



July 26, 2004

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

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


Dear Ms. Flender:

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

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

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

Very truly yours,


Daniel J. Murphy
Chief, Property Tax Bureau

DJM:KC