

**Massachusetts Department of Revenue** *Division of Local Services*  
*Alan LeBovidge, Commissioner Gerard D. Perry, Deputy Commissioner*

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# *Community Preservation Fund*

## *Budgeting and Finance Issues*

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*Prepared for Community Preservation Coalition Workshop – October 2005*



## 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 CP 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, which carries out the Department's responsibilities in the area of municipal taxation and finance, has issued the following guidelines addressing the municipal finance provisions of the CPA:

- |                |   |
|----------------|---|
| December 2000  | <ul style="list-style-type: none"><li>• <b>Bulletin 2000-16B</b> <i>Implementation of Community Preservation Fund Finance Provisions</i></li><li>• <b>IGR 00-209</b> <i>Community Preservation Fund</i></li></ul>         |
| September 2001 | <ul style="list-style-type: none"><li>• <b>Bulletin 2001-09B</b> <i>FY2002 Implementation of Community Preservation Act</i></li><li>• <b>IGR 01-207</b> <i>Community Preservation Fund</i> (Amends IGR 00-209)</li></ul>  |
| September 2002 | <ul style="list-style-type: none"><li>• <b>Bulletin 2002-12B</b> <i>Community Preservation Act Amendment and Information</i></li><li>• <b>IGR 02-208</b> <i>Community Preservation Fund</i> (Amends IGR 00-209)</li></ul> |
| February 2003  | <ul style="list-style-type: none"><li>• <b>Bulletin 2003-04B</b> <i>Community Preservation Act Implementation and Appropriation Votes</i></li></ul>   |

All materials are available on our web site: [www.mass.gov/dls](http://www.mass.gov/dls).

Also available is a version of IGR 00-209 with all amendments made by IGRs 01-207 and 02-208, [http://www.dls.state.ma.us/PUBL/IGR/2000/00\\_209amended.pdf](http://www.dls.state.ma.us/PUBL/IGR/2000/00_209amended.pdf), and spreadsheets with CPA acceptances and annual matching fund distributions, <http://www.dls.state.ma.us/mdmstuf/otherlocalaid.htm>.

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Alan LeBovidge**Law Seminar Materials Online**

The Division of Local Services has posted the [materials online](#) that were disseminated in conjunction with this year's "What's New in Municipal Law" seminars. These seminars, presented by the attorneys of the Division's Property Tax Bureau, were held in late September in West Springfield and Randolph.

Be sure to mark your calendars for next year's seminars, which will be held on Friday, September 29, 2006 in West Springfield and Friday, October 6, 2006 in the greater Boston area.

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## Community Preservation Committee

- 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

- Special revenue fund.
  - Annual recurring fund revenues.
    - Local property tax surcharges.
    - State trust fund distributions.
  - Non-recurring revenues.
    - Public/private gifts or grants.
    - 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).
- Expenditures require both recommendations of Community Preservation Committee and appropriation 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.

- 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 spend for related purposes:
  - Administrative and operating expenses of Community Preservation Committee up to 5% of annual fund revenues.
    - For committee expenses only, not general indirect costs of assessors, collector, treasurer, accounting officer in implementing.
  - Debt service on loans authorized under Ch. 44B for community preservation projects.
  - 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 not spend 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).

Chart 1  
**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 or real property 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
<b>ACQUIRE</b>	Yes	Yes	Yes	<del>Yes</del>
<b>CREATE</b>	Yes	Yes	Yes	Yes
<b>PRESERVE</b> Means protect from injury, harm or destruction, not maintenance	Yes	Yes	Yes	Yes
<b>SUPPORT</b>	<del>Yes</del>	<del>Yes</del>	<del>Yes</del>	<del>Yes</del>
<b>REHABILITATE/RESTORE</b> 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, includes funding for community's affordable housing trust  Yes if acquired or created with CP funds



## Community Preservation Fund

### Appropriation Financing Sources

(See Chart 3 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.

- 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.
- 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.
- 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 if surcharge revoked.
  - If uncommitted monies sufficient, surcharge ceases next FY.
  - If insufficient, surcharge continues until sufficient monies raised.

## **Borrowing**

(See Chart 3 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 2 COMMUNITY PRESERVATION FUND FINANCING SOURCES

	ANNUAL FUND REVENUES	FUND BALANCE	BUDGETED RESERVES	BORROWING
<b>Definition</b>	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
<b>Source</b>	<p>Surcharges assessed for FY</p> <p>State trust fund distribution received during FY (beginning in 2<sup>nd</sup> 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 non-specific community preservation fund purposes</p>	<p>Appropriations from annual fund revenues or fund balance</p>	Proceeds from notes, bonds or other debt obligations issued for a CPA purpose
<b>Limitations</b>	<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 from 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 from 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 from 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>
<b>Availability</b>	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
<b>Similarity</b>	<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 3**  
**SAMPLE VOTES FROM COMMUNITY PRESERVATION FUND FINANCING SOURCES**

**SOURCE**

Annual revenues

**VOTE**

- To appropriate \$10,000 from FY2006 Community Preservation Fund revenues for \_\_\_\_\_.
- To reserve \$250,000 from FY2006 Community Preservation Fund revenues for FY2006 Community Preservation Fund purposes (FY2006 Budgeted Reserve)
- To reserve \$100,000 from FY2006 Community Preservation Fund revenues for Open Space.
- To appropriate/transfer \$75,000 from Community Preservation Fund balance to \_\_\_\_\_.
- To appropriate/transfer \$75,000 from FY2006 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 \_\_\_\_\_.

Fund Balance

Annual Budgeted Reserve

Special Purpose Reserves

Excess Bond Proceeds

**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 FY06 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 FY06 budget cycle**

The accompanying charts show the CPA financing sources available at different points during the FY06 and FY07 budget cycles for communities that adopted and implemented the CPA in FY02-05 (Chart 4), or adopt it for initial implementation in FY06 (Chart 5). Cities and towns will adopt their FY06 budgets in the spring of 2005 and may adjust them up to the time they set the tax rate in the fall. 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 FY06, communities can appropriate or reserve the estimated FY06 fund revenues up to the time they set their FY06 tax rate in the fall of 2005. 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 6/30/05 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 FY06 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 FY06 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 FY06 CP fund revenues for CP fund purposes during FY06 (i.e., to the FY06 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 FY06 budgeted reserve any time from 7/1/05 to 6/30/06).

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 FY06 fund revenues will be \$1,000,000, the CPC can vote to recommend that the city or town vote to reserve FY06 CP fund revenues for CP fund purposes during FY06 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 4

CPA FINANCING SOURCES

Sources available during FY06 budget cycle for communities that first assessed surcharge in FY02-FY05

COMMUNITIES THAT IMPLEMENTED SURCHARGE IN FY02-FY04

COMMUNITIES THAT IMPLEMENTED SURCHARGE IN FY05

Spring 2005 Annual Town Meeting/City Council Budget Meeting

- **FY06 CP fund revenues** (amount available = estimated (1) FY06 surcharges and (2) 10/15/2005 state trust fund distribution based on FY05 net surcharge levy as of 6/30/2005) (cannot spend appropriations made from this source until 7/1/05)
- CP fund balance (amount available = balance as of **6/30/04** less appropriations & reservations made at meeting held since balance reported by accounting officer. Amount reflects favorable FY04 fund activity, including FY04 surcharge/trust fund revenues above the amounts appropriated & reserved at the time the FY04 rate was set.)
- **FY05** CP budgeted reserve balance if any
- CP open space, historic resource, community housing reserve balances if any
- CP borrowing
- **FY06 CP fund revenues** (amount available = estimated (1) FY06 surcharges and (2) 10/15/2005 state trust fund distribution based on FY05 net surcharge levy as of 6/30/2005) (cannot spend appropriations made from this source until 7/1/05)
- **NO FUND BALANCE AVAILABLE UNTIL 1<sup>ST</sup> YEAR OF FUND OPERATION ENDS ON 6/30/05.** Any FY05 estimated fund revenues that were not appropriated or reserved at time FY05 rate was set are not available until they become part of the 6/30/05 fund balance and are reported by accounting officer.
- **FY05** 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 7/1/2005

- 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 7/1/2005 and Before FY06 Tax Rate Set

- FY06 CP fund revenues not appropriated or reserved at previous meetings
- CP fund balance (amount available = balance as of **6/30/05** less any appropriations & reservations made at meeting held since balance reported by accounting officer. Amount reflects favorable FY05 fund activity, including FY05 surcharge/trust fund revenues above the amounts appropriated & reserved at the time the FY05 rate was set)
- **FY06** CP budgeted reserve balance if any (Unappropriated FY05 reserve was closed to fund balance as of 6/30/05)
- CP open space, historic resource, community housing reserve balances if any
- CP borrowing
- FY06 CP fund revenues not appropriated or reserved at previous meetings
- CP fund balance (amount available = balance as of **6/30/05** less any appropriations & reservations made at meeting held since balance reported by accounting officer. Amount reflects favorable FY05 fund activity, including FY05 surcharge/trust fund revenues above the amounts appropriated & reserved at the time the FY05 rate was set)
- **FY06** CP budgeted reserve balance if any (Unappropriated FY05 reserve was closed to fund balance as of 6/30/05)
- CP open space, historic resource, community housing reserve balances if any
- CP borrowing

Any Special Town Meeting/City Council Meeting Held After 7/1/2005 and After FY06 Tax Rate Set

- **EXCEPT FY06 FUND REVENUES**, same sources as available before tax rate set to the extent not already appropriated or reserved at previous meetings. (FY06 fund revenues not appropriated or reserved at time FY06 tax rate set are not available until they become part of the 6/30/06 fund balance and are reported by accounting officer.)



**Chart 5  
CPA FINANCING SOURCES  
Sources available during FY06 budget cycle for communities that first assess surcharge in FY06**

Any Town Meeting/City Council Meeting Held Before FY06 Tax Rate Set

- **FY06 CP fund revenues** not appropriated or reserved at any previous meetings held since CPA referendum approved (Modified CPA communities - total amount available = estimated FY06 surcharges and 10/15/2005 state trust fund distribution based on FY05 CCLB net surcharge as of 6/30/05. In all others = FY06 surcharges only as first state trust fund distribution will not be received 10/15/2006, *i.e.*, during FY07)(cannot spend appropriations made from this source until 7/1/05)
- **FY06 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
- CP fund balance created by transfer of CCLB fund balance (Available 7/1/05 in modified CPA communities only)
- **EXCEPT FY06 FUND REVENUES**, same sources as available before tax rate set to the extent not already appropriated or reserved at previous meetings. (FY06 fund revenues not appropriated or reserved at time FY06 tax rate set are not available until they become part of the 6/30/06 fund balance and are reported by accounting officer.)

Any Special Town Meeting/City Council Meeting Held After FY06 Tax Rate Set

**Sources available during FY07 budget cycle**

Spring 2006 Annual Town Meeting/City Council Budget Meeting

- **FY07 CP fund revenues** (amount available = estimated (1) FY07 surcharges and (2) 10/15/2006 state trust fund distribution based on FY06 net surcharge levy as of 6/30/06)(cannot spend appropriations made from this source until 7/1/06)
- **EXCEPT FOR MODIFIED CPA COMMUNITIES, NO FUND BALANCE AVAILABLE UNTIL 1<sup>ST</sup> YEAR OF FUND OPERATION ENDS ON 6/30/06.** Any FY06 estimated fund revenues that were not appropriated or reserved at time FY06 rate was set are not available until they become part of the 6/30/06 fund balance and are reported by accounting officer.
- **FY06 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 7/1/2006

- 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 7/1/2006 and Before FY07 Tax Rate Set

- FY07 CP fund revenues not appropriated or reserved at previous meetings
- **FY07 CP budgeted reserve balance** if any (Unappropriated FY06 reserve was closed to fund balance as of 6/30/06)
- CP fund balance (amount available = balance as of 6/30/06 less any 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)
- CP open space, historic resource, community housing reserve balances if any
- CP Borrowing
- **EXCEPT FY07 FUND REVENUES**, same sources as available before tax rate set to the extent not already appropriated or reserved at previous meetings. (FY07 fund revenues not appropriated or reserved at time FY07 tax rate set are not available until they become part of the 6/30/07 fund balance and are reported by accounting officer.)

Any Special Town Meeting/City Council Meeting Held After 7/1/2006 and After FY07 Tax Rate Set

- Same sources as available before tax rate set to the extent not already appropriated or reserved at previous meetings. (FY07 fund revenues not appropriated or reserved at time FY07 tax rate set are not available until they become part of the 6/30/07 fund balance and are reported by accounting officer.)

## Chart 6 Community Preservation Committee Annual Calendar

	<b>Action</b>	<b>Other Officials Involved</b>	<b>Timetable</b>
1.	Develop 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	Treasurer Accounting officer	January - March January - March
3.	Prepare CP budget recommendations: <ul style="list-style-type: none"> <li>• Allocate estimated annual revenues: <ul style="list-style-type: none"> <li>• Fund CPA debt service (counts toward 10% minimum in category)</li> <li>• If modified CPA, fund CCLB debt service (counts toward open space minimum), then other CPA debt service (counts toward minimum in category)</li> </ul> </li> <li>• Fund CPC budget (up to 5%)</li> <li>• Allocate to meet minimums (direct spending on projects or reserves)</li> <li>• If modified CPA and CCLB debt service and CPC budget more than 80% of estimated revenues, met by allocating 50% of balance to historic &amp; 50% to affordable housing</li> <li>• New initiatives</li> <li>• Annual budgetary reserve</li> <li>• Allocate reserves and borrowing capacity</li> </ul>		
4.	Submit recommendations for CPC annual budget/appropriations/reservations	Town meeting/council	March - June
5.	Notify EOE of prior year CP projects (CP-3)		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

**Chart 7  
Check List  
FY06 Implementation of Modified CPA**

	<b>Action</b>	<b>Officials Involved</b>	<b>Timetable</b>
1.	Notify DOR (MDM/TAB) of Acceptance (See form in Bulletin 2004-16B)	Clerk	9/15/2005 deadline
2.	Close CCLB fund as of 6/30/05 Establish CP fund as of 7/1/05 Transfer 6/30/05 CCLB balance to CP fund	Accounting officer	6/30/05 year end closing
3.	Notify DOR (BOA) of starting CP fund balance (CP-2) Notify CPC and local officials of balance available for appropriations in FY06	Accounting officer	After 7/1/05
4.	Notify DOR (MDM/TAB) of FY05 CCLB net levy as of 6/30/05 (CP-1) to obtain state matching funds	Assessors Accounting officer	9/15/2005 deadline
5.	Approve CPC by-law/ordinance Organize committee	Town meeting/council Selectmen/manager/boards represented on CPC	Before FY06 tax rate set (cannot appropriate/reserve FY06 CP fund revenues after rate set)
6.	CPC develop plan and recommendations Act on CPC recommendations for appropriations/reservations	CPC Town meeting/council	Before FY06 tax rate set (cannot appropriate/reserve FY06 CP fund revenues after rate set)
7.	Report appropriations/reservations/financing sources on tax recap (Form A-4)	Assessors Accounting officer Clerk CPC	Fall 2005
8.	Notify DOR (BOA) of fund balance as of 6/30/06 (See CP-2) Notify CPC and local officials of balance available for FY07 appropriations	Accounting Officer	After 7/1/2006
9.	Notify EOE of FY06 CP projects (CP-3)	CPC	8/15/2006

**Chart 8  
Modified Community Preservation Fund (CPA) Features**

	<b>CPA</b>	<b>Modifications for Conversions of CCLB</b>
<b>Adoption</b>	<ul style="list-style-type: none"> <li>• Legislative body acceptance/Initiative petition, and</li> <li>• Referendum</li> </ul>	<ul style="list-style-type: none"> <li>• Legislative body acceptance, and</li> <li>• Referendum</li> </ul>
<b>Surcharge Amount</b>	Up to 3% of real estate tax, as reduced by abatements and exemptions	3% of real estate tax, as reduced by abatements and exemptions
<b>Surcharge Exemptions</b>	3 optional surcharge exemptions: <ul style="list-style-type: none"> <li>• Residential exemption</li> <li>• Commercial/industrial exemption, if split rates</li> <li>• Low income persons/Low &amp; moderate income seniors</li> </ul>	No optional exemptions
<b>Fund Revenues</b>	<ul style="list-style-type: none"> <li>• Annual surcharges</li> <li>• Annual state matching distribution</li> <li>• Gifts and grants</li> <li>• Proceeds from sale of real estate acquired with fund monies</li> <li>• Fines for damage to real estate acquired with fund monies</li> </ul>	Same
<b>State Matching Funds</b>	<ul style="list-style-type: none"> <li>• Annual distributions from dedicated revenue stream (recording fee surcharges)</li> <li>• Amount up to 100% of prior FY surcharge net levy</li> </ul>	Same
<b>Fund structure</b>	Multiple financing sources (like enterprise fund) <ul style="list-style-type: none"> <li>• Annual revenues (estimated surcharges and state matching distribution) available for appropriation or reservation until tax rate set for fiscal year</li> <li>• Fund balance (free cash)</li> <li>• Special purpose reserves for open space, historic resources and affordable housing</li> </ul>	Same
<b>Spending Purposes</b>	<ul style="list-style-type: none"> <li>• Acquisition, creation and preservation of open space</li> <li>• Acquisition, preservation, rehabilitation and restoration of historic resources</li> <li>• Acquisition, creation and preservation of recreational land</li> <li>• Creation, preservation and support of affordable housing</li> <li>• Rehabilitation and restoration of open space, recreational land and affordable housing acquired or created with fund monies</li> </ul>	Same

	<b>CPA</b>	<b>Modifications for Conversions of CCLB</b>
<b>Minimum Spending Requirements</b>	10% annual revenues must be appropriated or reserved for each of three categories: open space, historic resources, affordable housing	Same, except that if payment of CCLB debt service is more than 80% of annual revenues, must only appropriate after any appropriations for CPC operations 50% of the balance for historic resources and the other 50% for affordable housing
<b>Property Maintenance Expenses</b>	No	Same
<b>Administrative Expenses</b>	Up to 5% of annual revenues for committee expense (not general implementation expenses)	Same
<b>Borrowing</b>	<ul style="list-style-type: none"> <li>• General obligation borrowing for same purposes &amp; terms as Ch. 44</li> <li>• Borrowing authorization limited to amount supportable by estimated local surcharge revenues over borrowing term</li> <li>• Annual debt service for borrowings authorized under act paid from any fund monies</li> </ul>	Same
<b>Fund administration</b>	<p>Community Preservation Committee of 5-9 members, including one representative from:</p> <ul style="list-style-type: none"> <li>• Conservation Commission</li> <li>• Historical Commission</li> <li>• Planning Board</li> <li>• Board of Park Commissioners</li> <li>• Housing Authority</li> </ul>	Same
<b>Surcharge Amendment</b>	<p>Committee prepares plan and makes spending recommendations</p> <ul style="list-style-type: none"> <li>• Percentage and surcharge exemptions may be amended</li> <li>• Legislative body vote and referendum required</li> </ul>	No amendments permitted until after FY2020
<b>Revocation</b>	<ul style="list-style-type: none"> <li>• After 5 years</li> <li>• Legislative body vote and referendum</li> <li>• Surcharge assessed until fund obligations paid</li> </ul>	No revocation permitted until after FY2020
<b>Tax Rate recap</b>	<ul style="list-style-type: none"> <li>• Estimated revenues/appropriations reported (Form A-4)</li> <li>• Deficits raised</li> </ul>	Same

**Chart 9  
Comparison of Community Preservation Fund (CPA) and Cape Cod Land Bank (CCLB) Features**

	<b>CPA</b>	<b>CCLB</b>
<b>Adoption</b>	<ul style="list-style-type: none"> <li>Legislative body acceptance/Initiative petition, and</li> <li>Referendum</li> </ul>	Referendum
<b>Surcharge Amount</b>	Up to 3% of real estate tax, as reduced by abatements and exemptions	3% of real estate tax, as reduced by abatements
<b>Surcharge Exemptions</b>	3 optional surcharge exemptions: <ul style="list-style-type: none"> <li>Residential exemption</li> <li>Commercial/industrial exemption, if split rates</li> <li>Low income persons/Low &amp; moderate income seniors</li> </ul>	No exemptions
<b>Fund Revenues</b>	<ul style="list-style-type: none"> <li>Annual surcharges</li> <li>Annual state matching distribution</li> <li>Gifts and grants</li> <li>Proceeds from sale of real estate acquired with fund monies</li> <li>Fines for damage to real estate acquired with fund monies</li> </ul>	<ul style="list-style-type: none"> <li>Annual surcharges</li> <li>Annual state matching distribution</li> <li>Gifts and grants</li> </ul>
<b>State Matching Funds</b>	<ul style="list-style-type: none"> <li>Annual distributions from dedicated revenue stream (recording fee surcharges)</li> <li>Amount up to 100% of prior FY surcharge net levy</li> </ul>	<ul style="list-style-type: none"> <li>Annual distributions from fixed appropriation until exhausted</li> <li>Amount equal to 50% of prior FY surcharge collections</li> </ul>
<b>Fund structure</b>	Multiple financing sources (like enterprise fund) <ul style="list-style-type: none"> <li>Annual revenues (estimated surcharges and state matching distribution) available for appropriation or reservation until tax rate set for fiscal year</li> <li>Fund balance (free cash)</li> <li>Special purpose reserves for open space, historic resources and affordable housing</li> </ul>	Actual receipts (receipts reserved for appropriation fund)
<b>Spending Purposes</b>	<ul style="list-style-type: none"> <li>Acquisition, creation and preservation of open space</li> <li>Acquisition, preservation, rehabilitation and restoration of historic resources</li> <li>Acquisition, creation and preservation of recreational land</li> <li>Creation, preservation and support of affordable housing</li> <li>Rehabilitation and restoration of open space, recreational land and affordable housing acquired or created with fund monies</li> </ul>	<ul style="list-style-type: none"> <li>Acquire open space (vacant land)</li> <li>Improve acquired land to use for recreational purposes</li> </ul>

	CPA	CCLB
<b>Minimum Spending Requirements</b>	10% annual revenues must be appropriated or reserved for each of three categories: open space, historic resources, affordable housing	None
<b>Property Maintenance Expenses</b>	No	Up to 3% of fund to maintain and improve acquisitions
<b>Administrative Expenses</b>	Up to 5% of annual revenues for committee expense (not general implementation expenses)	None permitted
<b>Borrowing</b>	<ul style="list-style-type: none"> <li>• General obligation borrowing for same purposes &amp; terms as Ch. 44</li> <li>• Borrowing authorization limited to amount supportable by estimated local surcharge revenues over borrowing term</li> <li>• Annual debt service for borrowings authorized under act paid from any fund monies</li> </ul>	<ul style="list-style-type: none"> <li>• General obligation borrowing for same purposes &amp; terms as Ch. 44</li> <li>• Borrowing authorization limited to amount supportable by estimated local surcharge revenues over borrowing term</li> <li>• Principal on annual debt service for borrowings under act paid from any fund monies</li> <li>• Interest on annual debt service for borrowings under act paid from local fund revenues only (not state matching funds)</li> </ul>
<b>Fund administration</b>	<p>Community Preservation Committee of 5-9 members, including one representative from:</p> <ul style="list-style-type: none"> <li>• Conservation Commission</li> <li>• Historical Commission</li> <li>• Planning Board</li> <li>• Board of Park Commissioners</li> <li>• Housing Authority</li> </ul> <p>Committee prepares plan and makes spending recommendations</p>	<p>Open Space Committee appointed or designated by selectmen or town council</p> <p>Committee makes spending recommendations</p>
<b>Surcharge Amendment</b>	<ul style="list-style-type: none"> <li>• Percentage and surcharge exemptions may be amended</li> <li>• Legislative body vote and referendum required</li> </ul>	Not permitted
<b>Revocation</b>	<ul style="list-style-type: none"> <li>• After 5 years</li> <li>• Legislative body vote and referendum required</li> <li>• Surcharge assessed until fund obligations paid</li> </ul>	Not permitted – Surcharge assessed for 20 years (FY2000-2020)
<b>Tax Rate recap</b>	<ul style="list-style-type: none"> <li>• Estimated revenues/appropriations reported (Form A-4)</li> <li>• Deficits raised</li> </ul>	Not shown

## Case Study 1

### FY05 Implementation - Appropriations/Reservations Reported on FY05 Tax Rate

**ESTIMATED FY05 FUND REVENUES = \$1,000,000** based on:

- \$1,000,000 surcharges (net of two adopted exemptions)
  - 10% minimum spending requirement for year = \$100,000
  
- **9/25/04 Special Town Meeting/City Council Meeting** - Appropriates/reserves \$350,000 from FY05 revenues as follows to begin planning and ensure compliance with 10% minimum spending requirements:
  - \$50,000 *CPC FY05 operating expenses*
  - \$100,000 *open space reserve*
  - \$100,000 *historic resources reserve*
  - \$100,000 *community housing reserve*
  
- **11/13/04 Special Town Meeting/City Council Meeting** – Actions from available financing sources are:
  - \$650,000 in FY05 fund revenues not appropriated at previous meeting based on estimate of \$1,000,000
    - *Appropriates \$400,000 from FY05 revenues to purchase open space parcels*
    - *Appropriates \$200,000 from FY05 revenues for FY05 CP budgeted reserve*
  - **Total appropriated: \$600,000**
  - Borrowing
  
- **12/10/04** Community sets FY05 tax rate using:
  - **\$950,000** from FY05 fund revenues to cover \$950,000 in appropriations and reservations
    - \$50,000 unappropriated and unreserved reported on tax rate recap (not available during FY05)
  
- **1/28/05 Special Town Meeting/City Council Meeting** –Actions from available financing sources are:
  - FY05 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 FY06 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
  
- **5/14/05 Annual Town Meeting/City Council Meeting** – Actions from available financing sources are:
  - FY06 fund revenues (but cannot spend appropriations from this source until 7/1/05)
    - *Appropriates \$75,000 CPC FY06 operating expenses*
    - *Appropriates \$195,000 open space reserve*
    - *Appropriates \$100,000 FY06 debt service on historic borrowing*
    - *Appropriates \$95,000 historic resources reserve*
    - *Appropriates \$195,000 community housing reserve*
    - *Appropriates \$1,000,000 FY06 CP budgeted reserve*
  - **Total appropriated: \$1,660,000**
  - FY05 CP budgeted reserve of \$200,000
  - Open space, historic resource, community housing reserve balances of \$100,000 each
  - Borrowing
  
- **6/24/05 Special Town Meeting/City Council Meeting** – Actions from available financing sources are:
  - \$265,000 in FY06 fund revenues not appropriated at previous meeting based on estimate of \$1,925,000
  - FY05 CP budgeted reserve balance of \$200,000
  - Open space, historic resource, community housing reserve balances of \$100,000 each
    - *Appropriates \$50,000 from open space reserve for conservation restriction*
  - Borrowing



**FY05 OPERATIONS** end as of 6/30/05

- 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 6/30/06**

- 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 6/30/05 balance + \$195,000 reserved from FY06 fund revenues at previous meeting)
- Historic resources reserve balance of \$195,000 (\$100,000 6/30/05 balance + \$95,000 reserved from FY06 fund revenues at previous meeting)
- Community housing reserve balance of \$295,000 (\$100,000 6/30/05 balance + \$195,000 reserved from FY06 fund revenues at previous meeting)

**10/15/05 FY06 STATE TRUST FUND DISTRIBUTION** = \$975,000 (100% match of FY05 net surcharge levy)

- **Total Estimated FY06 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 FY05 levy of \$975,000 by now anticipated 5% growth in property tax levy)
  - 10% minimum spending requirement for year now = \$198,875

- **11/01/05 Special Town Meeting/City Council Meeting.** Available financing sources are:

- Fund balance of \$235,000
- FY06 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 FY06 tax rate not set** - \$338,750 in FY06 fund revenues not appropriated at previous meetings (based on new estimate of \$1,988,750 total for year)

## Case Study 2

### FY05 Implementation - No Appropriations/Reservations Reported on FY05 Tax Rate

**ESTIMATED FY05 FUND REVENUES = \$1,000,000** based on:

- \$1,000,000 surcharges (net of two adopted exemptions)
- 10% minimum spending requirement for year = \$100,000
- **12/10/04** Community sets FY05 tax rate using:
  - \$0 from FY05 fund revenues to cover \$0 in appropriations and reservations
  - \$1,000,000 unappropriated and unreserved reported on tax rate recap (not available during FY05)
- **1/28/05 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 FY06 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
- **5/14/05 Annual Town Meeting/City Council Meeting** – Actions from available financing sources are:
  - FY06 fund revenues (but cannot spend appropriations from this source until 7/1/05)
    - *Appropriates \$75,000 CPC FY06 operating expenses*
    - *Appropriates \$195,000 open space reserve*
    - *Appropriates \$100,000 FY06 debt service on historic borrowing*
    - *Appropriates \$95,000 historic resources reserve*
    - *Appropriates \$195,000 community housing reserve*
    - *Appropriates \$1,000,000 FY06 CP budgeted reserve*
    - Total appropriated: \$1,660,000***
  - Borrowing
- **6/24/05 Special Town Meeting/City Council Meeting** – No action from following available financing sources:
  - \$265,000 in FY06 fund revenues not appropriated at previous meeting based on estimate of \$1,925,000
  - Borrowing

**FY05 OPERATIONS** end as of 6/30/05

- 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 6/30/06

- Reservations by accounting officer to meet FY05 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**

**10/15/05 FY06 STATE TRUST FUND DISTRIBUTION** = \$975,000 (100% match of FY05 net surcharge levy)

- **Total Estimated FY06 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 FY05 levy of \$975,000 by now anticipated 5% growth in property tax levy)
  - 10% minimum spending requirement for year now = \$198,875
  
- **11/01/05 Special Town Meeting/City Council Meeting.** Available financing sources are:
  - Fund balance of \$682,500
  - FY06 budgeted reserve balance of \$1,000,000
  - Open space and community housing reserve balances of \$292,500 each (\$97,500 6/30/05 balance + \$195,000 reserved from FY06 fund revenues at previous meeting)
  - Historic resources reserve balance of \$192,500 (\$97,500 6/30/05 balance + \$95,000 reserved from FY06 fund revenues at previous meeting)
  - Borrowing
  - **If FY06 tax rate not set** - \$338,750 in FY06 fund revenues not appropriated at previous meetings (based on new estimate of \$1,988,750 total for year)

**Case Study 3**  
**FY06 Implementation of Modified CPA**  
**Appropriations/Reservations Reported on FY06 Tax Rate**

**FY05 CCLB**

- **5/4/2005 Annual Town Meeting - Actions** from available financing sources are:
  - CCLB receipts reserved fund available balance
    - *Appropriates \$1,000,000 FY06 debt service on open space acquisition borrowings*
  - *Total appropriated: \$1,000,000*
- Borrowing
- **5/10/2005 Annual Town Election** – *Voters approve modified CPA – No further appropriations/borrowings may be made under CCLB*

**FY05 OPERATIONS** end as of 6/30/05

- CCLB Fund balance transferred to CP fund and available for appropriation for any community preservation purpose until 6/30/06 = **\$500,000**

**ESTIMATED FY06 CP FUND REVENUES** available for appropriation as of July 1, 2005 = **\$2,025,000** based on:

- \$1,025,000 surcharges (assumes property tax levy growth of 2.5%)
- \$1,000,000 state trust fund (assumes 100% match of FY05 CCLB surcharge net levy)
  - 10% minimum spending requirement for year = \$202,500
- **9/24/05 Special Town Meeting/City Council Meeting - Actions** from available financing sources are:
  - FY06 fund revenues of \$2,025,000 - *Appropriates/reserves* as follows to begin planning and ensure compliance with 10% minimum spending requirements:
    - *Appropriates \$100,000 CPC FY06 operating expenses*
    - *Appropriates \$225,000 open space reserve*
    - *Appropriates \$225,000 historic resources reserve*
    - *Appropriates \$225,000 community housing reserve*
    - *Appropriates \$1,250,000 FY06 CP budgeted reserve*
  - *Total appropriated: \$2,025,000*
- CP fund balance of \$500,000
- Borrowing
- **10/10/05 FY06 tax rate set** using:
  - **\$2,025,000** from FY06 fund revenues to cover \$2,025,000 in appropriations and reservations

**10/15/05 FY06 STATE TRUST FUND DISTRIBUTION** = \$1,000,000 (100% match)

- **1/25/06 Special Town Meeting/City Council Meeting** – *Actions* from available financing sources are:
  - CP fund balance of \$500,000
  - FY06 CP budgeted reserve of \$1,250,000
  - Open space, historic resources, community housing reserve balances of \$225,000 each
  - Borrowing
    - *Authorizes \$1,000,000 borrowing for rehabilitation of historic town hall (20 years)*

**ESTIMATED FY07 FUND REVENUES = \$2,125,000** based on:

- \$1,100,000 surcharges (actual FY06 CP net levy increased for property tax levy growth of 2.5%)
- \$1,025,000 state trust fund (assumes 100% match)
  - 10% minimum spending requirement for year = \$212,500
- **5/14/06 Annual Town Meeting/City Council Meeting** – *Actions* from available financing sources are:
  - FY07 fund revenues (but cannot spend appropriations from this source until 7/1/06)
    - *Appropriates \$100,000 CPC FY07 operating expenses*
    - *Appropriates \$1,000,000 FY07 debt service on open space acquisition borrowings*
    - *Appropriates \$100,000 FY07 debt service on historic borrowing*
    - *Appropriates \$125,000 historic resources reserve*
    - *Appropriates \$225,000 community housing reserve*
    - *Appropriates \$500,000 FY07 CP budgeted reserve*
    - **Total appropriated: \$2,050,000**
  - CP fund balance of \$500,000
  - FY06 CP budgeted reserve of \$1,250,000
  - Open space, historic resource, community housing reserve balances of \$225,000 each
  - Borrowing
- **6/26/06 Special Town Meeting/City Council Meeting** – *Actions* from available financing sources are:
  - \$75,000 in FY07 fund revenues not appropriated at previous meeting based on estimate of **\$2,125,000**
  - CP fund balance of \$500,000
  - FY06 CP budgeted reserve balance of \$1,250,000
  - Open space, historic resource, community housing reserve balances of \$225,000 each
    - *Appropriates \$50,000 from open space reserve for conservation restriction*
  - Borrowing

**FY06 OPERATIONS** end as of 6/30/06

- Beginning balance transferred from CCLB = \$500,000
- Actual revenues = \$2,070,000 (\$45,000 above \$2,025,000 budgeted when rate set)
- Unencumbered/unspent appropriations = \$1,260,000 (\$10,000 CPC budget and \$1,250,000 FY06 budgeted reserve)

**Available balances until 6/30/07**

- Fund balance available for appropriation for any community preservation purpose = +/- **\$1,805,000** (the actual amount determined by accounting officer will reflect other accounting adjustments, interest on revenues, etc.)
- Open space reserve balance of \$175,000 (\$225,000 FY06 reservation - \$50,000 FY06 appropriation = \$175,000 6/30/06 balance)
- Historic resources reserve balance of \$350,000 (\$225,000 6/30/06 balance + \$125,000 reserved from FY07 fund revenues at previous meeting)
- Community housing reserve balance of \$450,000 (\$225,000 6/30/06 balance + \$225,000 reserved from FY07 fund revenues at previous meeting)

**10/15/06 FY07 STATE TRUST FUND DISTRIBUTION = \$1,070,000** (100% of FY06 CPA net surcharge)

- **Total Estimated FY07 Fund Revenues Now = \$2,193,500** (\$2,125,000 estimate used in spring + \$45,000 additional revenues from higher distribution than originally estimated + \$23,500 additional surcharge revenues than originally estimated after increasing actual FY06 levy of \$1,070,000 by now anticipated 5% growth in property tax levy)
  - 10% minimum spending requirement for year now = \$219,350
- **10/20/06 Special Town Meeting/City Council Meeting.** Available financing sources are:
  - Fund balance of \$1,805,000
  - FY07 budgeted reserve balance of \$500,000
  - Open space reserve balance of \$175,000
  - Historic resources reserve balance of \$350,000
  - Community housing reserve balance of \$450,000
  - Borrowing
  - **If FY07 tax rate not set** - \$143,500 in FY07 fund revenues not appropriated at previous meetings (based on new estimate of \$2,193,500 total for year)

**Case Study 4**  
**FY06 Implementation of Modified CPA**  
**No Appropriations/Reservations Reported on FY06 Tax Rate**

**FY05 CCLB**

- **5/4/2005 Annual Town Meeting - Actions** from available financing sources are:
  - CCLB receipts reserved fund available balance
    - *Appropriates \$1,000,000 FY06 debt service on open space acquisition borrowings*
  - **Total appropriated: \$1,000,000**
- Borrowing
- **5/10/2005 Annual Town Election** – *Voters approve modified CPA – No further appropriations/borrowings may be made under CCLB*

**FY05 OPERATIONS** end as of 6/30/05

- CCLB Fund balance transferred to CP fund and available for appropriation for any community preservation purpose until 6/30/06 = **\$500,000**

**ESTIMATED FY06 CP FUND REVENUES** available for appropriation as of July 1, 2005 = **\$2,025,000** based on:

- \$1,025,000 surcharges (assumes property tax levy growth of 2.5%)
- \$1,000,000 state trust fund (assumes 100% match of FY05 CCLB surcharge net levy)
  - 10% minimum spending requirement for year = \$202,500
- **9/24/05 Special Town Meeting/City Council Meeting - No action** from following available financing sources:
  - FY06 fund revenues of \$2,025,000
  - CP fund balance of \$500,000
  - Borrowing
- **10/10/05 FY06 tax rate set** using:
  - **\$0** from FY06 fund revenues to cover \$0 in appropriations and reservations
    - \$2,025,000 in estimated annual revenues reported on tax rate recap as unappropriated and unreserved are no longer available for appropriation during FY06

**10/15/05 FY06 STATE TRUST FUND DISTRIBUTION** = \$1,000,000 (100% match)

- **1/25/06 Special Town Meeting/City Council Meeting –Actions** from available financing sources are:
  - CP fund balance of \$500,000
    - *Appropriates \$50,000 from fund balance for conservation restriction*
  - Borrowing
    - *Authorizes \$1,000,000 borrowing for rehabilitation of historic town hall (20 years)*

**ESTIMATED FY07 FUND REVENUES = \$2,125,000** based on:

- \$1,100,000 surcharges (actual FY06 CP net levy increased for property tax levy growth of 2.5%)
- \$1,025,000 state trust fund (assumes 100% match)
  - 10% minimum spending requirement for year = \$212,500
- **5/14/06 Annual Town Meeting/City Council Meeting** – *Actions* from available financing sources are:
  - FY07 fund revenues (but cannot spend appropriations from this source until 7/1/06)
    - *Appropriates \$100,000 CPC FY07 operating expenses*
    - *Appropriates \$1,000,000 FY07 debt service on open space acquisition borrowings*
    - *Appropriates \$100,000 FY06 debt service on historic borrowing*
    - *Appropriates \$125,000 historic resources reserve*
    - *Appropriates \$225,000 community housing reserve*
    - *Appropriates \$500,000 FY06 CP budgeted reserve*
    - **Total appropriated: \$2,050,000**
  - CP fund balance of \$450,000
  - Borrowing
- **6/26/06 Special Town Meeting/City Council Meeting** – *Actions* from available financing sources are:
  - \$75,000 in FY07 fund revenues not appropriated at previous meeting based on estimate of \$2,125,000
  - CP fund balance of \$450,000
  - Borrowing

**FY06 OPERATIONS** end as of 6/30/06

- Beginning balance transferred from CCLB = \$500,000
  - Appropriations/expenditures = \$50,000
  - Actual revenues = \$2,070,000 (compared to \$0 budgeted when rate set)
  - Unencumbered/unspent appropriations = \$0
- Fund balance = +/- **\$2,520,000** (the actual amount determined by accounting officer will reflect other accounting adjustments, interest on revenues, etc.)
- Reservations by accounting officer to meet FY06 minimum spending requirement are:
  - *\$207,000 (10% of fund balance due to FY06 revenues) to each reserve: open space, historic resources, community housing*

**Available balances until 6/30/07**

- Fund balance available for appropriation for any community preservation purpose = +/- **\$1,899,000**
- Open space reserve balance of \$207,000 (\$207,000 reservation of 6/30/06 balance)
- Historic resources reserve balance of \$332,000 (\$207,000 reservation of 6/30/06 balance + \$125,000 reserved from FY07 fund revenues at previous meeting)
- Community housing reserve balance of \$432,000 (\$207,000 6/30/06 balance + \$225,000 reserved from FY07 fund revenues at previous meeting)

**10/15/06 FY07 STATE TRUST FUND DISTRIBUTION** = \$1,070,000 (100% of FY06 CPA net surcharge)

- **Total Estimated FY07 Fund Revenues Now = \$2,193,500** (\$2,125,000 estimate used in spring + \$45,000 additional revenues from higher distribution than originally estimated + \$23,500 additional surcharge revenues than originally estimated after increasing actual FY06 levy of \$1,070,000 by now anticipated 5% growth in property tax levy)
  - 10% minimum spending requirement for year now = \$219,350
- **10/20/06 Special Town Meeting/City Council Meeting.** Available financing sources are:
  - CP fund balance of \$1,899,000
  - FY07 budgeted reserve balance of \$500,000
  - Open space reserve balance of \$207,000
  - Historic resources reserve balance of \$332,000
  - Community housing reserve balance of \$432,000
  - Borrowing
  - **If FY07 tax rate not set** - \$143,500 in FY07 fund revenues not appropriated at previous meetings (based on new estimate of \$2,193,500 total for year)



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 cursive script 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



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 black ink that reads "Daniel J. Murphy". The signature is fluid and cursive, with a long horizontal stroke at the end.

Daniel J. Murphy  
Chief, Property Tax Bureau

DJM/KC



June 11, 2002

Marie Chiofalo, Acting Chairman  
Community Preservation Committee  
1 Liberty Lane  
Norfolk MA 02056

Re: Community Preservation Act  
Our File No. 2002-379

Dear Ms. Chiofalo:

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 (2<sup>nd</sup> New College Edition 1985); Black's Law Dictionary 440 (4<sup>th</sup> 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.

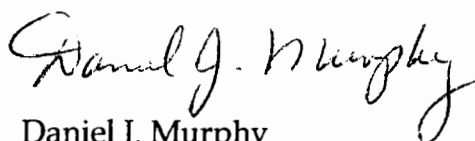
4. Make particular improvements on recreational property owned by the town before adoption of the CPA, or acquired with community preservation or any other municipal funds, for the limited purpose of protecting the property from injury, harm or destruction. This might include such projects as repair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



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,

  
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 (2<sup>nd</sup> New College Edition 1985); Black's Law Dictionary 440 (4<sup>th</sup> 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 cursive script 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 (2<sup>nd</sup> 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 cursive script 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.

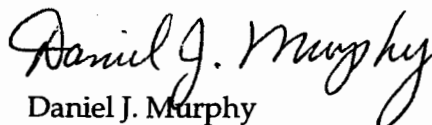


Under that view, municipalities could still use fund monies to restrict the future use of a property, but it would be considered "creation" of the community preservation asset, which is included in the list of allowable purposes for all categories of such assets. Creation is not defined in the act, but its ordinary and generally understood meaning is bringing into being, causing to exist or production. American Heritage Dictionary 338 (2<sup>nd</sup> New College Edition 1985); Black's Law Dictionary 440 (4<sup>th</sup> 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.

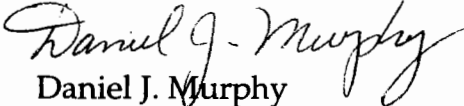
Depending on the circumstances, the project may come within an allowable purpose under the Community Preservation Act (CPA). G.L. c. 44B. The CPA provides that monies in the community preservation fund may be used "for the *acquisition, creation and preservation* of open space ... and for the *rehabilitation 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.

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



January 24, 2002

Kathleen A. Archambeault  
Treasurer/Collector  
Town of Southamptton  
P.O. Box 157  
Southampton MA 01073

Re: Community Preservation Surcharge Exemptions  
Our File No. 2002-29

Dear Ms. Archambeault:

You asked for written confirmation of our position that only the portion of a real estate tax that is exempt from property taxes is exempt from the community preservation surcharge.

Enclosed is a copy of an opinion we issued last year that explains why we read the Community Preservation Act (CPA) as exempting a taxpayer receiving a property tax exemption from any community preservation surcharge on the exempted tax only. See Informational Guideline Release 00-209, *Community Preservation Fund*, Sections II-B and F.

With respect to contrary information available from other sources, we think local assessors should follow our guidelines regarding surcharge exemptions. Courts are the ultimate arbiters of disputes regarding the meaning of laws under our system and in resolving those disputes, they generally give some deference to the statutory interpretation of the agency charged with the administration of the statute in question. In this case, the CPA specifically gives the Department of Revenue authority to administer its provisions. G.L. Ch. 44B §17 ("The Commissioner of Revenue shall have the authority to promulgate rules and regulations to effect the purposes of this chapter."). Any final decision regarding the meaning of the CPA would be made by the Massachusetts Supreme Judicial Court.

Please do not hesitate to contact me again if you have any further questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Bruce H. Stanford".

Bruce H. Stanford  
Chief, Property Tax Bureau

BHS/KC  
Enclosure



June 14, 2001

James R. Doukaszewicz  
Finance Director  
Town of Dracut  
62 Arlington Street - Suite 6  
Dracut MA 01826

Re: Community Preservation Surcharge Exemptions  
Our File No. 2001-354

Dear Mr. Doukaszewicz:

You asked for written confirmation of our position that only the portion of a real estate tax that is exempt from property taxes is exempt from the community preservation surcharge.

As set forth in the guidelines we issued in December 2000, we read the Community Preservation Act as exempting a taxpayer receiving a property tax exemption from any community preservation surcharge on the exempted tax. See Informational Guideline Release 00-209, *Community Preservation Fund*, Sections II-B and F; G.L. Ch. 44B §17 ("The Commissioner of Revenue shall have the authority to promulgate rules and regulations to effect the purposes of this chapter.").

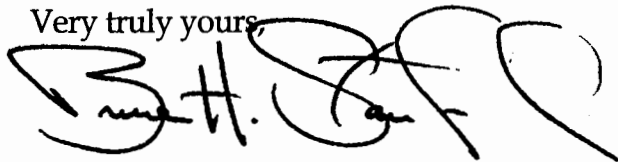
We believe this interpretation is consistent with the language and purpose of the Community Preservation Act, which creates a dedicated revenue source for communities to use in expanding and preserving open space, historic sites and affordable housing. The surcharge exemption provision at issue applies broadly to any real property tax exemption authorized by General Laws "chapter 59 or any other law." G.L. Ch. 44B §3(c). You suggest the provision should be interpreted as meaning that all taxpayers receiving partial as well as full property tax exemptions are fully exempt from the surcharge. As you know, the legislature included in the Act various optional provisions under which a community may fully or partially exempt certain classes of taxpayers from surcharge liability and thereby tailor the amount and allocation of its surcharge tax base consistent with its needs and circumstances. G.L. Ch. 44 §3(2). Under your interpretation, however, the legislature would have also intended to fully exempt, without any local action, all owner occupied residential properties in those communities that adopt a residential exemption under property tax classification. G.L. Ch. 59 §5C. Since residential property typically makes up the largest portion of a community's tax base, and a substantial portion of residential property is owner occupied, most residential taxpayers in communities using the residential exemption would have no surcharge liability. We doubt the legislature intended that result since it would severely hamper, if not effectively preclude, communities that adopt the residential exemption from being able to use the Act.

James R. Doukaszewicz  
Finance Director  
Town of Dracut  
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Moreover, that interpretation produces other results not likely intended by the legislature given the design and objectives of the Act. For example, a major commercial or industrial taxpayer in a community that did not adopt the optional surcharge exemption for business properties would nonetheless be fully exempt from the surcharge because it might be receiving a partial exemption for certain pollution control facilities installed on its plant, G.L. Ch. 59 §5(44), or a tax increment financing special assessment for the value of the addition to its plant. G.L. Ch. 59 §5(51). There are numerous other classes of taxpayers who would be fully exempt under that reading of the statute, including, for example, property owners (1) with classified forest, farm or recreational land who are partially exempt from regular property taxes under G.L. Ch. 59 §5(26), (48) and (49), (2) with a septic system in a community that shifts water and sewer debt service from rates to the tax levy who are receiving a partial exemption under G.L. Ch. 59 §5(53), or (3) with solar panels installed on their homes or businesses who receive a relatively modest partial exemption on the value of the panels under G.L. Ch. 59 §5(45). As indicated above, we believe the purpose of the local option exemptions is to give communities substantial control over the allocation of surcharge liability among its taxpayers. In our view, to would be inconsistent with that purpose to construe the language in question as intending to automatically exempt all of these and other classes of taxpayers receiving partial property exemptions from paying any share of the adopted surcharge.

Please do not hesitate to contact me again if you have any further questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Bruce H. Stanford". The signature is stylized and somewhat cursive, with the first name "Bruce" being the most prominent part.

Bruce H. Stanford  
Chief, Property Tax Bureau

BHS/KC

