

2002-12B

COMMUNITY PRESERVATION ACT

TO: Assessors, Collectors, Treasurers, Accountants, Auditors, Mayors,
Selectmen, City/Town Managers, Executive Secretaries, Finance Directors,
City/Town Councils, City Solicitors and Town Counsels

FROM: Joseph J. Chessey, Jr., Deputy Commissioner
Division of Local Services

DATE: September 2002

SUBJECT: Community Preservation Act Amendment and Information

This *Bulletin* provides local officials with information about further amendments to our guidelines for the implementation of the municipal finance provisions of the Community Preservation Act (CPA). G.L. Ch. 44B. Property Tax Bureau Informational Guideline Release (IGR) No. 00-209 *Community Preservation Fund*. The **amendments** are found in the **enclosed IGR 02-208** and address a recent change in the law regarding the purposes for which community preservation fund monies may be used. Chapter 165 of the Acts of 2002. Under that change, communities may now use community preservation fund monies to rehabilitate or restore historic resources they owned before the adoption of the act or acquired with other municipal funds.

This *Bulletin* also addresses (1) the types and availability of different financing sources within the fund, (2) first year implementation information for those communities that have accepted the CPA for implementation beginning in Fiscal Year 2003 and (3) the public records status of applications for CPA exemptions as recently determined by the Supervisor of Public Records.

With the release of these materials, the Division of Local Services has now issued the following guidelines addressing the municipal finance provisions of the CPA. All of the materials are available on our web site at www.dls.state.ma.us.

- December 2000
 - **Bulletin 2000-16B** *Implementation of Community Preservation Fund Finance Provisions*
 - **IGR 00-209** *Community Preservation Fund*

- September 2001
 - **Bulletin 2001-09B** *FY2002 Implementation of Community Preservation Act*
 - **IGR 01-207** *Community Preservation Fund (Amends IGR 00-209)*

- September 2002
 - **Bulletin 2002-12B** *Community Preservation Act Amendment and Information*
 - **IGR 02-208** *Community Preservation Fund (Amends IGR 00-209)*

For your convenience, we have also placed on our web site a version of IGR 00-209 with all amendments made by IGRs 01-207 and 02-208.

I. ALLOWABLE SPENDING PURPOSES

As you know, the CPA provides communities with a dedicated funding source 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, including rehabilitation or restoration projects. G.L. Ch. 44B §5(b)(2). Rehabilitation or restoration projects, however, may only involve assets originally acquired or created with fund monies.

Recent legislation has removed this restriction with respect to rehabilitation or restoration projects involving historic assets. Chapter 165 of the Acts of 2002. Under this amendment, communities may now also appropriate fund monies or borrow under Ch. 44B to rehabilitate or restore historic city or town halls, or other historic municipal buildings or sites, owned before adoption of the CPA, or acquired with any other municipal funds.

In addition, the legislation **defines rehabilitation for CPA purposes** as the remodeling, reconstruction and making of extraordinary repairs to any open space, historic, recreational or community housing asset, which would generally mean improvements intended to adapt or extend its use or life. Rehabilitation also includes certain other improvements required to meet various federal, state or local standards. Please refer to the enclosed IGR 02-208 for a more detailed explanation of the new legislation and its effective date.

The recent legislation does not affect rehabilitation or restoration projects involving open space, recreational or community housing assets. The CPA continues to restrict the use of fund monies or borrowings for such projects to those assets originally acquired or created with fund monies. Improvements that come within the narrower definition of **preservation**, however, are not so limited. Communities may use fund monies or borrowings to preserve any open space, historic, recreational or community housing asset. Preservation means improvements made to protect the asset from injury, harm or destruction. This could include such projects as the 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 would not include ordinary maintenance or upkeep of the property, nor any of the more substantial or extensive improvements that would come within the definition of rehabilitation.

II. FUND FINANCING SOURCES

The community preservation fund has a multiple financing source structure, similar to the general fund or an enterprise fund. Communities are not limited to making appropriations from monies actually received and on hand, but can appropriate from the estimated annual revenues of the fund each fiscal year **up until the time the tax rate is set for that year**. Annual fund revenues include the estimated surcharge levy and state trust fund distribution for the fiscal year, but for the first year the act is implemented, they include only the estimated surcharges. Those revenues are the primary recurring financing source for appropriations for allowable acquisitions and initiatives, but there may be special purpose reserves and an unreserved fund balance from which such appropriations may be made as well. Understanding the different financing sources is key to preparing an implementation plan, particularly in those communities that hope to finance projects in the first year the surcharge is assessed. See Section III-B and C below.

Attached to this *Bulletin* is a chart that explains the types of fund financing sources. In addition, we have attached two case studies to illustrate the availability of those financing sources during FY03 and FY04 in communities that adopt the CPA for FY03. One community appropriates and reserves a portion of FY03 annual revenues before setting its FY03 tax rate (Case Study 1) and the other does not (Case Study 2).

III. FIRST YEAR IMPLEMENTATION INFORMATION

Communities that adopted the CPA for FY03 should be aware of the following first year implementation issues. The same policies in place for communities that adopted the act in FY02 will apply to communities that adopt it for FY03 and future years. See *Bulletin 2001-09B, FY2002 Implementation of Community Preservation Act*.

A. Billing FY03 Surcharges

Some communities may not have modifications in their billing software completed in time to bill the surcharge on the same schedule as their property taxes, *i.e.*, on a semi-annual or quarterly payment schedule as provided by the act. G.L. Ch. 44B §3. In that case, FY03 surcharge commitment and billing can be deferred until later in the fiscal year as needed in order to make technical changes. The amount owed for the year remains the same, but taxpayers will simply pay it in fewer and larger installments than would otherwise be the case.

We recommend that a stuffer be included with the first tax bill that displays the surcharge. It should explain the purpose and calculation of the surcharge. It should also explain when the surcharge will ordinarily be billed and due, address the procedures for seeking any local option surcharge exemptions adopted by the community and inform taxpayers of any unique circumstances that will apply for the first year only.

B. Spending FY03 Surcharge Revenues

As you know, a community's legislative body cannot appropriate or reserve any community preservation fund monies without a recommendation from the Community Preservation Committee (CPC). As explained in more detail in Section II above, the fund has multiple financing sources, with the primary recurring source being annual fund revenues. Each year, the **legislative body** must earmark by appropriation, or reservation for later appropriation, at least 10% of those annual fund revenues for each of the three basic categories of community preservation purposes: (1) open space (excluding recreational uses), (2) historic resources and (3) community housing.

Annual fund revenues are available for appropriation or reservation only until the tax rate is set for the particular fiscal year, however. This means a community adopting the act for FY03 must complete a number of steps **before** it sets its FY03 tax rate if it wants to (1) appropriate any FY03 estimated fund revenues for CPC FY03 operating expenses and particular projects, or (2) place any of those revenues into the fund's open space, historic resource or community housing reserves for later appropriation for particular projects in FY03 or thereafter. Those steps include the following:

- (1) A CPC must be established by by-law or ordinance, and in the case of a town, the by-law must be approved in accordance with the procedures of G.L. Ch. 40 §32.

- (2) The CPC members must be selected as specified in the by-law or ordinance and the CPC must organize.
- (3) The CPC must develop community preservation plans after holding a public hearing.
- (4) The CPC must prepare budgetary recommendations based on the plan and the minimum appropriation/reservation requirement and present the recommendations to the legislative body for action.

C. Timing Options

Some communities may not have sufficient time to organize a CPC or present spending recommendations to their legislative bodies before the FY03 tax rate is set. The failure to do so will not affect the assessment and collection of the surcharge. If the community accepted the act, the surcharge must be assessed for FY03 unless the acceptance vote specified a later implementation year.

If the CPC has organized before the community plans to set its tax rate, but has not yet identified any particular projects for funding, it may simply recommend that the legislative body allocate a **specified dollar amount** of the estimated revenues to each of the three reserves: (1) open space, (2) historic resources and (3) community housing. Then, if the CPC identifies and recommends particular projects for funding after the rate is set, the legislative body can appropriate the necessary funds from the applicable reserve at any time during the fiscal year. Again, a minimum of 10% of estimated revenues must be reserved for each category. The CPC can also recommend funding for its FY03 operating expenses. No more than five per cent of annual fund revenues may be appropriated and spent for such purposes each fiscal year. Case Study 1 (attached) illustrates this option.

In the event, however, that appropriations or reservations are **not** made before the tax rate is set, then the legislative body will be **limited** to funding community preservation expenditures during FY03 by borrowing to the extent permissible. See IGR 00-209, IV-A. In addition, the **accounting officer must reserve 10% of the FY03 year-end fund balance for each of the three categories of community preservation purposes**. The legislative body can appropriate the reserved funds any time thereafter for projects within the particular reserve category upon recommendation of the committee. **This special accounting rule applies only in this particular situation in the first year of implementation** in order to ensure compliance with the statutory minimum allocation requirement. See Case Study 2 for an example of the application of this accounting rule. In subsequent years, communities must make the minimum allocations by CPC recommendation and legislative body action.

IV. SURCHARGE EXEMPTION APPLICATION DISCLOSURE

Most communities adopting the CPA have also adopted the exemption for property owned and occupied as a domicile by taxpayers qualifying for low income housing, or low or moderate income senior housing, in the community. Applicants for this exemption must provide assessors with financial and other personal information in order to establish their eligibility, but the CPA is generally silent about the actual administration of its three local option surcharge exemptions and does not expressly exempt applications for a CPA exemption from public disclosure.

In September 2001, we asked the Supervisor of Public Records for a written advisory opinion on the public records status of CPA exemption applications. The Supervisor of Public Records has recently advised that some personal information contained in the application may be withheld from disclosure under the general privacy exemption of the public records law. G.L. Ch. 4 §7(26)(c). Specifically, assessors may redact the following information when responding to a request to inspect or copy an application for a CPA exemption:

- (1) The identity of the applicant, which would typically include the applicant's name, telephone number, address, signature and any other identifying references.
- (2) The marital status of the applicant, which could also include references in the application that necessarily reveal that status such as the identification of a household member as the applicant's spouse or the receipt of alimony.
- (3) The identity of minor children in the applicant's household.
- (4) The social security numbers of individuals.

This information should be redacted from supporting documentation that is considered part of the application as well. State and federal tax returns submitted as part of such documentation are also exempt from disclosure under other state and federal laws. The remainder of the application and supporting documentation must be provided to the requester.

Any questions you have about the opinion may be directed to the Supervisor of Public Records at 617-727-2832. The opinion reference is SPR 01-692, issued on July 22, 2002.

If you have any questions about the municipal finance provisions of the CPA, please contact the Property Tax Bureau legal staff.

COMMUNITY PRESERVATION FUND FINANCING SOURCES

	ANNUAL FUND REVENUES	BUDGETED RESERVES	FUND BALANCE	BORROWING
Definition	Annual recurring revenues Surcharges assessed for FY State trust fund distribution received during FY (beginning in 2 nd year of fund operation)	Funds designated by the legislative body for later appropriation for one of the following CPA purposes: (1) open space (excluding recreational), (2) historic resources and (3) community housing Appropriations from annual fund revenues or fund balance	Unspent funds generated by favorable operations during the previous FY that are available for appropriation Appropriation turn-backs Actual receipts in excess of budgeted revenues Investment interest 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 non-specific community preservation fund purposes	Debt repaid with future fund revenues Proceeds from notes, bonds or other debt obligations issued for a CPA purpose
Source				
Limitations	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 Cannot spend from appropriations until FY begins (<i>i.e.</i> , 7/1)	Appropriations to a particular reserve require legislative body vote that states the specific dollar amount and source being reserved Appropriations <i>from</i> a particular reserve limited to that CPA purpose	May be appropriated by legislative body for any CPA purpose	Legislative body <i>must</i> specifically authorize borrowing under CPA (G.L. Ch. 44B) Borrowing limited to purposes and terms applicable to municipal borrowing generally under G.L. Ch. 44 §§7 and 8 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
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 reservation	Any time after accounting officer reports prior FY fund activities and balance to DOR until 6/30 close of current FY	Anytime
Similarity	General fund annual tax levy (taxes, state aid, receipts) Enterprise fund annual revenues (user charges and fees)	Stabilization fund (<i>i.e.</i> , general fund monies reserved for later appropriation for municipal purpose) Enterprise fund budgeted surplus	Free cash Enterprise fund free cash (retained earnings)	Other municipal debt

CASE STUDY 1

FUND FINANCING SOURCES

FY03 Implementation - Appropriations/Reservations Reported on FY03 Tax Rate

ESTIMATED FY03 FUND REVENUES = \$1,000,000 based on:

- \$1,000,000 surcharges (net of two adopted exemptions)
- **9/25/02 Special Town Meeting/City Council Meeting** - Appropriates/reserves \$350,000 from FY03 revenues as follows to begin planning and ensure compliance with 10% minimum spending requirements:
 - \$50,000 CPA committee FY03 operating expenses
 - \$100,000 open space reserve
 - \$100,000 historic resources reserve
 - \$100,000 community housing reserve
- **11/13/02 Special Town Meeting/City Council Meeting**
 - Appropriates \$400,000 from FY03 revenues to purchase 3 open space parcels
 - Authorizes \$500,000 CPA borrowing for historic acquisition
- **12/10/02** Community sets FY03 tax rate using:
 - **\$750,000** from FY03 fund revenues to cover \$750,000 in appropriations and reservations
- **1/28/03 Special Town Meeting/City Council Meeting** - Available financing sources are:
 - Open space, historic resources, community housing reserve balances of \$100,000 each
 - Borrowing

ESTIMATED FY04 FUND REVENUES = \$1,900,000 based on:

- \$1,100,000 surcharges (net of two adopted exemptions)
- \$800,000 state trust fund (assumes conservative estimate at 80% match)
- **5/14/03 Annual Town Meeting/City Council Meeting** - Available financing sources are:
 - FY04 fund revenues (but cannot spend appropriations from this source until 7/1/03)
 - Open space, historic resource, community housing reserve balances, if any remaining
 - Borrowing
- **6/24/03 Special Town Meeting/City Council Meeting** - Available financing sources are:
 - FY04 fund revenues not appropriated at previous meeting (cannot spend until 7/1/03)
 - Open space, historic resource, community housing reserve balances, if any remaining
 - Borrowing

FY03 OPERATIONS end as of 6/30/03

- Actual surcharge collections = \$975,000 (compared to \$750,000 budgeted when rate set)
- Unencumbered/unspent appropriations = \$10,000
- Fund balance available for appropriation for any community preservation purpose until 6/30/04 = +/- \$235,000 (the actual amount determined by accounting officer will reflect other accounting adjustments, interest on revenues, etc.)

10/15/03 FY04 STATE TRUST FUND DISTRIBUTION = \$975,000 (100% match of FY03 net surcharge levy)

- **Total Estimated FY04 Fund Revenues Now** = \$2,075,000 (\$1,900,000 estimate used in spring + \$175,000 additional revenues due to higher distribution than originally estimated)
- 10% minimum spending requirement for year now = \$207,500
- **11/15/03 Special Town Meeting/City Council Meeting.** Available financing sources are:

If FY04 tax rate not set

- Open space, historic resource, community housing reserve balances if any remaining
- Fund balance of \$235,000
- Borrowing
- Any FY04 fund revenues not appropriated at previous meetings (based on new estimate of \$2,075,000 total for year)

If FY04 tax rate set

- Open space, historic resource, affordable housing reserve balances if any remaining
- Fund balance of \$235,000
- Borrowing

CASE STUDY 2 FUND FINANCING SOURCES

FY03 Implementation - No Appropriations/Reservations Reported on FY03 Tax Rate

ESTIMATED FY03 FUND REVENUES = \$1,000,000 based on:

- \$1,000,000 surcharges (net of two adopted exemptions)
- **12/10/02** Community sets FY03 tax rate using:
 - \$0 from FY03 fund revenues to cover \$0 in appropriations and reservations
- **1/28/03 Special Town Meeting/City Council Meeting** - Available financing sources are:
 - Borrowing (**only**)

ESTIMATED FY04 FUND REVENUES = \$1,900,000 based on:

- \$1,100,000 surcharges (net of two adopted exemptions)
- \$800,000 state trust fund (assumes conservative estimate at 80% match)
- **5/14/03 Annual Town Meeting/City Council Meeting** - Available financing sources are:
 - FY04 fund revenues (but cannot spend appropriations from this source until 7/1/03)
 - Borrowing
- **6/24/03 Special Town Meeting/City Council Meeting** - Available financing sources are:
 - FY04 fund revenues not appropriated at previous meeting (cannot spend until 7/1/03)
 - Borrowing

FY03 OPERATIONS end as of 6/30/03

- Actual surcharge collections = \$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.)
 - Reservations by accounting officer to meet FY03 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
 - Balance available for appropriation for any community preservation purpose until 6/30/04 = \$682,500

10/15/03 FY04 STATE TRUST FUND DISTRIBUTION = \$975,000 (100% match of FY03 net surcharge levy)

- **Total Estimated FY04 Fund Revenues Now** = \$2,075,000 (\$1,900,000 estimate used in spring + \$175,000 additional revenues due to higher distribution than originally estimated)
- 10% minimum spending requirement for year now = \$207,500

- **11/15/03 Special Town Meeting/City Council Meeting.** Available financing sources are:

If FY04 tax rate not set

- Open space, historic resource, affordable housing reserves (\$97,500 + any FY04 fund revenues appropriated at previous meetings)
- Fund balance of \$682,500
- Borrowing
- Any FY04 fund revenues not appropriated at previous meetings (based on new estimate of \$2,075,000 total for year)

If FY04 tax rate set

- Open space, historic resource, affordable housing reserves (\$97,500 + any FY04 fund revenues appropriated at previous meetings)
- Fund balance of \$682,500
- Borrowing