



TOWN OF HAMILTON

2008

COMMUNITY PRESERVATION PLAN

Hamilton Community Preservation Committee

September 2008

Town of Hamilton
Community Preservation Plan

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The Community Preservation Act in Hamilton

Preface

The Hamilton Community Preservation Committee is pleased to present the 2008 Town of Hamilton Community Preservation Plan. This Plan describes the process for administering the Community Preservation Act in Hamilton. The Plan presents a description of CPA as it applies to the Town of Hamilton, a definition of CPA goals, and a methodology and procedure by which the CPA will be administered. As such, it represents an informational document for citizens of the town, a guideline and instructional document for applicants seeking project funding through the CPA, and a guidance document for this and future CPC Committees in reviewing proposed projects and making recommendations to Town Meeting for project funding. The Committee recognizes that this document may be modified by future CPA Committees in response to changing goals and experiences with the CPA over time.

Introduction

The citizens of Hamilton voted to adopt the Community Preservation Act (CPA) on May 12, 2005. This program creates a 2% surcharge on real estate taxes for all residences and businesses, with exemptions for the first \$100,000 of residential property value and property owned and occupied by any person who qualifies for low income housing or low or moderate income senior housing. This surcharge is then matched by a state fund.

Since Hamilton's adoption of the CPA in 2005, the Town has collected CPA funds as follows, and appropriated CPA dollars for FY2007, FY2008, and FY2009 at Annual Town Meeting as follows:

	Collections (inc. State match)	Appropriations
FY07	\$623,494	\$ 325,500
FY08	\$637,771	\$ 453,146
FY09	\$692,000 (estimate)	\$ 257,500

To date, the CPA has funded just over \$1,000,000 for nearly 30 projects across all four project categories. In its three-year history, the CPA is funding much-needed renovations to historic Town Hall and other historic buildings in Hamilton, support for community housing, enhancements to popular recreational areas, and more. Please see Appendices VI, VII, and VIII for a detailed list of approved projects.

Overview of the Community Preservation Act

History and Introduction of the CPA

The Community Preservation Act (CPA), M.G.L. Chapter 44B (Appendix III), was adopted by the Legislature and signed into law by Governor Cellucci in September 2000. The CPA allows any city or town in the Commonwealth of Massachusetts to adopt a property tax surcharge of up to 3%, the revenues from which are matched to the extent of available funding by State funds collected from fees on documents recorded in the County Registry of Deeds. In addition to Hamilton, 133 of the 351 cities and towns across the state have adopted the CPA to date.

The combined money from these two sources are used for the following purposes:

- Acquire, create and preserve **open space**
- Acquire and preserve **historic resources**
- Acquire, create, and preserve land for **recreation** use
- Acquire, create, preserve, and support **community housing**

CPA funds enable Hamilton to undertake projects (with State matching funds) in these areas that would otherwise have been paid for with 100% local tax dollars and also to fund projects that the Town might otherwise have been unable to undertake or that would have required Proposition 2 ½ overrides (e.g. open space acquisition, construction of affordable housing).

Community Preservation Committee: Formation and Responsibilities

The Community Preservation Act requires that each town that accepts the CPA, also establish by ordinance or by-law a Community Preservation Committee. At the Annual Town Meeting on May 2, 2005, voters approved a Town Bylaw (Appendix II) creating the nine member Hamilton Community Preservation Committee (CPC). The composition of the committee includes one member of the Conservation Commission, one member of the Historic District Commission, one member of the Planning Board, one member of the Board of Selectmen acting as a Parks Commissioner, one member of the Housing Authority and four citizens at large appointed by the Board of Selectmen. Each member's length of term is three years with staggered terms. These nine residents with a range of expertise across the project areas are charged with studying the Town's needs, possibilities and resources with respect to the community preservation purposes and making recommendations to Town Meeting with respect to the allocation and expenditure of CPA funds.

The CPC meets on the second Thursday of each month at Town Hall at 7:30 p.m., and any citizen is welcome to attend. Minutes of CPC meetings are posted on the CPC webpage on the Town website, www.hamiltonma.gov under Boards and Committees.

CPA Funding Requirements

The Community Preservation Act requires that in every fiscal year, and on the recommendation of the Community Preservation Committee to Town Meeting, a minimum of 10% of the annual revenues of the fund must be used for each of the three

core community concerns: community housing, open space, and historic resources. The remaining 70% can be allocated or reserved for future use for any combination of the allowed uses, or for land for recreational use. This gives Hamilton the opportunity to determine its priorities, plan for its future, and have funds to make those plans happen.

How CPA Funds Can Be Used

Community Preservation Act funds must be used for community preservation purposes that have a public benefit. "Community Preservation" is defined in Chapter 44B, section 2 as "the acquisition, creation, and preservation of open space, the acquisition, creation and preservation of historic structures and landscapes and the creation and preservation of community housing." In addition, a portion may be used for recreation purposes.

Fund monies may be spent to undertake the following community preservation purposes:

The acquisition, creation and preservation of open space. Open space, as defined by the CPA, "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."

The creation, preservation and support of community housing. The CPA defines community housing as "low and moderate income housing for individuals, families, and seniors." Funds may be used for the acquisition, creation, preservation and support of community housing and for the rehabilitation or restoration of such housing.

The acquisition, preservation, rehabilitation and restoration of historic resources. Historic resources are historical structures and landscapes including a "building, structure, vessel or real property that is listed or eligible for listing on the state register of historic places or has been determined by the Historical Commission to be significant in the history, archaeology, architecture or culture of the town".

The acquisition, creation, and preservation of land for recreational use. Recreational use is defined in the CPA as "active or passive recreational use including, but not limited to, the use of land for community gardens, trails, and non-commercial 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.

CPA Administration

The CPA statute also provides for a community to appropriate up to 5% of the annual revenues in each fiscal year for the purposes of providing administrative support and operating expenses for the CPC and CPA. Since FY2008, Hamilton's CPC has recommended that Town Meeting set aside up to 5% of the annual revenues for this

purpose. These funds have been used to pay for Hamilton's annual membership to the Community Preservation Coalition which is a non-profit alliance of open space, affordable housing, and historic preservation organizations that work with municipalities to help them understand, adopt, and implement the CPA. The funds have also provided funding to purchase a MUNIS accounting module for project tracking and will be used in the near future to conduct a town-wide survey about CPA. These funds have also allowed the Town to hire a Community Preservation Coordinator who assists the CPC on a part-time basis. The Coordinator provides support to the CPC, assists with the CPA application process, prepares meeting agendas and materials and records minutes. The position also reviews the budget and approves bills submitted for reimbursement by project applicants. It should be noted that all CPA bills are also subject to the Town's Finance Director and the Town's annual audit by a third party Certified Public Accountant. The coordinator is also available to answer any questions pertaining to CPA This position is currently held by Christine Berry who can be reached at cberry@hamiltonma.gov or (978) 468-5570.

Needs and Resource Assessment

An important part of this plan is an assessment of community needs that must be consistent Community Preservation Act criteria. These needs fall into the categories outlined in the Act: community housing, historic preservation, open space and recreation. Fortunately, Hamilton recently completed a two-year comprehensive planning effort which resulted in the Town's Master Plan, adopted in February 2004 by the Planning Board. This, along with other studies, including the Town's Open Space and Recreation Plan adopted in 2008, Hamilton's Heritage Landscape Inventory completed in May 2005, the 2001 Recreation Master Plan, and Hamilton's Affordable Housing Production Plan accepted in May 2008, provide the basis for the needs assessment in this plan.

For 2009, the CPC intends to reserve a substantial portion of available CPA funds for the purpose of providing the Town with the future ability to acquire land for at least one CPA purpose. The CPC believes it is prudent to save CPA funds for major, costly future projects that benefit the Town.

Community Housing

Needs and Resource Assessment

Hamilton continues to be a desirable residential community due to its traditional neighborhoods, good schools, green spaces, recreation areas, pleasant small-town environment, and convenient location relatively close to Boston. However, Hamilton has no large affordable housing developments and very few of its homes meet the statutory definition of low-income housing. In fact, only 2.8% of Hamilton's housing stock meet the low-income definition of affordable housing, compared to the 10% which is required to avoid a 40B development. The Town of Hamilton needs at least 195 additional low and moderate income housing units to meet the 10% statutory minimum

under Chapter 40B. Because of this, Hamilton may eventually face one or more Chapter 40B development on land ill suited for higher density use. Affordable housing, especially for seniors, is a significant need, including maintenance of existing Housing Authority units and creation of new senior and affordable housing units. In addition, some forms of community housing, namely 55 and older housing and cluster or condominium housing could create an additional tax base which could greatly benefit Hamilton.

Opportunities

Fortunately, Hamilton now has an effective way to encourage the creation of elderly housing through a Senior Housing Bylaw. Open space preservation is seen by many to be in conflict with incentives that could be adopted to build clustered elderly (age restricted) or other housing projects. The town needs to increase the availability of housing options for seniors who wish to downsize their property holdings and home sizes and who wish to remain in Hamilton because of their established network of friends. The town also wants to create affordable housing so that our teachers, police, firefighters, other municipal employees, children of residents and others of modest income can afford to live in Hamilton. The CPC will encourage projects which create or expand housing options for Hamilton residents who are over 65 and of low or moderate and persons under 65 of low income, including funds to improve accessory apartments and building age-restricted and affordable housing in Hamilton, assuming suitable land can be found.

Goals from Master Plan and Affordable Housing Production Plan

The following goals were identified in Hamilton's 2004 Master Plan and Affordable Housing Production Plan:

1. To develop moderately priced housing units that are affordable and attractive to elderly households.
2. To work incrementally towards the 10% minimum set under Chapter 40B.
3. To protect and retain Hamilton's inventory of small homes.
4. To provide Chapter 40B affordable housing in areas with established infrastructure, facilities and services, primarily through scatter-site, infill and acquisition/disposition strategies that are compatible with the land use goals of the Master Plan.

Criteria for Project Review

In addition to the general criteria for CPA funding, projects involving community housing that address as many of the following criteria will receive preference:

1. Address objectives or projects identified specifically to fit within the goals or objectives in the Master Plan and/or the Affordable Housing Production Plan,
2. Ensure long-term affordability through deed restrictions or other mechanisms,
3. Contribute to the goal of 10% affordability consistent with Chapter 40B,
4. Create new affordable housing opportunities through reuse or conversion of market rate housing to affordable units,
5. Creates senior housing,
6. Projects which give priority to local residents, town, and school employees, and

7. Projects which employ “smart growth” principles (e.g. higher density senior or affordable housing near downtown or train station).

Historic Preservation

Needs and Resource Assessment

Hamilton has one National Register District and one Local Historic District. Both share the same boundary and were established in 1973. The District includes 26 properties located along Bay Road and includes such significant structures as Town Hall, the town’s first church and meeting house, and Cutler Park. Properties listed on the State Register of Historic Places include the Brown House, the Austin Brown House, the Emeline Patch House, and the Woodberry-Quarrels House. Other significant historic resources in Hamilton include the Hamilton-Wenham Community House, First Congregational Church of Hamilton, Asbury Grove’s Tabernacle and Chapel, Masconomet’s Grave on Sagamore Hill, the Gatehouse at Bradley Palmer State Park, and the large estates developed in the 19th and early 20th century, as well as other historic landscapes.

Opportunities

There are a limited number of mechanisms in Hamilton available to protect the cultural and historic resources of the Town. Opportunities for historic preservation can include funding support for restoration of historically significant structures, applying historic preservation restrictions on applicable structures, and preservation of cemeteries, gravestones, etc.

Goals from Master Plan

The following goal was identified in Hamilton’s 2004 Master Plan:

1. Assure the endurance of key historic buildings, stone walls, mature trees and vistas that represent Hamilton’s history and define its visual character.

Criteria for Project Review

In addition to the general criteria for CPA funding, projects involving historic preservation that address as many of the following criteria will receive preference:

1. Address objectives or projects identified specifically or fit within the goals or objectives in the Master Plan and the Hamilton Reconnaissance Report – Essex County Landscape Inventory,
2. Capital projects to maintain, repair and upgrade Town Hall and other historic properties, both within and outside of the Hamilton’s Historic District.
3. Supplement project funding for the preservation of historic buildings, and
4. Provide funds for historic resources that are eligible for National register status or that are within the historic districts.
5. Provide support to historic properties that provide a clear public benefit.

The CPA encourages the Historic District Commission (HDC) and the Hamilton Historical Society (HHS) to identify historic structures, buildings and landscapes which can be preserved by the use of CPA funds. Prior evaluation of the historic importance

of each structure or landscape by the HHS and/or the HDC is a necessary requirement prior to application for CPA project funding.

Open Space

Needs and Resource Assessment

Hamilton is fortunate to have a significant amount of open space within its borders, some of which is protected and some of which is not. Hamilton's most significant, permanently protected open space holdings include portions of Chebacco Woods, Bradley Palmer State Park, Ipswich River Wildlife Sanctuary, Appleton Farms, town-owned wellhead protected land, and land owned or subject to conservation restrictions held by Essex County Greenbelt Association and the Hamilton-Wenham Open Land Trust.

Opportunities

There is also a large number of unprotected open space parcels in town, including the Myopia Hunt Club, Pingree School, and the nearly 700 acres of farms, forest and other open space temporarily protected by Chapter 61, 61A, and 61B. There are also many other properties which are vacant or contain significant undeveloped land that are privately owned with no legal protection from development. A number of civically-minded families in Hamilton have preserved their properties by placing Conservation Restrictions (CR) on their large land holdings. These and other land conservation strategies are encouraged by the CPC and will be given priority if they leverage additional sources of funding for land conservation projects.

Goals from Master Plan and Open Space and Recreation Plan

The following goals were identified in Hamilton's 2008 Open Space and Recreation Plan and 2004 Master Plan:

1. Preserve and enhance open space and scenic qualities.
2. Protect water resources.
3. Protect wildlife habitat.
4. Support agriculture and forestry.
5. Preserve, maintain and enhance trail systems and passive recreation facilities.
6. Significantly increase the amount of protected open space by preserving large ecologically significant tracts of forest, habitat corridors and water resources.
7. Preserve and encourage rural, working landscapes: agricultural and equestrian.
8. Encourage public use and enjoyment of Hamilton's open space by maintaining and linking the existing trail network, and by providing passive recreation opportunities throughout the town.
9. Protect the capacity and quality of Hamilton's wetland, surface and groundwater resources.

Criteria for Project Review

In addition to the general criteria for CPA funding, projects involving open space that address at least one of the following criteria will receive preference:

1. Address objectives or projects identified specifically to fit within the goals and objectives in the Open Space and Recreation Plan and Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts,
2. Possess high ecological, scenic or recreational value,
3. Provide linkages with existing trails or are contiguous with existing protected land,
4. Protect water resources and water supply land, and
5. Prevent development that would be detrimental for the fiscal condition (e.g. tax revenues, demand for services) of or quality of life in Hamilton (e.g. traffic).

Recreation

Needs and Resource Assessment

Hamilton is fortunate to have a significant number of recreational facilities and opportunities in Town, including playgrounds, athletic fields, parks, swimming pool, trails for walking, biking, and equestrian use, ponds and rivers for fishing, and more. Some of the more actively used recreation facilities in Hamilton include Patton Park, School Street Park, Bradley Palmer State Park, Donovan Fields and the Hamilton-Wenham Recreation Center. Participation in organized sports has grown rapidly over the years, including recreation needs of new and growing groups like seniors, children, at-risk youth and handicapped residents. Many of these sports use the same fields and have overlapping seasons. In particular, athletic fields in Hamilton and Wenham are actively used, and there is a need for additional fields for youth sports.

Opportunities

Renovations or expansion of existing recreation facilities may provide for additional recreation uses. There is ongoing investigation of additional sites that may yield new opportunities.

Goals from Master Plan, Open Space and Recreation Plan, and Recreation Master Plan

1. Locate parks, playgrounds, and athletic fields near population centers in order to assure their accessibility to the elderly, persons with disabilities and those that do not drive.
2. Improve road safety by developing bike trails and pedestrian trails along public roads.
3. Preserve, maintain and enhance trail system and passive recreation facilities.

Criteria for Project Review

In addition to the general criteria for CPA funding, projects involving recreation that address the following criteria will receive preference:

1. Acquiring new athletic fields for use by youth and adult sports, and
2. Improve and create additional roadside bicycle paths/sidewalks in key locations.

General Selection Criteria

The Community Preservation Committee (CPC) is responsible for reviewing all projects proposed for CPA funding and for making recommendations to Town Meeting. In order to be eligible for review for the CPA, a project must at a minimum meet the statutory requirements of the CPA.

If a submitted project is deemed to be eligible for funding by the CPC, it will be evaluated in relation to the General Selection Criteria and the specific criteria identified in the Needs Assessment for the appropriate use category (Community Housing, Historic Preservation, Open Space and Recreation). Recommendations for funding will be based on how well the projects meet these criteria, recognizing that all criteria may not apply to every project. The following factors will be considered (*not* presented in order or priority or weight):

- a. The project's consistency with the Master Plan, Open Space and Recreation Plan, Housing Production Plan, and other planning documents that have received wide scrutiny, public input and have been adopted by the Town or its boards;
- b. The extent to which the project preserves and enhances the character of the Town;
- c. The extent to which the project conserves resources that would otherwise be threatened;
- d. The extent to which the project serves a currently under-served population;
- e. Whether or not the project fulfills more than one CPA purpose (especially in linking open space, recreation and community housing) or demonstrates why serving multiple needs is not feasible;
- f. The project applicant demonstrates practicality and feasibility; demonstrates that the project can be implemented expeditiously and within budget;
- g. The project produces an advantageous cost/benefit value;
- h. The project leverages additional public and/or private funds;
- i. The project preserves or enhances current town-owned assets;
- j. The project applicant receives endorsement by other municipal boards, committees or departments, interest groups and community organizations;
- k. The project finances capital projects for public facilities that would otherwise be funded out of tax revenues or would not otherwise be able to be completed;

- l. The project includes adequate provisions for future maintenance; and
- m. The project will be matched by CPA funding from neighboring communities and when involving joint or shared resources, facilities, or recreation or school-related projects, Wenham agrees to pay its equitable share.

In general, the Committee intends to reserve approximately 50% of each year's CPA receipts for major CPA eligible projects and as a result not all eligible projects proposed will be funded or fully funded. Also, project proponents need to maximize and demonstrate their efforts to obtain funds from all available sources.

Community Preservation Application Process

The CPC accepts project applications beginning in the fall each year, and the application process has two phases. The initial Application for Community Preservation Eligibility serves to introduce your proposal to the CPC so it can determine the project's eligibility and offer guidance. If the CPC agrees that your proposal is eligible for CPA funding, an Application for Community Preservation Funding must also be completed. The CPC will work to determine eligibility as quickly as possible so that the applicant may have ample time to complete the Application for Funding. Applications can be found in Appendix IV. The Guidelines for Project Submission (Appendix V) provide additional detail on the application process.

The CPC actively seeks suggestions and proposals from residents of Hamilton, Town Boards, Committees, and local organizations for projects which will best serve the goals of the CPA, the needs and interests of the Town and meet the CPC's Principles and Priorities for use of CPA funds.

The fiscal year 2010 Community Preservation Application process and schedule is as follows:

- In order to be considered for recommendation for the May 2009 Annual Town Meeting, you must submit an Application for Community Preservation Eligibility no later than October 1, 2008. Final Applications for Community Preservation Funding must be received no later than November 7, 2008 to be considered for recommendation at the May 2009 Annual Town Meeting, except for emergency or urgent situations or other exceptional circumstances.
- Each application must be submitted to the Community Preservation Committee (CPC) using the Application for Community Preservation Funding/Eligibility as a cover sheet.
- Applications should be submitted in ten (10) copies of all project materials to the attention of Christine Berry, Coordinator, Community Preservation Committee, Town Hall, P.O. Box 429, 577 Bay Road, Hamilton, MA 01936.
- Please include any maps, diagrams, and/or photos that pertain to your project.
- Applicants will be expected to be present their proposals at a CPC meeting and answer questions about their proposals. Applicants will be notified regarding the date of the meeting they should attend. The CPC will set a public meeting schedule to review project proposals in December 2008 and January 2009.
- The CPC will also set a public hearing in February 2009 where decisions will be made as to which projects will be recommended to Town Meeting.

- The CPC will discuss its project recommendations with the Selectmen and Finance Committee before preparing a Warrant Article with project recommendation for Town Meeting approval.
- If approved, project funding would be available on July 1, 2009 following the Annual Town Meeting.

Appendix I. CPA Committee

The following citizens represent the Community Preservation Committee as of Fall 2008:

Peter Britton (at large; Housing Partnership)
Tom Catalano (Historic District Commission; Chair)
David Carey (Board of Selectmen)
Peter Clark (Planning Board)
Peter Dana (Conservation Commission)
Chris Davis (at large; Hamilton Wenham Open Land Trust)
Leigh Keyser (Housing Authority)
Lindle Willnow (at large; Hamilton-Wenham Recreation Board)
Ray Whipple (at large)

Appendix II. CPA Bylaw

Excerpt from Town Bylaw

CHAPTER XXVII COMMUNITY PRESERVATION COMMITTEE

Section 1 - Establishment, Membership, Terms

There is hereby established a Community Preservation Committee, consisting of nine (9) voting members pursuant to G.L. c. 44B, the Community Preservation Act. The Committee shall act pursuant to G.L. c. 44B, § 5. The composition of the committee, the method of selecting its members, and each member's length of term is as follows:

One member of the Conservation Commission as designated by the Conservation Commission for a term of three years.

One member of the Historical Commission as designated by the Historical Commission for an initial term of one year and thereafter for a term of three years.

One member of the Planning Board as designated by the Planning Board for a term of three years.

One member of the Board of Selectmen, acting in its capacity as the Board of Park Commissioners, as designated by the Board of Selectmen for an initial term of one year and thereafter for a term of three years.

One member of the Housing Authority as designated by the Housing Authority for an initial term of one year and thereafter for a term of three years.

Four citizens at large to be appointed by the Board of Selectmen for initial terms of two years and thereafter each for a term of three years.

Any member who serves as a representative of an appointing committee who ceases during his or her term to be a member of the appointing committee shall also cease to be a member of the Community Preservation Committee. Any member may be removed with or without cause by the appointing committee. Any vacancy during the pendency of a term shall be filled by the appointing committee for the remainder of the term. Members may be eligible for reappointment.

Should any of the Commissions, Boards, or Committees who have appointment authority under this by-law chapter be no longer in existence for any reason, the appointment authority for that Commission, Board, or Committee shall devolve upon the persons acting in the capacity of or performing the duties of the former Commission, Board or Committee. If there are no such persons acting in the capacity of

or performing the duties of any such Commission, Board, or Committee, then the appointment shall be the responsibility of the Board of Selectmen.

All initial appointments shall be made within twenty days of the effective date of this by-law. Thereafter, all vacancies, whether at the end of a member's term or otherwise, shall be filled within twenty days of the creation of the vacancy.

Section 2 - Duties

1. The Committee shall study the needs, possibilities and resources of the town regarding community preservation. The Committee shall consult with existing municipal boards, including but not limited to the Conservation Commission, the Historical Commission, the Planning Board, the Board of Selectmen in its capacity as the Board of Park Commissioners, the Housing Authority and the Open Space Committee, 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 town regarding community preservation, 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 town.
2. The Committee shall make recommendations to the town meeting for the: acquisition, creation and preservation of open space pursuant to Article XCVII of the Constitution of the Commonwealth and the Hamilton Open Space Plan prepared pursuant to M.G.L.A. c.40 sec. 8C; for the acquisition and preservation of historic resources, for the acquisition, creation and preservation of land for recreational use, for the creation, preservation and support of community housing and for rehabilitation or restoration of such open space, historic resources, land for recreational use and community housing that is acquired or created as provided in this by-law. With respect to community housing, the Committee shall recommend, wherever possible, the reuse of existing buildings or construction of new buildings on previously developed sites.
3. The Committee may include in its recommendation to the town meeting 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. Recommendations for the expenditure of funds shall include the Committee's anticipated administrative and operating expenses.

August 2006

Appendix III. CPA Statute

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.

(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.

Appendix IV. CPA Application Forms



TOWN OF HAMILTON
APPLICATION FOR
COMMUNITY PRESERVATION ELIGIBILITY

Date: _____

Project Title: _____

Name of Applicant: _____

Name of Organization: _____

Address: _____

Telephone: _____

Email: _____

CPA Category (circle all that apply):

Open Space

Historic Preservation

Recreation

Community Housing

CPA Funding Requested: \$ _____ Total Project Cost: \$ _____

Project Description: Please provide a brief project description below. Include a brief description of how your project accomplishes the goals of the CPA and include an estimated budget. Please include supporting materials as necessary.

NOTE: This application enables the CPC to review the request to ensure eligibility and offer guidance. If eligible, an Application for Funding must be completed.



TOWN OF HAMILTON
APPLICATION FOR
COMMUNITY PRESERVATION FUNDING

Date: _____

Project Title: _____

Name of Applicant: _____

Name of Organization: _____

Address: _____

Telephone: _____

Email: _____

CPA Category (circle all that apply):

Open Space
Recreation

Historic Preservation
Community Housing

CPA Funding Requested: \$ _____ **Total Project Cost:** \$ _____

Please attach answers to the following questions. Include supporting materials as necessary.

1. **Project Description:** Please give a detailed project description, including specific objectives.
2. **Goals:** How does this project accomplish the goals of the CPA? (See Guidelines for Project Submission for general criteria)
3. **Timeline:** What is the schedule for project implementation, including a timeline for all critical milestones? Will this be a multi-year project?
4. **Budget:** Please provide a full budget including the following information, as applicable.
(NOTE: CPA funds may not be used for maintenance):
 - a. Total amount of the project cost, with itemization of major components.
 - b. Additional funding sources. Please include those that are available, committed, or under consideration.
 - c. Describe the basis for your budget and the sources of information you used.
5. **Support:** Have the appropriate Town Boards and Commissions expressed support and/or approved the project? What is the nature and level of community support for this project?

Appendix V. Guidelines for Project Submission

TOWN OF HAMILTON COMMUNITY PRESERVATION FUNDING GUIDELINES FOR PROJECT SUBMISSION

1. The application process for Community Preservation Funding is twofold. The Application for Community Preservation Eligibility will introduce your proposal to the Committee so that it can determine the project's eligibility and offer guidance. If the Committee agrees that your proposal is eligible, an Application for Community Preservation Funding must be completed. The Committee will review both the application for eligibility and that for funding according to the General Criteria outlined below.
2. In order to be considered for recommendation for the May 2009 Annual Town Meeting, you must submit an Application for Community Preservation Eligibility no later than October 1, 2008. Final Applications for Community Preservation Funding must be received no later than November 7, 2008 to be considered for recommendation at the May 2009 Annual Town Meeting.
3. Each application must be submitted to the Community Preservation Committee (CPC) using the Application for Community Preservation Funding/Eligibility as a cover sheet.
4. Applications should be submitted in ten (10) copies of all project materials to the attention of Christine Berry, Coordinator, Community Preservation Committee, Town Hall, P.O. Box 429, 577 Bay Road, Hamilton, MA 01936.
5. Please include any maps, diagrams, and/or photos that pertain to your project.
6. All applicants will be expected to be present at a CPC meeting to answer questions about their proposals. The CPC will set a public meeting schedule to review project proposals in January and February 2009. Applicants will be notified regarding the date of the meeting they should attend.
7. The CPC will discuss its project recommendations with the Selectmen and Finance Committee before preparing a Warrant Article with project recommendation for Town Meeting approval.
8. If approved, project funding would be available on July 1, 2009 following the Annual Town Meeting.

General Criteria

The Community Preservation Committee will give preference to proposals which address as many of the following general criteria as possible:

- Are eligible for Community Preservation Act (CPA) funding according to the requirements described in the CPA legislation; specifically
 - The acquisition, creation, and preservation of open space
 - The acquisition, preservation, rehabilitation, and restoration of historic resources.
 - The acquisition, creation, and preservation of land for recreational use.
 - The creation, preservation, and support of community housing.
 - The rehabilitation and restoration of resources that have been acquired or created using monies from the fund.
- Are consistent with the Master Plan, Open Space and Recreation Plan, Recreation Master Plan, Affordable Housing Plan, the Town's Capital Management Plan and other planning documents that have received wide scrutiny, public input and have been adopted by the Town;
- Preserve and enhance the character of the town as described in the Master Plan;
- Save resources that would otherwise be threatened and/or serve a currently under-served population;
- Either serve more than one CPA purpose (especially in linking open space, recreation and community housing) or demonstrate why serving multiple needs is not feasible;
- Demonstrate practicality and feasibility; demonstrate that the project can be implemented expeditiously and within budget;
- Produce an advantageous cost/benefit value;
- Leverage additional public and/or private funds;
- Preserve or utilize current town-owned assets; and
- Receive endorsement by other municipal boards or departments.

For further information about the application process or to discuss a project's eligibility, please contact Christine Berry at the above mailing address or at cberry@hamiltonma.gov or visit Hamilton's Community Preservation Committee website at www.hamiltonma.gov → Boards and Committees → Community Preservation Committee.

VI. FY07 CPA Project List

FY07 CPA Project List

	Project Name	Purpose	Amount	Project Summary
1	Renovations to Hamilton Housing Authority Apartments	Community Housing	\$120,000	To fund renovations to the kichenettes at the Hamilton Housing Authority Apartments on Railroad Avenue.
2	Community Housing Coordinator	Community Housing	\$35,000	To fund a community housing coordinator
3	Town Hall Renovations	Historic Preservation	\$65,000	To fund the repair of the Town Hall heating systems
4	Historic Headstone Repairs	Historic Preservation	\$6,000	To fund the repair of the historic headstones in the Hamilton cemetery
5	Masconomet Plaque	Historic Preservation	\$2,500	To fund the construction of a plaque commemorating the burial site of Chief Masconomet.
6	School Street Well Protection	Open Space	\$27,000	To acquire conservation restrictions to protect the School Street Well.
7	Open Space Reserve Fund	Open Space	\$31,000	To reserve \$31,000 in revenues for the Open Space Reserve Fund.
8	Old Library Re-use Study	Recreation	\$10,000	To fund a feasibility study on new usages of the old Hamilton Library site, such as more Recreational opportunities and/or Community Housing
9	Patton Park Field Re-grading	Recreation	\$4,000	To fund the repair of drainage problems at the Patton Park baseball field
10	Community Preservation Coordinator	Administration	\$25,000	To hire a Community Preservation Coordinator
11	Total		\$325,500	

Appendix VII. FY08 CPA Project List

FY08 CPA Project List

Project Name	Purpose	Amount	Project Summary
1 MA Conservation Mapping Assistance/Partnership Program (MACMAPP GIS)	Open Space	\$1,200	To fund the purchase of a laptop computer needed to carryout the MACMAPP GIS program whose purpose is to support conservation organizations with planning and inventory using GIS.
2 HW Community House Portico Repair Design	Historic	\$8,200	To fund the architectural and design work necessary for the repair of the HW Community House portico and underlying structural system.
3 Conservation of Historic Documents	Historic	\$16,346	To fund the preservation of a variety of the Town's historical assets which are in need of conservation; cost estimate includes scanning.
4 Chebacco Woods Trail Restoration	Recreation	\$25,000	To fund trail improvements on portions of the White Dot Trail at Chebacco Woods.
5 Pleasant Pond Landscape Improvement Plan	Recreation	\$23,300	To fund a portion of the Pleasant Pond Landscape Improvement Plan, specifically, parking lot improvements and sub-grade preparation.
6 Gathering Places -Construction of picnic tables, trash bins, and bike racks	Recreation	\$4,200	To fund the purchase of raw materials to construct a dozen picnic tables, bike racks, and trash receptacles to be placed in parks and various other public areas of town.
7 Energy Audit for Town Hall	Historic	\$9,900	To fund an energy audit and heating design solution for Town Hall
8 Replace Underground Wiring and Lights at Patton Park	Recreation	\$25,000	To fund an additional light and the replacement of the underground wiring at Patton Park which leads various lights and poles at the Park.
9 Vaulted/Domed Ceiling Second Floor Town Hall	Historic	\$30,000	To fund the repair of the 1898 existing plaster ceiling of the 2nd floor of Town Hall (inc plaster work, lighting and fans)
10 Woodbury Street Proposal	Recreation	\$32,000	To fund the construction of a stream crossing needed to complete the pedestrian/bicycle pathway along Woodbury Street.
11 Landfill Site Assessment and Reuse	Open Space and Rec.	\$113,000	To fund a study of the existing environmental condition of the landfill area and review the potential for its reuse.
12 Model T Building	Historic	\$35,000	To construct the building that currently houses the Chemical Company's 1916 Model T/American LaFrance Chemical Truck, the first piece of apparatus purchased by the Hamilton Fire Dept.
PROJECT TOTAL		\$323,146	
Community Housing Administration		\$60,000	Approximate set aside for 10% Community Housing purpose
		\$30,000	Approximate, CPC Coordinator salary, CPC membership, etc.
TOTAL		\$413,146	

Appendix VIII. FY09 CPA Project List

May 8, 2008

FY2009 CPA Project List

Project Name	Project Proponent	Purpose	Amount	Project Summary
1 Renovations of Historic Bell at the First Congregational Church of Hamilton	Rev. Dorington Little, First Congregational Church	Historic Preservation	\$11,000	To fund renovations that will enable the historic bell at the First Congregational Church of Hamilton to ring at time intervals synchronized with the Town Clock.
2 HW Community House Portico Project	Melissa Elmer, Community Service of Hamilton Wentham	Historic Preservation	\$60,000	To partially fund the repair of the portico of the Comm. House including new concrete masonry, repair and waterproofing.
3 Replacement of Floor at Senior Center/Old Library	Mimi Fanning, Council on Aging	Historic Preservation	\$9,000	To replace the flooring at the Senior Center/Old Library.
4 Restoration of Weaver Pond at Patton Park	Town of Hamilton, Recreation Department	Recreation	\$2,500	To preserve and restore Weaver Pond at Patton Park as a public recreational resource, particularly for skating in the winter.
5 Open Space Set-Aside	Community Preservation Committee - Statutory Requirement	Open Space	\$70,000	To appropriate \$70,000 for the required set-aside for future Open Space projects.
6 Community Housing Set Aside	Community Preservation Committee - Statutory Requirement	Community Housing	\$70,000	To appropriate \$70,000 for the required set-aside for future Community Housing projects.
7 CPA Administration	Community Preservation Committee	Administration	\$35,000	To appropriate \$35,000 for administration costs including, but not limited to, Annual Community Preservation Coalition membership Fees and salary for part-time CPC Coordinator position.
PROJECT TOTAL			\$257,500	
Anticipated FY 2009 CPA Revenues of \$ 700,000 (including estimated state match of \$275,000). The balance of FY09 CPA revenues, estimated at \$442,500, will be placed in the undedicated reserve fund.				

COMMUNITY PRESERVATION ACT Allowable Spending Purposes

	Historic Resources	Community Housing	Open Space	Land for Recreational Use
	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	housing for individuals and households with low (below 80% of area median, as defined by U.S. Dept. of Housing & Urban Development) and moderate (below 100% of area median, as defined by HUD) incomes, including housing for seniors	includes, but is not limited to, land to protect existing and future wet 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	for active or passive recreational use including, but not limited to, the use of land for community gardens, trails, and noncommercial youth and adult sports, and the use of land as a park, playground or athletic field. Shall not include horse or dog racing or the use of land for a stadium, gymnasium or similar structure.
ACQUIRE	YES	YES	YES	YES
CREATE	NO	YES	YES	YES
PRESERVE protect from injury, harm, or destruction (... not maintenance)	YES	YES	YES	YES
SUPPORT	NO	YES, including funds for an affordable housing trust	NO	NO
REHABILITATE / RESTORE * remodeling * reconstruction * extraordinary repairs for the purpose of making [resources] 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.	YES, but rehabilitation must comply with the U.S. Secretary of the Interior's <i>Guidelines for the Treatment of Historic Properties</i> (www.nps.gov/history/hps/tps/standguide) OR <i>Guidelines for the Treatment of Cultural Landscapes</i> (www.nps.gov/hpl/landscape_guidelines)	YES, IF acquired or created with CP funds	YES, IF acquired or created with CP funds	YES, IF acquired or created with CP funds

SOURCE: Prepared by the Massachusetts Department of Revenue, Division of Local Services, to help communities and project applicants understand the basic purposes and constraints in the Community Preservation Act, Massachusetts General Laws Chapter 44b. The original of this chart is in the DOR booklet created for an April 2007 Community Preservation Coalition workshop on Community Preservation Fund, Budgeting and Finance Issues.