



CPA and Affordable Housing



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Massachusetts
Housing Partnership



Citizens' Housing and
Planning Association



A guidebook on how cities



and towns can use Community

Preservation Act funds to support

local housing efforts



In Appreciation



This guidebook is dedicated to Robert Kuehn (1942-2006), a developer and former president of the Citizens' Housing and Planning Association, who was a pioneer in mixed-income housing, historic preservation and instrumental in the creation of the Community Preservation Act.

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Introduction

SINCE BECOMING LAW IN 2000, the Community Preservation Act (CPA) has proven to be a flexible tool to create affordable housing. Communities have used CPA funds at every stage of the development process, from raising public awareness about housing at the outset to providing funds for specific projects to a host of activities in between. You could say that CPA communities have “written the book” on how to use these funds for housing.

Yet up until now, there has been no book. Examples have been passed on by word of mouth, from consultant to community or during presentations at housing conferences. As CPA has grown—127 communities as of 2007—there’s been a clear need to capture these techniques and success stories in an instructional guidebook.

THE GUIDEBOOK FOR COMMUNITIES ON CPA AND AFFORDABLE HOUSING is one of the first attempts to round up and explain the various ways in which CPA funds can be used for housing. It is intended to be a comprehensive resource for Community Preservation Committee (CPC) members and other local decision makers involved in using CPA funds for affordable housing.

Before we begin listing the various eligible uses and going into detail about how the funds can be used, it’s important to understand the full scope of CPA.

The Massachusetts Community Preservation Act was signed in to law September 14, 2000, after more than a decade of work developing this legislation. Communities that adopt CPA can use the funds for affordable housing, historic preservation, open space and recreation. The law represents the bringing together of four diverse groups who share a common aim to preserve and enhance the vibrant and diverse nature of communities.

While the focus of this guidebook is on how to use CPA funds to promote locally-supported affordable housing efforts, it is not meant to imply that the other eligible CPA activities are not important or worthy of consideration. For additional information about the CPA and the full range of eligible activities visit the CPA umbrella organization, the Community Preservation Coalition at www.communitypreservation.org.

For those who are seeking information on how to use CPA funds for housing, please continue reading. We hope that this guidebook will help you understand how to use the funds effectively in your community.

“You could say that CPA communities have “written the book” on how to use these funds for housing.”

I. CPA and Housing: What the Law Allows

The way in which the CPA law is written explains why funds have been used in such a wide variety of ways for housing. The law allows for funds to be used for the *“acquisition, creation, preservation and support of community housing; and for the rehabilitation and restoration of...community housing that is acquired or created”* under CPA. Of the four areas eligible for spending—open space, recreation, historic preservation and community housing—housing is the only one that includes the word “support.” This allows for a broad and flexible range of activities whenever a sound and rational link is made between the activity and its role in supporting community housing.¹

However, the reuse of existing buildings or new construction on previously developed sites is a stated preference of the law. This is not a requirement and does not require any documentation but is a goal that is in keeping with the state’s policy of encouraging smart growth. Often in practice, a site or property becomes available and the opportunity then presents itself for the creation of affordable housing. Each opportunity will need to be evaluated against a number of important criteria, including those promoting smart growth, before it can be determined if a project is both

feasible and meets a community’s housing goals.

The law refers to the housing to be produced or preserved using CPA funds as “community housing”, but this guide will use the more commonly recognized term “affordable housing”.²

The CPA defines community or low and moderate income housing as housing that serves households at or below 100 percent of the Area Median Income (AMI), as determined by the Federal housing agency, the Department of Housing and Urban Development (HUD). The AMI information for all Massachusetts cities and towns can be found at <http://www.mass.gov/dhcd/components/housdev/HUDincme.pdf>.³

A. Assessing Housing Needs

The law requires each Community Preservation Committee (CPC) to study the “needs, possibilities and resources” regarding community preservation. As part of the study of community preservation needs, the CPC is required to hold one or more public informational hearings.⁴

Some communities may already have an up-to-date housing needs assessment or housing plan that can

¹ M.G.L.C. 44B Community Preservation Act, Section 5 (2) “The community preservation committee shall make recommendations to the legislative body for... and community housing that is acquired or created as provided in this section. With respect to community housing, the community preservation committee shall recommend, wherever possible, the reuse of existing buildings or construction of new buildings on previously developed sites.”

² Ibid. Section 2. “Community housing”, low and moderate income housing for individuals and

families, including low or moderate income senior housing.

³ Ibid. Section 2. “Low income housing”, housing for those persons and families whose annual income is less than 80 per cent of the areawide median income. The areawide median income shall be the areawide median income as determined by the United States Department of Housing and Urban Development.... “Low or moderate income senior housing”, housing for those persons having reached the age of 60 or over who would qualify for low or moderate

income housing.

⁴ Ibid. Section 5. (b)(1) The community preservation committee shall study the needs, possibilities and resources of the city or town regarding community preservation. The committee shall consult with existing municipal boards and shall hold one or more informational public hearings on the needs, possibilities and resources of the city or town regarding community preservation possibilities and resources.

inform the CPC about local housing needs and possible opportunities and resources. For some communities, the CPA will be an occasion to update or expand an existing housing study or plan. CPA funds may be allocated to do housing plans as discussed further under the section on CPA finances. Understanding a community's housing needs provides an essential foundation in knowing how best to direct financial resources. A well-researched housing study may support the "conventional wisdom" about the type and scale of housing needed, or it may point in new directions. While anecdotal information is always helpful, vigorous research is indispensable.

For example, members of the CPA committee may initially conclude that their community needs senior housing, based on direct experience with their own families.

However, further research may prove that there are an adequate number of senior housing options available and that there is a greater need for special needs housing for people with developmental disabilities.

To help CPC committees assess their housing needs, MHP has a publication for housing non-professionals entitled *HOUSING NEEDS WORKBOOK: ASSESSING COMMUNITY HOUSING NEEDS*. It is available on the MHP website at <http://www.mhp.net/uploads/resources/mhphousingneeds.pdf>.

A number of communities in the Commonwealth have approved housing plans under the state's Planned Production Program, whereby a plan is approved, affordable housing production goals established and certified communities gain increased local zoning control in permitting Chapter 40B developments. There is a section in this guidebook that provides additional information on Chapter 40B. For more detailed information about the Department of Housing and Community Development's (DHCD) Planned Production Program (also known as Housing Production Plans), and for examples of approved

housing plans under this program click on http://www.mass.gov/?pageID=ehedterminal&L=3&Lo=Home&L1=Community+Development&L2=Chapter+40B+Planning&sid=Ehed&b=terminalcontent&f=dhcd_cd_ch40b_planprod&csid=Ehed.



When a community decides it needs a Housing Needs Assessment, Housing Study or Housing Plan, it's quite common for a community to seek additional expertise through third-party assistance from a housing consultant, the regional planning agency or a planning department at an institution of higher education. For information on consultants, go to www.macponline.org or http://www.chapa.org/resources_consultants.htm). For information on regional planning agencies, go to http://www.nearc.org/web-content/html/state_direct/mass/mass_index.html.

B. CPA & Housing Funding Basics

1. Basics: Yearly Requirements

Each year at least 10 percent of the community's annual CPA revenues (local and state match) must be spent on open space, historic preservation and community housing or set aside in reserve accounts for each of these activities. The remaining 70 percent can be used toward *any* of the four activity areas, and five percent of the total annual CPA funds can be used for administrative purposes.

When affordable housing activities warrant funds beyond the minimum 10 percent per annum, the CPA allows for spending, up to a possible 80 percent per annum total on housing, in addition to the five percent administrative funds which can be spent on a range of housing related activities. The range of eligible housing activities for both project funds and administrative funds is included in this guidebook.

If the *minimum* 10 percent of funds required to be spent on affordable housing is not spent in a given

year then those funds must be set aside in a reserve account for that purpose. This allows funds to be built up for a future project or program, or accumulated for a particularly large land or building purchase for housing.⁵

2. Bonding

The law allows for municipal bonding or issuance of a note for projects when funds may not be adequate or available in any one year to fund an activity. See Section 11 of the law. The bond payments due each year over the term of the bond are made from future CPA revenue received from the local surcharge. There are particular requirements regarding bonding with CPA funds that a community interested in doing so should research beyond the information provided here.

3. Proportionate Spending

CPA funds can be spent on a housing activity in the same proportion as the percentage of CPA eligible housing units in the development or program. For example, if half the housing units to be created in a development are for households who are income eligible under the CPA, then half of the total cost of the development may be funded using CPA funds.

a. Mixed Use

Mixed-use developments are where different uses occur in the same building or on the same property. A typical example of a mixed use project is a building that has retail shops on the ground floor and residential units on the second floor. Since all uses are regulated by the city or town's zoning bylaw, mixed uses are regulated by local zoning. CPA funds for housing can be used in mixed use developments if the amount of CPA funds is used in the same percentage of the total project budget as the percentage of CPA eligible housing. For example, if there are three retail

stores on the ground floor and three condominiums for residents earning less than 100 percent of AMI on the second floor, then 50 percent of the development project could be funded with CPA funds. This could be called the CPA rule of proportionate spending.

The state agency charged with oversight of the CPA, Department of Revenue (DOR) has issued a guidance document, (File No. 2004-275), on April 23, 2004, regarding this issue as it pertained to Chilmark and a mixed-use development. The DOR guidelines can be found on the MHP web site at: http://www.mhp.net/uploads/resources/cpa_dept._revenue_guidance.pdf.

b. Mixed Income

Mixed income is a term for residential development that contains dwelling units priced for a range of incomes, often meaning a mix of market-rate units and units with rents or selling prices restricted in order to make them affordable for households within specified income ranges. An example might be a development permitted under the state's Local Initiative Program (LIP) with 75 percent of the units at market rate with no price or rent restrictions, and 25 percent of the units price restricted for households earning below 80 percent of AMI. In this instance, the amount of CPA funds for this project would be limited to 25 percent of the project's total development cost (TDC). The DOR has concurred that the ruling cited above applies to mixed-income as well as mixed-use projects.

4. Exempt from Ch. 30B Procurement

Real estate acquired using CPA funds is exempt from provisions of Ch. 30B regarding municipal procurement. This allows for a simpler process for property transactions using CPA funds, however, the price paid needs to be in keeping with customary appraisal practices.⁶

⁵ Ibid. Section 5 (3) The community preservation committee may include in its recommendation to the legislative body a recommendation to set aside for later spending funds for specific purposes that are consistent with community preservation but for which sufficient revenues are not then available in the Community Preservation Fund to accomplish that specific purpose or to set aside for later

spending funds for general purposes that are consistent with community preservation.

⁶ Ibid. Section 5(f) Section 16 of chapter 30B shall not apply to the acquisition by a city or town, of real property or an interest therein, as authorized by this chapter for the purposes of community preservation and upon recommendation of the community preservation

committee, and notwithstanding the provisions of section 14 of chapter 40, for purposes of this chapter, no such real property, or interest therein, shall be acquired by any city or town for a price exceeding the value of the property as determined by such city or town through procedures customarily accepted by the appraising profession as valid.

C. Deed Restrictions for Affordable Housing

The CPA requires property purchased with CPA funds to have a long term deed restriction put on the property. However, the municipality maintains a “real property interest” through the placement of the affordability restriction on the property. The use of deed restrictions to preserve affordable housing is an area that CPCs are advised to seek guidance from appropriate legal counsel. The DHCD Local Initiative Program provides a template for the state approved “Universal Deed Rider” <http://www.mass.gov/Ehed/docs/dhcd/hd/lip/lipdeedrider.pdf>.

D. Leveraging Other Funds

Some housing activities, such as developing new affordable housing, or renovating housing in areas in need of revitalization, may be eligible for other private, state or federal resources in addition to CPA funds. By combining CPA with other funding sources, additional funds are “leveraged”, allowing for better and often more affordable endeavors, resulting in local CPA funds going further. The allocation of CPA funds by a community early on in the planning or development process can make the development more competitive for other funds by this demonstration of local support.⁷

E. Role of the Community Preservation Committee

The Community Preservation Committee (CPC) is charged with studying the community preservation needs, possibilities, and resources within the town;

holding public informational meetings; and recommending annual expenditures within the four eligible areas to the legislative body. These recommendations must then be approved by majority vote of the CPC and local legislative body.

1. Composition of the Committee

The Committee is required by law to include representation from across the four allowed spending areas: open space, historic preservation, recreation and housing. There are five mandated “slots” for one member each from the Conservation Commission, the Historic Commission, the Planning Board, the Board of Park Commissioners and Housing Authority Board of Commissioners. In addition to these statutory members, up to four additional at-large positions can be created at the discretion of the local legislative body.⁸

Not every community has a local housing authority. In this case, the law states that “a person acting in the capacity of or performing like duties” may be appointed. This may be a member of the Local Housing Partnership, Housing Trust or Housing Committee. There is also an opportunity for the appointing authority to fill one of the “at-large” seats with a member who will represent housing interests in addition to the housing authority mandatory slot. In communities that opt to have elected or appointed at-large members, clearly the choices will be determined by the field of candidates. This was the case in Northampton, where a number of people interested in affordable housing ran for the elected at-large seats.

2. Selecting Housing Activities to Fund

The process used to identify housing activities that create, preserve and support affordable housing is one that will need to be developed locally.

⁷ Ibid. Section 14. Notwithstanding the provisions of any general or special law to the contrary, every city and town may accept sections 3 to 7, inclusive, and may thereupon **receive state grants** under section 10. A city or town that accepts said sections 3 to 7, inclusive, shall not be precluded from participating in state grant programs...State grant programs may include local adoption of this chapter among the criteria for selection of grant recipients. Funds in the Community Preservation Fund may be made available and used by

the city or town as the **local share for state or federal grants** upon recommendation of the community preservation committee and the legislative body.

⁸ Ibid. Section 5. (a) A city or town that accepts sections 3 to 7, inclusive, shall establish by ordinance or by-law a community preservation committee. The committee shall consist of not less than five nor more than nine members.... The committee shall include, but not be limited to... and one member of the housing

authority established under section 3 of chapter 121B as designated by the authority, or persons, as determined by the ordinance or by-law, acting in the capacity of or performing like duties of the commissions, board or authority if they have not been established in the city or town. If there are no persons acting in the capacity of or performing like duties of any such commission, board or authority, the ordinance or by-law shall designate those persons.

Some Community Preservation Committees such as Bedford and Newton have developed a request for proposal (RFP) process and proposal review criteria. They solicit the submission of proposals on a set schedule. Other CPCs such as Amherst have been successful at identifying and funding housing activities by a less formal process whereby committee members suggest projects and/or community groups submit requests to the committee throughout the year.

The clearer the CPC can be about the types of projects and activities it is interested in funding, the more on target the response will be from groups and organizations wanting to assist in meeting your affordable housing goals.

F. Counting CPA Housing Units on the Subsidized Housing Inventory

This Guidebook provides communities with information to help understand Chapter 40B and the state's Subsidized Housing Inventory (SHI).

1. Ch. 40B Comprehensive Permits

Massachusetts state law, Chapter 40B, was enacted in 1969. This statute, also known as the Comprehensive Permit Law, was created to address the state's affordable housing shortage.

Chapter 40B sets a standard for communities to provide a minimum of 10 percent of their total housing stock as affordable to households at 80 percent of area median income. Once a community has met or surpassed the 10 percent threshold it is given much more local discretion in reviewing and permitting the proposed development. Therefore, most communities are very aware of where they stand vis à vis the Ch. 40B 10 percent threshold and are often interested in having any new housing initiatives or developments result in affordable units

that will "count" on the state's Subsidized Housing Inventory (SHI). This is the official list for tracking a municipality's percentage of affordable housing.

Units created with CPA funds are eligible for inclusion on the state's SHI. This is currently done through

an application process to DHCD's Local Initiative Program (LIP).

CPA funds can be used to create housing for households up to 100 percent of AMI. Chapter 40B SHI-qualified units are for up to 80 percent of AMI. Therefore, in order for CPA-funded units to count toward a community's 10 percent threshold, they

must serve households at or below 80 percent of AMI. However, there are valid reasons why a municipality would want to offer housing at an affordability level above 80 percent of AMI. That is a local decision based on local needs and goals.

2. Local Initiative Program (LIP)

The state's Department of Housing and Community Development's Local Initiative Program provides a way for affordable units created with CPA funds to be included on the state's Subsidized Housing Inventory (SHI). More detailed information about LIP and Local Action Units (LAUs) is available at www.mass.gov/dhcd.

The following is a summary of the eligibility requirements for LAUs:

1. The units have resulted from city or town action or approval.
2. The units will be sold or rented on a fair and open basis and will be subject to an affirmative fair marketing and resident selection plan approved by DHCD.
3. The unit sale price or rent is affordable to households at or below 80% of area median household income.
4. The unit has its long-term affordability secured by use restrictions approved by DHCD.

“The allocation of CPA funds by a community early on in the planning or development process can make the development more competitive for other funds.”

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The Local Initiative Program currently allows up to 70 percent of the units in a development to be designated as local preference. However, the use of local preference categories must comply with applicable fair housing laws. Typically local preferences include people who already live in the community. DHCD can provide additional information on using local preference categories.

a. A Note About Accessory Apartments

Accessory apartments are a local affordable housing option that is often popular with communities because it creates additional housing while using little or no additional land, in already developed areas. The LIP allows accessory apartments to be included on the SHI if they meet the requirements listed above for LAUs. Accessory dwelling units that are already occupied would not meet the requirement for affirmative marketing on a “fair and open basis”. The zoning for and permitting of accessory apartments may be an important and valuable part of a local strategy to provide affordable housing options, however, it may not always meet the criteria for counting these units on the SHI.

G. CPA Oversight & Data Collection

The Community Preservation Act is overseen by the Massachusetts Department of Revenue (DOR) www.mass.gov/DOR. DOR’s website has useful information regarding the mechanics of managing funds and reporting requirements. There are mandatory reporting requirements that municipalities must adhere to in administering CPA funds.

It is essential to collect good information about CPA funding, and track and assess how CPA is working.

The DOR requires three reporting forms, CP 1-3, available on the DOR website along with detailed information about submission deadlines and other reporting requirements. The DOR forms aggregate information by the allowed spending categories and do not request information about individual activities within each category.

The Community Preservation Coalition, in partnership with the Massachusetts Executive Office of Energy and Environmental Affairs, is managing on-line data collection for CPA communities to provide a much needed data source about specific activities, amount of land purchased and housing units produced or preserved with CPA funds. We encourage communities to provide detailed information on CPA activities to both DOR and EOEEA because part of the long term success of CPA will depend on this information.

II. Eligible CPA Housing Activities

A community may need to augment existing staff or technical capacity in order to identify and implement affordable housing activities. A municipal department, board or committee may request funds from the CPC for the purpose of building capacity.

Cambridge leads way with CPA

SINCE CAMBRIDGE'S ADOPTION OF CPA in 2001, it has allocated approximately \$57 million to affordable housing initiatives, totaling about 80 percent of all CPA expenditures. Most of this funding has been funneled through its Affordable Housing Trust Fund. All told, Cambridge CPA funds have supported the creation of more than 550 affordable units of housing.

Part of the city's focus has been homeownership. Cambridge has contributed \$6.5 million to help first-time homebuyers. The program provides direct assistance to help qualified individuals and families purchase their first home in the private market. The program also puts a long-term lease restriction on the property, creating permanent affordability in the city. So far, 38 homebuyers have used this fund to buy a home.

1. Capacity Building Activities

To most effectively use CPA funding, communities may need to augment their existing capacity to promote affordable housing.

There is a wide variation in capacity among towns and cities in Massachusetts, ranging from small towns with limited staff capacity to those with planners who have varying degrees of affordable housing expertise. A small number of communities have staff dedicated at least part-time to housing issues. Personnel that can play this role include an assistant or associate planner or, a housing coordinator. Larger communities often have housing and community development departments that focus largely on affordable housing issues.

No matter what the size, communities should take proactive steps to ensure that CPA funds are spent judiciously. To do so, communities should consider any of the following provisions:

► Planning

Housing Plans provide the necessary blueprint for prioritizing and implementing affordable housing initiatives based on documented local needs, community input and existing resources. Without such a plan, a community must respond reactively to development proposals or comprehensive permit applications instead of having a framework in which to proactively guide new development.

► Dedicated Municipal Oversight

Communities should identify and support or build a viable organizational structure to focus on local housing issues, make recommendations on CPA funding for housing, and implement the housing plan. Some communities already have a housing partnership, housing committee or a housing trust, or even a tax-exempt non-profit 501(c)(3) housing entity. Others use their housing authority for broader local oversight of affordable housing issues.

Chatham uses CPA in variety of ways

CHATHAM EXEMPLIFIES THE FLEXIBILITY OF HOW CPA FUNDS can be used. For example, it allocated \$135,000 for the purchase of a commercial property. The space is being converted into four condominiums, ready for occupancy at the start of 2008, using sustainable design strategies. The Lower Cape Cod Community Development Corporation (LCCDC) is the developer, and the Chatham Housing Authority coordinated the outreach and marketing. The Chatham Affordable Housing Committee and Friends of Chatham sponsored the development.

Chatham also used \$317,000 in CPA funds to provide predevelopment and gap financing to support 47 rental units. This money helped leverage state funding to increase the affordability of this “friendly” Chapter 40B project. The seven-acre project is comprised of five-plus acres owned by the Chatham Housing Authority (next to an existing affordable homeownership development, Chatham Homeownership Opportunities) and a one-plus acre lot donated by the town to the project. The completed development includes 47 rental units developed by The Community Builders (TCB), three new homes built by Habitat for Humanity of Cape Cod. All units are affordable.



Chatham residents approved CPA funding to support the creation of 47 affordable rental units.

The rental units have several income tiers for families and individuals earning up to 30, 50 and 60 percent of area median income. The units have been occupied for about a year.

For more on Chatham, see pages 16 and 32.

► Professional Support

Each community should have some affordable housing expertise. This may be either through in-house staff, such as a planner, housing coordinator or assistant planner, or with the use of consultants. People in this role can help implement housing strategies and ensure affordable units get counted and remain on the Subsidized Housing Inventory.

► Partnerships

The successful implementation of affordable housing strategies relies on gaining access to a wider range of resources—financial and technical—as well as forging partnerships with developers and lenders. CPA funds are an excellent vehicle for leveraging other important resources.

► Community Support

Because housing production strategies rely on local approvals from governing bodies like town meeting and the city council, community support for new initiatives are essential. Strategic efforts to better inform residents on the need for affordable

housing and specific new initiatives will help generate a greater understanding of the benefits of affordable housing, reduce misinformation, dispel negative stereotypes, and ultimately garner political support.

CPA funds can be used for the following activities to help increase this local capacity for affordable housing support and/or development:

Administrative/Organizational Support— This includes costs such as staff time or professional services to help manage local CPA funds and other supplementary expenses such as printing, postage, stationery, phone, transportation to sites, rent, and legal fees. These funds can also be used for research and plans, studies, or technical reviews to support local decisions on community housing projects. Funds of up to five (5) percent of a community’s annual CPA revenues can be used for costs associated with the administrative and operating expenses of the CPC. In some instances other housing activities such as a housing planner or consultant, a planning

study, or site feasibility work may be appropriately funded from CPA administrative funds, or as outlined below, may be in addition to the administration/organizational support.

Housing Coordinator— Funds for a professional to support the implementation of the Community Preservation Plan and other local affordable housing plans as well as technical input on development proposals, ranging from a part-time staff person or consultant to several staff positions if warranted.

Grant Writing— Provide funding to secure necessary professional services to prepare grants or other funding applications as part of the community's efforts to leverage public and private funding support to insure affordable housing projects are financially feasible. Note: In most cases a project developer, once selected, will be responsible for securing grants and other funding awards.

Local LIP or Chapter 40B Affordable Housing Guidelines— Fund the preparation of Affordable Housing Guidelines, Local LIP or Chapter 40B policies. These are locally developed and adopt review procedures and criteria. These guidelines can help communities affect the types of housing proposals that are submitted by providing guidance to developers on the types of projects that will be acceptable.

Local Procedures Manuals— Provide information on how a specific community plans to implement affordable housing projects based on the existing organizational structure of the municipality, including procedures that meet state requirements such as those under the Local Initiative Program.

Matching Funds— Provide local matching funds that are often necessary to secure essential state or federal funding for housing development projects.

Affordable Housing Trusts— Direct funding to a dedicated fund that supports affordable housing such as a Municipal Affordable Housing Trust Fund, or an approved housing fund established by a tax-exempt non-profit organization.

Planning— Finance the preparation of affordable housing plans, including housing needs assessments that can be prepared separately or as part of an affordable housing plan, to help communities assess local housing needs and prepare strategies and production

goals to meet these needs. Planning activities may be an eligible administrative expense of the CPC.

Rezoning— Promote affordable housing by hiring professionals to help prepare changes in zoning by-laws that offer inclusionary zoning with mandates or incentives in exchange for affordable units, or allow housing in nonresidential areas or in combination with nonresidential uses. Some of these types of zoning may include inclusionary zoning, flexible zoning, smart growth overlay districts through Ch. 40R (http://www.mass.gov/?pageID=eheadterminal&L=3&Lo=Home&L1=Community+Development&L2=Community+Planning&sid=Ehead&b=terminalcontent&f=dhcd_cd_ch40r_ch40r&csid=Ehead), affordable development on nonconforming lots, or allow mixed-use.

2. Predevelopment Activities

CPA funding is an important resource to jumpstart project development. A board or committee of the city or town, or the project sponsor, may request CPA funds to finance predevelopment activities. These activities may be needed to determine project feasibility, plan for the number of housing units to be built or preserved, create preliminary site plans for the best use of an entire parcel. It may be appropriate to spend funds on predevelopment activities for projects that turn out, after adequate investigation, to not be feasible. Predevelopment activities, also referred to as “soft costs”, are eligible to receive CPA funds and may include the following:

Appraisals— Cover the costs of an appraisal to determine current market value of a potential development site.

Preliminary Environmental Feasibility Studies— Fund tests to insure that there are suitable site conditions for development and indicate where development is most suitable on any particular site, including Phase I Environmental reports, test borings, wetlands delineations etc.

Preliminary Financial Feasibility Analyses— Provide funding for consultants to prepare project pro formas to estimate project costs and subsidy requirements.

Legal Costs— Support project costs related to legal issues including title matters, acquisition, and other legal issues that need early resolution.

Requests for Proposals (RFP)— Support costs related to preparing the necessary documents for soliciting proposals or applications from qualified applicants to conduct a specified scope of services or obtain funding.

Technical Review of Development Proposals— Hire consultant(s) to review development proposals that include affordable housing and provide important feedback to the community on a wide range of feasibility issues.

In 2005, Westport provided \$60,000 in CPA funds to conduct predevelopment work and a feasibility analysis for a town-owned parcel on which they intend to build affordable housing. In 2006, the town followed up, approving another \$750,000 in CPA funding to acquire a private site adjacent to the Town-owned one—the two parcels

[illegible]

Additionally, it is important to note that CPA funding for housing production does not guarantee that the affordable units will be included in the Subsidized Housing Inventory. All Chapter 40B requirements of affordability must be met to qualify a unit for

inclusion in the SHI. (See Section I Overview for more details on Chapter 40B.)

Eligible housing production related activities are listed below. These activities are not necessarily exclusive of each other as some may be effectively used in combination with one another.

Accessory Apartments— Promote the creation of accessory apartments which are usually within existing residences or out-buildings. These modest size apartments increase the supply of affordable rental units. CPA funds can be used to support the costs of necessary improvements.

Adaptive Reuse— Convert existing nonresidential properties, such as schools, mills, churches, hospitals, office buildings, warehouses, etc., to housing.

Plymouth HA development uses CPA

PLYMOUTH HAS ALLOCATED \$2.5 MILLION in CPA funds and \$200,000 in CDBG funding for the development of 36 units of senior housing on an acquired parcel adjacent to an existing housing authority development. The project is being developed by the non-profit Plymouth Bay Housing Corporation and the new senior units will be managed by the Plymouth Housing Authority. The project sponsor—Plymouth Bay—anticipates that the community’s decision to support the effort with CPA funding will help it leverage additional gap financing from the state.

Plymouth has also committed \$500,000 to create the Local Affordable Rental Housing Development Program in an effort to facilitate the creation of rental housing in existing vacant space in downtown and village center buildings that would not be cost-effective with conventional financing. Typical projects are expected to involve the rehabilitation of existing housing units in downtown buildings, the conversion of upper story space in commercial buildings to housing, as well as the adaptive reuse of other types of underutilized properties.

The guidelines for this new initiative are modeled after DHCD’s Housing Development Support Program. See www.mass.gov/dhcd for more details on this program.

Additions to Existing Developments— Expand existing affordable housing developments by building a new addition or adding another structure on or adjacent to the same parcel so as to increase the number of affordable units, whether rental or ownership.

Building Acquisition— Acquire existing structures to improve and sell or lease to qualifying households.

Land Acquisition— Purchase land to build affordable housing through a Housing Trust or tax foreclosure, for example. Communities can also partner with the Housing Authority, non-profit or for-profit developers to acquire property and build new housing.

Buy-Down Programs— Purchase and rehabilitate existing housing to be leased or sold to qualifying occupants. Units will require deed restrictions to preserve affordability.

Deed Restriction Programs— Set-aside funding to convert existing privately owned housing to long-term affordability through the purchase of deed restrictions. It is important to insure that all state requirements under the Local Initiative Program are met to have these units count as part of the Subsidized Housing Inventory (see Section I—CPA Overview).

Development of Existing Publicly-Owned Property— Develop affordable housing on public-owned property, including land owned by the city or town or by the local housing authority. Don’t overlook smaller lots in existing neighborhoods, including non-conforming lots where zoning relief or the use of Ch. 40B can make affordable housing development feasible.

Increase Affordability— CPA funding can further increase the number of affordable units in any development, for example beyond what is required by an inclusionary zoning bylaw or a 40B development.

Infill Housing— Develop new housing on small lots in existing neighborhoods. Sites can be acquired (often through tax foreclosure), donated or purchased. Habitat for Humanity programs are often examples of this type of activity. Once again, consider lots that do not conform to existing zoning requirements but might accommodate new starter homes or smaller houses for empty nesters.

Innovative Housing Options— Subsidize a wider range of housing types such as congregate housing, limited equity housing, co-housing, mutual housing, assisted



Did you know?

Stow has used CPA funds to preserve affordable housing where use restrictions were about to expire. The town approved \$350,000 for the 60-unit Pilot Grove rental project and placed permanent affordability restrictions on 37 units that were at risk of being converted to market-rate.

living, etc. to meet the wide range of local housing needs.

Mixed-Income Housing— Subsidize housing development to increase the number of affordable units in a mixed-income development beyond what may be required under existing zoning or Chapter 40B.

Mixed-Use Development— Integrate housing with other property uses, most typically retail or office uses.

Recycled Housing— Move an existing house slated for teardown to another site, make necessary improvements, and sell or lease to a qualifying occupant in exchange for affordability restrictions. This is typically done with a municipally-owned or other donated parcels.

Site Improvements— Make site improvements including water and sewer connections, well installation, septic installation or repair, or other underground utilities associated with an affordable housing development.

Special Needs Housing— Create housing for special needs populations such as those with mental or physical disabilities, AIDS, etc. CPA funding could help leverage additional state funding from programs such as the Housing Innovations Fund or Facilities Consolidation Fund.

4. Housing Preservation & Improvement Activities

Communities are also concerned that they do not lose units that already meet the housing needs of moderate and lower income residents, including seniors and special needs populations. For units to count as part of

the Subsidized Housing Inventory, they must be subject to use restrictions or resale controls to preserve their affordability for a minimum of 15 years from the date of subsidy approval or completion of rehabilitation. Some eligible activities include the following:

Handicapped Accessibility Improvements— Provide grants or loans to provide accessibility improvements to allow qualifying disabled or elderly occupants to continue to live safely in their homes, whether for rental or ownership developments.

Housing Rehabilitation Programs— Offer funds for improvements, primarily code-related, to owner-occupied or investor-owned homes occupied by qualifying households in exchange for deed restrictions. Note that Section 5 b(2) puts limits on using CPA funds specifically for rehabilitation of housing. There have been various interpretations of this section and it is always advisable to check with your municipal counsel for final determination of an activity's eligibility under the statute.

Improvements to Housing Authority Developments— Make improvements to Housing Authority developments or other subsidized developments. These cannot be routine maintenance items. It should be recognized that there may be other public sources of modernization funding for public housing that should be pursued initially. See www.mass.gov/dhcd for information from the state's Department of Housing and Community Development and www.hud.gov for the U.S. Department of Housing and Urban Development.

Preserve "Expiring Use" Properties— Refinance properties where affordability restrictions are due to elapse to maintain units as affordable, as opposed to allowing the units to convert to market prices. For more information on resources directed to expiring use units, see websites for DHCD (www.mass.gov/dhcd) and MassHousing (www.masshousing.com).

5. Financial Assistance to Qualifying Households

Funds may also be used to provide subsidies directly to eligible households to lower the costs of obtaining affordable housing. Eligible activities in this category include the following:

.....

Down Payment and Closing Cost Assistance— Provide financial support to first-time homebuyers to help cover the down payment and closing costs. This assistance requires deed restrictions to preserve affordability.

Individual Development Accounts (IDA's)— Offer a form of matched savings where qualifying participants make contributions into a savings account that is matched at some established ratio by another entity, such as a non-profit organization, with public and/or private funding to support the purchase of a home (IDA's have also been used for business start-up and education expenses).

Interest Rate Subsidies— Reduce the mortgage interest rate to make monthly payments more affordable to first-time homebuyers or those who qualify for age-restricted developments. These subsidies could be used in tandem with other state programs such as the Soft Second Loan Program, administered by MHP. For more information on the Soft Second Program see <http://www.mhp.net/homeownership/>.

Mortgage Subsidies— Provide a subsidy to fill the gap between the purchase price of an existing home or condominium and the affordable price based on the formula established under the state's Local Initiative Program (LIP), requiring that the purchaser meet all LIP requirements including the acceptance of a deed rider.

Rental Assistance— Offer direct assistance in the form of rental vouchers that subsidize the difference between market rents and what a household can afford to pay, based on spending no more than 30 percent of one's household income on housing.

Support for Other Rental Expenses— Provide subsidies, either grants or deferred loans, to qualifying households to help them defray costs related to accessing rental opportunities including security deposits, moving costs or utility bills. CPA funding could be provided through the Housing Trust Fund or a renters revolving loan or guarantee fund to be repaid at a later time.

Technical Assistance— Fund technical assistance to property owners to help them create affordable accessory units.

Chatham uses CPA to help homebuyers

SEVERAL COMMUNITIES ARE initiating or planning mortgage buy-down programs whereby CPA funds are used to fill the gap between the market price and an affordable one for first-time homebuyers.

Chatham has committed \$60,000 for a purchase thus far and other communities such as Cambridge and Newton have similar programs.

It is important for communities to affirmatively advertise the availability of this funding and prepare a Ready Buyers List that includes those qualifying applicants that have submitted income and asset documentation as well as a letter of interest from a lending institution per the requirements of the Local Initiative Program (LIP).

Once an applicant from this list selects a unit to purchase, additional documentation will be required such as the home inspection, appraisal, signed Purchase and Sale Agreement and mortgage commitment.



6. Multiple Use Strategies

Communities can fund projects that incorporate more than one or all three funding categories of CPA—historic preservation, open space preservation, and affordable housing. CPA represents an opportunity to reconcile some traditional competition for funding among these different funding categories, accomplishing several municipal goals simultaneously. Also, CPA funds should be drawn from each applicable use category, reflecting the proportionate amount of funding needed for housing, open space or recreation, and historic preservation:

Historic Preservation and Housing—Incorporate affordable housing into the improvement of existing historic structures.

Open Space and Housing— Preserve open space in tandem with the creation of affordable housing clustered on a part of the parcel. CPA open space funds can be used in combination with CPA housing funds. Housing funds may be used on the parcel set-aside for housing construction.

Bedford is a leader in CPA use

BEDFORD WAS THE FIRST TOWN TO ADOPT CPA and has been a leader in using it for affordable housing.

In 2001, the Duplex Conversion Project was approved for \$131,940 in CPA. Coordinated by the town's housing trust, a duplex was purchased in October 2002, renovated, converted into two condominiums and sold to first-time homebuyers for \$125,000. The deed restrictions insure that the units will remain affordable in perpetuity.

Also in 2001, \$161,200 of CPA funds was approved to fund a condominium buy-down program. This enabled the town's housing trust to purchase market rate or previously restricted units that still did not meet all of the requirements for counting as part of the SHI, insuring that the units would be affordable in perpetuity upon resale to qualifying households.

Community Preservation funds subsidize the gap between the market and the affordable prices based on LIP requirements, and also for the initial unit covered the condo fees to insure that the owner paid no more than

\$150 per month in fees. One condominium unit has been purchased to date through this program. The housing trust annually verifies this owner's income and if it exceeds 80 percent of area median income, the owner is responsible for a proportionately higher amount of the condo fee.

To support affordable rental housing development, the town approved \$220,000 in CPA funding to support the Patriot Place development in its historic town center. This

funding, in combination with other state subsidies, allowed the developer to alter the design to make it more harmonious with its historic location and make seven of the 10 units affordable. Three of the units will be affordable in perpetuity, and the other four affordable units will remain so until the developer repays the CPA funding that was



provided as a 40-year loan. The project was completed in the summer of 2005 and is fully occupied.

Bedford has also committed \$25,000 in CPA funding for predevelopment studies and another \$700,000 towards the development of 14 units of mixed-income rental housing on town-owned land. Twelve of the units are affordable.

Open Space, Historic Preservation and Housing—

Combine the improvement of an historic structure while creating new affordable housing within the historic structure, in another existing structure or through new construction, as well as preserving open space on the same or adjacent parcels.

It should also be noted that CPA allows recreational uses that can be used in combination with affordable housing production such as locating housing adjacent to community athletic fields.

7. Regional Strategies

Communities are not restricted to spending CPA funds only within the city or town's borders. They are allowed to consider strategies that extend beyond their geographical boundaries but still satisfy important local needs. These might include:

Collaborative Implementation of Programs or Services— Establish a collaboration or consortium of communities to identify opportunities for

implementing housing programs and services to serve all participating communities, pooling CPA funding for such efforts.

Regional Planning— Develop a regional housing plan.

Shared Development— Support affordable housing or mixed-income development projects that span borders.

Infrastructure Support— Provide funding to support the extension of important infrastructure, such as water, sewer services or roads, from an adjacent community, to service affordable housing development.

“Communities are not restricted to using CPA funds within its borders. They are also allowed to consider supporting regional strategies.”

III. Highlighted Housing Activities

The previous section outlined the various ways municipalities, housing authorities, non-profit and for-profit organizations have used CPA funds to create, preserve and support affordable housing. The next section takes a more in-depth look at some of the key housing activities for which CPA funds may be used.

1. Capacity Building Activities

Housing Coordinator

Purpose: To coordinate the implementation of the Community Preservation Plan for housing or other approved local plans such as an Affordable Housing Plan or Master Plan.

Resources Required: A designated staff or committee to supervise the activities of the housing coordinator. This may be a municipal housing trust, housing partnership, housing committee, community development department or local housing authority.

Housing coordinators can be hired as staff and report to a public official (planner, town administrator, town manager, mayor) or be hired as a consultant based on an agreed-upon scope of services and fee schedule. The cost of a housing coordinator varies depending upon type and amount of work required.

Implementation Process: The designated municipal committee prepares a job description, affirmatively advertises its availability and selects the most qualified applicant.

Where Implemented: Various municipalities have handled this need differently. For example, the Town

of Marshfield issued an RFP for a housing coordinator position and has hired consultants over the past several years. The Town of Grafton has hired an assistant planner after receiving initial guidance from a housing consultant. At one time, Bedford shared a housing consultant with the Town of Lincoln. Holliston is working with a consultant and is likely to hire a part-time housing professional using CPA funds. Weston supports a housing position with a combination of CPA and other town revenues. CPA funds have also been used to hire a Community Preservation planner in Randolph and a CPA liaison in Bridgewater. Sudbury has used CPA funds to hire a part-time housing coordinator.

Pros: To assume a more proactive role in promoting affordable housing and executing official housing plans, most communities must augment their capacity with some specialized expertise in housing programs, policy and development.

Cons: The housing coordinator's success often depends on having public support for affordable housing, as well as an approved local plan. For small communities without a sizable CPA budget, the housing coordinator position can represent a substantial portion of available funding.

Affordable Housing Plans

Purpose: To assess the needs and the priorities of a community or region and develop strategies to promote affordable housing to meet those needs and local priorities.



Resources Required: A designated local committee or municipal department is necessary to oversee the preparation of the housing plan. If the municipality does not have adequate in-house staff capacity to prepare the plan, it should seek the services of a consultant.

Understanding a community's housing situation is the foundation of any good housing plan and communities generally have their situation analyzed early in the process. Known as a Housing Needs Assessment, this is typically an important component of any housing plan. An assessment can be produced as separate documents under separate contracts from the affordable housing plan or as part of the plan. A needs assessment provides a community with a documented

snapshot of current housing conditions and housing affordability. It also identifies gaps between what housing is available to serve local residents and what is required to meet local needs. The Massachusetts Housing Partnership has prepared a resource guide on the preparation of housing needs assessments. Entitled "Housing Needs Workbook", it's available at www.mhp.net.

Implementation Process: The local committee that is designated to coordinate a community's affordable housing plan should assess in-house capacity, and if outside assistance is needed, prepare a Request for Proposals to select a consultant to undertake the work. It is useful to reach out to housing consultants to solicit their interest in responding to the RFP. After

Planned Production Program an option for communities¹

Note: The Planned Production Program requirements may have changed since the publication of this guidebook. Check with DHCD for the most up to date information on this program.

PLANNED PRODUCTION IS ONE OPTION that a municipality has available when considering the development of an Affordable Housing Plan. The Massachusetts Department of Housing and Community Development (DHCD) administers the Planned Production Program in accordance with regulations that enable cities and towns to do the following:

- Prepare an affordable housing plan that demonstrates production of an increase of .75 percent over one year or 1.5 percent over two years of its year-round housing stock eligible for inclusion in the Subsidized Housing Inventory for approval by DHCD.
- Through local ZBA action, deny a comprehensive permit application during the period of certified compliance, which is 12 months following submission of the production documentation to DHCD, or 24 months if the 1.5 percent threshold is met.

For the plan to be acceptable to DHCD it must meet the following requirements:

- Include a housing needs assessment to establish the context for municipal action.
- Address a mix of housing consistent with identified needs and market conditions.
- Include a description of use restrictions.
- Address at least one of the following strategies including:
 - Identification of geographic areas in which land use regulations will be modified to accomplish affordable housing production goals.
 - Identification of specific sites on which comprehensive permit applications will be encouraged.
 - Preferable characteristics of residential development such as infill housing, clustered areas, and compact development.
 - Municipally owned parcels for which development proposals will be sought.

Currently the state has approved about 75 plans under Planned Production, and approximately a dozen communities have been certified under the program by achieving the stated unit production goal. Once certified, the municipality does not have to accept unwanted comprehensive permit projects for a 12-month period. To review approved Planned Production Plans, visit DHCD's web site at www.mass.gov/dhcd.

¹ Massachusetts General Law Chapter 40B, 760 CMR 31.07 (1)(i).

the committee has made its selection, the planning process typically takes approximately six months to complete.

The plan should incorporate participation of community residents through at least a couple of public forums. These public meetings allow residents to learn more about the issue of affordable housing and weigh-in on local challenges and opportunities for affordable housing development. Many communities seek local approval from the board of selectmen or mayor.

The Planned Production Program is another planning option available to communities. Enacted by the state as an addition to Chapter 40B, it enables cities and towns to adopt an affordable housing plan that demonstrates a certain level of affordable housing production. If the state certifies that the locality has complied with its annual goals, the community can deny comprehensive permit applications without opportunity for appeal by developers. For more information, see the sidebar on Planned Production in this section.

Where Implemented: Affordable housing plans have been prepared by many towns, some under Executive Order 418 that provided funding for such planning in the past, others as part of a Master Plan or Local Comprehensive Plan, and more recently under the state's Planned Production Program.

Pros: An affordable housing plan provides a blueprint for a community to make well-informed decisions regarding the investment of limited CPA funds. A good plan will provide specific direction on how CPA funds can be best utilized to implement key strategies that will lead to actual unit production. These plans can also be incorporated into a community's master plan as the housing element. With an inclusive public process, the planning effort presents an excellent opportunity to provide outreach and education on the issue of affordable housing, dispel negative stereotypes and build local political support for housing initiatives and CPA funding commitments.

Cons: Affordable housing plans are rarely useful if approved and then put on a shelf and ignored. The designated committee should ensure that essential resources and political support are secured to implement priority short and long-term strategies.

2. Predevelopment Activities

Preliminary Environmental Feasibility Studies

Purpose: To assess site conditions related to a range of environmental issues to determine if specific parcels are suitable for residential development and if so, where such development should most appropriately be sited. Feasibility analysis typically include a Phase I Initial Site Investigation (see note below), wetlands delineations, test borings and perc tests to determine conditions for septic systems, possible existence of endangered species, and traffic and access issues.

Note: A Phase I Initial Site Investigation is an inspection of the site for possible contamination and review of the property, including past uses and ownership, review of public records and initial site reconnaissance.

Resources Required: A designated municipal board or committee should be identified to coordinate this work. The amount of CPA funding depends on the size and complexity of the site(s) to be studied.

Implementation Process: The designated local board or committee that is responsible for housing-related activities should request the necessary CPA funds, prepare the Request for Proposals for such services, procure bids for the scope of work, select a qualified consultant to undertake the work, oversee progress, and review results. A time period of 10 to 12 weeks should be sufficient to complete this work.

Where Implemented: Such studies have been conducted on publicly-owned parcels in Falmouth, Acton, Amherst, Hanover, Harvard, Harwich, Holliston, Chilmark, Sudbury, Yarmouth, Wareham, Westford and Boxford.

Pros: These preliminary investigations offer credible and realistic expectations regarding a wide range of site development issues and enable the community to assess what housing can or cannot be accommodated on a particular parcel. This analysis promotes better project planning and avoids potential pitfalls that may add to project costs and delays. This information also provides valuable supportive documentation in Requests for Proposals. Having experienced professionals undertake this work adds credibility and can

What's covered in a feasibility study?

THE TOWN OF HANOVER approved \$32,000 in CPA funds for a feasibility study of a 6.59-acre parcel owned by the Hanover Housing Authority. The scope of services for a feasibility analysis included the following:

1. **Data Collection:** research on local zoning and regulation, utilities, soils, reconnaissance level survey, and endangered species;
2. **Survey Base Plan:** review of deeds and easements, flag wetland boundaries, map topography, and prepare base plan;
3. **Data Analyses:** narrative describing constraints and opportunities for development;
4. **Development Options:** prepare development alternatives based on site constraints, opportunities and community's initial plans;
5. **Additional Design Development:** prepare final conceptual plan suitable for presentation;
6. **Preliminary Engineering:** needs analyses for utilities, drainage, traffic, and septic system feasibility;
7. **Feasibility Report and Plan:** report that depicts different development strategies that address general topography and site conditions, wetland resources, soil types and septic system suitability, traffic assessment, utility infrastructure and design limitations, storm water management considerations, access analysis, roadway conditions, intersection sight distance, zoning and permitting, and recommended regulatory waivers;
8. **Meeting Attendance:** attend at least three meetings;
9. **ANRAD:** prepare an Abbreviated Notice of Resource Area Determination.

help the sponsoring entity in gaining additional local approvals and funding necessary for the development to proceed.

Cons: If localities are not clear and very specific about the scope of services and do not select a qualified consultant, the resulting work may be disappointing and have limited utility.

Requests for Proposals (RFPs)

Purpose: Requests for Proposals solicit interest from firms or individuals to undertake a specific scope of services and provide a competitive process for selecting the most qualified respondent. RFP's are prepared for a wide variety of purposes where professional services are required, including almost all of the capacity-building and predevelopment activities cited in Section II. They are also instrumental in selecting developers for publicly owned property.

The Massachusetts Housing Partnership has a comprehensive resource that can assist municipalities in the writing of RFPs, *Developing Affordable Housing on Public Land*. It is available on the MHP website at http://www.mhp.net/uploads/resources/mhp_public_land_guide2.pdf.

Resources Required: The municipality should consider which board or committee is responsible for coordinating the RFP process. Typically it will be the same entity that is responsible for overseeing local housing issues.

If a qualified municipal staff person is available, they can prepare the RFP and provide professional support in the proposal selection process. Some volunteer committees have successfully prepared RFPs for development. Another frequently used alternative is to hire a consultant to assist in the preparation of the RFP. Fees for this type of work depend on the size and complexity of the project.

Implementation Process: If using a consultant, the local board or committee should arrange to meet with the consultant to discuss the project and cover the following issues:

- The objectives of the project;
- Conditions of the property, site and buildings including any information derived from preliminary feasibility studies (see Section II);
- Regulatory constraints (i.e., existing zoning, need for comprehensive permit, wetlands, Title V);
- Available funding;
- Neighborhood concerns (if any);
- Timeline.

Any plans or other documentation relating to the project (i.e., surveys, appraisals, title, preliminary

tests and feasibility work, photos or drawings, design guidelines) should be presented to the consultant for review and possible inclusion or reference in the RFP. Communities should allow at least four to six weeks for the preparation of the RFP, then meet again with the staff person or consultant to review comments and finalize the document.

It is extremely important to undertake an affirmative and aggressive outreach effort to get the word out on the availability of the RFP. This can be accomplished by listing it on the state's central registry at www.sec.state.ma.us/spr/sprinf/infocent.htm, announcing it in local and regional newspapers, in publications that cover minority or women-owned businesses and on municipality web sites. Additionally, RFP availability can be communicated via notices to local and regional non-profits and developers, state and regional housing organizations and in trade association publications.

The municipality should issue the RFP and allow at least 60 to 90 days until the due date for proposals, depending on how much detail is required of the respondents. Especially for smaller projects, the RFP should not require substantial expenditures of time and money for the preparation of proposals. Some preliminary budgets, site plans, elevations and floor plans are standard. However, if respondents are required to invest significant funding into the preparation of the proposals, they may decide not to submit responses. Also, any preliminary feasibility analyses, site planning and design work that has already been done should be noted in the RFP. The more informative an RFP, the more likely a community will get proposals that will be of high quality as well as easy to compare.

The municipality should coordinate the selection process following the receipt of the proposals. It is essential that all references be checked and the responses documented. When possible, additional references outside those offered by the respondents should be contacted. An evaluation sheet should be used to rank respondents based on the selection criteria listed in the RFP, and the ranking should be documented based on the contents of the proposal and references. The municipality may also decide to interview one or more of the respondents or conduct some site visits of completed developments.

What's the difference between an RFP and an RFQ?

REQUESTS FOR PROPOSALS (RFPs) and Request for Qualifications (RFQs) both involve soliciting proposals on a competitive basis. They are an alternative to the lowest-bidder process as they look beyond cost estimates in the selection of a contractor to undertake a specific scope of work or to award funding. An RFP asks respondents to indicate how they will undertake a particular project and includes a number of competitive ranking criteria for determining the best proposal. An RFQ is focused on selecting the respondent based more directly on past experience and qualifications. The preparation of RFP's and RFQ's are both eligible under CPA.

Where Implemented: RFP's supported by Community Preservation funding have been prepared in many communities. Holliston and Carlisle are two examples.

Pros: Besides the basic legal requirements under state public procurement requirements, RFP's offer an excellent process for selecting the most interested and qualified professional. RFP's that offer clear guidance on the scope of services and provide background information are likely to solicit more thoughtful and feasible proposals that will enable the locality to more effectively move forward with a project.

Communities should also be cognizant of the state rules regarding the issuance of contracts. State procurement regulations under Chapter 30B stipulate that any contract issued by a public entity for more than \$25,000 must include a competitive process involving written proposals that are ranked based on specified qualifications on a competitive basis. Public contracts for less than \$10,000 do not require formal written proposals, but at least three verbal quotes must be secured. While CPA expenditures are exempt from Ch. 30B, the use of public land requires compliance with Ch. 30B procurement regulations. Note: Chapter 30B requires each municipality to have a procurement officer and it is recommended that you check all purchases of services with your municipal procurement officer.

Cons: A poorly written RFP that lacks background information will likely yield disappointing proposals, making it difficult to select the most qualified respondent.

3. Housing Production Activities

Adaptive Reuse

Purpose: To convert nonresidential properties such as mills, schools, hospitals, military bases, motels, warehouses, office buildings into residential or mixed use. This reuse of abandoned, underutilized, or obsolete property enables communities to direct growth towards already developed locations and away from so-called “greenfields” and areas without existing infrastructure. It may be a way of preserving or restoring unique architecture in the community, which may be of historic significance.

The local historic commission can be helpful in identifying historic properties. Note that multiple purpose

projects using CPA historic preservation funds in conjunction with housing funds require compliance with the Standards for Rehabilitation stated in the U.S. Secretary of Interior’s Standards for the Treatment of Historic Properties codified in 36 C.F. R. Part 68 (<http://www.achp.gov/regs-revo4.pdf>).

Depending upon the structure, adaptive reuse can be amenable to mixed-use and mixed-income development through various options including but not limited to Single Room Occupancy (SRO’s), congregate and/or special needs housing, rental housing and first-time homeownership.

Resources Required: A committee, board or organization should be chosen to identify and promote the redevelopment of vacant or underutilized nonresidential properties into housing, including affordable housing, such as a housing trust, housing partnership, community development department or housing authority. It is also useful to have a staff person or consultant help identify possible properties and

Holliston uses \$1M in CPA funds to get two projects moving

THE TOWN OF HOLLISTON demonstrated its support of affordable housing with a commitment of over \$1 million in CPA funding since 2003.

One of these endeavors is the adaptive re-use of a former elementary school, the Andrews School, into 16 units of housing. Town meeting approved the disposition of this 1930s school building and approved an allocation of \$600,000 in CPA funds. The Holliston Housing Committee took the lead for the town and issued an RFP for a developer. A non-profit developer, in partnership with a local for-profit developer, was selected to undertake the project. The Andrews School project is waiting state funding approval and anticipates starting construction in 2008.

Cutler Heights Housing will result in the new construction of 30 affordable rental units. The Holliston Housing Authority disposed of a 5.4 acre parcel through a long-term land lease to a private developer. The town has approved over \$700,000 in CPA funds for predevelopment and project financing for this project. This development is also



In Holliston, CPA funding has helped pave the way for the future conversion of the Andrews School into affordable housing.

awaiting state funding approval and anticipates starting construction in 2008.

Holliston has also used CPA funds to support a housing consultant, expenses of the housing committee and the support of existing rental housing.

Newton uses CPA to preserve, create affordable housing

THE CITY OF NEWTON has been one of the leaders in using CPA for affordable housing. Since 2001 Newton has spent approximately \$8.5 million in CPA funds for 14 housing projects.

Newton has focused much of its CPA efforts on preserving the affordability of its existing housing stock, given the high cost of housing in this desirable city just west of Boston. Newton has used CPA funds for: a homebuyer assistance program, to support rental properties for families, seniors and special needs populations and to start a pilot program to provide financial and technical assistance to home owners to create accessory apartments or ownership units.

Newton has also used CPA funds to support a local non-profit development organization. In 2005, it provided nearly \$700,000 in CPA funds to CAN-DO for Millhouse Commons, a six-unit homeownership

effort in Upper Newton Falls which rehabilitated two units and created four new units. Two homebuyers purchased homes in this development with the Massachusetts Housing Partnership's SoftSecond Loan Program for first-time homebuyers.

CAN-DO also received CPA funds totaling \$200,000 for the acquisition of a two-family dwelling. CPA funds were used in conjunction with additional funding to reduce the loan secured from Auburndale Cooperative Bank from \$400,000 to \$175,000. In addition, the city provided \$200,000 in Community Development Block Grant funding for the acquisition of the property. The two dwelling units are protected under a permanent affordability restriction and rented to families with Section 8 rental assistance.

Newton has a very informative web site for its Community Preservation Committee's activities. You can access this resource at www.ci.newton.ma.us/planning/CPAC/committee.htm.



With \$700,000 in CPA funds, local non-profit CAN-DO converted two home sites into Millhouse Commons, a six-unit, mixed-income homeownership effort.

to find partners to develop them. Predevelopment funding from the Community Preservation Fund can be used to support project planning and preliminary feasibility studies, which may for eligible projects, be augmented with additional funds from the Priority Development Fund (PDF) administered by DHCD http://www.mass.gov/?pageID=eheadterminal&L=3&Lo=Home&L1=Community+Development&L2=Community+Planning&sid=Ehed&b=terminalcontent&f=dhcd_cd_pdf_pdf&csid=Ehed. HTM; Executive Office of Environmental and Energy Affairs (EOEEA) Smart Growth Technical Assistance Funds http://www.mass.gov/envir/grant_loan/; or the Community Economic Development Assistance Corporation (CEDAC) www.cedac.org.

It should be recognized that there may be some environmental problems on properties that are being recycled for residential use. CPA funding can support

some clean-up activity, but there are other programs that subsidize the testing and remediation.

Adaptive reuse developments are likely to require subsidy funds to fill the gap between the total development costs and the purchase prices or rents. Because this kind of development is typically so costly, deep subsidies are required, and CPA funds can provide important local leverage to secure multiple sources of state and federal resources. It may also be prudent to consider mixed-income housing, particularly in higher market areas, where the market rate units can internally subsidize the affordable ones. Additionally, these projects often have the capacity to integrate several income tiers, providing housing to meet a range of local housing needs, whether for purchase or rental.

Implementation Process: The municipality should first identify an inventory of such properties that might be

Needham Housing Authority uses CPA for predevelopment, also to increase affordability

THE NEEDHAM HOUSING AUTHORITY is planning to increase the number of units in their 80-unit High Rock Homes development (state Chapter 200 family housing). NHA plans to replace 20 single-family properties with 40 new units—20 new affordable rental units that will re-house existing residents and 20 new affordable homeownership units that will be priced from \$160,000 to \$290,000.

The town approved the necessary zoning to allow the development to move forward in 2001 and has since committed \$499,500 in CPA funds to help the project. In the spring of 2006, the town voted to use \$324,500 in CPA funds to do predevelopment work. “These funds were used to help figure out how to fund it, to get a design together and to translate a loose plan into a specific development plan,” said housing consultant Peter Smith, who is working on the project.

In the spring of 2007, the town voted to use \$175,000 in CPA funds to write down the cost of two of the units to make them more affordable. The NHA’s development affiliate recently closed on its construction loan and construction has begun. The project is expected to be completed by the end of 2008.

purchased, rehabilitated and converted to residential use. The next step is to attract interested for-profit or non-profit developers to undertake development through a Request for Proposals if publicly owned, or through zoning incentives or the use of Ch.40B. It may also be possible to acquire such properties through tax taking, donation, negotiation, distress sale, or bank foreclosure. This can be done through a municipal affordable housing trust, redevelopment authority or the housing authority, and conveyed to a developer selected through an RFP process.

Where Implemented: A number of communities are in the process of implementing adaptive reuse develop-

ments using CPA funds. The communities of Williamstown (Cable Mills), Holliston (Andrews School), Ayer (Pleasant Street) and Cohasset (library conversion to senior housing) are a few of the projects currently underway that will reuse existing buildings for housing.

Pros: This is smart growth development at its best, recycling existing buildings and providing affordable housing. Often these buildings are well known to the community and tend to be located in very central or visible locations. Their improvement can often spark further positive development in the area. Some of these developments are located on parcels that can adapt to additional new construction, such as an addition to an existing school or municipal building. These properties typically have historic characteristics that a savvy developer will retain, such as brick interior walls, beamed and/or high ceilings, or large windows.

Cons: This type of development is often expensive. Many if not most of these properties have some contamination, such as asbestos, lead, oil, or other hazardous substance that must be tested and eliminated under supervision. Retrofitting outdated, nonresidential spaces to new apartments or condominiums takes assistance from an experienced architect. It is frequently the case that these properties, particularly those that have been abandoned for prolonged periods, are in a deteriorated condition, and communities need to be vigilant about protecting them until a developer is brought on board. Costs involved in protecting or shoring up a building can be funded by CPA.

New Infill Housing—Habitat for Humanity

Purpose: To build or renovate houses for families “selected on the basis of their compelling need for a decent, affordable home, their willingness to partner with Habitat (to build the home alongside community volunteers) and their ability to pay the monthly mortgage of around \$565.”² Habitat for Humanity is an ecumenical, non-profit Christian ministry dedicated to building simple, decent homes in partnership with families in need.

² Habitat for Humanity of Cape Cod, “Habitat facts— Basic Facts about Habitat for Humanity of Cape Cod...building homes, hope, lives and community for 19 years.” The \$565 is the cur-

rent monthly payment for houses developed by Habitat for Humanity of Cape Cod for homes that have recently been sold. However, future amounts are likely to be somewhat

higher, ranging from \$575 to \$675, depending upon bedroom size, mortgage length and amount needed to escrow for insurance and property taxes.

Resources Required: Each Habitat for Humanity home is built in partnership between the community and the selected family that does not have adequate shelter and will purchase and occupy the home, relying on the following resources:

- Volunteer labor
- Donations of construction materials and professional services

- Land donations
- Cash donations to pay for materials and services that are not donated
- Sweat equity of the family of at least 250 hours

Each house costs approximately \$105,000³ to build with \$80,000 needed to cover professional construction services and materials. Vendors and the construc-

Examples of Habitat homes and CPA support

HABITAT FOR HUMANITY ON CAPE COD, established in 1988, has produced 51 affordable homes with several more underway.

A recent example of Habitat's efforts on the Cape is four new homes under construction in Brewster, an effort that includes building a new access road, James Burr Road. Because this new road and associated utilities were expensive, and also because the project involved more than just a couple of homes, the organization sought and received public subsidies from Brewster's Community Preservation Fund and the Barnstable County HOME Consortium. Financing for the project totaled almost \$700,000 and included:

- \$95,000 grant from CPA
- \$80,000 grant from the Barnstable County HOME Consortium
- \$15,000 grant from TD BankNorth (funded for predevelopment costs)
- \$18,000 energy-related grant
- \$50,000 each from Brewster Baptist Church and Youth United house sponsors
- \$100,000 in services and materials over and above donated sweat equity
- The remaining amount from a wide range of community contributors, including the mortgage payments of other Habitat homeowners.

Habitat for Humanity of Greater Lowell is in the process of redeveloping a 3.47-acre site at 130 North Road in Bedford into eight ownership units targeted to families earning between 25 and 50 percent of area median income.

Bedford has committed \$600,000 in CPA funds to this development.

Amherst is another example. The town gave Pioneer Valley Habitat for Humanity \$30,000 in CPA funds for site development costs for four homes to be built on a three-acre site donated by Amherst College.

The contemporary design for the homes was created by the architectural firm Kuhn Riddle of Amherst, and the contemporary design incorporates many energy conserving features. The construction of the Habitat homes will be phased over four years to maximize participation by Amherst College students, faculty, staff and alumni.

Anthony W. Marx, the president of Amherst College, is proud the college can play a part in helping the town. "The very first buildings of this college, at its founding, were literally built by the hands of the people of Amherst. The college is delighted to return the favor to the town".



Amherst used \$30,000 in CPA funds for site development of land donated by Amherst College that is being used to build four homes.

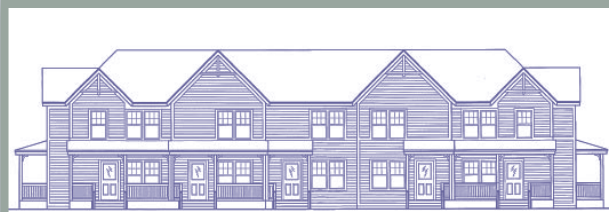
Amherst, Nantucket use CPA for infill

INFILL HOUSING CAN OCCUR in a variety of ways, especially when it involves undeveloped parcels in denser, more urban and inner suburban neighborhoods.

For example, the Amherst Housing Authority acquired a 4.2 acre site with the help of \$75,000 in CPA funding, using additional acquisition financing from CEDAC. After receiving the special permit to build 11 units of family housing, the AHA issued an RFP and selected two non-profits, Valley CDC and Amherst Affordable Housing Associates, to work in partnership on the project.

The development received another \$200,000 in CPA funds to support project soft costs, including environmental testing, legal costs, design, engineering and a survey. Community support of the project helped leverage multiple subsidies, including \$550,000 in state HOME funding, \$350,000 in CDBG, \$715,000 in Affordable Housing Trust Funds, and a \$15,000 grant from TD BankNorth. In addition, the Massachusetts Housing Partnership has committed a \$268,000 first mortgage and a \$750,000 deferred payment second mortgage.

Nantucket's Housing Office (NHO) has administered the House Recycling Program since 1996. The program creates affordable, year-round rental units for low- and moderate-income islanders through the donation of unwanted but structurally sound dwellings. NHO then relocates, rehabilitates, and affordably rents the homes using scattered vacant residential lots provided by the town. Thus far, 24 units have been created. During the past several years, NHO has received \$175,000 per year in CPA funding, which covers about one move per year. A couple of the units involved stick-built housing because the town-owned lot was nonconforming to zoning and required a special design configuration to accommodate a home on the site.



Here is a sketch of the units that are planned for the 4.2 acre purchased by the Amherst Housing Authority, with partial funding from CPA.

tion industry typically donate about \$25,000 in-kind value per house, and local churches, individuals, businesses, clubs and civic organizations raise the remaining contributions to insure that all of the necessary financing is in place before a purchaser is selected and construction begins. Key to the Habitat model is a Habitat financed no- interest, long-term mortgage that offers the purchasers "a hand up, not a hand out" as Habitat's founders, Millard and Linda Fuller, point out.

When communities have land available that can accommodate several new homes, particularly when new roads and other infrastructure are required, the organization typically seeks some public subsidies through CPA or other resources, such as HOME funding.

Implementation Process: Habitat for Humanity affiliates have focused their efforts on building new homes for qualifying first-time homebuyers through

donated land, materials, labor and funding as well as other special financing strategies as follows:

- House lot(s) are identified and donated either by the private or public sector. If the property is owned by the municipality, it will have to secure town meeting or city council approval for the conveyance for affordable housing and issue a Request for Proposals, to which the local Habitat affiliate responds.
- The local affiliate raises the necessary funding for the construction of the home(s). If the project involves more than one house and/or involves costly infrastructure or other substantial costs items, the local affiliate may need to reach out for governmental support.

³ This is the Cape Cod fall of 2007 estimate.

- Local affiliates select a qualified purchaser. The affiliate provides the purchaser with a long-term mortgage of at least 20 years (20 to 27-year mortgage/length based on recommendation from the local Habitat affiliate's credit committee.⁴ Construction involves substantial sweat equity from the selected purchaser (usually 250 hours for a single adult household and 500 hours for households with two adults—80 percent of these hours involve on-site construction and the remaining time in workshops and other associated meetings) and volunteer labor from the community.

- Various national and local companies donate materials to bring down costs.
- Purchaser closes and occupies the new home. The closing includes the execution of a deed rider that maintains the home's long-term affordability.⁵
- Purchasers pay back the monthly mortgage directly to the local affiliate.

Where Implemented: There are now approximately 20 local Habitat affiliates operating in Massachusetts. For a list of Habitat affiliates in Massachusetts click on

CPA funds help fuel Acton's bid to turn public property into affordable housing

ACTON IS ANOTHER TOWN that has used CPA funds in a variety of ways to increase its supply of affordable housing, including the use of CPA funds to facilitate the disposition and development of publicly-owned property.

In this case, the town designated the Acton Community Housing Corporation (ACHC) to develop the Willow-Central Residences on a piece of town-owned land that had been acquired for back taxes through the tax title process.

MassHousing Priority Development Funds—administered by DHCD—were used for preliminary design and engineering work for the development of three affordable units located in the West Acton Village district. This development includes one farmhouse-style duplex and a bungalow-style single family home.

CPA provided \$160,000 in funding—combined with an additional \$100,000 gift—were used to make these three units

affordable. A private developer was selected through a public land disposition process and occupancy is expected for spring 2008. The Acton Housing Authority is in the process of purchasing one of the units at the Willow-Central Residence to use for an income-eligible renter household using an additional \$200,000 in CPA funds.

Acton has used CPA funds in other ways for affordable housing, including:

- A condominium buy down program (\$200,000 in CPA funds) is administered by the Acton Community Housing Corporation (ACHC) who maintains a ready buyer list, identifies available properties and negotiates the purchase price and establishes the amount of subsidy or “buy down” required to make the sales price affordable to a household below 80% of the area median income.
- Acton's first Habitat for Humanity house is currently under construction (\$35,000 in CPA funds). CPA funds were matched by \$35,000 from a local foundation.



Acton used CPA funds to help facilitate the disposition and development of a town-owned parcel into three units of affordable housing.

⁴ Some affiliates in very high-priced areas go as high as a 30-year mortgage term.

⁵ Habitat for Humanity of Cape Cod, as well as other Massachusetts-based affiliates, requires

deed restrictions in perpetuity. Nationwide, affiliates use various mechanisms to prevent speculative buys and sells and/or preserve affordability including deed restrictions and/or

land trusts and/or a second mortgage that declines over 20 years.

Provincetown \$1M in CPA funds to acquire site

PROVINCETOWN, LIKE MANY CAPE COD communities, is struggling to maintain housing opportunities that are affordable for its year round residents. Over the past decade much of the town's year round housing stock has been bought as summer homes, driving the price of housing so that it is not affordable for the people who are working in the town.

The Provincetown Housing Authority and the town, through its board of selectmen and town meeting, have made addressing and solving this problem a high priority. The Provincetown Housing Authority identified a vacant parcel of land as a possible housing site and town meeting voted to support the acquisition of the property and allocated \$1 million of Community Preservation Act money for the acquisition.

The Town's main objective for the property is to ensure the development of financially feasible, mixed-income rental housing, with a minimum of 40 units, which meets the community's housing needs. In addition to committing the funding to acquire the property, to support as much affordable housing as possible, the town has also extended a sewer main line up Shank Painter Road.

The town is currently in the Request for Proposal process for a developer.

<http://www.habitatboston.org/links.html>. Examples of communities that have committed CPA funding towards at least one Habitat home include Chatham, Hingham, Nantucket, Newton, Norwell, Scituate, Bedford, Amherst, Harwich, Acushnet, Tisbury, Hanover and Brewster.

Pros: Habitat for Humanity homes offer not only a strategy for building affordable housing but also a way for building community, engaging local faith-based, organizations, businesses and individual volunteers in a grassroots effort of fund raising and actual hands on home building. This type of development is often the easiest to "sell" politically. It also

tends to be an excellent way to provide infill development in existing neighborhoods where infrastructure is more likely to exist and therefore in line with smart growth principles. Based on the sweat equity and financing that is provided, Habitat can reach a lower income purchaser, generally between 45 and 65 percent of area median income.⁶ Also, volunteers come "face to face" with the affordable housing crisis and often become new advocates for affordable housing in their communities.

Cons: Habitat for Humanity projects do not typically lend themselves to high volume developments because of the extensive fundraising required and general reliance on donated property, most projects happen incrementally, one house at a time. Also, there have been complications in the past with some affiliates regarding adequate affirmative marketing of available homes, with a number of Habitat houses not counting as part of the state's Subsidized Housing Inventory due to marketing issues. This issue, however, has largely been resolved between DHCD and Habitat affiliates.

Disposition of Publicly-Owned Property

Purpose: To create affordable housing through the development of publicly owned properties, including land and/or buildings, conveying the properties through RFPs to qualified developers.

Resources Required: This type of locally-initiated development requires a number of local resources including a designated board or committee to coordinate the project and a municipal staff person or paid consultant to oversee the conveyance of the property and the use of CPA and other public subsidies.

Implementation Process: The development of publicly-owned land for affordable housing usually involves a number of important parties—the municipality, the state, a selected developer, regulatory boards and agencies, lenders (public and private), marketing agents, etc. It should also be noted that in addition to the availability of publicly-owned existing properties, land and buildings can be procured through tax

⁶ Housing for Humanity International encourages affiliates to serve the neediest local

population possible, and affiliates in lower priced areas can get below the 45% to 65% of

area median income range necessary in higher priced areas such as Massachusetts.

foreclosure or direct acquisition by the town or housing trust.

The designated municipal entity overseeing the RFP for the project should work with the local 30B procurement officer on this task, potentially hiring a consultant to coordinate this activity and prepare the document (see Section II).

Note: If the units are being developed through the state's Local Initiative Program (LIP), municipalities assume a greater role in working with DHCD on project monitoring. Please refer to the LIP guidelines for details at www.mass.gov/dhcd.

Where Implemented: The development of publicly owned property, owned by the municipality, school district, housing authority, or other public entity, is

being planned in a number of communities including Boxford, Harwich, Wayland, Amherst, Bedford, Hopkinton, Westport, Carlisle, Needham, Holliston, Sudbury and Provincetown.

Pros: A publicly owned property that can be conveyed for a nominal amount represents an excellent opportunity for the municipality to take the initiative, make development possible, minimize acquisition costs, and control local development. The community can determine what will be built and ultimately an enforceable regulatory agreement, can insure that development moves ahead based on local needs and guidance.

Even small, scattered infill sites that are owned by the municipality can become important local resources

CPA helps communities preserve, improve housing

AMHERST AND NEWTON are examples of communities that have used CPA to improve existing housing or turn existing structures into affordable housing.

In Amherst, the housing authority acquired the Keet House that included four rental units with expiring use restrictions, using \$85,000 of CPA funding and a conventional bank loan. The AHA also owned a vacant site on Tamarack Road that could accommodate another four units in two duplex buildings and decided to develop the two separate properties jointly as an eight-unit rental development.

In addition to the acquisition funding for the Keet House, CPA provided \$45,000 in predevelopment funding on the Tamarack Road parcel and another \$40,000 as a "gap filler", helping to subsidize the project's development costs and leverage other subsidies including \$330,000 from the Massachusetts Affordable Housing Trust Fund and architectural fees paid by DHCD as part of

a pilot program to promote modular construction. MHIC provided the construction financing. The Massachusetts Housing Partnership also played a key role in this effort, providing early technical assistance as well as a \$385,000 first mortgage and a \$600,000 deferred-payment second mortgage.

In Newton, Citizens for Affordable Housing in Newton Development Organization, Inc. (CAN-DO), received \$575,000 in CPA funds for the historic renovation and the creation of three units of community housing within a

mixed-income development totaling five units. Known as Linden Green, two of the new units are affordable to households with incomes at or below 80 percent of area median income and one unit will be affordable at 100 percent of area median income. The funds were used to pay down the existing conventional bank loan for purchasing the

historic house on the site, for historic renovations, and for hard and soft construction costs of the community housing units.



Amherst acquired and preserved Keet House with financing that included CPA funds.

for integrating affordable housing into residential neighborhoods and building an affordable inventory of housing that can be preserved in perpetuity. The community may be able to insure that up to 70 percent of the units in a development on publicly owned land can be purchased or leased by residents or those who have a special local connection, providing that all procedures comply with applicable state and federal fair housing laws.

Cons: Conveyance of a municipally owned property requires approval of town meeting or city council and political support for the development is essential. These projects can be controversial and it is likely that abutters may stir local opposition. Some

publicly-owned parcels that receive approval for development may involve undeveloped land, may lack infrastructure or be a distance from services and other developed areas.

4. Housing Preservation and Improvement Activities

Purpose: To make improvements to bring existing properties up to building and safety codes, within historic preservation standards where relevant, and integrate greater accessibility for the disabled. Properties have existing affordable units or are improved to integrate such housing.

CPA funds help Chatham program that offers rental assistance, path to homeownership

THE CHATHAM HOUSING AUTHORITY has developed a town voucher program that offers qualifying households a subsidy for a period of five years that consists of a shallow rent subsidy of not more than \$400 per month and an automatic contribution to a monthly escrow account, deducted from the rent subsidy, to help the qualified family save for homeownership.

The housing authority calculates the voucher amount based on a participant's income, expenses and rent level. The subsidy is paid directly to the landlord, and the participant is responsible for promptly paying the balance of the rent amount. The housing authority determines the amount put in escrow monthly for each eligible participant, which is comparable to an Individual Development Account (IDA), used for the purpose of a down payment should the participant wish to pursue homeownership.

Program participants must meet a number of eligibility criteria including:

- Must live and/or work in Chatham, be a graduate of Chatham High School, or have close family ties with those currently living in Chatham.
- Be current on their rental payments; be a tenant in good standing with current landlord.
- A household member must remain employed full-time

over the course of the five-year term of the program.

- Must meet the income guidelines established by the Barnstable HOME Consortium.
- Cannot be receiving other housing subsidies.
- Cannot have a tax lien or evidence of bankruptcy on their credit report.
- Cannot have owned any property within the last five years.

Participants are required to sign a five-year participation agreement that states their obligations under the program and also enter into a Limited Funding Agreement, which further explains the program, particularly as to how it relates to the CPA funding. All participants must also attend local first-time home buyer seminars and budgeting classes. Participants are also expected to identify a local financial adviser to provide additional assistance in helping them move to self-sufficiency, who will provide regular progress reports to the housing authority.

The program is funded with \$200,000 of CPA funds, including \$12,500 for administrative costs, to allow at least four program participants, assuming the \$400 maximum monthly subsidy is granted. Participants must "graduate" after five years, either purchasing their own home or maintaining self-sufficiency in their current rental unit or another apartment.

The housing authority is also committed to securing an agreement from landlords to secure a program participant's rental unit as "project-based" that will enable the unit to count as part of the Subsidized Housing Inventory.

Resources Required: Funds to subsidize the costs of property improvements and a designated municipal staff person, consultant or organization to insure that the work is completed properly.

Implementation Process: Assign a party to provide oversight to insure that work is done. If a new affordable unit is created, it will be important for the locality to insure that all state requirements are met.

Where Implemented: CPA funds have been used for preservation and improvement projects, for both publicly and privately owned housing units, in a number of communities including:

- The acquisition of a preservation restriction on the historic 1835 Marcia Thomas House in Marshfield, including the planned creation of an affordable rental unit (\$29,423).
- Preservation work on the historic Landmark House that is used for affordable housing on Nantucket (\$54,000).
- Renovation of public housing units in Bedford, Cohasset, and Yarmouth (\$304,000, \$80,000, and \$247,400 respectively).
- Improvements that incorporate American Disability Act (ADA) accessibility standards for public housing units in Braintree (\$125,000).
- Capital improvements to the Neville Place Assisted Living project in Cambridge (\$325,000).



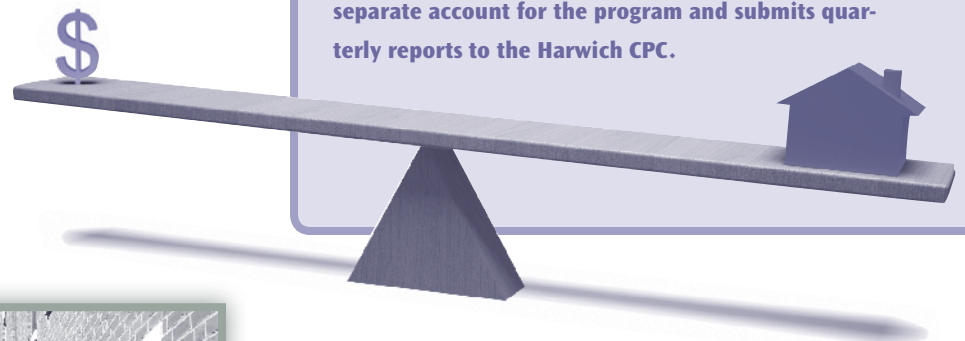
The preservation of CAST apartments in Cambridge included \$1.5 million in CPA funds.

Harwich uses CPA to give renters needed assistance

THE HARWICH HOUSING AUTHORITY has recently introduced a rental assistance revolving loan program to provide qualifying households with first, last and security deposits for rental units in Harwich. The Program has initially been funded with \$100,000 in CPA funds.

Participants receive a voucher that is in fact a loan, the amount of which is based on their income, expenses, and rent level and is paid directly to the landlord. This amount is repaid by the program participants in monthly installments and deposited into the revolving loan fund that is available to other eligible participants. The program requires all participants to sign a one-year loan agreement. Each participant must enroll in a budgeting class within six months of receiving the voucher and is encouraged to attend first-time home-buyer classes.

Participants must meet a number of eligibility criteria, which are the same as those for Chatham's rental voucher program. The HHA has established a separate account for the program and submits quarterly reports to the Harwich CPC.



- Improvements to the Little Neck Village development in Marion (\$296,647).
- The City of Cambridge supported Scouting Way, a rental property that combined historic preservation with affordable housing by adding 13 affordable, family-sized rental units (\$1,540,000).
- Cambridge also subsidized the CAST Apartments that involved refinancing 42 expiring-use units in a large apartment building, including necessary property improvements (\$1.5 million).

Cable Mills epitomizes CPA and the man who was the driving force behind the act



THIS PROJECT INVOLVES the adaptive reuse of the nine-acre Cable Mills, the last remaining mill in Williamstown. The project's scope involves achieving almost everything CPA was intended to do, from creating affordable housing to historic preserva-

tion to preserving open space to creating public access by means of a river walk to the nearby Green River.

The town issued a bond for \$1.5 million to subsidize the project, to be paid by future CPA funds. Of this amount, \$500,000 has been committed for open space preservation and recreation, \$500,000 for historic preservation, and \$525,000 for affordable housing. Three of the original mill buildings will be converted into 61 condominiums, 12 of which will be affordable to those earning at or below 80 percent of area median income. The project also includes the new construction in a second phase of 32 units in duplex cottages.

The project was conceived by the late Robert Kuehn, who died suddenly

in 2006. Kuehn was the principal of Keen Development Corporation and was the driving force behind the idea that became the Community Preservation Act.

The project was acquired by Mitchell properties, with continued involvement of the Berkshire Housing Development Corporation. Initially the projects was planned to use a 40B Comprehensive permit, but given the extraordinary costs involved in this adaptive reuse project, it was finally determined that the number of affordable units had to be less than 25 percent. The development then required a zoning overlay district to afford the necessary regulatory relief.

Boston Community Capital has been pivotal in lending funds for site assessment, environmental testing, demolition activities related to removing assorted buildings on site to create access to the river and interior demolition of the buildings to be redeveloped. MassDevelopment has provided important financing for Brownfields remediation. In addition to CPA funds, HOME Program funding and Affordable Housing

Trust Funds have also been committed to the project to subsidize the affordable units. The developer is beginning initial work this fall and plans to start full construction in 2008.



The historic preservation of Cable Mills in Williamstown and the conversion of the buildings and property into housing and open space epitomizes CPA and the late Bob Kuehn, the initial developer for the project and one of the driving forces behind the CPA.

- Chatham has committed \$160,000 through their town budget and another \$160,000 in CPA funds for the rehabilitation of four (4) homes on town-owned properties, leased from the town for a nominal amount, and situated on a parcel known as the MCI property. Another \$50,000 was allocated for the completion of a site master plan for the project. The Chatham Housing Authority is managing the properties, renting the homes at just below the HUD Fair Market Rent (FMR), with half the rent going to

an escrow account that the tenant will be able to access in three years following initial occupancy to purchase their own home. Thus far the program has graduated four families, all of whom have purchased a home using 100 percent financing from Cape Cod Five. The units have not yet counted as part of the Subsidized Housing Inventory, but will be incorporated upon the next turnover of tenants when deed restrictions will be executed.

Pros: While CPA cannot be used for regular maintenance items, it is a very useful resource for making property improvements that bring units up to building and safety codes, within historic preservation guidelines where required, and incorporate some affordable housing. The improvement of these properties can remove an existing eyesore, and CPA may be the resource that finally makes the rehabilitation of a property with deferred and costly work financially feasible.

Cons: The renovation of older buildings, particularly historic properties, can be very costly and it is important to bring on a developer and contractors with experience in this type of work. It is important to insure that the rehabilitation work complies with CPA eligibility criteria and does not involve routine maintenance items.

5. Direct Financial Assistance to Qualifying Households

Purpose: To enable low- and moderate-income households to afford to rent or purchase housing by providing direct subsidies based on specified terms and conditions.

Resources Required: A designated public entity with staff support to administer the program or the identification of a non-profit organization or consultant to operate the program on behalf of the municipality. Some amount of CPA funding will be necessary to initiate the program as well as potential annual contributions to supplement the initiative.

Implementation Process: The administering agency or organization must develop clear program

Westford finds many uses for CPA funds

LIKE MANY COMMUNITIES in the greater metropolitan Boston area, Westford is not seeing moderately-priced homes being produced. The median price of a home is about \$400,000 and most new housing is for higher income households.

The Westford Housing Authority and the Westford Affordable Housing Committee have worked to counter this and both have proven to be effective advocates for directing CPA funds toward affordable housing.

In 2003 Westford approved \$100,000 in CPA funding to write down the purchase price for homebuyers earning below 80 percent of the area median income.

In 2004, as a response to the town's new affordable housing action plan the town allocated \$160,000 in CPA funds toward the construc-

tion of a four-unit special needs group home.

Also, Westford used \$250,000 of CPA funds to prepare a town site planned for multiple uses that included a school, recreation fields and 15 units of rental housing, the William D. Coakley Residences at Stony Brook.

In 2005, town meeting approved the formation of the Westford Affordable Housing Trust Fund. In 2007 \$200,000 in CPA funds were put in to the town's affordable housing trust fund.

Chris Pude, Westford Housing Authority Director had this to say about the formation of the trust:

"It's a good vehicle to put CPA funds to use. It might not be useful right off the bat. At first, go through your CPC and town meeting. But as you get used to using CPA, it's good to have a trust fund to get things going quickly".

In 2007 \$200,000 in CPA funds were put in to the town's affordable housing trust fund.



In Westford, \$250,000 in CPA funds was used to prepare a town-owned site for a development that included a school, playing fields and 15 units of rental housing (above).

guidelines and have the capacity to determine eligibility and manage the program. These entities must apply for Community Preservation Funding, and enter into a grant agreement when awarded funding.

Where Implemented:

These types of initiatives have been implemented in a number of communities including:

- Funding to provide financial assistance to first-time homebuyers in Cambridge (\$2 million), Chatham (\$250,000), Nantucket (\$100,000), Newton (\$875,000), and Norfolk (\$200,000).
- Mortgage interest assistance in Chilmark (\$55,000).
- Rental assistance programs in Chilmark (\$110,000), Harwich (\$100,000) and Chatham (\$200,000).
- Rental assistance program operated by the Dukes County Regional Housing Authority. Both Edgartown and West Tisbury committed \$30,000 and \$18,000, respectively.
- In Westford, \$100,000 in CPA funds has been appropriated to be used as subsidies to keep homes affordable to those earning at or below 80 percent of area median income.

Pros: These programs enable existing residents to remain in their community despite increasing housing prices and other costs of living. Also, given the need for service employees on the Cape, keeping workers serves an important local and regional economic need. Moreover, funds have been used to keep units affordable upon property turnover.

Cons: Some of these programs do not include long-term deed restrictions and therefore units cannot be counted as affordable for inclusion in the Subsidized Housing Inventory.

6. Multiple Use Strategies

Purpose: To incorporate two or more of the use categories of CPA to meet multiple local objectives for community housing, historic preservation, open space preservation and recreation.

Resources Required: A designated municipal entity should be identified to obtain the resources and hire consultants to undertake preliminary feasibility studies, if appropriate; apply for CPA funding; prepare and issue an RFP; and select a developer to complete the project. Municipal staff support is also useful to help coordinate development. Sometimes these projects will require additional subsidies beyond those provided by CPA, and the municipality should

provide letters of support for funding applications.

Implementation Process: When the project includes the development of affordable housing on a publicly owned or acquired site, the municipality should select the most qualified developer, whether it be for profit or non-profit, through a Request for Proposals (see Section II). If the property is privately owned, the municipality should work with the developer to provide necessary regulatory relief and subsidies.

Where Implemented: There are a number of communities that have successfully used CPA funding or have committed to use CPA to fund projects that involve two or more of the use categories for CPA including but not limited to the following:

- Nike Missile site in Wayland— property acquired and further subsidized using CPA funding for affordable housing and parkland (\$600,000 for acquisition, \$200,000 to close the missile silos, and another \$600,000 to subsidize construction).

Newton uses CPA for open space, housing

THE CITY OF NEWTON provided \$1.1 million in CPA funds for the acquisition of a 1.15 acre parcel adjacent to the Dolan Pond Conservation Area in West Newton.

The purpose of the proposed acquisition would allow 70 percent of the property to be deeded to the Newton Conservation Commission to expand the Dolan Pond Conservation Area. The remainder would be deeded to the Newton Housing Authority and Habitat for Humanity for the creation of community housing for low-income households. It is known as 76 Webster Park.

The housing authority renovated the existing house, built in 1925, and Habitat is constructing two new units to the rear of the house. The applicants included Newton Conservators, the Newton Housing Authority, and the Newton Conservation Commission.

- Benfield Parcel in Carlisle— site acquired using CPA. The plan is for 26 rental units for seniors as well as athletic fields and open space (\$2 million for acquisition thus far).
- Murtha Property in Hanover— property acquired using CPA for affordable housing, historic preservation and open space preservation (\$775,000 for acquisition; project in very early stages of planning and development).
- New affordable housing on town-owned land in Harwich center that includes the rehabilitation of an historic town-owned building (\$90,000 in infrastructure and design work). This project is sponsored by the Harwich Affordable Housing Committee and an RFP will be issued to select a developer.
- Westford used \$250,000 in CPA funds to transport soil to a site as part of the Town's plan to create 15 affordable units in addition to building a middle school and recreational fields.

Many projects that involve new housing construction are clustering the housing to also preserve some open space. Some incorporate passive recreational activities as well.

Pros: These developments, by embracing several or all of CPA's designated uses, serve multiple local needs.

Cons: These projects can end up requiring substantial amounts of CPA funding, particularly if the project involves site acquisition, thus reducing amounts available for other initiatives. Some communities, in

their efforts to preserve as much open space as possible, minimize the portion of the development committed to housing and should look for opportunities to enhance density on a portion of the site.

MassDocs can help communities deliver CPA funds

MUNICIPALITIES PROVIDING CPA funds for affordable rental developments may want to join MassDocs, a combined affordable housing program developed by the state housing agencies to simplify affordable developments financed with multiple public loans.

Through MassDocs a single set of loan documents is used for multiple sources. The lenders jointly engage counsel to close the MassDocs loan. The relationship between the lenders is set forth in a Global Participation Agreement. Closing attorneys use a web-based document assembly system to prepare the loan documents. In addition to simplifying the closing process and achieving costs savings, MassDocs reconciles the different statutory, regulatory and policy requirements of each loan program and provides a composite affordability restriction to make compliance monitoring during the loan term simpler.

To date, 10 municipalities have joined MassDocs and are delivering their local resources through the program. More information about MassDocs is available at www.massdocs.com.



7. Regional Strategies

Purpose: To enable communities to respond jointly to help meet both local and regional needs.

Resources Required: CPA communities combine to fund efforts that are managed by a qualified regional entity.

Implementation Process: Identify a qualified agency, organization or consultant to work with a number of individual municipalities to develop and implement housing-related initiatives. The planning costs associated with this entity or individual would be eligible for CPA funding. Each participating community would request a commitment of CPA funds towards the implementation of the initiative, which may need to be applied for annually.

Where Implemented:

Historically, with a strong home rule tradition, efforts involving the coordination among communities have not been widely supported in Massachusetts. There has been some progress on more regional approaches to affordable housing including the provision of technical and financial resources through HOME Consortia, regional planning agencies and regional non-profit organizations.

There are a couple of examples of specific CPA-funding strategies that involve the combined and coordinated efforts of several communities such as:

- Both Edgartown and West Tisbury committed \$30,000 and \$18,000, respectively, towards the support of the rental assistance program operated by the Dukes County Regional Housing Authority on Martha's Vineyard.
- Seven communities in the Merrimack Valley—Billerica, Chelmsford, Dracut, Tyngsboro, Dunstable, Tewksbury, and Westford—have joined in a collaborative effort, called the Merrimack Valley Regional Housing Consortium, to determine how they might be able to work together on housing issues including education and outreach, advocacy and special programs. Thus far, each community has contributed \$2,500 in CPA funds (Billerica has not yet passed CPA and is currently using another funding source) to support their continued

efforts including a housing consultant. They applied and received HOME funds to provide down payment and closing cost assistance for first-time homebuyers, administered by the Merrimack Valley Housing Partnership. They have also brought in speakers to learn more about a range of possible funding opportunities for developing housing-related programs that could benefit all participating communities.

Pros: These concerted efforts reduce the need for individual communities to set-up their own programs and services thus reducing the administrative costs

of establishing smaller, separate and multiple programs. These regional programs can take advantage of economies of scale and provide services more effectively and efficiently.

Cons: Individual communities lose some direct control over the management of their own CPA resources and have to trust that at least some of their funding will result in actual benefits in the community or for local residents.



Did you know?

The Rental Assistance Program, operated by the Dukes County Regional Housing Authority on Martha's Vineyard, provides a subsidy to assist qualifying renters in paying their monthly rent. The tenant is responsible for paying 30 percent of their monthly income towards rent, while the remainder is paid directly to the landlord by the Regional Housing Authority. In addition to private fundraising from the Island Affordable Housing Fund, four towns have committed CPA funds including Edgartown (\$30,000), West Tisbury (\$18,000), Tisbury (\$18,000) and Oak Bluffs (\$24,000). The Program is available to eligible families and individuals making less than 80 percent of median income for Dukes County. The program currently serves 66 families and the average income of participants has been at approximately 50 percent of area median income.

IV. Municipal Affordable Housing Trusts

Introduction

An affordable housing trust can be an important tool for communities working to create and preserve affordable housing. It serves as a repository for funds approved for housing purposes and is overseen by a board of trustees who ensure that funds are used as intended. Absent a trust, funding may be deposited into a municipality's general fund.

Affordable housing trusts can take many forms in terms of their powers and governance. A trust document spells how trustees are appointed, what their powers are and the procedures they must follow.

Prior to the January 2005 passage of “An Act Establishing Municipal Affordable Housing Trust Funds”,¹ there was no standard model for local housing trusts in Massachusetts. Municipalities that wanted a trust had to develop their own trust documents and get legislative permission through a Special Act of the State Legislature.²

The 2005 law created a standardized and consistent procedure for establishing a Municipal Affordable Housing Trust across the Commonwealth. It is a “local option” law, meaning that municipalities that vote to accept its provisions can create a trust without a

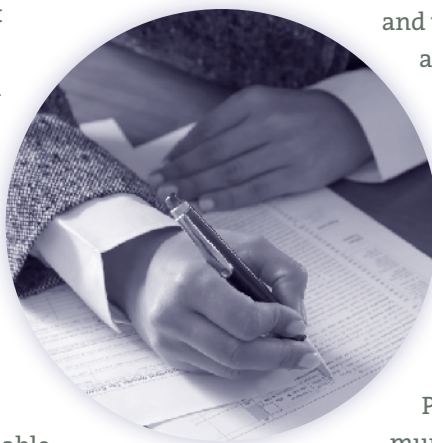
home rule petition. At least 30 municipalities have created trusts.

An affordable housing trust offers municipalities two other important benefits. It allows them to create a vehicle that can respond quickly to market opportunities for land acquisition or building purchase and to carry out many housing related activities often vital to the preservation or production of housing. It also makes it easier for communities to provide funds to trusts and ensure that those funds remain available to the trust without the need for annual re-approvals for their use.

These characteristics make trusts an important tool for Community Preservation Committees. Some communities have experienced limitations in carrying out the full range of housing activities allowed because they had to wait for town meeting action.

Trusts can also help communities use inclusionary zoning developer payments more effectively. In some communities, trust members also advocate for and help implement affordable housing activities.

The affordable housing trust fund law sets out a basic framework for municipal trusts, including:



¹ Chapter 491 of the Acts of 2004 added Section 55C to Chapter 44 of the Massachusetts General Laws. Chapter 109 of the Acts of 2006 amended the MAHT statute, effective September 11, 2006, to allow towns to accept the statute by a majority vote of the annual town meeting or a special town meeting (previously, towns could only accept the statute at the

annual town meeting), and to authorize the receipt of Community Preservation Act funds into the Trust Fund. It also gave municipalities greater choice in the powers they could give their local Trusts.

² At least 20 municipalities have trusts created prior to the 2005 legislation or shortly thereafter. These older trusts vary in terms of

powers and governance—some are simple repositories of funds, overseen by the Board of Selectmen, with Trustees appointed by the municipality; some are largely overseen by the local housing partnership and others by a local housing authority, and a few are separate non-profits that did not require a home rule petition to create.

- Allows communities to collect funds for housing, segregate them out of the general budget into an Affordable Housing Trust fund, and use these funds without needing additional spending approvals from town meeting. Funds paid into the trust are the property of the trust.
- Allows trusts to receive funds from fees, private contributions, CPA funds and payments associated with zoning ordinances.
- Allows trusts to purchase, own and manage real estate and sell, lease or exchange property, enter contracts and carry out many other housing related activities.
- Requires that trusts be governed by a board of trustees that consists of *at least* five members appointed for terms not to exceed two years by the board of selectmen or by the mayor or town manager.
- Requires that all monies paid to the trust in accordance with any zoning ordinance or by-law, exaction fee or private contributions be paid directly into the trust. Monies do not need to be appropriated or accepted or approved into the trust.
- Specifies that general revenues appropriated into the trust become trust property and can be spent without further appropriation and that funds remaining at the end of the fiscal year remain trust property.
- Identifies which state laws trusts must comply with, including open meeting and public procurement laws. It also requires trusts to follow state public bidding and construction laws if they undertake a public construction project. However, it is likely that most trusts will choose to dispose of property through a sale or long term lease to a developer, in which case the development is not a public construction project.

Comment: The ability of trusts to act quickly, is likely to vary by community, because the law also allows municipalities to omit or modify the list of powers set out in the law when creating their local trust or grant additional powers consistent with the law. It also gives them discretion in terms of the size and make up of the board of trustees and the funding sources assigned to the trust. In some communities, local boards or officials have been uncomfortable with the level of independence allowed under the law and

have chosen to restrict trust powers (e.g. requiring prior board of selectman or town meeting approval for many actions).

Each community will need to make its own decision concerning the level of flexibility and independent action it allows the trust.

As of September 2007, over 50 communities have some type of local housing trust, including 30 that have created or authorized the creation of a Municipal Affordable Housing Trust.

Massachusetts Communities with Local Housing Trusts—September 2007

Housing Trust Status	Number of Communities	Have Adopted CPA	CPA Vote Pending	Have incentive zoning
Have a non-MAHT Trust	24	17	—	12
Have a MAHT	30	22	3	8
Considering	4	1	—	2
Total	58	40	3	22

Funding sources vary. Most of the communities that have created a trust are CPA communities. Some trusts hold payments made under inclusionary zoning or payments from other sources for use for affordable housing.³ Trusts also benefit from their ability to access municipal “resources” including town counsel, accounting services and insurance protection.

Organizing a Trust

As outlined below, the law lays out the basic provisions for a Municipal Affordable Housing Trust (MAHT), including its purpose, how it is to be created at the local level, how it can be governed, allowable powers, treatment of funds deposited in the trust and the extent to which it is subject to general rules governing municipalities.

1. Accepting the Statute

The first formal step in creating a trust is a vote by the city or town to accept it (Section 55C of Chapter 44). In towns, acceptance requires a majority vote at town meeting. In cities it requires a majority vote by the municipal legislative body.

³ Based on a July 2007 study by Jennifer Goldson, a CPA and planning consultant in Massachusetts, plus updates.

2. Establishing the Trust

Municipalities can vote to establish the trust at the same time that they accept the law or as a separate action. The approval process is the same as used to accept the statute (majority vote by town meeting or by the municipal legislative body).

- Establishing the trust involves voting on “terms”

(language specifying the powers the trust will have, the composition of the board of trustees and the length of trustee terms).

- Some communities choose to establish the trust by ordinance or bylaw, but most approve basic parameters as a warrant article and use their trust document to spell out the details. (See www.mhp.net for a sample warrant article).
- Some communities have approved the language as laid out in the statute, while others have tailored it to their community based on discussions with local officials, boards and/or municipal staff.

Requirements and Options in Establishing Terms of the Trust

The municipal affordable housing trust law lays out a basic framework for trusts, but as noted above also gives localities flexibility with in many details, including (1) the composition of the board of trustees and (2) the powers of the trust.

Board of Trustees

- The board of trustees must include *at least five* trustees, but municipalities can choose to establish a larger board.
- All trustees are appointed by the board of selectmen or by the mayor or city manager (and confirmed by the city council). The terms of trustees cannot exceed two years.
- *At least one* of the trustees must be the chief executive officer of the city or town. Where the

chief executive is a multi-member body, that body shall designate at least one of its members to serve of the board. A board of selectmen can appoint the town manager or town administrator as a member or chair of the board, with or without the power to vote.

Comment: Most communities appear to have created

boards with 6-7 members, including as required, one selectman or the town manager. Some require representation from specific entities (e.g. housing authority or local housing partnership). Others have chosen not to require representation from other committees due to the rotating nature of assignments, opting instead for more dedicated trustees.

The composition of the

board can play a role in addressing concerns about trust powers.

Trust Powers

The powers of the board shall include the following, but a city or town, by ordinance or bylaw, may omit or modify any of these and can grant the board additional powers:

- To accept and receive real property, personal property or money, by gift, grant, contribution, devise or transfer from any person, firm, corporation or other public or private entity, including but not limited to money, grants of funds or other property, including CPA funds
- To purchase and retain real or personal property including investments that yield a high rate of income or no income
- To manage or improve real estate
- To sell, lease, exchange, transfer or convey property
- To make contracts
- Employ advisors and agency, such as accountants, appraisers and lawyers as the board deems necessary and to pay reasonable compensation and expenses



Did you know?

The towns of Grafton and Sudbury are directing 10 percent of their annual CPA allocation to Municipal Affordable Housing Trust Funds. Grafton’s housing trust plans to use some of the funding in its trust fund as collateral for securing a line of credit with a local lending institution, thus leveraging the CPA funds. The trust can apply for additional CPA funds for specific projects.

- To divide receipts and charges between incomes and principle and create reserves
- To borrow money and mortgage and pledge trust assets as collateral

3. Appoint Trustees

Once the trust is established, the board of selectmen or mayor or town manager must appoint trustees. (Some communities have found it can take up to a year to complete this process.) Local realtors, attorneys, or other real estate professionals or business community members can bring important skills and market knowledge to a board.

4. Develop Trust Document

The board of trustees then meets to discuss housing needs, goals, and funding priorities which inform the creation and adoption of a trust's rules and regulations and declaration of trust. The trust documents should also be filed at the Registry of Deeds.

For examples from the City of Salem see their Affordable Housing Trust Ordinance, Declaration of Trust, and Rules & Regulations on line at http://www.salem.com/Pages/SalemMA_BComm/affordablehousing.

Note: The law allows trusts to be established for the purpose of providing “for the creation and preservation of affordable housing...for the benefit of low and moderate income households.” CPA funds can assist households with incomes of up to 100 percent of median, but many trusts focus on activities that benefit households with incomes at or below 80 percent of median, so that assisted units can count toward a community's 10 percent goal under Chapter 40B. Some trusts receive inclusionary zoning payments (e.g. Newton) and allow some use of these funds to benefit households with incomes of up to 110 or 120 percent of median.

Strategies for Winning Acceptance of a Trust

Start early. Municipalities that have established MAHTs recommend starting discussion of the concept at least several months before the local deadline for accepting warrant articles. Who is involved in initiating the discussion and fleshing out the details of trust governance and powers will vary by community.

Individuals or entities interested in affordable housing—such as the planning and/ or community development office, a local housing authority, local housing partnership, community preservation committee members, municipal officials—can play this role. Local realtors, attorneys, or other real estate professionals or business community members can also play an important role in explaining the benefits of having an entity that can respond quickly to housing opportunities.

Provide information about the experiences of other communities. It can be helpful to provide information on the experience and procedures of communities that already have active trusts to selectmen or city councilors and other interested parties, such as warrant or finance committee members. Inviting representatives from more experienced communities to attend local briefings can also be helpful. Proponents must be prepared to discuss specific language regarding the trust powers and the size and composition of the board of trustees.

Consider whether MAHT statute offers advantages to existing trusts. Communities that already have a trust need to evaluate whether accepting the MAHT statute could improve the local capacity to produce affordable housing (e.g. some trusts have found that while the law tends to make it easier to spend funds, it can bring new restrictions and requirements as well). Bedford and Somerville are two communities that had older trusts but decided to accept the new law.

Address concerns about trust powers. Local boards and/or town meeting members may be uncomfortable with the level of independence the law allows municipalities to give their trusts in terms of spending and real estate transactions. This concern has led communities to limit the powers they give their trust. Again, public meetings to discuss the proposal to create a trust provide a forum to learn about and respond to concerns and to gauge information needs.

It is helpful to explain the controls that apply to trust projects. For example, trust-funded projects are subject to the same local regulatory reviews as other projects. In addition, CPA funds need to be used in accordance with the CPA requirements. So, for example, acquisitions made by the trust (if using CPA funds) need to be bound with a permanent deed

restriction. Some communities have added additional controls, for example, attaching conditions to some revenue coming into the fund (in particular CPA funding) that limit use of those funds for a specific project or type of project/program. Lincoln, for example, did this through a grant agreement between the CPC and the trust.

Trusts in Operation

The capacity of a local housing trust to implement affordable housing activities will depend on many variables, including the amount of funding available to the trust, trustee experience and time, its powers and the availability of municipal or other staff support. CPA funds can help pay for staff or consultant support.

For many newly established trusts, early meetings are likely to be devoted to “housekeeping” tasks such as defining their mission, drawing up their trust document and, if they choose, rules and regulations. Understanding the legal requirements that apply to trusts is important. Town counsel can be an important resource at this stage. State requirements include the following:

- The trust and board of trustees is subject to open meeting law requirements (c. 39).
- The trust is also considered a municipal agency and public employer and trustees are considered public employees and special municipal employees for the purposes State Ethics Law 268A, meaning they must avoid conflicts of interest.

“Most of the communities that have created a trust are CPA communities.”

- The trust is a governmental body for the purposes of c.39, Sections 23A, 23B and 23C. They are also exempt from state and local taxes. Trust accounts are monitored and controlled by the City or Town Treasurer. A trustee is also designated as a treasurer with check-writing powers and providing financial statements when applicable.
- Trusts *must* comply with public procurement (Chap. 30B) and public bidding and construction laws. Generally, if they dispose of property through a

sale or long-term lease to a developer, that development is not considered a public construction project. In addition, agreements and conveyances between the trust and agencies, boards, commissions, authorities, departments of public instrumentalities of the

city or town are exempt from c.30B. Trustees should consult with town counsel in advance to understand how these provisions apply to a particular transaction.

- A town finance director, treasurer or accountant is responsible for disbursement of funds.
- Audit requirements: the law requires an annual audit of trust books and records by an independent auditor paid for by the municipality out of the trust’s account.

Note: Legislation has been proposed to exempt trusts from Chapter 30B.

A sample Affordable Housing Trust Warrant article can be found at www.mhp.net

V. Glossary and Resources

Glossary of Terms

Accessory Apartment

A secondary dwelling unit created within or as an extension of an existing dwelling that contains separate bath and kitchen facilities.

Adaptive Reuse

The conversion of nonresidential properties such as mills, schools, hospitals, military bases, motels, warehouses, office buildings, etc. into residential or mixed uses.

Area Median Income (AMI)

The estimated median income, adjusted for family size, by metropolitan area (or county, in non-metropolitan areas). AMI is updated annually by HUD and used as the basis of eligibility for most housing assistance programs.

Brownfields

An abandoned, idle, or underused property where expansion or redevelopment is complicated by real or suspected contamination. Brownfield sites include abandoned factories and other industrial facilities, gasoline stations, oil storage facilities, dry cleaning stores, and other businesses that formerly dealt with polluting substances.

Citizens' Housing & Planning Association (CHAPA)

Established in 1967, CHAPA is a statewide non-profit umbrella organization for affordable housing and community development activities. CHAPA's mission is to encourage the production and preservation of housing affordable to low-income families and individuals.

Chapter 40B

The State's comprehensive permit law, enacted in 1969, which established an affordable housing goal of 10% for

every community. In communities below the 10% goal, developers of low and moderate income housing can seek an expedited local review under the comprehensive permit process and can request a limited waiver of local zoning and other restrictions which hamper construction of affordable housing. Developers can appeal to the State if their application is denied or approved with conditions that render it uneconomic and the State can overturn the local decision if it finds it unreasonable in light of the need for affordable housing. (Chapter 774 of the Acts of 1969; M.G.L.c.40B§20-23); see also Comprehensive Permit.

Community Economic Development Assistance Corporation (CEDAC)

A quasi-public agency created by the Legislature in 1978 to provide development assistance to nonprofit developers in order to increase the supply of affordable housing and help revitalize chronically distressed areas. By statute, it can only provide services to nonprofit corporations.

Community Preservation Act (CPA)/ Chapter 44B

The Community Preservation Act Enabling Legislation (Chapter 267 of the Acts of 2000). Allows communities, at local option, to establish a Community Preservation Fund to preserve open space, historic resources and community housing, by imposing a surcharge of up to 3% on local property taxes. The state provides matching funds from its own Community Preservation Trust Fund, generated from an increase in certain Registry of Deed's fees.

Congregate Housing

Housing accommodation that offers separate rooms or apartments but provides shared activities of daily living

with other residents. May be rental or ownership.

Conservation Easement

A legal agreement, often used to preserve rural areas or greenfields, in which a government or nonprofit can purchase a property in return for the guarantee of preserving it from development.

Co-operative (co-op)

A form of shared ownership housing where all residents own stock in the corporation that owns the property. They do not own their units, but co-op shared ownership entitles a resident to a long-term lease on a unit and a vote in the governance of the property. Limited equity co-operatives are a form of affordable, resident-controlled homeownership in which the individual share purchase prices are very low so that the resident does not need mortgage financing to buy in. Like rental properties, co-ops may be syndicated to raise money for the construction.

Deferred loan (or “deferred payment second mortgage”)

Debt (borrowed money), often from a public or charitable source, repayment of which may be postponed for a specified period of time, indefinitely, or forgiven entirely. A commonly used financing mechanism to support affordable housing.

Department of Housing and Community Development (DHCD)

Massachusetts DHCD is the state’s lead agency for housing and community development programs and policy. It oversees the state-funded public housing, administers rental assistance programs, provides funds for municipal assistance, and funds a variety of programs to stimulate the development of affordable housing. Until July 1996, DHCD was known as the Executive Office of Communities and Development. Prior to that, it was also called the Department of Community Affairs.

Expiring Use Restrictions

Refers to affordable rental housing where the restrictions on rents and/or incomes of occupants could or will expire in the near future if property owners prepay their publicly assisted mortgages and convert the units to market rate housing. The units were built with federal and/or state subsidies (such as low cost mortgages, interest subsidies, rent subsidies and loan guarantees). While mortgages and other assistance often had terms as long as 30-40 years, many gave owners the option

to prepay the mortgage after 20 years and thus remove use restrictions on the property.

Fair Housing Act

Federal legislation, first enacted in 1968 and expanded by amendments in 1974 and 1988, that provides the Secretary of HUD with investigation and enforcement responsibilities for fair housing practices. Prohibits discrimination in housing and lending based on race, color, religion, sex, national origin, handicap, or familial status. There is also a Massachusetts Fair Housing Act, which extends the prohibition against discrimination to sexual orientation, marital status, ancestry, veteran status, children, and age. The state law also prohibits discrimination against families receiving public assistance or rental subsidies, or because of any requirement of these programs.

Fair Market Rents (FMRs)

Maximum rents allowed by HUD in the Section 8 rental assistance program. Updated and published annually, FMRs represent HUD’s estimate of the actual market rent for an apartment in the conventional marketplace. HUD sets FMRs by unit size (0-bedroom, 1 bedroom, etc.) and regions within each state. The current FMRs are posted on HUD’s website at <http://www.huduser.org/datasets/fmr.html>

Federal Home Loan Bank of Boston (FHLBB)

One of the 12 district banks, the FHLBB covers the 6 New England states and is owned by more than 460 New England financial institutions. A wholesale bank (a bank for banks), it provides access to credit for its members and administers several programs to promote community development and expand affordable housing.

Federal Home Loan Mortgage Corporation (FHLMC) or Freddie Mac

Congressionally chartered agency established in 1970 (and privatized in 1989) to buy qualifying residential mortgages from originating lenders. The loans are either kept in portfolio or packaged and sold as securities. Freddie Mac also offers programs with more flexible underwriting guidelines for lower income homebuyers. Fannie Mae activity has helped to create an enormous secondary mortgage market.

Federal National Mortgage Association (FNMA of Fannie Mae)

Created in 1938 to purchase Federal Housing Administration, and later Veterans Administration and conven-

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tional mortgages, Fannie Mae is now privately owned and managed, federally chartered corporation, the largest source of home mortgage funds in the United States. It buys qualifying residential mortgages from originating lenders and either keeps them in portfolio or packages and sells them as securities. Fannie Mae also offers programs with more flexible underwriting guidelines for lower income homebuyers.

501(c)(3)

Section of the Internal Revenue Code that grants status as a nonprofit corporation. Entitles organizations to receive tax-exempt status and tax-deductible donations.

Geographic Information Systems (GIS)

A computerized system that stores and links spatially defined data in a way that allows information display and processing and production of maps and models. A powerful planning and analytical tool.

Green Building

A whole-building and systems approach to design and construction that employs building techniques that minimize environmental impacts and reduce the energy consumption of buildings while contributing to the health and productivity of its occupants.

Green Development

Development that uses environmentally friendly building practices and energy efficiency. There are a number of public and private incentives for green development, and increasingly, nonprofit developers use green construction.

Greenfields

Undeveloped land. Smart growth principles dictate that new development be steered away from greenfields to the maximum extent possible and toward sites where infrastructure and public transportation already exist, or to contaminated and/or underutilized sites that can be reclaimed to accommodate new development.

HOME Investment Partnership Program (HOME)

A federal program run by HUD which provides annual grants on an entitlement basis to states, large cities and consortia of smaller communities for affordable housing activities, including homeownership, rent subsidies, housing development and rehabilitation.

HOPE VI

A federal program (aka the Urban Revitalization Program) that provided funding for the revitalization of

severely distressed or obsolete public housing sites. Funds can be used for demolition or rehabilitation of units; construction of replacement units; rental assistance to tenants who are displaced; provision of self-sufficiency services for tenants; and for programs designed to improve management. No longer active, this federal program did create guidelines for using mixed-financing on federal public housing land.

Housing Appeals Committee (HAC)

A quasi-judicial body within DHCD, which hears appeals by developers and local zoning boards on comprehensive permit (Chapter 40B) decisions by local Zoning Boards of Appeal.

Housing Consumer Education Centers

A statewide information and referral network that assists tenants, landlords, current and prospective homeowners with their housing problems. The Centers are located at agencies that provide a variety of housing services throughout Massachusetts.

Housing Trust Fund

A fund established by state legislation or local ordinance that uses public funds to finance the construction or renovation of affordable housing. The fund typically has a dedicated, ongoing source of revenue. Most are administered by a public agency, but some are administered by foundations or other entities.

Inclusionary Zoning

A local zoning ordinance that either requires or encourages a developer to include affordable housing as part of a development, or contribute to a fund for such housing. The bylaw may provide incentives such as increased density or expedited permitting in exchange for the affordable housing.

Infill Development

The practice of building on vacant or undeveloped parcels in dense areas, especially urban and inner suburban neighborhoods. Promotes compact development, which in turn allows undeveloped land to remain open and green.

Limited Equity Homeownership

Ownership housing in which resale values are restricted in order to maintain the long-term affordability of the units. Can take the form of a cooperative, a condominium or fee simple ownership.

Local and Regional Housing Authorities (LHAs)

A housing authority set up by a city or town, or group of towns, in accordance with state law to provide low-income family or elderly housing.

Local Housing Partnership

A local housing committee appointed by the municipality with the purpose of promoting opportunities to produce and preserve affordable housing.

Local Initiative Program (LIP)

A state program under which communities may use local resources and DHCD technical assistance to develop affordable housing that is eligible for inclusion on the State Housing Inventory. LIP is not a financing program, but the DHCD technical assistance qualifies as a subsidy and enables locally supported developments that do not require other financial subsidies to use the comprehensive permit process, and allows units created locally without the use of a comprehensive permit to qualify for inclusion on the Subsidized Housing Inventory.

Low-Income Housing Tax Credit (LIHTC)

Federal tax credit for developers of affordable housing. States receive an annual dollar value of credits which they then allocate to qualifying projects based on priorities established in a state allocation plan. DHCD is the allocating agency for Massachusetts.

Manufactured Homes

A home built entirely in the factory to a federal building code administered by HUD. The Federal Manufactured Home Construction and Safety Standards (commonly known as the HUD code) went into effect June 15, 1976. Manufactured homes may be single- or multi- section and are transported to the site and installed. The Federal standards regulate manufactured housing design and construction, strength and durability, transportability, fire resistance, energy efficiency, and quality.

Massachusetts Affordable Housing Trust Fund (ATHF)

A revolving trust fund established by the Massachusetts Legislature as Section 227 of Chapter 159 of the Acts of 2000, and now known as Chapter 121D. Administered by MassHousing, ATHF functions as a gap filler, the last funding piece necessary to make an affordable housing development financially feasible and sustainable for the long term. Funding is typically in the form of deferred payment loans.

MassDevelopment

A quasi-public agency created in 1998 by the merger of the Government Land Bank and the Massachusetts Industrial Finance Agency. MassDevelopment offers a variety of programs in support of economic development, large scale real-estate development projects and brownfield clean-up including predevelopment assistance, loans, loan guarantees, mortgage insurance and taxable and tax-exempt bond financing. Its programs can also be used for mixed commercial and residential projects.

MassDocs

Municipalities providing CPA funds for affordable *rental* developments may want to join MassDocs, a combined affordable housing program developed by the state housing agencies to simplify affordable developments financed with multiple public loans. To date, 10 municipalities have joined MassDocs and are delivering their local resources through the program. More information about MassDocs is available at www.massdocs.com

MassHousing (formerly the Massachusetts Housing Finance Agency, MHFA)

A quasi-public agency created in 1966 to help finance affordable housing programs. MassHousing sells both tax-exempt and taxable bonds to finance its many single-family and multi-family programs. The Agency oversees and regulates the properties it has assisted, and runs a number of other programs, some on behalf of HUD and DHCD.

Massachusetts Housing Investment Corporation (MHIC)

A private, non-profit corporation which provides loans for affordable housing, equity funds for low-income housing tax credit (LIHTC) developments and loan guarantees for lead paint abatement loans. Created in 1991 by a consortium of banks, MHIC also administers a bridge financing program for tax credit projects in conjunction with the Massachusetts Housing Partnership.

Massachusetts Housing Partnership (MHP)

A quasi-public agency created by the Legislature in 1985 to support affordable housing and neighborhood development. It is funded by state-mandated contributions from interstate banks and has received state funds as well. It is governed by a seven-member board appointed by the Governor and the state's banking industry. MHP provides technical assistance and below-market financ-

ing and bridge loans for affordable rental housing, runs the SoftSecond program for first time homebuyers together with DHCD.

Massachusetts Rental Voucher Program (MRVP)

A state-funded rental assistance program begun in November 1992, as a revised version of the state's previous rental assistance program (Chapter 707). It has both a project-based component and a tenant-based component.

Mixed Income Housing Development

Development that includes housing for various income levels. In urban neighborhoods, it is a tool to deconcentrate poverty.

Mixed Use Development

Projects that combine different types of development such as residential, commercial, office, industrial and institutional into one project.

Modular Homes

A factory built home, built to applicable State and local codes. Modules are transported to the site and installed.

Municipal Affordable Housing Trust

Due to a 2005 law, municipalities can elect to create a trust for the purpose of administering funds and managing a range of real estate activities related to affordable housing.

New England Fund (NEF)

An affordable housing program run by the Federal Home Loan Bank of Boston (FHLBB), NEF provides loans to member financial institutions to finance affordable housing. NEF is a widely used program for the development of mixed income housing under the comprehensive permit.

OneStop Application

A detailed application used by Massachusetts public funding sources for developments. This comprehensive funding application ensures that funders are reviewing the same information and have complete financial information for a development project.

Regional Planning Agencies (RPA)

Public agencies that coordinate planning in each of thirteen regions of the state. They provide professional planning services to communities that include master planning, needs assessments, affordable housing plans, and traffic impact studies.

Request for Proposal (RFP)

A process for soliciting applications for third-party services or for project developers when funds are awarded competitively.

Section 8

A HUD program (officially called the Housing Choice Voucher Program) providing funding for rental assistance to low-income households. Participating tenants typically pay 30% of their income for housing (rent and utilities) and the federal subsidy pays the balance of the rent.

Single Room Occupancy (SRO)

Efficiency units which may or may not include separate bathroom or kitchen facilities.

Smart Growth

An approach to planning and development that promote a more efficient use of land to reduce sprawl using compact development patterns that are less dependent on the automobile and include a range of housing options and improve the balance of jobs and housing within the community or the region.

SoftSecond Mortgage Program

The state's first time homebuyer mortgage program operated by the Massachusetts Housing Partnership. Eligible buyers obtain a bank mortgage from participating banks and combine that with a second mortgage for a portion of the purchase price. The second mortgage may be subsidized for 10 years.

Subsidy

Typically refers to financial assistance that fills the gap between the costs of affordable housing development and what the occupants can afford based on program eligibility requirements. Many times multiple subsidies from various funding sources are required, often referred to as the "layering" of subsidies, in order to make a project feasible. In the state's Local Initiative Program (LIP), DHCD's technical assistance qualifies as a subsidy and enables locally supported developments that do not require other financial subsidies to use the comprehensive permit process. Also, "internal subsidies" refers to those developments that do not have an external source(s) of funding for affordable housing, but use the value of the market units to "cross subsidize" the affordable ones.

Transit Oriented Development (TOD)

Mixed-use higher density development centered on existing or new transportation facilities (including bus, rail, bicycle and pedestrian).

Transitional Housing

A short term housing option for families or individuals that do not have permanent housing but benefit from more stability than that of an emergency shelter.

U.S. Department of Housing and Urban Development (HUD)

The lead federal agency for regulating housing, including fair housing and housing finance. It is also the major federal funding source for affordable housing programs.

Universal Design

Products and buildings that are accessible and usable by everyone, including people with disabilities.

Resources & References

Community Economic Development Assistance Corporation (CEDAC)

A public-private community development finance institution that provides technical assistance and pre-development funds to local and regional non-profits involved in housing development.

www.cedac.org

Citizens' Housing and Planning Association (CHAPA)

State-wide membership organization providing studies, workshops, forums, information and advocacy on affordable housing.

www.chapa.org

Community Preservation Coalition

State-wide organization providing information and technical assistance to communities on the CPA.

www.communitypreservation.org

MA Department of Housing and Community Development (DHCD)

The state's housing agency administering a number of state housing programs and source of information on housing that includes: Ch. 40B, the Subsidized Housing Inventory (SHI), the Local Initiative Program (LIP), the Planned Production Program, state public housing, and state funding programs for housing.

www.mass.gov/dhcd

MA Department of Revenue (DOR)

DOR is responsible for regulation and oversight of the CPA.

www.mass.gov/DOR

MassDevelopment

State finance agency providing funding for brown field mitigation, business development, cultural facilities, child care and housing.

www.massdevelopment.com

MassHousing

State finance agency providing funding for the development of affordable housing.

www.masshousing.com

Massachusetts Housing Partnership (MHP)

State agency providing permanent financing for affordable rental development, administers the SoftSecond Mortgage Program for first-time homebuyers <http://www.mhp.net/homeownership/> and provides an array of services and resources to communities.

www.mhp.net

For Housing Needs Workbook: Assessing Community Housing Needs

<http://www.mhp.net/uploads/resources/mh-phousingneeds.pdf>

For Developing Affordable Housing on Public Land: A Guide for Massachusetts Communities

http://www.mhp.net/uploads/resources/mhp_public_land_guide2.pdf

MA Office of the Inspector General (IG)

Information on Ch. 30B Uniform Procurement Act

<http://www.mass.gov/ig/publ/30bmanl.pdf>

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U.S. Department of Housing and Urban Development (HUD)

Federal Housing Agency providing funding and information on a wide range of affordable housing topics.

<http://www.hud.gov/>

To find the HUD Area Median Income (AMI) for your city or town go to <http://www.mass.gov/Ehed/docs/dhcd/hd/home/hudincome.pdf>

Resources on Ch. 40B

The following are a number of useful web resources that provide accurate and useful information on Chapter 40B:

MHP Local Review Guidelines

http://www.mhp.net/termsheets/local_40b_v3_low_res.pdf

CHAPA 40B Fact Sheet

http://www.mhp.net/uploads/resources/local_40b_v3_low_res.pdf

DHCD

Ch 40B Statute

<http://www.mass.gov/legis/laws/mgl/gl-40b-toc.htm>

Ch. 40B Overview Information

http://www.mass.gov/?pageID=ehedterminal&L=5&Lo=Home&L1=Economic+Planning&L2=Executive+Office+of+Housing+and+Economic+Development&L3=Department+of+Housing+and+Community+Development&L4=DHCD+Legal+Resources&sid=Ehed&b=terminalcontent&f=dhcd_hac_hac&csid=Ehed

State Ch. 40B Regulations

http://www.mass.gov/?pageID=ehedterminal&L=5&Lo=Home&L1=Economic+Planning&L2=Executive+Office+of+Housing+and+Economic+Development&L3=Department+of+Housing+and+Community+Development&L4=DHCD+Legal+Resources&sid=Ehed&b=terminalcontent&f=dhcd_hac_hac&csid=Ehed

Subsidized Housing Inventory (SHI)

<http://www.mass.gov/Ehed/docs/dhcd/hd/shi/shiinventory.htm>

Local Initiative Program (LIP)

http://www.mass.gov/?pageID=ehedterminal&L=3&Lo=Home&L1=Community+Development&L2=Chapter+40B+Planning&sid=Ehed&b=terminalcontent&f=dhcd_hd_lip_lip&csid=Ehed

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Community Preservation Act: Enabling Statute— M.G.L. ch. 44B

1. **Section 1— Addition of Chapter 44B to MGL**
2. **Section 2— Definitions**
3. **Section 3— Adoption of the CPA**
 - a. Exemptions
 - b. Chapter 59 exemptions also apply
 - c. Ballot question text and acceptance dates
4. **Section 4— Imposition of surcharge**
 - a. Instructions to tax collector
5. **Section 5— Community Preservation Committee (CPC)**
 - a. 5 mandatory members and contents of by-law
 - b. Duties: study needs, possibilities of town and public info session
 - c. What CPC makes recommendations about (i.e. allowable uses of CPA funds).
 - d. CPA funds may set aside for later spending
 - e. A quorum is necessary to conduct business
 - f. Legislative action on CPC recommendations
 - g. CPA and eminent domain
6. **Section 6— Legislative body shall spend CPA funds**
 - a. Can't supplant existing funds.
7. **Section 7— Establishes CP Fund**
 - a. Monies that go into fund
8. **Section 8— Sets up Registries fees**
9. **Section 9— Sets up Mass CP Trust Fund**
 - a. DOR is entitled to 5% for operating and admin expenses.
10. **Section 10— State match distribution**
 - a. Formulas for three rounds
11. **Section 11— CPA communities may issue bonds against local CPA revenue**
12. **Section 12— Real property interests**
 - a. Permanent deed restrictions that meet MGL ch. 184, shall run with land and can be enforceable by municipality or third party.
 - b. Real property shall be owned by city or town but management may be done by a non-profit.
13. **Section 13— CPC shall keep records that are public**
14. **Section 14— CPA communities may still receive other state grants**
 - a. CPA funds can be used as local share of matching funds
15. **Section 15— Damages**
16. **Section 16— Changing or revoking CPA**
 - a. Can revoke after 5 years through same method as adopted
 - b. Changes can only be done by legislative body and then ballot
17. **Section 17— DOR has regulatory authority**

Chapter 267 of the Acts of 2000

As amended by SB 2343 (July 2002), HB 3944 (July 2003), HB 4709 (December 2004), HB 1680 (March 2006), SB 167 (September 2006), and SB 2725 (December 2006).

AN ACT RELATIVE TO COMMUNITY PRESERVATION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The General Laws are hereby amended by inserting after chapter 44A the following chapter:—

CHAPTER 44B. COMMUNITY PRESERVATION.

Section 1. This chapter shall be known and may be cited as the Massachusetts Community Preservation Act.

Section 2. As used in this chapter, the following words shall, unless the context clearly indicates a different meaning, have the following meanings:—

“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.

“Annual income”, a family’s or person’s gross annual income less such reasonable allowances for dependents, other than a spouse, and for medical expenses as the housing authority or, in the event that there is no housing authority, the department of housing and community development, determines.

“Community housing”, low and moderate income housing for individuals and families, including low or moderate income senior housing.

“Community preservation”, the acquisition, creation and preservation of open space, the acquisition, creation and preservation of historic resources and the creation and preservation of community housing.

“Community preservation committee”, the committee established by the legislative body of a city or town to make recommendations for community preservation, as provided in section 5.

“Community Preservation Fund”, the municipal fund established under section 7.

“CP”, community preservation.

“Historic resources”, a building, structure, vessel, real property, document or artifact that is listed or eligible for listing on the state register of historic places or has

been determined by the local historic preservation commission to be significant in the history, archeology, architecture or culture of a city or town.

“Legislative body”, the agency of municipal government which is empowered to enact ordinances or by-laws, adopt an annual budget and other spending authorizations, loan orders, bond authorizations and other financial matters and whether styled as a city council, board of aldermen, town council, town meeting or by any other title.

“Low income housing”, housing for those persons and families whose annual income is less than 80 per cent of the areawide median income. The areawide median income shall be the areawide median income as determined by the United States Department of Housing and Urban Development.

“Low or moderate income senior housing”, housing for those persons having reached the age of 60 or over who would qualify for low or moderate income housing.

“Maintenance”, the upkeep of real or personal property.

“Moderate income housing”, housing for those persons and families whose annual income is less than 100 per cent of the areawide median income. The areawide median income shall be the areawide median income as determined by the United States Department of Housing and Urban Development.

“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 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.

“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.

“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.

Section 3. (a) Sections 3 to 7, inclusive, shall take effect in any city or town upon the approval by the legislative body and their acceptance by the voters of a ballot question as set forth in this section.

(b) Notwithstanding the provisions of chapter 59 or any other general or special law to the contrary, the legislative body may vote to accept sections 3 to 7, inclusive, by approving a surcharge on real property of not more than 3 per cent of the real estate tax levy against real property, as determined annually by the board of assessors. The amount of the surcharge shall not be included in a calculation of total taxes assessed for purposes of section 21C of said chapter 59.

(c) All exemptions and abatement of real property authorized by said chapter 59 or any other law for which a taxpayer qualifies as eligible shall not be affected

by this chapter. A taxpayer receiving an exemption of real property authorized by said chapter 59 or any other law shall be exempt from any surcharge on real property established under this section. The surcharge to be paid by a taxpayer receiving an abatement of real property authorized by said chapter 59 or any other law shall be reduced in proportion to the amount of such abatement.

(d) Any amount of the surcharge not paid by the due date shall bear interest at the rate per annum provided in section 57 of said chapter 59.

(e) The legislative body may also vote to accept one or more of the following exemptions:

(1) for property owned and occupied as a domicile by a person who would qualify for low income housing or low or moderate income senior housing in the city or town;

(2) for class three, commercial, and class four, industrial, properties as defined in section 2A of said chapter 59, in cities or towns with classified tax rates; or

(3) for \$100,000 of the value of each taxable parcel of residential real property.

(f) Upon approval by the legislative body, the actions of the body shall be submitted for acceptance to the voters of a city or town at the next regular municipal or state election. The city or town clerk or the state secretary shall place it on the ballot in the form of the following question:

“Shall this (city or town) accept sections 3 to 7, inclusive of chapter 44B of the General Laws, as approved by its legislative body, a summary of which appears below?”

(Set forth here a fair, concise summary and purpose of the law to be acted upon, as determined by the city solicitor or town counsel, including in said summary the percentage of the surcharge to be imposed.)

If a majority of the voters voting on said question vote in the affirmative, then its provisions shall take effect in the city or town, but not otherwise.

(g) The final date for notifying or filing a petition with the city or town clerk or the state secretary to place such a question on the ballot shall be 35 days before the city or town election or 60 days before the state election.

(h) If the legislative body does not vote to accept sections 3 to 7, inclusive, at least 90 days before a regular

city or town election or 120 days before a state election, then a question seeking said acceptance through approval of a particular surcharge rate with exemption or exemptions, may be so placed on the ballot when a petition signed by at least 5 per cent of the registered voters of the city or town requesting such action is filed with the registrars, who shall have seven days after receipt of such petition to certify its signatures. Upon certification of the signatures, the city or town clerk or the state secretary shall cause the question to be placed on the ballot at the next regular city or town election held more than 35 days after such certification or at the next regular state election held more than 60 days after such certification.

(i) With respect to real property owned by a cooperative corporation, as defined in section 4 of chapter 157B, that portion which is occupied by a member under a proprietary lease as the member's domicile shall be considered real property owned by that member for the purposes of exemptions provided under this section. The member's portion of the real estate shall be represented by the member's share or shares of stock in the cooperative corporation, and the percentage of that portion to the whole shall be determined by the percentage of the member's shares to the total outstanding stock of the corporation, including shares owned by the corporation. This portion of the real property shall be eligible for any exemption provided in this section if the member meets all requirements for the exemption. Any exemption so provided shall reduce the taxable valuation of the real property owned by the cooperative corporation, and the reduction in taxes realized by this exemption shall be credited by the cooperative corporation against the amount of the taxes otherwise payable by or chargeable to the member. Nothing in this subsection shall be construed to affect the tax status of any manufactured home or mobile home under this chapter, but this subsection shall apply to the land on which the manufactured home or mobile home is located if all other requirements of this clause are met. This subsection shall take effect in a city or town upon its acceptance by the city or town.

Section 4. (a) Upon acceptance of sections 3 to 7, inclusive, and upon the assessors' warrant to the tax collector, the accepted surcharge shall be imposed.

(b) After receipt of the warrant, the tax collector shall collect the surcharge in the amount and according to the computation specified in the warrant and shall pay

the amounts so collected, quarterly or semi-annually, according to the schedule for collection of property taxes for the tax on real property, to the city's or town's treasurer. The tax collector shall cause appropriate books and accounts to be kept with respect to such surcharge, which shall be subject to public examination upon reasonable request from time to time.

(c) The remedies provided by chapter 60 for the collection of taxes upon real estate shall apply to the surcharge on real property pursuant to this chapter.

Section 5. (a) A city or town that accepts sections 3 to 7, inclusive, shall establish by ordinance or by-law a community preservation committee. The committee shall consist of not less than five nor more than nine members. The ordinance or by-law shall determine the composition of the committee, the length of its term and the method of selecting its members, whether by election or appointment or by a combination thereof. The committee shall include, but not be limited to, one member of the conservation commission established under section 8C of chapter 40 as designated by the commission, one member of the historical commission established under section 8D of said chapter 40 as designated by the commission, one member of the planning board established under section 81A of chapter 41 as designated by the board, one member of the board of park commissioners established under section 2 of chapter 45 as designated by the board and one member of the housing authority established under section 3 of chapter 121B as designated by the authority, or persons, as determined by the ordinance or by-law, acting in the capacity of or performing like duties of the commissions, board or authority if they have not been established in the city or town. If there are no persons acting in the capacity of or performing like duties of any such commission, board or authority, the ordinance or by-law shall designate those persons.

(b)(1) The community preservation committee shall study the needs, possibilities and resources of the city or town regarding community preservation. The committee shall consult with existing municipal boards, including the conservation commission, the historical commission, the planning board, the board of park commissioners and the housing authority, or persons acting in those capacities or performing like duties, in conducting such studies. As part of its study, the committee shall hold one or more public informational hearings on the

needs, possibilities and resources of the city or town regarding community preservation possibilities and resources, notice of which shall be posted publicly and published for each of two weeks preceding a hearing in a newspaper of general circulation in the city or town.

(2) The community preservation committee shall make recommendations to the legislative body for the acquisition, creation and preservation of open space; for the acquisition, preservation, rehabilitation and restoration of historic resources; for the acquisition, creation and preservation of land for recreational use; for the acquisition, creation, preservation and support of community housing; and for the rehabilitation or restoration of open space, land for recreational use and community housing that is acquired or created as provided in this section. With respect to community housing, the community preservation committee shall recommend, wherever possible, the reuse of existing buildings or construction of new buildings on previously developed sites.

(3) The community preservation committee may include in its recommendation to the legislative body a recommendation to set aside for later spending funds for specific purposes that are consistent with community preservation but for which sufficient revenues are not then available in the Community Preservation Fund to accomplish that specific purpose or to set aside for later spending funds for general purposes that are consistent with community preservation.

(c) The community preservation committee shall not meet or conduct business without the presence of a quorum. A majority of the members of the community preservation committee shall constitute a quorum. The community preservation committee shall approve its actions by majority vote. Recommendations to the legislative body shall include their anticipated costs.

(d) After receiving such recommendations from the community preservation committee, the legislative body shall then take such action and approve such appropriations from the Community Preservation Fund as set forth in section 8, and such additional appropriations as it deems appropriate to carry out the recommendations of the community preservation committee.

(e) For the purposes of community preservation and upon the recommendation of the community preservation committee, a city or town may take by eminent domain under chapter 79, the fee or any lesser interest

in real property or waters located in such city or town if such taking has first been approved by a two-thirds vote of the legislative body. Upon a like recommendation and vote, a city or town may expend monies in the Community Preservation Fund, if any, for the purpose of paying, in whole or in part, any damages for which a city or town may be liable by reason of a taking for the purposes of community preservation.

(f) Section 16 of chapter 30B shall not apply to the acquisition by a city or town, of real property or an interest therein, as authorized by this chapter for the purposes of community preservation and upon recommendation of the community preservation committee, and notwithstanding the provisions of section 14 of chapter 40, for purposes of this chapter, no such real property, or interest therein, shall be acquired by any city or town for a price exceeding the value of the property as determined by such city or town through procedures customarily accepted by the appraising profession as valid.

A city or town may appropriate money in any year from the Community Preservation Fund to an affordable housing trust fund.

Section 6. In every fiscal year and upon the recommendation of the community preservation committee, the legislative body shall spend, or set aside for later spending, not less than 10 per cent of the annual revenues in the Community Preservation Fund for open space, but not including land for recreational use, not less than 10 per cent of the annual revenues for historic resources and not less than 10 per cent of the annual revenues for community housing. In each fiscal year, the legislative body shall make such appropriations from the Community Preservation Fund as it deems necessary for the administrative and operating expenses of the community preservation committee, but the appropriations shall not exceed 5 per cent of the annual revenues in the Community Preservation Fund. Funds that are set aside shall be held in the Community Preservation Fund and spent in that year or later years, but funds set aside for a specific purpose shall be spent only for the specific purpose. Any funds set aside may be expended in any city or town in the commonwealth. The community preservation funds shall not replace existing operating funds, only augment them.

Section 7. Notwithstanding the provisions of section 53 of chapter 44 or any other general or special law to

the contrary, a city or town that accepts sections 3 to 7, inclusive, shall establish a separate account to be known as the Community Preservation Fund of which the municipal treasurer shall be the custodian. The authority to approve expenditures from the fund shall be limited to the legislative body and the municipal treasurer shall pay such expenses in accordance with chapter 41.

The following monies shall be deposited in the fund: (a) all funds collected from the real property surcharge or bond proceeds in anticipation of revenue pursuant to sections 4 and 11; (b) all funds received from the commonwealth or any other source for such purposes; and (c) proceeds from the disposal of real property acquired with funds from the Community Preservation Fund. The treasurer may deposit or invest the proceeds of the fund in savings banks, trust companies incorporated under the laws of the commonwealth, banking companies incorporated under the laws of the commonwealth which are members of the Federal Deposit Insurance Corporation or national banks, or may invest the proceeds in paid up shares and accounts of and in co-operative banks or in shares of savings and loan associations or in shares of federal savings and loan associations doing business in the commonwealth or in the manner authorized by section 54 of chapter 44, and any income therefrom shall be credited to the fund. The expenditure of revenues from the fund shall be limited to implementing the recommendations of the community preservation committee and providing administrative and operating expenses to the committee.

Section 8. (a) The fees of the registers of deeds, except as otherwise provided, to be paid when the instrument is left for recording, filing or deposit shall be subject to a surcharge of \$20. The fees for so recording, filing or depositing a municipal lien certificate shall be subject to a surcharge of \$10. The surcharges shall be imposed for the purposes of community preservation. No surcharge shall apply to a declaration of homestead under chapter 188. No surcharge shall apply to the fees charged for additional pages, photostatic copies, abstract cards, additional square feet for the filing and recording of plans or for additional or required marginal references.

(b) The fees of the assistant recorder, except as otherwise provided, to be paid when the instrument is left for registering, filing or entering with respect to registered land shall be subject to a surcharge of \$20. The fees for so registering, filing or entering a municipal lien certificate

shall be subject to a surcharge of \$10. The surcharges shall be imposed for the purposes of community preservation. No surcharge shall apply to a declaration of homestead of chapter 188. No surcharge shall apply to the fees charged for additional lots shown on plans, for indexing instruments recorded while a petition for registering is pending, for additional certificates of sewer assessments, for old age assistance liens, for duplicates and for photocopies.

(c) All surcharges on fees collected pursuant to this section shall be forwarded to the Massachusetts Community Preservation Trust Fund, established in section 9.

Section 9. (a) There shall be established and set up on the books of the commonwealth a separate fund, to be known as the Massachusetts Community Preservation Trust Fund, for the benefit of cities and towns that have accepted sections 3 to 7, inclusive, and pursuant to said sections 3 to 7, inclusive, have imposed a surcharge on their real property tax levy, subject to any exemptions adopted by a municipality. The fund shall consist of all revenues received by the commonwealth: (1) under the provisions of section 8; (2) from public and private sources as gifts, grants and donations to further community preservation programs; (3) from damages, penalties, costs or interest received on account of litigation or settlement thereof for a violation of section 15; or (4) all other monies credited to or transferred to from any other fund or source pursuant to law.

(b) The state treasurer shall deposit the fund in accordance with the provisions of section 10 in such manner as will secure the highest interest rate available consistent with the safety of the fund and with the requirement that all amounts on deposit be available for withdrawal without penalty for such withdrawal at any time. All interest accrued and earnings shall be deposited into the fund. The fund shall be expended solely for the administration and implementation of this chapter. Any unexpended balances shall be redeposited for future use consistent with the provisions of this chapter.

(c) The state treasurer shall make all disbursements and expenditures from the fund without further appropriation, as directed by the commissioner of revenue in accordance with said section 10. The department of revenue shall report by source all amounts credited to said fund and all expenditures from said fund. The

commissioner of revenue shall assign personnel of the department as it may need to administer and manage the fund disbursements and any expense incurred by the department shall be deemed an operating and administrative expense of the program. The operating and administrative expenses shall not exceed 5 per cent of the annual total revenue received under the provisions of said section 10.

Section 10. (a) The commissioner of revenue shall annually on October 15 disburse monies from the fund established in section 10 to cities and towns that have accepted sections 3 to 7, inclusive, and notified the commissioner of their acceptance. The community shall notify the commissioner of the date and terms on which the voters accepted said sections 3 to 7, inclusive. The municipal tax collecting authority shall certify to the commissioner the amount the municipality has raised through June 30 by imposing a surcharge on its real property levy and shall certify the percentage of the surcharge applied.

(b) The commissioner shall multiply the amount in the fund by 80 per cent. This amount distributed in the first round distribution shall be known as the match distribution. The first round total shall be distributed to each city or town accepting said sections 3 to 7, inclusive, in an amount not less than 5 per cent but not greater than 100 per cent of the total amount raised by the additional surcharge on real property by each city or town. The percentage shall be the same for each city and town and shall be determined by the commissioner annually in a manner that distributes the maximum amount available to each participating city or town.

(c) The commissioner shall further divide the remaining 20 per cent of the fund in a second round distribution, known as the equity distribution. The commissioner shall determine the equity distribution in several steps. The first step shall be to divide the remaining 20 per cent of the fund by the number of cities and towns that have accepted said sections 3 to 7, inclusive. This dividend shall be known as the base figure for equity distribution. This base figure shall be determined solely for purposes of performing the calculation for equity distribution and shall not be added to the amount received by a participant.

(d) Each city and town in the commonwealth shall be assigned a community preservation rank for purposes

of the equity distribution. The commissioner shall determine each community's rank by first determining the municipality's equalized property valuation per capita ranking, ranking municipalities from highest to lowest valuation. The commissioner shall also determine the population of each municipality and rank each from largest to smallest in population. The commissioner shall add each equalized property valuation rank and population rank, and divide the sum by two. The dividend is the community preservation raw score for that municipality.

(e) The commissioner shall then order each municipality by CP raw score, from the lowest raw score to the highest raw score. This order shall be the CP rank for each municipality. If more than one municipality has the same CP raw score, the municipality with the higher equalized valuation rank shall receive the higher CP rank.

(f) After determining the CP rank for each municipality in the commonwealth, the commissioner shall divide all municipalities into deciles according to their CP ranking, with approximately the same number of municipalities in each decile, and with the municipalities with the highest CP rank shall be placed in the lowest decile category, starting with decile 10. Percentages shall be assigned to each decile as follows:

- decile 1 140 per cent of the base figure
- decile 2 130 per cent of the base figure
- decile 3 120 per cent of the base figure
- decile 4 110 per cent of the base figure
- decile 5 100 per cent of the base figure
- decile 6 90 per cent of the base figure
- decile 7 80 per cent of the base figure
- decile 8 70 per cent of the base figure
- decile 9 60 per cent of the base figure
- decile 10 50 per cent of the base figure

After assigning each municipality to a decile according to their CP rank, the commissioner shall multiply the percentage assigned to that decile by the base figure to determine the second round equity distribution for each participant.

(f) Notwithstanding any other provision of this section, the total state contribution for each city or town shall not exceed the amount raised by the municipality's surcharge on its real property levy.

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(g) When there are monies remaining in the trust fund after the first and second round distributions, and any necessary administrative expenses have been paid in accordance with section 6, the commissioner may conduct a third round surplus distribution. Any remaining surplus in the fund may be distributed by dividing the amount of the surplus by the number of cities and towns that have accepted this chapter. The resulting dividend shall be the surplus base figure. The commissioner shall then use the decile categories and percentages as defined in this section to determine a surplus equity distribution for each participant.

(h) The commissioner shall determine each participant's total state grant by adding the amount received in the first round distribution with the amounts received in any later round or rounds of distributions, with the exception of a city or town that has already received a grant equal to 100 per cent of the amount the community raised by its surcharge on its real property levy.

(1) Only those cities and towns that adopt the maximum surcharge allowed by this chapter shall be eligible to receive additional state monies through the equity and surplus distributions.

(2) If less than 10 per cent of the cities and towns in the commonwealth have accepted sections 3 to 7, inclusive, and imposed and collected a surcharge on their real property levy, the commissioner may calculate the state grant with only one round of distributions, or in any other equitable manner.

(j) After distributing the trust fund in accordance with this section, the commissioner may keep any remaining funds in the trust for distribution in the following year.

Section 11. A city or town that accepts sections 3 to 7, inclusive, may issue, from time to time, general obligation bonds or notes in anticipation of revenues to be raised pursuant to section 3, the proceeds of which shall be deposited in the Community Preservation Fund. Bonds or notes so issued may be at such rates of interest as shall be necessary and shall be repaid as soon after such revenues are collected as is expedient. Cities or towns that choose to issue bonds pursuant to this section shall make every effort to limit the administrative costs of issuing such bonds by cooperating among each other using methods including, but not limited to, common issuance of bonds or common retention of bond counsel.

Except as otherwise provided in this chapter, bonds or notes issued pursuant to this section shall be subject to the applicable provisions of chapter 44. The maturities of each issue of bonds or notes issued under this chapter may be arranged so that for each issue the amounts payable in the several years for principal and interest combined shall be as nearly equal as practicable in the opinion of the officers authorized to issue bonds or notes or, in the alternative, in accordance with a schedule providing for a more rapid amortization of principal.

Section 12. (a) A real property interest that is purchased with monies from the Community Preservation Fund shall be bound by a permanent deed restriction that meets the requirements of chapter 184, limiting the use of the interest to the purpose for which it was acquired. The deed restriction shall run with the land and shall be enforceable by the city or town or the commonwealth. The deed restriction may also run to the benefit of a nonprofit, charitable corporation or foundation selected by the city or town with the right to enforce the restriction.

(b) Real property interests acquired under this chapter shall be owned and managed by the city or town, but the legislative body may delegate management of such property to the conservation commission, the historical commission, the board of park commissioners or the housing authority, or, in the case of interests to acquire sites for future wellhead development by a water district, a water supply district or a fire district. The legislative body may also delegate management of such property to a nonprofit organization created under chapter 180 or chapter 203.

Section 13. The community preservation committee shall keep a full and accurate account of all of its actions, including its recommendations and the action taken on them and records of all appropriations or expenditures made from the Community Preservation Fund. The committee shall also keep records of any real property interests acquired, disposed of or improved by the city or town upon its recommendation, including the names and addresses of the grantors or grantees and the nature of the consideration. The records and accounts shall be public records.

Section 14. Notwithstanding the provisions of any general or special law to the contrary, every city and town may accept sections 3 to 7, inclusive, and may thereupon

receive state grants under section 10. A city or town that accepts said sections 3 to 7, inclusive, shall not be precluded from participating in state grant programs.

State grant programs may include local adoption of this chapter among the criteria for selection of grant recipients. Funds in the Community Preservation Fund may be made available and used by the city or town as the local share for state or federal grants upon recommendation of the community preservation committee and the legislative body, as provided for in section 5, if such grants and such local share are used in a manner consistent with the recommendations of the community preservation committee.

Section 15. (a) A person who, without permission, knowingly carries away or steals, mutilates, destroys, damages, causes to be damaged or cuts any tree, shrub, grass or any other portion of real property purchased by a city or town with funds derived from this chapter shall be liable to the city or town in tort for such actions.

(b) Damages, including punitive damages for willful or wanton violation of this chapter or any rule or regulation issued or adopted hereunder, may be recovered in a civil action brought by the city or town or, upon request of the city or town, by the attorney general. The city or town or, upon request of the city or town, the attorney general, may bring an action for injunctive relief against any person violating this chapter or any rule or regulation issued hereunder. The superior court shall have jurisdiction to enjoin violations, to award damages and to grant such further relief as it may deem appropriate.

(c) Any damages, penalties, costs or interest thereon recovered pursuant to this section shall be deposited into the Community Preservation Fund of the city or town in which the violation occurred.

Section 16. (a) At any time after imposition of the surcharge, the legislative body may approve and the voters may accept an amendment to the amount and computation of the surcharge, or to the amount of exemption or exemptions, in the same manner and within the limitations set forth in this chapter.

(b) At any time after the expiration of five years after the date on which sections 3 to 7, inclusive, have been accepted in a city or town, said sections may be revoked in the same manner as they were accepted by such city or town, but the surcharge imposed under section 3 shall

remain in effect in any such city or town, with respect to unpaid taxes on past transactions and with respect to taxes due on future transactions, until all contractual obligations incurred by the city or town prior to such termination shall have been fully discharged.

Section 17. The commissioner of revenue shall have the authority to promulgate rules and regulations to effect the purposes of this chapter.

SECTION 2. Section 38 of chapter 262 of the General Laws, as appearing in the 1998 Official Edition, is hereby amended by adding the following paragraph:-

The fees of the registers of deeds, except as otherwise provided, to be paid when the instrument is left for recording, filing or deposit shall be subject to a surcharge under section 8 of chapter 44B.

SECTION 3. Section 39 of said chapter 262, as so appearing, is hereby amended by adding the following paragraph:-

The fees of the assistant recorder, except as otherwise provided, to be paid when the instrument is left for registering, filing or entering with respect to registered land shall be subject to a surcharge under section 8 of chapter 44B.

Approved September 14, 2000.

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This guidebook was supported and prepared by:

The Massachusetts Housing Partnership (MHP):

MHP is a quasi-public state agency that supports the development and preservation of affordable housing through community support, long-term financing for rental housing and the SoftSecond Loan Program for first-time homebuyers.

MHP is privately funded by the banking industry due to a 1990 state law that requires companies that acquire Massachusetts banks to make funds available to MHP for affordable housing. Since then, MHP's loan pool has grown to over \$1 billion and it has provided over \$541 million in loans and commitments for the financing of over 14,000 units of rental housing.

In addition, MHP also helps communities in their efforts to build affordable housing. MHP provides technical assistance, holds trainings and workshops for local officials and publishes resource materials like this guidebook in print and on the web at www.mhp.net. MHP also offers SoftSecond in partnership with participating banks. SoftSecond has helped over 10,000 low and moderate-income families purchase their first home.

The Citizens' Housing and Planning Association (CHAPA):

Citizens' Housing and Planning Association (CHAPA) is the non-profit umbrella organization for affordable housing and community development activities throughout Massachusetts. Established in 1967, CHAPA is the only statewide group which represents all interests in the housing field, including non-profit and for-profit developers, homeowners, tenants, bankers, real estate brokers, property managers, government officials, and others.

CHAPA's mission is to encourage the production and preservation of housing that is affordable to low-income families and individuals. CHAPA pursues its goals through advocacy with local, state and federal officials; research on affordable-housing issues; education and training for organizations and individuals; and coalition- and consensus-building among broad interests in the field. For more information, go to www.chapa.org.

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A note about the guidebook: This information in this guidebook has been researched and reviewed for accuracy but is in no way intended to offer legal advice or opinion. The information contained herein is subject to change based on subsequent regulatory clarification from state agencies and any court decisions that may interpret provisions of the Community Preservation Act. The information in this publication should not be used in place of advice of legal counsel. The city solicitor or town counsel should be involved to provide legal advice.

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