massachusetts House of Representatives in 1985 and a protege of Representative Goyette. In 1987, Durand sponsored the first bill that would have allowed land banks to create affordable housing and conserve land. It fell a few votes short of passage in the Massachusetts House in the waning days of 1987 due to strong opposition from realtors, who were opposed to the use of the RETT as the funding mechanism (Mohl 1987). Their opposition to the transfer tax never wavered over the following decade

and effectively kept statewide enabling authority for land banks—and individual local authority in the form of home-rule petitions—from moving forward. That is, until a new funding mechanism was devised.

Over the years from 1987 to the end of the twentieth century, Durand tirelessly championed the paired concepts of land conservation and affordable housing in the Massachusetts House of Representatives and later the state Senate. In 1997, Durand linked them with historic preservation and filed the first legislation, entitled the Community Preservation Act. Finally, when he served as Governor Paul Cellucci's secretary of environmental affairs, Durand built the groundswell necessary to lift support for the CPA, allowing it to become the law of the land.

The move to combine land conservation with affordable housing and historic preservation dates back to 1994, when Senator Durand was named to chair a special Commission on Historic Preservation. The so-called Durand Commission released a landmark report entitled *Saving Our Future*, which focused attention on the important role that historic preservation contributes to a community's economic vitality (Historic Massachusetts 1994). The commission's work and subsequent projects led by Historic Massachusetts permanently changed the perception that historic preservation was a luxury that only applied to affluent communities. Their work demonstrated that historic preservation could serve as a catalyst in the revitalization of formerly blighted neighborhoods in dense urban cities such as Chelsea, home to Senator Thomas Birmingham. Later, as Senate president, Birmingham provided essential political leadership to ensure that the CPA would be supported by legislators representing all types of communities, not just those that wanted to preserve open space.

The Durand Commission's report laid the groundwork for the original filing of the Community Preservation Act in 1997, the first proposal to combine open space preservation, affordable housing, historic preservation, and other purposes such as brownfields redevelopment and septic system improvements into one legislative package (Historic Massachusetts 1997). The 1997 version of the CPA would have allowed all cities and towns to adopt a RETT of up to 1 percent on the purchase price of real estate via local ballot referendum. Like the dozens of land bank proposals that preceded it, the proposal faced strong opposition from segments of the real estate and business community due to its reliance on the real estate transfer tax. The CPA would remain stalled in the legislature until 1999, when a new approach that had already proven successful on Cape Cod was chosen.

THE CAPE COD EXPERIENCE

Although their neighbors on Nantucket and Martha's Vineyard had benefited from their land banks since the early to mid-1980s, efforts to create a similar Cape Cod Land Bank had been stymied routinely in the Massachusetts legislature. As a region served by a single drinking water source, a sole-source aquifer, Cape Cod leaders became alarmed as they saw rampant development threatening their only water supply. After a decade of inaction on their state legislative proposals, land bank supporters chose a different course. They opted to put a nonbinding referendum question on the ballot

FIGURE
3.1

CAPE COD AND THE ISLANDS



in November 1996—a presidential election year—asking all 15 Cape Cod towns whether they would support the creation of a Cape Cod Land Bank backed by a 1 percent RETT. Voters in all 15 towns approved the nonbinding questions, and support exceeded 60 percent in smaller Outer Cape towns, whereas support in many larger Midcape towns hovered in the 50 to 52 percent range (figure 3.1).

Based on these election results, and owing to Cape Cod's unique circumstances (particularly its dependence on a sole aquifer), state lawmakers overrode Governor Cellucci's veto, approving legislation that established a Cape Cod Land Bank in November 1997 (Wong 1997). The bill imposed a 1 percent RETT on sellers of property and exempted the first \$100,000 of the transaction from the levy. Lawmakers eliminated an earlier provision that would have allowed 10

percent of the funds to be spent on development of affordable housing. Final approval of the law required approval by a majority of Cape Cod residents at a special election within 120 days. The Massachusetts Association of Realtors spent nearly \$150,000 on a last-minute advertising campaign that aimed to defeat the measure, and on January 27, 1998, voters defeated the Cape Cod Land Bank bill by a 55 to 45 percent margin (Phillips 1998).

Later that spring, a completely revamped version of the Cape Cod Land Bank was fashioned by a coalition that included environmentalists, realtors, and business leaders. Instead of the real estate transfer tax that had proved so divisive, the funding mechanism was switched to a property tax surcharge. This concept was introduced by the Trust for Public Land, which had extensive knowledge and experience with local property tax surcharges for open space in New Jersey and was happy to share that expertise with the Massachusetts coalition. With the leadership of House Speaker Thomas Finneran, the Massachusetts legislature ultimately approved a bill that, after approval by a majority of voters in a November 1998 ballot measure, permitted Cape Cod towns to levy a 3 percent property tax surcharge for 20 years (Massachusetts General Court 1998). To encourage local adoption of the land bank concept, the state provided a \$15 million pool of matching funds (from a state budget surplus) to municipalities that passed the law. (The concept of state matching funds also came from New Jersey.) This time, the opportunity was enthusiastically embraced in local elections.

THE NEW JERSEY MODEL

The revamped Cape Cod Land Bank was based upon a widely successful program from New Jersey, the most densely populated state in the United States. New Jersey has long been the leader in fostering intergovernmental financial support for land conservation. The results have been remarkable. All 21 counties and 234 municipalities have established dedicated funding for land conservation and related purposes (Trust for Public Land 2008a). In 2008, local governments in New Jersey were expected to spend more than \$350 million to protect the places that make New Jersey special. No other state comes close to this figure. So what accounts for this success? It is the direct reflection of a supportive political culture and a policy framework that encourages broad participation by local governments in passing conservation finance ballot measures.

New Jersey grants all local governments uniform enabling authority to establish their own dedicated funding source via ballot measures. These voter referendum ballot measures provide local governing bodies the authority to levy annual property taxes in any increment, up to a certain amount approved by the voters (e.g., 1.5¢ per \$100 of assessed valuation). While these ballot measures are technically only advisory in nature, in practice local governments adopt open space taxes equal to the maximum allowable levy. The tax proceeds can be used for acquisition, development (i.e., capital improvements), or maintenance of lands acquired for recreation or conservation purposes, farmland preservation, historic preservation, or debt service associated with any of these uses. The ballot measure may allocate portions of the tax levy for specific purposes. In the absence of specific allocations, the local governing body may determine the allocations, or it may change the amount of the annual levy, or add or remove purposes through passage of a new ballot measure (New Jersey Statutes Annotated 1997).

In addition, New Jersey provides local governments with financial incentives to encourage them to establish dedicated sources of local funding for land conservation. This combination of policies has provided local governments with the opportunity and inducement to become full partners with the state in promoting land conservation. New Jersey's Green Acres Planning Incentive (PI) program offers matching funds to communities that develop an open space and recreation plan approved by the state and adopt a dedicated tax (or an alternate, stable funding source) for land acquisition. After initial state approval of the plan, a local government can acquire lands identified in its plan without having to file separate individual applications for each parcel. For communities that have not adopted a tax and a plan, the local government would have to make an application for each parcel targeted for acquisition. Whereas local governments that have adopted a tax may receive grants of up to 50 percent of a project's costs, those that have not are only eligible for grants of up to 25 percent. Another major benefit of the PI program is that local governments have reasonable assurance that current and future priority projects will receive funding from the state.

A NEW CONCEPT FOR CPA FINANCING

The success of the revamped Cape Cod Land Bank, modeled on New Jersey's successful open space program, marked a watershed moment in the effort to establish the

Community Preservation Act in Massachusetts. It demonstrated that voters would support higher local property taxes for land conservation, especially when the state sweetened the pot by providing matching grants as financial incentives. By shifting away from the real estate transfer tax, the revamped Cape Cod Land Bank bill also eliminated the primary obstacle that had doomed its predecessor: well-funded, organized opposition, primarily from real estate brokers. Without this opposition, the land bank bill quickly sailed through the legislature. Subsequent ballot measures on Cape Cod faced no organized opposition and were passed handily.

Going into the 1999 legislative session, the coalition that had long pushed for approval of statewide land bank authority—and in 1999 for passage of CPA legislation—was split on whether to keep going with the RETT or to emulate Cape Cod and opt for the property tax instead. The coalition, which numbered nearly 20 member groups, included long-time advocates for the RETT, who were reluctant to jettison the concept. In order to help keep the coalition moving forward, a public opinion survey was commissioned to determine whether voters would support the establishment of local enabling authorities that would levy property taxes for community preservation purposes. The results were quite promising: 59 percent of respondents said they would support a ballot measure to levy a property tax increase for the CPA.

The critical next step was to marshal legislative support to advance the CPA. The Massachusetts House of Representatives, led by Speaker Finneran, was a key starting point. The House had historically been resistant to land bank proposals based on the RETT. The previous year, however, Finneran supported the revised Cape Cod Land Bank once it was switched to a property tax surcharge. If Finneran supported the CPA because it relied on the property tax surcharge, it was thought that the idea would likely gain favor in the Senate, where Senator Durand had long championed the land bank concept and later the CPA.

Early in 1999, Governor Cellucci named Durand secretary of environmental affairs, an ideal leadership position from which to make the case for community preservation. Throughout 1999 and 2000, Secretary Durand and his staff organized across the state regional community preservation summits, which taught local elected officials, citizens, and civic leaders about strategies to balance growth while protecting open space and preserving the historic and cultural resources of their communities (Historic Massachusetts 2000). At a November 1999 meeting on Massachusetts' South Shore, Durand summed up the focus of the summits: "We're here to provide the tools necessary for communities to take charge of their destiny. People come to our state because we are rich in history and culture. If we ruin those resources, we ruin the economic engine of the state" (Taylor 1999). The net effect of these summits was to build a groundswell for the related CPA, which was now poised to move through the legislature.

In the summer of 1999, both the Massachusetts House and Senate approved their own versions of the Community Preservation Act. Each provided for enabling authority by which local governments could levy property tax surcharges of up to 3 percent via ballot referendum for three community preservation purposes: open space preservation (and recreation), historic preservation, and affordable housing. Each version also

provided state matching funds to adopting communities in order to encourage them to approve CPA. The source of these funds would be newly proposed document recording fees collected by local registries of deeds.

The bills differed in one fundamental way, however. The Senate version allowed communities to choose either a RETT or a property tax surcharge to fund local community preservation efforts. The RETT had been a deal breaker for 15 years in the legislature and had been rejected by the voters on Cape Cod in 1998. It turned out to be a deal breaker in the House, too. After nearly a year of deadlock, the transfer tax option was dropped and CPA was ultimately approved by the legislature and signed by Governor Cellucci in September 2000 (Massachusetts Executive Office of Energy and Environmental Affairs 2009).

KEY PROVISIONS OF THE COMMUNITY PRESERVATION ACT

The act that became law in 2000 gives communities the ability to undertake a wide range of activities to shape their own growth and future development. Communities that adopt CPA via local ballot measure may levy a property tax surcharge up to 3 percent and become eligible to receive state matching funds from the Community Preservation Trust Fund. Local governments that adopt the CPA make all spending decisions without further approval by the state. The following section outlines the key provisions of the CPA (General Laws of Massachusetts 2009).

Local property tax surcharge. Local adoption of the CPA allows a municipality to collect a property tax surcharge of up to 3 percent for the stated purposes: open space (including land for recreational use), preservation of historic community resources, and community housing. Of the 133 cities and towns that have adopted CPA as of October 2008, a majority (71) had chosen the 3 percent surcharge.

To mitigate the impact on certain types of taxpayers, communities can choose several exemptions to the CPA surcharge: (1) the first \$100,000 of taxable value of residential real estate; (2) property owned and occupied by a person who would qualify for low-income housing or low- or moderate-income senior housing in the city or town; (3) class three (commercial) and class four (industrial) properties in cities or towns with classified tax rates. As of October 2008, all but 20 of the CPA-adopting municipalities chose some exemptions: 84 chose to exempt both low- and moderate-income residents from the surcharge and to exclude the first \$100,000 of residential property value, while four communities implemented all three exemptions (Community Preservation Coalition 2008).

Dedicated state matching funds. The underpinning for the Massachusetts Community Preservation Trust Fund is a \$20 surcharge on Registry of Deeds filings, which are primarily recordings of deeds and mortgages and discharges of mortgages. A \$10 surcharge on the filing of municipal lien certificates is also levied. Since it is a trust fund, it is not subject to appropriation as part of the normal state budget process. In other words, the Community Preservation Trust Fund cannot be used for other purposes unless the state legislature votes to change the law.

TABLE
3.1**COMMUNITY PRESERVATION
TRUST FUND REVENUES***Source: Massachusetts Dept. of Revenue (2009a).*

Fiscal year	Revenues (millions)
2001	\$17.1
2002	\$41.3
2003	\$53.8
2004	\$50.5
2005	\$37.4
2006	\$36.1
2007	\$31.9
2008	\$27.0

Prior to the CPA's enactment in late 2000, annual state trust fund revenues were projected to total \$26 million. However, these projections were quickly eclipsed during the state's real estate boom. The CPA went into effect midway through fiscal year (FY) 2001 (the year ending June 30, 2001), with half-year collections totaling \$17 million (table 3.1). From FY2002 to FY2004, annual collections soared, topping out at \$54 million in FY2003. As the real estate market in Massachusetts cooled off, collections steadily declined to just \$27 million in FY2008. Current economic

circumstances suggest that collections for FY2009 and perhaps FY2010 will continue to trend downward, albeit at a slower pace (Massachusetts Department of Revenue 2009a).

Annually, in October, the Community Preservation Trust Fund disburses matching funds to participating municipalities. Depending on the balance in the trust fund, matching funds can range from 5 to 100 percent of local CPA property tax surcharge revenues. During its first six years, the balance in the fund was sufficient to provide 100 percent matching funds to all communities that had adopted CPA. The prospect of receiving dollar-for-dollar matching funds encouraged many communities to adopt CPA. In October 2008, however, for the first time the matching fund dipped below 100 percent, averaging 74 percent across the 127 eligible communities (Massachusetts Department of Revenue 2009b).

Referendum required. A municipality adopts CPA when a simple majority of its voters approves a CPA ballot measure at a regularly scheduled election. There are two routes to the ballot: (1) a referendum, which is accomplished by referral by the local legislative body (e.g., town meeting, city council, board of alderman); or (2) an initiative petition, which must be signed by at least 5 percent of registered voters. Of the 133 cities and towns that have initially adopted CPA, 40 (30 percent) chose an initiative petition and 98 (70 percent) chose legislative referral (Community Preservation Coalition 2008).

Bonding permitted. A municipality may issue general obligation bonds or notes in anticipation of the municipality's CPA property tax surcharge revenues. Such bonds may be used for any of the purposes permitted under CPA. If a municipality issues bonds or notes, the surcharge necessary to pay debt service must remain in effect until the bond is repaid. Community Preservation funds may only be used to pay debt service on bonds or notes approved under the provisions of CPA.

Opt-out provision. Participating cities and towns can opt out of the CPA after five years and end the surcharge in the same manner it was adopted. At any time after adoption of CPA, the municipality may change the surcharge level or the exemptions. However, if

the municipality has issued bonds backed by CPA proceeds, the surcharge must remain in effect until those bond obligations have been repaid.

Local flexibility on expenditure of funds. The Community Preservation Act is very flexible and allows towns to develop projects that suit their individual communities. The funds may be used for a wide array of projects.

If a municipality approves the CPA, it must also establish a Community Preservation Committee (CPC), which will make annual recommendations to its legislative body on how the money should be spent. The legislative body may only appropriate funds from the Community Preservation fund for purposes and amounts not greater than amounts recommended by the CPC, and it may also reject or reduce the amounts recommended by the committee.

The CPC must consist of at least five and no more than nine members, and must include one representative each from the local conservation, parks, and historical commissions; planning board; and housing authority. If a municipality has not established one or more of these boards or commissions, a representative serving in a similar capacity can be appointed to the committee. The other members of the committee, if any, may be appointed or elected, as provided in the bylaw or ordinance adopted to establish the committee.

The municipal legislative body must authorize all CPA spending, upon the recommendation of its committee. The municipality must spend or set aside at least 10 percent of its CPA funds each year for open space and/or recreation, 10 percent for historic preservation, and 10 percent for affordable housing. The remaining 70 percent may be spent on any one or more of these three purposes in accordance with the municipality's priorities. CPA funds do not have to be spent in any one year, so the community's fund may grow for future use.

FORMALIZING A ROLE FOR THE COMMUNITY PRESERVATION COALITION

Throughout the multiyear effort to pass the Community Preservation Act, a broad-based group of nearly 20 nonprofit organizations worked together to advocate on its behalf. They developed a coordinated lobbying strategy, formulated campaign messages, raised money, and built a grassroots network of supporters to advocate with legislators. The strength of a diverse coalition enabled the CPA to gain favor with legislators from across the commonwealth. Given the complexity of the act, once the CPA became law in September 2000, the loosely organized coalition needed to transform itself into a smaller, tightly focused organization that could help communities adopt the CPA. The Community Preservation Coalition was formally organized in 2001, with six founding members who served on its steering committee—two statewide organizations from each of the CPA's three primary areas of focus.³ These six members served on its steering committee and provided annual dues to support the coalition's operation, and in later years support from foundations would augment these dues. The coalition hired its first executive director in 2001.

³ The Trust for Public Land, Massachusetts Audubon Society, Citizens Housing and Planning Association (CHAPA), Massachusetts Affordable Housing Alliance (MAHA), the National Trust for Historic Preservation, and Preservation Massachusetts; The Trustees of Reservations joined in 2007.

The coalition’s early efforts were focused on providing awareness to cities and towns about the new law and furnishing critical technical assistance to municipalities concerning the design of CPA ballot measures that would win favor with voters. The coalition quickly became a hub for the exchange of information. Pioneers in early adopting cities and towns were happy to share their experiences concerning ways to design a successful CPA campaign with eager residents across the commonwealth. The coalition published self-help guides and shared sample ballot language and legislation as well as campaign flyers. In addition, the coalition made dozens of presentations across the state in order to advise communities about ways to pass a CPA ballot measure. It also provided campaign contributions to some of those campaigns (D. Pizzella personal communication).

EARLY EXPERIENCE WITH CPA

Once the CPA went into effect in December 2000, towns across Massachusetts were off and running to put before their voters ballot measures that would be considered at the spring 2001 town elections. There was a “Wild West” feeling in those early days, with many towns rushing to take advantage of the new law so many years in the making. While some towns carefully designed their CPA ballot measures, choosing the surcharge levels and exemptions wisely, others just threw it on the ballot without doing much homework or even having a solid understanding of the law’s many provisions. Some towns waged effective campaigns by building broad-based coalitions, reaching out to key local officials, writing letters to newspapers, and developing targeted direct mail pieces. Others mounted no campaign at all and took their chances to see how voters would respond (table 3.2).

TABLE
3.2

COMMUNITY PRESERVATION ACT BALLOT MEASURES, 2001–2004
Source: Trust for Public Land (2008b).

	2001		2002		2003		2004	
	Spring	Fall	Spring	Fall	Spring	Fall	Spring	Fall
Total measures	55	13	35	11	4	0	6	10
Successful measures	31	5	15	7	3	0	5	10
Approval rate	56%	38%	43%	64%	75%	—	83%	100%

The spring 2001 town election results reflect the disparate quality of these efforts, with voters approving 31 of 55 measures—a 56 percent approval rate—owing primarily to strong local economies. Of the successful measures, 38 sought the full 3 percent property tax surcharge and achieved a 48 percent approval rate. By contrast, 17 towns chose a lower surcharge and were successful 65 percent of the time (Trust for Public Land 2008b). Since Massachusetts cities do not hold spring elections, their first chance to adopt CPA came that fall. The results were not good. In the wake of the September 11 terrorist attacks, voters approved just 5 of 13 ballot measures. One of these failed

measures was a citizen-led initiative petition drive in the City of Boston, which ran up against a well-funded opposition campaign led by large Boston property owners. In six of the eight cities with failed measures, proponents sought the full 3 percent surcharge.

By spring 2003, progress on CPA had slowed considerably. Although 58 cities and towns had adopted CPA in the first two years, the approval rate was just 52 percent. CPA had been defeated in Boston and a number of smaller eastern Massachusetts cities that were centers of local political power in the state. A wait-and-see attitude had taken hold. Just four communities statewide even attempted CPA in 2003, down from 68 in 2001 and 46 in 2002.

At the same time, a robust real estate market and plunging interest rates, which were triggering a boom in mortgage refinancing, were causing revenues to pour into the state’s Community Preservation Trust Fund. Consequently, the trust fund was overflowing. Its revenues totaled \$93 million by June 30, 2003, making it a very visible target for a wide range of claimants who sought to secure CPA matching funds without first adopting the local CPA property tax surcharge. Efforts to defeat these raids on the fund rested upon a core belief that the CPA was a compact between local communities and the state—if a local government adopted the local CPA surcharge, the state would provide matching funds specifically and only to them. No adoption, no matching funds. In addition, these raids were thwarted by strong grassroots advocacy efforts organized by the Community Preservation Coalition and waged by the CPA communities’ municipal leaders, who spanned key legislative districts.

By 2005, the picture for the CPA had brightened considerably, with the approval rate topping 80 percent for the year and the one-hundredth community adopting it that spring. Although the approval rate dipped in 2006 as the local real estate market began to cool off, it rebounded in 2007 and 2008 with seven of eight communities approving CPA ballot measures, in spite of dire economic conditions (table 3.3).

TABLE
3.3

COMMUNITY PRESERVATION ACT BALLOT MEASURES, 2005–2008
Source: Trust for Public Land (2008b).

	2005		2006		2007		2008	
	Spring	Fall	Spring	Fall	Spring	Fall	Spring	Fall
Total measures	27	4	18	18	12	3	12	8
Successful measures	25	3	8	9	9	0	6	7
Approval rate	93%	75%	44%	50%	75%	0%	50%	88%

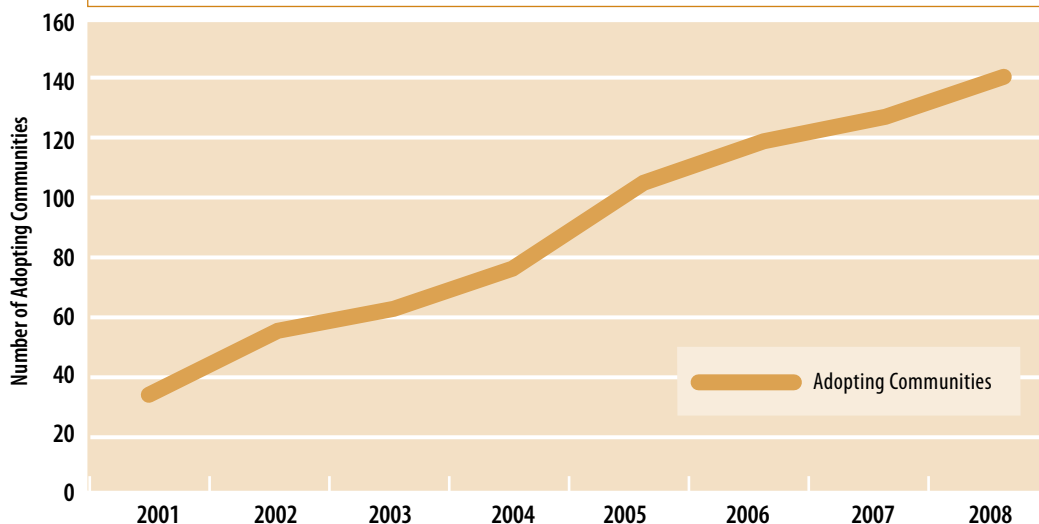
WHERE CPA HAS BEEN ADOPTED

Through the November 2008 election, the Community Preservation Act has been adopted in 140 Massachusetts cities and towns, 40 percent of the state’s total (Trust for Public Land 2008b). Overall, 205 cities and towns (59 percent) have attempted a CPA ballot measure (figure 3.2). The extent of CPA’s approval is comparable only to New Jersey, where 41 percent of municipalities and 100 percent of counties have passed

FIGURE
3.2

MASSACHUSETTS COMMUNITIES ADOPTING THE CPA

Source: Trust for Public Land (2008b).



local ballot measures. Compared with the 77 percent approval rate for land conservation ballot measures across the country, CPA's approval is significantly lower. Since CPA encompasses not only land conservation, but also parks, historic preservation, and affordable housing, it appeals to a more diverse array of local governments, especially those of heavily developed communities, than if it focused on land conservation alone. The complexity of CPA requires a more comprehensive effort to secure voter approval because it involves multiple issues that have their supporters and detractors, as opposed to a single-purpose measure.

Altogether, 19 cities and towns have had at least one failed CPA ballot measure before they returned to the voters and secured approval. Five—Essex, Gloucester, Manchester, Plympton, and Sharon—approved CPA on the third attempt, while 14 others approved their measures on the second try. Of these 19 cities and towns, 12 reduced their CPA surcharge to garner voter approval, and four others sought the approval of their town's legislative body after initially going the initiative petition route. Seven communities have rejected CPA twice, and there is no indication that proponents in these municipalities want to find out whether the third time is the charm.

CPA has been adopted by voters in all parts of the commonwealth, although clearly activity has been concentrated in several prominent geographic areas—notably those experiencing high growth (figure 3.3). These regional concentrations resulted from several factors. Often a local nonprofit organization—a land trust or watershed association, for example—actively tries to assist local governments within a region to adopt CPA. Once a city or town has adopted CPA, its neighboring towns become more familiar with the act and are eager to attempt a ballot measure of their own. Elected officials share their experiences with their counterparts next door, and local newspapers provide extensive coverage of the CPA's impacts on a community. In addition, a sense

both of competition between communities (if they can do it, so can we) and of jealousy (they are getting state matching funds, and we are not) propels activity within a region.

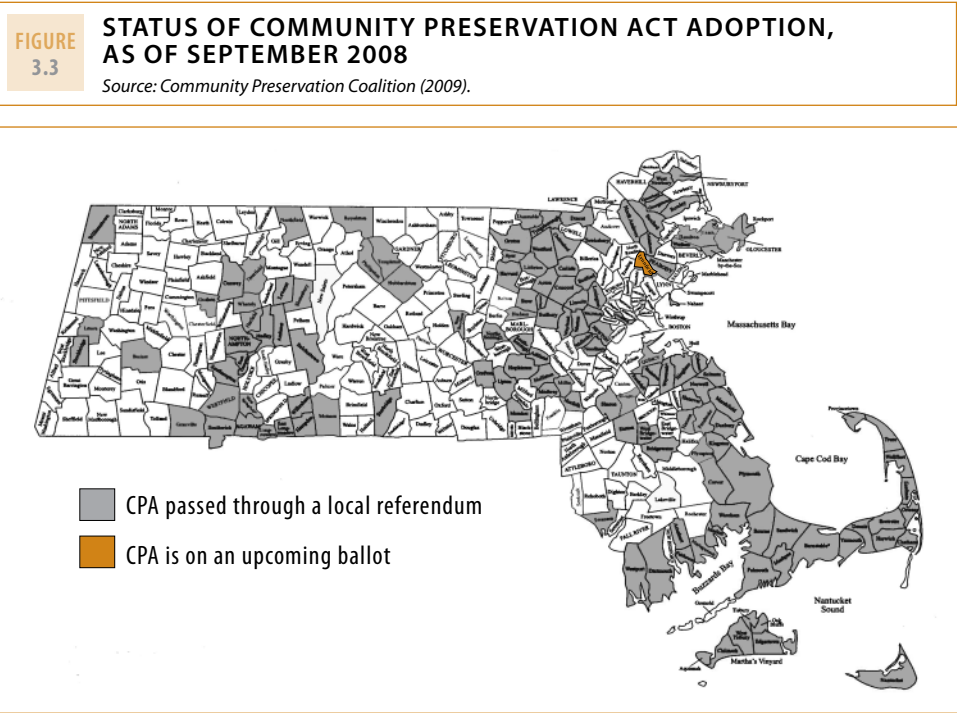
THE IMPACT OF THE CPA

As of September 2008, cities and towns in Massachusetts had approved \$551 million in CPA funding, which has supported 2,824 projects. Of that total, \$200 million has been spent on 581 open space projects, including the preservation of more than 10,000 acres. This figure includes \$117 million in CPA appropriations and \$82 million in bond issues backed by future revenues. Another \$140 million has been allocated for affordable housing, funding the creation of 2,245 housing units. CPA has also had a significant impact on historic preservation and recreation resources in the commonwealth. Communities have approved 1,337 historic preservation projects at a cost of \$100 million and 581 recreation projects totaling \$50 million (Community Preservation Coalition 2009).

THE EVOLUTION OF THE COMMUNITY PRESERVATION COALITION

The Community Preservation Act was a well-designed piece of legislation. While good design was an important first step, it is unlikely that the CPA would have grown into the wide-ranging success it has become without the work of the Community Preservation Coalition.

The initial focus of the coalition was to educate and inform communities about the CPA and to help them adopt it at the ballot box. As more communities adopted the CPA, a need for the coalition to help communities with implementation also grew. To address this need, the coalition began to offer training sessions for newly established



Community Preservation Committees. These sessions helped the committees establish operating procedures, develop project selection criteria, understand the legal guidelines of the CPA, and help to guide projects successfully through to legislative approval in their city or town. The coalition also holds regional and statewide conferences to allow local leaders to learn from their peers about the successes and challenges they have had with the CPA.

As the coalition has shifted its focus to become more of a service organization, it has also adjusted its business model. While it still receives some funding from members of its steering committee and foundations, it has primarily modified to become a dues-paying membership organization. In this model, cities and towns that adopt the CPA are encouraged to provide dues scaled to the revenues they generate under the CPA. This familiar model is adapted from municipal trade associations in Massachusetts. By its second year as a membership organization, more than 90 percent of adopting communities had chosen to support the coalition through suggested dues. In 2008, once the coalition had become established as a dues-paying organization, membership of its steering committee was expanded to include additional members from communities that had adopted CPA.

LESSONS LEARNED FROM CPA

The Community Preservation Act has proven a resounding success in Massachusetts owing to several key factors in the design of the law, as well as the presence of the Community Preservation Coalition, which helps preserve the integrity of the law and guides communities to adopt and implement it. This section reviews the lessons offered by the experience.

1. THE CHOICE OF THE PROPERTY TAX SURCHARGE AS A LOCAL FUNDING MECHANISM IS CENTRAL TO THE CPA'S SUCCESS.

Relying on the property tax surcharge rather than the real estate transfer tax was the most important step taken in making the CPA palatable to legislators and their constituents. It is unlikely that the CPA ever would have been adopted by the Massachusetts legislature had the RETT been the chosen funding mechanism. After all, RETT-based land bank legislation, which was vigorously opposed by real estate brokers, was stymied in the Massachusetts legislature for more than 15 years. Had the CPA relied upon the RETT, it may have served a handful of affluent, seasonal communities, but it is unlikely that it would have helped the broad cross section of cities and towns presently served by the CPA. By way of comparison, the RETT serves seven of nearly one thousand towns in New York (0.7 percent), whereas the property tax-based programs in New Jersey and Massachusetts each serve approximately 40 percent of the municipalities in each state.

If CPA were based on the RETT, it is very likely that local ballot measures would have faced well-funded opposition from real estate brokers. Rather than mounting small-budget campaigns (typically under \$1,000), local efforts would have needed to raise tens of thousands of dollars to compete. Requiring such huge investments to mount a campaign would have dissuaded most local communities from mounting campaigns at all.

2. *ENABLING CITIZENS TO VOTE ON CPA ADOPTION SPURS LOCAL GOVERNMENT PARTICIPATION.*

With the support of a majority of voters required for a ballot referendum to pass, the act grants all cities and towns uniform enabling authority to adopt the CPA. Allowing voters to participate in the process of creating local land conservation funds leads to a dramatic increase in the number of local governments that create such programs. Since 2001, when CPA went into effect, voters in 133 of the state's 351 cities and towns have adopted the act; prior to that, just 23 municipalities had created local funding for land conservation. Voters welcome the opportunity to cast a vote to chart their community's future, and elected officials prefer the accountability of securing voter approval prior to levying a tax increase.

3. *STATE MATCHING FUNDS SPUR BROAD-BASED COMMUNITY PARTICIPATION.*

The allure of receiving guaranteed state matching funds has driven nearly six in ten communities to attempt a CPA ballot measure. During its first eight years, municipalities that adopted the CPA received dollar-for-dollar matching funds from the CPA trust fund; this fell to 73 percent in October 2008 and will likely decline to 35 percent in October 2009. As the amounts in the trust fund continue to dwindle in tough economic times, there is concern that the state may be unable to continue to match 100 percent of the local CPA funds raised by 140 cities and towns in FY2010 (Cahill 2009).

Many municipalities have been driven to adopt the CPA because they have seen their neighboring communities receive significant matching-fund checks each fall from the Community Preservation Trust Fund. The decline in the level of state matching funds may lead to fewer cities and towns attempting CPA, and some may choose to revoke it after five years when that becomes an option. On the other hand, some communities may reason that some matching funds are better than none and will pursue CPA nonetheless. In communities where the CPA has made significant contributions and enjoys broad-based civic and political support, a decline in state matching funds may have little impact on public support for maintaining the local property tax surcharge.

4. *LOCAL CONTROL OVER CPA SPENDING HAS CREATED OPPORTUNITIES AND CHALLENGES.*

CPA provides wide-ranging authority to cities and towns to implement the act, as they deem appropriate, within the parameters of the law. No state regulations have been implemented to govern the CPA, and no state agency has enforcement powers to ensure compliance with it. The Department of Revenue, which collects and disburses funds from the Community Preservation Trust Fund, provides limited guidance. The state neither approves nor reviews local expenditures under the CPA. The absence of rigorous state oversight makes the CPA very attractive to cities and towns. The absence of such oversight, however, has led to broader uses of CPA funds than the law's drafters likely intended, primarily in the area of recreation. An October 2008 decision by the Massachusetts Supreme Judicial Court struck down the use of CPA funds to create new recreational resources—i.e., ball fields, lights, and playgrounds—except in the case of land newly acquired under the CPA.

5. THE COMMUNITY PRESERVATION COALITION HAS BEEN ESSENTIAL TO THE CPA'S SUCCESS.

The Community Preservation Coalition has provided extensive education and technical assistance to design and pass CPA ballot measures and to ensure that local programs are well designed and able to protect important community resources effectively. This is especially important given the state's modest oversight role. The coalition has been instrumental in helping the CPA reach nearly 40 percent of the state's cities and towns in just eight years. It has also defended the trust fund from raids that would have reallocated funds to other purposes and eroded the confidence local communities had in the integrity of the fund. Without the coalition, it is unlikely that the CPA would have taken hold across the state.

In addition, the coalition has been instrumental in defending the CPA against its detractors. In July 2007, the Rappaport Institute for Greater Boston at the Harvard Kennedy School published a report critical of the CPA entitled "The Massachusetts Community Preservation Act: Who Benefits, Who Pays?" (Sherman and Luberoff 2007). As its authors outlined in a subsequent column in the *Boston Globe*, affluent communities are more likely to adopt the optional property tax, while residents of all communities pay higher deed recording fees to supply the state matching funds (Luberoff and Sherman 2007). Moreover, because matching funds are linked to property values, wealthy communities receive more money than poorer ones. The authors also highlight the inadequate reporting requirements that make it difficult to determine how communities are actually spending the state funds and whether the money is being used efficiently.

In response, the coalition mounted an educational effort to inform the media, state legislators, and local community leaders about the concrete accomplishments of the CPA and to point out that the CPA was being held to a much higher standard than other programs. One newspaper editorial board aptly captured this view: "Not every state program is of equal value to every community. Inland towns don't apply for seawall restoration grants. Rural villages don't participate in state gang intervention programs. The CPA is no different. We don't question the Rappaport study's data, but we wonder about its assumptions. Must every single state program disproportionately benefit urban areas?" (*MetroWest Daily News* 2007).

APPLICATION OF CPA LESSONS

To build upon the success of the Community Preservation Act, the Trust for Public Land's Conservation Finance program has been working actively to share the CPA story with key leaders in other states. A workshop was held at the 2007 National Conference of State Legislatures' Legislative Summit in Boston, where leaders from across the country learned firsthand about CPA from members of the Community Preservation Coalition.

So far, these efforts have not borne fruit, but it must be remembered that the process to enact the CPA in Massachusetts took nearly 17 years. Two of its neighbors—New Hampshire and Connecticut—chose to emulate Massachusetts by creating new

document recording fees to fund their existing land conservation programs. Unlike Massachusetts, however, neither state used these new funds as incentives to encourage local communities to establish their own dedicated land conservation funds. In New York State, long-term efforts to establish uniform enabling authority to levy a real estate transfer tax for land conservation have been stymied repeatedly in the state legislature. But in 2007, all towns in two Hudson Valley counties—Westchester and Putnam—were granted the ability to impose a RETT for land conservation. Due to the stalled real estate market and concerns over strong opposition from real estate brokers, however, no towns have chosen to pursue a ballot measure.

Given the experience in Massachusetts and New Jersey, it might be wise to change course and allow a property tax surcharge as an alternative to the RETT. In the Chesapeake Bay Watershed, the Trust for Public Land has been working with the U.S. Forest Service to determine if the CPA model could be applied at the county level in Maryland, Pennsylvania, and Virginia to protect lands that will preserve the water quality of the bay. This effort focuses on establishing state enabling authority to allow all counties to levy a property tax for land conservation, subject to voter approval. While this effort is in its formative stages, public opinion surveys conducted in 2007 revealed strong voter preference for such enabling authority.

The application of the intergovernmental partnership enshrined in the CPA also holds promise outside the United States. In 2008, two municipalities in Canada's British Columbia—East Kootenay and Cowichan Valley—passed local ballot measures that establish local, dedicated land conservation funding. By exploring a CPA model that encourages provincial-municipal or federal-provincial partnerships, it may be possible to expand the level of activity in British Columbia and other provinces. There is no reason that this model of intergovernmental partnership could not be applied in Latin America as well, given the need to protect vast natural resources essential to address global climate change. Such efforts will need to be explored in conjunction with multinational nongovernmental organizations, such as the Inter-American Development Bank, and conservation organizations working on the ground, including The Nature Conservancy and Conservation International.

CONCLUSION

The Massachusetts Community Preservation Act has clearly demonstrated that one way to boost broad-based conservation efforts is to encourage different levels of government to work together. In less than a decade, voters in 40 percent of the state's cities and towns have embraced the opportunity to cast a vote to raise their own property taxes, encouraged by generous state financial incentives and empowered by a free hand, unfettered by the state, to choose how to spend those funds in a manner that suits their own community. Altogether, these municipalities have approved more than \$500 million in CPA projects. As the CPA spreads across Massachusetts from tiny rural towns to upscale suburbs, economically challenged cities to seasonal resort communities, a revolution in public conservation finance is taking place that holds inspiration for conservation leaders across the Americas.

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CONSERVATION CAPITAL IN THE AMERICAS

EXEMPLARY CONSERVATION FINANCE INITIATIVES

JAMES N. LEVITT, EDITOR

While the economic challenges we face today are certainly daunting, environmental protection is every bit as important as economic reform, and we must redouble our efforts to defend the needs of the planet. This is precisely why the conference on “Conservation Capital in the Americas” in January 2009 was such a success. In bringing together 120 of the world’s conservation finance experts to engage in dialogue and debate, share experiences, and strengthen relationships, the conference struck a blow against complacency. Participants returned to their countries re-energized and ready to meet new challenges head on. Their efforts truly hearten me—not only their own successes, but also the dedication and commitment to this cause that their work will inspire in others.

—Paul E. Simons, United States Ambassador to Chile

By bringing together in Valdivia representatives of the public, private, nonprofit, and academic sectors from across the Western Hemisphere, the organizers of the conference on “Conservation Capital in the Americas” put together an exceptional context for dialogue. The essays in this book show that the meeting yielded important insights that will inform the practice of conservation finance for years to come.

—Peter Stein, Managing Director, Lyme Timber Company

I always knew that conservation protected value.
Now I understand that conservation creates value.

—Latin American student at the conference on “Conservation Capital in the Americas”

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