

Potential Uses of CPA Funds

Community Preservation Coalition May 2004

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I. General Overview

The Community Preservation Act (CPA) allows participating cities and towns to adopt a real estate tax surcharge up to 3% in order to fund three key community purposes: open space, historic preservation and community housing. This guidance has been prepared by the statewide Community Preservation Coalition (CPC) in order to provide a basic explanation of the Act's mechanics along with examples of programs and strategies that may help put the CPA funding to work. This guidance is neither comprehensive nor exhaustive, but should serve as a starting point for communities contemplating adoption of CPA or for cities and towns just beginning their deliberations about community preservation. The Coalition has solicited legal advice in writing this document. Communities are encouraged, however, to consult with their local counsel with questions regarding the legality of particular expenditures.

At the recommendation of local Community Preservation Committees around the state, the CPC is also launching a new section of our Website that will showcase creative examples of CPA local initiatives as well as other models that communities may wish to consider when assessing their own local needs and developing annual allocation plans. As additional "best practices" emerge from the experience of cities and towns across the Commonwealth, the CPC will share this information over our [Website](http://www.communitypreservation.org) at www.communitypreservation.org. Also, communities are welcome to contact the Coalition hotline with any specific questions at 617-367-8998.

II. Expenditure Conditions

The CPA requires that communities spend, or set aside for future spending, a minimum of 10% of annual CPA receipts on: open space (excluding recreational purposes), historic preservation, and community housing. The remaining 70% of funds may be allocated to any one or a combination of the three main uses, including public recreational purposes, at the discretion of

the community preservation committee and subject to the approval of Town Meeting or City Council. Certain general conditions apply to CPA expenditures:

- **Establish Funds.** Communities must establish a separate fund into which community preservation funds are deposited each year with the following three reserve accounts, one for each of the three CPA uses: Community Preservation Fund Open Space Reserve, Community Preservation Fund Historic Resources Reserve, and Community Preservation Fund Community Housing Reserve. Funds not allocated to one of the reserved funds remain in the general CPA fund.
- **Minimum Expenditures.** If the minimum 10% of Community Preservation Funds are not spent in the current year for a given category, the funds must be "banked" for use only in that same category in a subsequent year; i.e., money dedicated to a particular category cannot be reassigned to another category in a future year. The Community Preservation Committee is responsible for accounting for all CPA monies, including both funds expended in the current year as well as any funds "banked" for use in future years. After the mandatory 30% of CPA funds is spent or set aside for future spending, the remaining 70% may be reserved in one of the three reserve accounts or returned to the general CPA fund, to be appropriated to one of the three uses at a future date.
- **No Maintenance.** CPA funds cannot be used for routine maintenance of existing facilities. For example, communities cannot use CPA funds to maintain a municipal park (such as mowing the lawn, emptying trash barrels or dumpsters, etc.) or to maintain a historic town hall (cleaning the common areas or paying for utilities, etc).
- **No Supplanting.** The CPA is directed at augmenting municipal funds, not replacing existing funding. To this end, CPA funds may not be appropriated to pay for project costs that have already been appropriated from another source. Any CPA eligible costs for a project that are identified in a municipality's capital improvement program are eligible for funding under the Act if the municipality has not made a prior funding commitment to pay for such costs.
- **Committee Costs.** Up to 5% of the annual CPA funds may be spent on the operation and administration costs of the Community Preservation Committee. For example, overhead such as stationary, telephone calls, and transportation to sites may be included within this 5% administrative allowance. In addition, the Committee may use its allowance for legal fees, or technical reviews for its decision-making purposes.
- **Incidental Project Costs.** CPA funds may be used for site surveys, environmental assessments, historic or housing consultants, architectural and engineering fees, permit processing fees, construction consultants, financing consultants, legal and accounting fees, and similar costs associated with and incidental to the development of a CPA project. Such expenditures should be made from the appropriation for the particular project and, as project costs, they do not constitute operation or administration expenses of the committee subject to the 5% limitation.
- **Projects in Other Communities.** CPA funds may be spent anywhere in Massachusetts, meaning communities are not confined to expending funds only within their jurisdiction. For example, this flexible provision allows a community to purchase land surrounding its water supply even if located in another city or town. CPA funding may also support intercommunity cooperation on regional housing needs, allowing development that spans borders or shared development in one community that serves several towns. Another

example is the coordinated efforts of several communities to establish a "heritage corridor" that celebrates the shared history of a region.

- **Leveraging CPA Funds.** CPA funds may be used as a municipality's matching monies for state and federal grant programs that require a local match such as the Massachusetts Housing Partnerships' Soft Second Program, state Department of Housing and Community Development (DHCD) Self-Help program, Massachusetts Preservation Program Fund (MPPF), and the Executive Office of Environmental Affairs (EOEA) Massachusetts Forest Legacy program, Self-Help and Urban Self-Help programs. Applications for Self-Help and Urban Self-Help matching funds through EOEA receive significantly higher weight if the applying community has already adopted the CPA.
- **Borrowing.** Communities may borrow against the local CPA surcharge revenue they expect to receive under the CPA in subsequent years (not against the state matching funds). Such borrowings may be useful to aggregate sufficient funds to undertake a more costly undertaking in one or all three categories than is possible using funds available on an annual basis. Any bonds issued under the CPA are payable from future revenues, and such expenditures will count toward the 10% minimum expenditure required for the purpose category for which the bond proceeds were spent. Future revenues will not be available to pay debt service, however, to the extent that such revenues are needed to satisfy the other 10% minimum expenditure requirements for other purpose categories. However, bonds issued under the CPA are general obligation bonds of the city or town, and to the extent that CPA revenues are insufficient to pay off the principal and interest, these obligations must be met with other funds of the city or town.
- **Partnerships.** A city or town may partner with other public entities and, in certain circumstances, with private entities, including for-profit and non-profit entities, to undertake allowable uses.
- **Multiple Purpose Projects.** Communities are encouraged to consider the creative combination of allowable uses in their expenditure of CPA funds. For example, a large tract of land can be acquired for open space protection while reserving part of the parcel for the development of community housing. Another example is adaptive re-use of an historic structure to convert a building to a residential or non-residential CPA-related use.
- **Deed Restrictions.** Section 12(a) of the Act requires that a permanent deed restriction be placed on any "real property interest" acquired using CPA funds to ensure that the property continues to be used for the applicable CPA purpose. If a deed restricted, real property interest acquired using CPA funds is subsequently sold, any proceeds from the sale must be deposited in the local CPA fund. Also, the sale of property acquired under the CPA for open space or recreational purposes, may require a two-thirds vote of the Legislature. However, real property interests, as defined by the CPA, do not include those interests with a term of less than 30 years or which represent only a security interest arising under a loan agreement. In any case, the Community Preservation Coalition strongly recommends that use restrictions consistent with the amount and duration of any CPA support be placed on any property receiving CPA assistance in order to preserve the public purposes for which the real property was supported with CPA funds, consistent with the amount and duration of support.
- **Ownership and Management Requirements.** Section 12(b) of the Act further requires that any "real property interest" (e.g. land or buildings) acquired with CPA funds must be owned and managed by the municipality (although management may be delegated to

certain municipal agencies and to certain types of non-profit organizations). However, this limitation only applies to real property interests with a term greater than 30 years, excluding security interests in loan agreements. Therefore, CPA funds may be structured to allow an acquisition in the name of a third party provided there is a short-term holding period and/or the form of the funding is a loan.

Within the broad guidelines of the Act, the CPA may be implemented based on local funding priorities as established by the local Community Preservation Committee. The discussion below outlines a number of examples of allowable activities in each use category.

III. CPA Project Types

1. Open Space

The Act requires that a participating community "... shall spend, or set aside for later spending, not less than 10 percent of the annual revenues in the local Community Preservation Fund for open space, but not including land for recreational use..." In other words, a city or town must annually either spend or "bank" not less than 10% of the current CPA revenues for acquisition, creation, preservation, rehabilitation, or restoration of open space. If a community desires to also acquire, create, preserve, rehabilitate, or restore recreational facilities, these programs must be funded from the 70% of CPA receipts that may be divided among the permissible use categories on a discretionary basis.

Open space is defined to include, but is not limited to, the following:

- Agricultural land
- Well fields, aquifers, recharge areas, and other watershed lands
- Grasslands, fields, or forest lands
- Fresh and salt water marshes and other wetlands
- Ocean, river, stream, lake and pond frontage
- Beaches, dunes, and other coastal lands
- Scenic vistas
- Land for wildlife habitat or biodiversity or nature preserves

With regard to permissible purposes for which CPA funds may be spent on open space, the Act specifically provides that CPA funds may be expended for "... the acquisition, creation, and preservation of open space...and for the rehabilitation or restoration of such open space...that is acquired under the CPA." The following are examples of the types of open space expenditures that may be carried out under the CPA:

Acquisition

- Purchase land to protect water supplies such as well fields, aquifers, recharge areas, and lake or reservoir frontage and other watershed lands

Creation

- Raze aging, vacant, municipally-owned building to create an open field
- Reconstruct a road to create a median strip with grass and trees
- Rehabilitate and/or redevelop brownfields such as capping a landfill and converting site to open space

Preservation

- Purchase permanent conservation or agricultural preservation restrictions to protect open space or farmland from future development
- Remove invasive plant species from ponds and wetlands to protect existing open space environment and wildlife habitats from harm or injury
- Purchase of easements to protect water supplies such as well fields, aquifers, recharge areas, and lake or reservoir frontage and other watershed lands

Rehabilitation and Restoration

- Restore natural areas such as wetlands or marshlands acquired using CPA funds to their original state
- Seed and plant trees and otherwise landscape an open space created by the removal of buildings on site.

2. Historic Preservation

With respect to the permissible purposes for which CPA funds may be used on historic resources, the Act requires that a participating community "...shall spend, or set aside for later spending...not less than 10 percent of the annual revenues for historic resources."

A historic resource is defined to include a building, structure, vessel, or other real property that is either:

- Listed or eligible for listing on the State Register of Historic Places; or
- Determined by the local Historic Commission to be significant in the history, archeology, architecture, or culture of the city or town.

Note: In connection with historic preservation projects, communities should consult the Secretary of the Interior's Standards for the rehabilitation of historic properties and cultural landscapes. These standards may be obtained from the website of Historic Massachusetts at www.historicmass.org. Please also see the Massachusetts Historical Commission website at: www.state.ma.us/sec/mhc.

With respect to the permissible purposes for which CPA funds may be used on historic resources, the Act was amended on July 18, 2002, to add language to the existing statute making it explicit that community preservation funds may be used to rehabilitate and restore municipally owned historic sites that were purchased prior to a community's adoption of the CPA. Section

5(b) (2) of the Act, as amended, now reads that CPA funds may be spent or set aside "...for the acquisition, preservation, rehabilitation and restoration of historic resources..." Also, a new definition of rehabilitation has been inserted in Section 2 of the Act that defines rehabilitation as including handicapped access and other capital improvements that may be necessary for historic properties to meet federal and local building codes, or to make those sites functional for the intended use of the facility.

Examples of the types of historic resource projects that may be carried out under the CPA:

Acquisition

Acquire a historic site or landscape

Provide a match for federal or state grants such as the Massachusetts Preservation Projects Fund

Preservation

- Purchase a preservation easement to protect façade or other historical features
- Restore historic buildings to reverse inappropriate alterations
- Establish or expand signage or markers at historic sites
- Conduct historical or archeological surveys necessary for a preservation project or creation of a new historic district
- Restore archival documents
- Provide grants to acquire or preserve a historic property in private non profit ownership provided that City or Town acquires a preservation restriction to protect the public's investment

Rehabilitation and Restoration

- Restore or upgrade municipal historic resources such as town halls, libraries, town commons, parks, or cemeteries
- Adaptively reuse historic sites such as the upgrade and rehabilitation of fire houses, churches, mills, police stations, town halls, or schools for community housing or another municipal use
- Capital improvements to historic resources that are necessary to comply with state building codes
- Provide new utilities and other site work necessary for a preservation project
- Mitigate environmental contamination at historic sites
- Provide ADA and MAAB accessibility at historic sites, such as elevators, ramps, restrooms, etc
- Restore historic landscapes

3. Community Housing

The Act requires that a participating community "...shall spend, or set aside for later spending, not less than 10 per cent of the annual revenues in the Community Preservation Fund for community housing." Community housing is defined to include housing for persons or families earning up to 100% or less of the locality's areawide median income. Applicable areawide median income (as further differentiated by household size) is established annually by the United States Department of Housing and Urban Development (HUD). HUD income limits are available from its web site: <http://www.huduser.org>. However, for housing units created with CPA funds to be counted toward a community's Chapter 40B affordable housing inventory, the units must serve those earning less than 80% of area median income.

The Act provides that community preservation funds may be expended 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. With respect to the permissible purposes for which CPA funds may be spent on community housing, the Act requires that wherever possible, preference be given to "... *the adaptive reuse of existing buildings or construction of new buildings on previously developed sites.*"

Section 12 (b) of the Act requires that if real property interests are acquired using CPA funds, the property must be owned and managed by the municipality (unless the interest has a term of less than 30 years or involves only a security interest such as a mortgage). Direct municipal ownership may constrain the development of community housing by limiting the availability of financing from certain federal and state housing assistance programs and by limiting the potential for private investment. Therefore, municipalities should consider creative ways to acquire and improve real property for community housing under the CPA that do not involve municipal ownership.

Potential allowable uses to which this housing funding may be applied include:

Creation

- Convert existing non-residential properties to community housing (schools, mills, churches office buildings, warehouses, etc)
- Create in-law apartments and other ancillary housing
- Acquire real property (land and/or buildings) for new housing development, both rental and homeownership
- Grant or loan funds for the creation of community housing to non-profit or for-profit parties (provided that the funds are not used by the private party to acquire a real estate interest and that the municipality establishes sufficient safeguards to ensure that the funds are used primarily for the creation of community housing and that any benefit to the private entity is merely incidental). It is anticipated that many local CPA housing initiatives will utilize private non-profit or for-profit intermediaries for the creation of community housing
- Restore "brown fields" sites for housing or other mitigation of contaminated sites in preparation for housing development

Preservation

- Refinance "expiring use" properties which are at risk of going market rate
- Acquire a preservation restriction to limit the occupancy of certain units in a privately owned rental building to persons of low or moderate income housing

Support

- Modify existing homes, including accessibility improvements that allow the disabled or senior citizens to continue to live in their homes
- Provide a match for state Home Modifications funds to adapt the homes of elderly and disabled town residents, including the installation of such safety measures as ramps and bars
- Assist the local housing authority to support its low income rental properties
- Assist residents to meet homeownership costs, including grants or "soft second" loans to reduce mortgage interest rates, provide a down payment, assist with closing costs, security deposits, utility assistance, or to subsidize interest rates.
- Use as a subsidy to write down interest rates for first-time homebuyer programs such as the Massachusetts Housing Partnership's Soft Second Program or the state's Self Help Program that has specific matching requirements; this subsidy makes the Soft Second Program the most affordable mortgage in the state
- Underwrite a revolving loan fund or guarantee fund for tenants who cannot afford first month, last month, and security deposit
- Fund a housing trust or a housing authority to support a particular community housing initiative income from an endowment for local affordable housing can be applied directly or matched with state or federal funding
- Provide matching funds under the Housing Innovations Fund which helps to build limited equity coops, housing for people with AIDS, etc

Rehabilitation and Restoration of Community Housing Created Using CPA Funds

- Make site improvements such as water/sewer connections, well installation, septic installation or repair, or other underground utilities associated with the creation of affordable housing
- Rehabilitate or restore existing public or private property being converted to affordable housing units in a mixed income residential environment

As noted above, if a CPA assisted community housing project serves individuals and families earning less than 80% of HUD area median income, any newly created units may count toward a city's or town's Chapter 40B affordable housing inventory. If CPA funds are used in conjunction with established rental or homeownership programs, the eligibility of this housing under 40B is generally assured. However, innovative new programs using CPA will require a determination by DHCD as to whether the amount or form of funding will qualify the housing. For example, if CPA Funds are used to assist a homeowner with down payments or to defray mortgage interest, that housing may not qualify for 40B unless there is a long-term affordability restriction.

Similarly, rental assistance to a household (or to an owner on behalf of a resident) is not likely to qualify if such a subsidy is only a short-term arrangement without long-term affordability.

4. Public Recreation

Once a community has expended or reserved at least 10% of the annual funds generated by the CPA on each required use category (open space, historic preservation and community housing), the City or Town may use all or a portion of the remaining 70% for recreational purposes.

Recreational use is defined to include active or passive recreational use, including, but not limited to, the following:

- Community gardens
- Trails
- Noncommercial youth and adult sports
- Parks, playgrounds, and athletic fields

The Act provides that CPA funds may be expended on "... the acquisition, creation, and preservation of land for recreation use ... and for rehabilitation or restoration of ... land for recreational use ... that is acquired or created" under the CPA. The following are examples of the types of recreational use projects that may be carried out under the CPA:

Acquisition

- Purchase of land to create new athletic fields for noncommercial youth and adult sports
- Purchase of existing, privately owned recreational facilities for municipal use, such as a tennis court

Creation

- Convert existing structures such as a railroad bed to a recreational use such as walking, biking, or inline skating trails
- Convert underutilized municipal lot to community gardens
- Clean up contaminated industrial site or cap landfills to create new soccer or baseball fields or playgrounds

Preservation

- Install an irrigation system at a public park to prevent the grass from dying or otherwise being harmed
- Install new drainage at an existing athletic field to prevent flooding and water damage
- Provide new drainage at an existing athletic field that has severely deteriorated; however, monies cannot be used for routine maintenance or capital improvement for which municipal funding has been already been committed

Rehabilitation and Restoration of Recreational Lands Acquired Using CPA Funds

- Create recreational opportunities through brownfields rehabilitation and/or redevelopment such as capping a landfill and establishing a new outdoor park, tennis courts or other athletic facilities on site
- Restore unused walking trails in forest land acquired with CPA funds to usable condition
- Resurface tennis courts created on municipally owned property

Note: The Act prohibits CPA funds from being used to acquire or create or preserve facilities for horse or dog racing, or land for a stadium, gymnasium, or similar structure.

IV. Conclusion

The Community Preservation Act is intended to provide municipalities with their own dedicated funding and maximum flexibility to fashion local initiatives that preserve and enhance community character. We hope this document will serve as a vehicle for community preservation committees across the Commonwealth to share ideas, models, and practical advice for undertaking projects using CPA funding. As more communities participate in the program and the adopting cities and towns make further progress with project implementation, it is our hope that this guidance will capture an even greater menu of best practices and innovative models to share with local CP committees and municipalities contemplating passage of the Act.

However, to succeed in this endeavor, we need your active feedback. Please contact the Community Preservation Coalition or visit our web site at www.communitypreservation.org, with your questions, successes and frustrations, or to share town meeting warrant language, annual spending plans, project descriptions, or to participate in one of the regional training sessions for local community preservation committees that we will be hosting in the fall and winter of 2002.