

COMMUNITY PRESERVATION ACT

Town of Hatfield

OPEN SPACE PROJECT GUIDELINES

CPA Open Space Projects: 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..." A city or town must either spend or reserve not less than 10% of current CPA revenues annually to acquire, create, preserve, or rehabilitate/restore open space. If a community desires to acquire, create, preserve, or rehabilitate/restore recreational facilities, these programs must be funded from the 70% of CPA receipts that also may be divided among all the other permissible use categories (open space, historical preservation and community housing) on a discretionary basis. 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."*

Open space includes, but is not limited to, the following:

- Agricultural land
- Well fields, aquifers, recharge areas, and other watershed lands
- Grasslands, fields, or forest lands
- Fresh water marshes and other wetlands
- Rivers, streams, lakes, and pond frontages
- Scenic vistas
- Land for habitats of threatened or endangered species of plants and animals, nature preserves, or areas of biodiversity
- Habitat areas that are in danger of vanishing.

Examples of Open Space Expenditures using CPA Funds:

Acquisition

- Purchase land to protect water supplies such as well fields, aquifers, recharge areas, 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 agricultural preservation or conservation restrictions to protect farmland or open space 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 easements to protect water supplies such as well fields, aquifers, recharge areas, 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.

Open Space Criteria

Open space proposals that address as many of the following criteria as possible will receive preference:

- Protect agricultural land resources
- Provide flood control/storage
- Preserve important surface water bodies, including wetlands, vernal pools, or riparian zones
- Permanently protect important wildlife habitat, including areas that are of local significance for biodiversity, contain a variety of habitats with a diversity of geologic features and types of vegetation, contain a habitat type that is in danger of vanishing from Hatfield, or preserve habitats for threatened or endangered species of plants or animals.
- Provide connections with existing trails or potential trail linkages
- Preserve scenic views
- Border a scenic road
- Protect drinking water quantity and quality
- Facilitate active and/or passive recreational activities

Sample CPA Questions and Answers

Question: *An opportunity arose where a landowner was willing to work with the town to sell his development rights on a few parcels of quality watershed/habitat/agricultural land. Can CPA funds be used to purchase a conservation restriction (CR) that meets many of the Town's goals, but does not explicitly purchase the property? Also, at what point must a parcel purchased with CPA funds have a CR in place? Must this be done immediately after purchase?*

Answer: The use of CPA funds to purchase a CR is certainly an allowable use of such funds. Technical CR questions are beyond our areas of expertise. For more detailed information, we suggest you contact the state's CR program at 617-626-1012.

Question: *Can CPA funds be appropriated to a city or town conservation fund?*

Answer: The Massachusetts Department of Revenue (DOR) has indicated that municipalities that have adopted the CPA may appropriate Community Preservation Fund monies to a Conservation Fund established under the Conservation Commission Act (G.L. Ch. 40 sec. 8c.) Under Ch. 40 sec. 8C, cities and towns may appropriate monies into the Conservation Fund, which the Conservation Commission may then spend without further appropriation, or other legislative body action, for various purposes including the acquisition of fee or other interest in land for open space or other conservation purposes. The town may use Community Preservation Fund monies to fund all or part of an annual appropriation to the Conservation Fund. The Commission may then spend the money for any purposes allowable by both laws. These include acquisition of land and placing deed restrictions on the land as required by the CPA. DOR gave this opinion in a 2003 letter to the Town of Duxbury.

Question: *Can a CPA Committee purchase a house with land and then turn around and sell the house to recover some of the money and keep the land?*

Answer: The answer depends on how you do it. If you want to sell the home at a market rate, then you would have to use another source of funding for that portion of the purchase because market rate housing is not an allowable use of CPA funds. If you wanted to purchase the entire lot with CPA funds, attach a deed restriction to the home to designate it as affordable housing and then sell it at an affordable rate, you could do that with CPA funds. The proceeds from the sale would then go back to the CPA fund.

CPA Expenditure Conditions

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 also may 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.

CPA Definitions

Acquire. Obtain by gift, purchase, devise, grant, rental, rental purchase, lease or otherwise. "Acquire" shall not include a taking by eminent domain, except as provided in this chapter.

Open space. Shall include, but not be limited to, land to protect existing and future well fields, aquifers and recharge areas; watershed land; agricultural land, grasslands, fields, forest land; fresh water marshes and other wetlands; river, stream, lake, and pond frontage; lands to protect scenic vistas; land for wildlife or nature preserve; and, land for recreational use.

Preservation. Protection of personal or real property from injury, harm, or destruction, but not including maintenance.

Real property. Land, buildings, appurtenant structures, and fixtures attached to buildings or land, including where applicable, real property interests.

Real property interest. A present or future legal or equitable interest in or to real property, including easements and restrictions, and any beneficial interest therein, including the interest of a beneficiary in a trust which holds a legal or equitable interest in real property, but shall not include an interest which is limited to the following: an estate at will or at sufferance and any estate for years having a term of less than 30 years; the reversionary right, condition or right of entry for

condition broken; the interest of a mortgagee or other secured party in a mortgage or security agreement.

Recreational use. 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. Recreational use shall not include horse or dog racing or the use of land for a stadium, gymnasium, or similar structure. (See Recreation Project Guidelines)

Rehabilitation. The remodeling, reconstruction, and making of extraordinary repairs to historic resources, open spaces, lands for recreational use, and community housing for the purpose of making such historic resources, open spaces, lands for recreational use, and community housing functional for their intended use including, but not limited to, improvements to comply with the Americans with Disabilities Act and other federal, state or local building or access codes. With respect to historic resources, rehabilitation shall have the additional meaning of work to comply with the *Standards for Rehabilitation* stated in the United States Secretary of the Interior's Standards for the Treatment of Historic Properties codified in 36 C.F.R. Part 68.

Further information and resources are available at the Community Preservation Coalition web site at: <http://www.communitypreservation.org/>

Open Space Proposal Guidelines Rev. 1.0 September 2008