Community Preservation Act Questions and Answers

These questions cover more complex issues and do not include basic information about the CPA, which can be found on the homepage. New questions will be added to this list frequently. Click on a question to see the answer. If you have difficulty seeing an answer, click here.

Affordable Housing
Open Space
Historic Preservation
Adminstration/Maintenance
Revenue/Surcharge/Trust Fund Related
The CPA and Town Meeting
The Community Preservation Committee
Local Control
Recreation

Affordable Housing

- Is it possible to apply for seed money from the CPA funds for the up-front work required to get affordable housing projects initiated? It is not for a particular project, but for preparing for one or several projects.

  ANSWER:
  The answer is yes. "Support" of affordable housing is one of the eligible uses of CPA funds. A number of communities have used CPA for such projects as site assessment/studies, grant writing, setting up a housing office, etc.

- Does the establishment of a Housing Trust Fund allow for expenditures from it without town meeting votes and without going through the proposal cycle each year? If possible, we would like to build a fund that could be used to buy-down or acquire property when it becomes available.

  ANSWER:
  If you transfer CPA funds to your housing trust fund, they may then be spent for CPA eligible projects without further approval of Town Meeting. The transfer itself requires a Town Meeting vote, but that is sufficient. Several communities are contemplating this route and Cambridge has already transferred nearly $20 million in CPA housing to such a trust fund, a lot of which has already been spent on numerous housing units. If you'd like more info on how Cambridge has done it, you may want to speak to someone over there directly. Call us at 617-367-8998 for more info.

- A piece of property links the land between Town Hall and the Highway Department property. Presently all office space, the library, and the police department are housed in the Town Hall. The owners of the property have offered the town the right of first refusal before they put it on the market. Is there something we can do with CPA Funds to acquire the home and make it available for affordable housing and give the back portion to the Town to expand town facilities?

  ANSWER:
  You could certainly use CPA funds in the case of the old home. An important thing to note is that if you would like to use the property for two uses, part for affordable housing and part for town offices, you may only use CPA funds for the portion of the property that would go to an allowable CPA use, i.e. affordable housing. You'd have to find another source of funding for the portions that would be devoted to other, non-CPA uses.

  This kind of multiple funding source purchase is very common, where a town buys a piece of property with other sources of funding in addition to CPA monies, so that the property can be used for multiple functions. The Town of Hopkinton, for example, purchased a large piece of open space with the idea of preserving a lot of it for open space, using some to build a school, some for affordable housing, and some for town facilities. CPA funds were used only to pay for the open space and affordable housing portions of the parcel.

  Regarding the part of the property that you would like to turn into affordable housing, there is a lot you could do with CPA funds from purchasing the property, to renovating it, etc. Note that you'd have to create permanent deed restrictions on the affordable units so that they remain affordable in perpetuity.

- We are considering a one-time payment to a developer who is developing a historic mill into rental units. The project requests $1.5 million to the developer in order to make 15% of the units affordable for 30 years. The Town would receive no asset/ownership for this payment. Is this an allowable use of CPA funds?

  ANSWER:
  There are a couple of issues to consider. First, you mention that there would be no municipal ownership of the development. Section 12 of the CPA enabling statute requires municipal ownership only when a real property interest is being acquired with CPA funds. Such an interest is defined in section 2 of that statute to be an interest in "real property, including easements and restrictions." Because you propose to give a grant or loan to the developer to assist with his development costs, you

will not be acquiring any interest in the property and thus have no obligation to own it.

The second issue involves the use of public funds. As with any investment of public monies, there needs to be a clear public benefit, i.e. a return on the investment that justifies the expenditure of municipal funds. One way to satisfy this requirement would be to insist on permanent deed restrictions on all of the affordable units. You could use the CPA money to purchase these restrictions from the developer, thus securing the affordability and making the project economically viable for the developer.

Note that a similar project was approved in Bedford in 2003. They will be giving a no interest loan to a developer so that he can create 5 affordable units in a ten-unit development.

- One of the proposals for our CPA funds this year is for $5000 to hire a consultant to set up a Housing Trust Fund. Is this allowable?

  ANSWER:
  Yes, that that would be a fine use of CPA housing funds. Several other communities have done similar things with CPA funds, like hiring consultants to help write grants, to do housing plans, etc. All of these activities fall under "support" of housing, which is explicitly authorized in Section 5 (b) (2) of the CPA enabling statute.

- Under "support" of housing, would be it allowable to use CPA funds to hire a Housing Advocate who would work with people to help them find housing, do housing crisis intervention and case management, help eligible people find financing (maintain welfare benefits, fuel assistance), work to prevent homelessness, etc.?

  ANSWER:
  "Support" as used in the statute is not defined, and DOR guidance does not provide much help, citing only an example of providing CPA funds to the housing authority to support affordable housing. As a result, there is a room for a liberal interpretation of "support". Having said that, the expenditure of funds for a housing advocate who would be providing support to people in need of housing would not really constitute an expenditure for the support of "community housing", which is the permitted purpose under the Act. Saying it another way, it wouldn't advance the purpose of "community housing" or help make housing affordable to those who qualify for community housing under the Act - it simply would provide a resource to those people to try to find affordable housing that already exists. Consequently, the better answer is that it is not a permitted expenditure under the Act.

- Can a town give preference to town employees (i.e. teachers, fire fighters, police, government employees) for CPA funded affordable housing or does it have to be open to anyone?

  ANSWER:
  There is nothing in the CPA that prevents a town from adopting local preferences, so long as the people being served qualify under the income limits of the Act. However, there are fair housing laws which prevent discrimination on certain bases (race, religion, etc.) in the provision of housing. In addition, to the extent that a community wants the affordable housing it creates to count toward the 10% goal for purposes of G.L. c.40B, there may be limitations on the number of units that can be rented on a local preference basis. If you are creating less than 5 units of housing in the proposed project, you will probably have more discretion since most affirmative marketing requirements are for 5 units of more. These Massachusetts fair housing law are beyond the scope of this document, however, and for more details, towns should consult with their counsel to make sure that their plans are in line with all existing laws in addition to the CPA.

- Can a town use CPA funds on state owned housing buildings?

  ANSWER:
  As long as the money is not being used to acquire real property interests that would not be owned by the town, the answer is yes, provided the housing created, preserved, or supported is otherwise eligible under CPA.

- May CPA funds be used to convert a town-owned structure that was not purchased with CPA money into affordable housing?

  ANSWER:
  Yes, a town could convert a town-owned structure not permanently used for affordable housing into affordable housing using CPA funds, provided that the units created will constitute low or moderate income housing as defined under the CPA. This would constitute "creation" of affordable housing, which is one of the permitted purposes under the CPA.

- Does CPA money have to be spent on a specific project or could a general transfer be approved? Could CPA money be transferred to a housing authority, for example, to be spent as expenses come up, provided they all are allowable under CPA?

  ANSWER:
  CPA funds may be used for any purpose permitted under the Act. In its guidance, DOR expressly stated that a town could use CPA funds to make payments to a housing authority for the purpose of creating or preserving

affordable housing because the Act permits the use of CPA funds for the "support" of affordable housing.

- Can new construction under the CPA qualify for 40B?

  ANSWER:
  Yes, if it meets the 80% area median income and long-term affordability requirements. It is important to note that the CPA defines community housing as affordable for those with less than 100% of the median area income, while housing can only qualify under 40B if it is affordable to those with incomes that are less than 80% of the median area income. The 40B comprehensive permit process does not apply to the purchase of existing housing, however. To have existing housing with long-term affordability restrictions certified for 40B, the town needs to petition to DCHD.

- A town is interested in building a mixed low-income/market price housing development. May CPA funds be used to partially fund the development and if so, how would the percentage is determined? If 25% of the units are affordable, can they fund up to 25% of the total cost with CPA or are there other considerations?

  ANSWER:
  A city or town may use CPA funds to fund the "assisted or subsidized" units in a mixed income development. So, yes, up to 25% of costs in this case would make sense.

- What ADA low-income housing programs might work well with the CPA by providing matching or supplemental funding. Is there a list somewhere, or could you mention a few?

  ANSWER:
  A good place to start is the Home Modification Loan Program which provides 0% interest loans to households with incomes up to 100% of the median (same as CPA). Eligibility is any homeowner who has a disability or household member with disability. Property must be less than 10 units.

  There is a provider agency for each region. But, the main contact is the Mass. Rehabilitation Commission at 617-204-3637 or check out their website.

- What is the connection between the CPA and Executive Order 418?

  ANSWER:
  In January 2000, Governor Cellucci signed Executive Order 418, Assisting Communities in Addressing the Housing Shortage, which established a

program for community planning and provided incentives to communities providing additional housing needs. All 351 Massachusetts cities and towns are eligible for up to $30,000 worth of planning services and technical assistance to help them complete a Community Development Plan that depicts the future growth of the community. The final Plan is a GIS (geographical information system) based map that addresses housing, open space and resource protection, economic development and transportation issues. The Community Preservation Act, if adopted locally, may help communities implement portions of their Community Development Plans.

In addition, the development of a local or intercommunity Community Development Plan will likely involve the work of a local committee. The composition of this committee may overlap with the Community Preservation Committee, thus providing a community with the possibility of combining time, agendas and priority setting purposes of each committee.

For further information please consult the Department of Revenues Informational Guideline Release (IGR) numbers 00_209 and 01_207. Note: you will need the free Reader from Adobe to view these documents.

- If we increase open space, wont we be limiting the land that is available for affordable housing?

  ANSWER:
  That depends. In some cases, this might be the case, but in others, both objectives could be met simultaneously. A town could save a piece of land from development and then plan to preserve the majority as open space with some percentage going towards affordable housing which would then be designed with the character of the entire piece of land in mind. In this manner, both open space and affordable housing needs are met, and CPA spending on this project could count towards the 10% minimum for each of those two categories.

- Can wheelchair ramps & ADA work be done with CPA funds at a private residence?

  ANSWER:
  Yes. It would be allowable to use CPA funds to pay for ADA improvements to a private residence, provided that the inhabitants of that residence meet the income limits under CPA (that they earn less than 100% of HUD's area median income).

Open Space

- If there are 50 acres, say, and three acres will be used for wells and 47 acres to provide protection to the wells by keeping them in conservation, is the 47 acres eligible for CPA funding if part of the funding (for the 3 acres) comes from the water fund?

  ANSWER:
  You may certainly use other sources of funding along with CPA funds for a purchase. The only thing that you need to be careful about is that you divide the use of the land accordingly so that the portion that was purchased with CPA funds is used for CPA-eligible purposes. So you could pay for part of a purchase with water funds so long as only that portion is used for wells.

- Does a town that is contributing CPA funds to a neighboring town have to retain some kind of interest in the land? Is it possible for both of them to own it jointly?

  ANSWER:
  It appears as though the CPA enabling statute, M.G.L. c. 44B, sec. 12(b), allows for municipalities to share in the ownership of property acquired with CPA funds. Under the CPA, municipalities can use CPA funds to purchase "real property interests." A real property interest is defined in M.G.L. c. 44B, sec. 2 as: "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." This definition indicates that, under the CPA, a municipality can acquire a real property interest that is less than the entire fee interest in a property. For instance, according to M.G.L. c. 44B, sec. 2, a municipality may acquire a beneficial interest in a trust that holds the title to a property using CPA funds. Ownership by the municipality of all of the beneficial interests in such a trust is not required. As a result, a municipality should be able to share the ownership of real property acquired with CPA funds with other municipalities or entities, including a nonprofit, charitable corporation.

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

  ANSWER:
  The use of CPA funds to purchase a CR is certainly an allowable use of such funds. A number of communities have already appropriated CPA

monies for this purpose, including Amherst, Southwick, and Westport. Several others are considering purchasing CRs.

Technical CR questions are beyond our areas of expertise. For more detailed information, we suggest you contact the state's CR program at 617-626-1012.

- Are there any options available to a town to purchase open space before they have formed a Community Preservation Committee (but after passage of the CPA)?

  ANSWER:
  In this situation, the options would be quite limited. They cannot make any official CPA purchases until the CPC is formed and makes its recommendations. They are also not able to have the town purchase the land and then have the CPC recommend that the town is reimbursed. This is because, according to the Act, CPA funds "shall not replace existing operating funds, only augment them." (see the last sentence in Section 6 of the CPA).

  The only option open to them is to have a private, non-profit, such as a conservation trust or The Trust for Public Land purchase the land. Then, if the CPC so recommends, CPA funds could be used to reimburse that entity, since the original purchase was not a government appropriation, and thus the CPA funds are not replacing a government expenditure or a legal commitment on the part of the government to make such an expenditure.

- Our town is interested in purchasing a piece of open space that has a transmission tower on it. The current landowner receives fees for leasing space on the tower. Would we be allowed to use CPA funds to purchase the land (and the tower) and then continue to lease space on the tower to offset the cost of the acquisition?

  ANSWER:
  Yes, so long as the tower is preexisting and any revenues from such an arrangement are directed back to the CPA fund.

- The Board of Selectmen has a warrant article on the agenda for Spring Town Meeting in which the town will vote to authorize the Selectmen to draft a conservation restriction, and then negotiate and grant the CR to an appropriate conservation agency. Could the Town Meeting vote approving the acquisition of the property using CPA funds include the CR, all as part of the same package, thus making a subsequent vote unnecessary?

ANSWER:
It would be unusual for you to have an additional article after an open space purchase vote just to approve the CR. A situation in which this might be necessary is if there was a specific condition in the original vote that approval of the CR is necessary at a subsequent Town Meeting. Otherwise, the CPA is quite clear (see section 12) that a CR is necessary for all land purchases, so you would not need an additional warrant article.

- Would it be okay to use CPA funds for ADA improvements to open space (i.e. adding a handicap parking spot, ramps, etc)?

ANSWER:
If the property was acquired using CPA funds, the improvements are probably fine as rehab./restoration. If not, then the improvements would need to be justified as preservation of open space or rec. facilities, which is narrowly defined to mean protection from harm or injury. Whether or not a good argument can be made that the improvements constitute preservation will depend on the particular facts, but, as a general matter, ADA improvements like adding a handicapped parking space or adding a new access ramp will probably be difficult to justify on grounds that they protect the open space or rec. facility from harm or injury.

- Can CPA funds be appropriated to a city or town conservation fund?

ANSWER:
The Massachusetts Dept. of Revenue has indicated that municipalities that have adopted the CPA may appropriate Community Preservation Fund monies to a Conservation Fund established under the Conservation Commission Act (G.L. Ch. 40 sec. 8c.) Under Ch. 40 sec. 8C, cities and towns may appropriate monies into the Conservation Fund, which the Conservation Commission may then spend without further appropriation, or other legislative body action, for various purposes including the acquisition of fee or other interest in land for open space or other conservation purposes.

The town may use Community Preservation Fund monies to fund all or part of an annual appropriation to the Conservation Fund. The Commission may then spend the money for any purposes allowable by both laws. These include acquisition of land and placing deed restrictions on the land as required by the CPA. DOR gave this opinion in a 2003 letter to the Town of Duxbury.

Historic Preservation

- We have a proposal before us from the Veterans organization to use Historic Preservation funds to pay for part of the construction of a

Veterans Memorial - titled "Celebration of Freedom" based on the fact that it will make prominent, important parts of the town's history. The request is that CPA funds would be used to provide all historic text and engravings on the memorial (title, dedication statement, service emblems, captions on structure and benches - e.g. names of those died in service from town - logos of the five military services, seal of the town and US, etc. Would this qualify for CPA funds?

ANSWER:
While this project definitely sounds interesting, it would be outside the scope of the CPA. CPA funds may be spent on historic preservation of resources that are actually historic. While this memorial will commemorate historical events, it is not historic itself as it is being built in 2003. If there were an existing memorial that was built more than 50 years ago (generally the length of time something needs to be around before it can be considered historic), and they were proposing to restore it, that would certainly be a project eligible for CPA funds.

- An old school in town is to be renovated and will become a teen center, meeting rooms, Park and Rec. office, etc. An indoor pool and gym are to be added as new construction. Total cost of the project is projected at $10.5 million. The Park and Recreation Commission is administering this project, and they plan to apply for upwards of $2 million for renovation of the 1925 school, under historic preservation. Could an argument be made that only exterior rehabilitation and perhaps code issues would qualify under historic preservation? Or could tearing out walls and reconfiguring for the new use (i.e., teen center, etc.) also be justified as historic preservation?

ANSWER:
There are two questions here, really. The first is what is allowable under the CPA statute and the second is what your committee is comfortable with funding.

To answer the first, all of the work you mention, both the exterior rehab and the interior renovation would be allowable. This is because the statute allows for rehabilitation of historic resources, which is defined as, "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." (M.G.L. ch. 44B s. 2).

This is a fairly broad definition that has included work like new electrical, plumbing, fire systems, structural renovations, etc.

The second question is whether the committee wants to use CPA funds for this use in light of other competing projects and that's one that needs to be made by the committee, regardless of whether or not such expenditures are legal.

- A significant historic school building exists in our town center. The building and surrounding property is owned and managed by a private trust that have little in the way of financial resources. The trust has a charter that limits the use of the building to educational purposes only. For over 60 years, the town leased the building for $1 per year for classroom space. Must the town have ownership or hold a deed restriction on the property in order to pay for restoration of the building with Community Preservation funds?

  ANSWER:
  It is definitely allowable for a CPA community to give a grant of CPA funds to restore a historic structure that is privately owned. This has been done on many occasions throughout the state.

  A few examples are:

  Cambridge - $540,000 for preservation grants to qualifying homeowners to make historically appropriate renovations to their homes and for other historic preservation programs.

  Plymouth - $2,875 for the partial replacement of the roof on the 17th century Sparrow House.

  Rowley - $15,000 for restoration of a historic mill wheel in town and an engineering study of the oldest stone bridge of its kind in North America.

  In all of these cases, there is no requirement that the town own the historic resource. Section 12 of the CPA enabling statute requires municipal ownership only when a real property interest is being acquired. Just giving a grant for restoration does not constitute the acquisition of a real property interest and so there is no municipal ownership requirement. It is, however, always recommended that a town require a deed restriction in return for granting CPA funds so that the public investment is protected (i.e. you wouldn't want someone to remove a historic facade that was just restored with CPA funds). Note that this deed restriction would not

necessarily have to cover the entire structure but rather just those portions that were restored with CPA funds.

- At our historic town hall, we are planning to install insulated glass windows that will have dividers between the two panes of glass to replicate the paned windows we now hove, but the panes will actually be one large single pane of glass. I wanted to make sure that replacing the windows with new windows that are not exactly like the old ones would be okay.

  ANSWER:
  What you propose would be fine. Under rehabilitation of historic resources, an allowed use of CPA funds, you may remodel, reconstruct, and/or make repairs to historic resources to make such resources functional for their intended use, or to make them comply with ADA or other federal, state, or local building or access codes. (M.G.L. ch. 44B s. 2).

  So long as the work that you do preserves the historic character of the building, you may certainly use modern materials to make the building more useful.

- Is it possible to provide CPA funds as reimbursement for non-municipal expenditures previously made on an historic preservation project? This might arise in the case of a possible project to rehabilitate a sawmill. The sawmill's roof collapsed under the snows of this past winter. It may need to be repaired before our town meeting is able to approve the funds. Could we as a committee recommend to town meeting that CPA funds be used reimburse the owners of the sawmill for repairs and rehabilitation that have already been done?

  ANSWER:
  What you propose would be fine. The CPA has a prohibition against reimbursing previously appropriated funds, but that is an entirely different issue, as a private expenditure does not represent a municipal appropriation. If the town had previously appropriated funds for the project and you then wanted to reimburse those expenses, that would run afoul of the prohibition, but a private expenditure would be fine. In order to make this more acceptable to people (they could complain that if the private owner could afford the expense initially why should they receive a reimbursement) you may want to think about explaining it as a timing issue and that the homeowners went forward with the knowledge that you'd recommend some assistance from the CPA funds.

- To what extent, if any, can CPA funds be used for the historic preservation of privately owned structures?

ANSWER:
If it is decided by the community that this is a use of the funds that they feel is important, CPA funds may be dedicated to such preservation. The benefit to the private owner, however can only be incidental - the primary goal must be for public benefit. It may be helpful to consider whether or not the proposed improvements will be visible from a public way when determining if there will be a significant public benefit. Note that if CPA funds are used in this manner, a deed restriction must be agreed upon with the owner to protect the publics investment.

- There are a number of towns that would like to do borrow money through bonding to do historic preservation work on structures that were not purchased with CPA funds. There is some confusion regarding what types of work are permissible under the CPA

ANSWER:
In the fall of 2001, Bedford voters approved a 10-year bond (for $1.6 million) to fund restoration of the town's old town hall. This project was subsequently rejected by the town's bond counsel, who ruled that according to their reading of the CPA, funds could not be used for buildings that were already owned by the town and thus not purchased with CPA funds. This ruling let to a bipartisan effort to change the CPA to allow such expenditures that resulted in an amendment to the Act, which was signed by Governor Swift on July 18, 2002. Under the amendment, the guidelines for spending CPA funds on historic preservation have been significantly broadened. The original Act listed "historic landscapes" as the only things eligible for CPA funds. The new wording includes "historic resources," which is a much broader term. The Act now allows for the acquisition, preservation, rehabilitation, and restoration of historic structures, landscapes, and just about any other historic resource in a community that has been determined by the local Historic Commission to be significant in the history, archeology, architecture, or culture of a city or town. CPA funds may be spent on these historic resources regardless of whether they were purchased with CPA funds or not.

- We would like to obtain facsimile artifacts and enlarged, sturdily mounted photos that could be used in a classroom, the library or for speaking events; over time we'd like to have some professional archaeologists as public speakers, improve the public and school libraries' collections on related topics and a variety of other activities to make the town more aware of its local history. When the activities mentioned above are so tied in with the preservation and promotion of local history, are any of them something that might be eligible for CPA funds?

ANSWER:
While all interesting sounding proposals, none of these things would be

eligible for CPA funding. Some towns have used CPA funds to educate the community about the work of the CPA Committee, but educational projects alone would not fall under the CPA.

Adminstration/Maintenance

- There is going to be a meeting between some municipal officials and the CPC committee to ascertain the city/town's focuses for CPA spending. Is this okay? Or is it an abrogation of the public's right and responsibility to define spending?

  ANSWER:
  Such a meeting is certainly fine and probably a good idea, so long as there is the clear understanding that the CPC has the final say in which projects are recommended to Town Meeting. It is always a good idea to meet with various town boards to discuss projects and solicit input. You just have to be careful because sometimes, especially in the case of the Selectmen and Finance Committee, they want to have control of the CPA funds, and that is where you would run into legal trouble since the CPC has sole responsibility for recommending projects to Town Meeting and Town Meeting is the only entity that can appropriate CPA funds.

- What is the thinking on the prohibition on using CPA funds for maintenance? After a structure is built or restored, who is responsible for its maintenance?

  ANSWER:
  One thing to consider is the way that such proposals are worded. While maintenance is prohibited, replacing a roof or doing major reconstruction can be framed as preservation if the building in question is considered a historic structure under the Act. Generally, the use of CPA funds is not allowed for routine maintenance that would normally come out of an operating budget. Expenditures that would most likely be approved are those that can be considered capital improvements. Each community is responsible for securing the non-CPA funds necessary to maintain any properties that have been improved or purchased through the CPA.

- What happens to administrative funds that appropriated for a fiscal year but are not spent?

  ANSWER:
  According to DOR, funds appropriated for administrative expenses but not spent in a given fiscal year revert back to the general CPA fund balance on June 30. Those funds then can be appropriated from the fund balance in the future for any of the three main CPA purposes.

- Has anyone mentioned the use of CPA funds, only for specific CPA projects when needed, to augment an effort to hire a Consulting Planner for a town?

  ANSWER:
  At least two communities, Newton and Peabody, have hired full or part time planners to assist with their CPA projects. A number of other communities have hired consultants to assist with specific projects or to assist in with fund raising for housing, etc. Make sure that the person who is hired keeps track of and documents his or her time spent on the CPA so that you can show how you arrived at the amount that you paid that person. These funds would come mostly from your admin funds, although if the planner is working on a specific CPA project, you could probably use funds from the appropriate CPA category funds.

- Are there any hard and fast rules for what the administrative expenses under the CPA can be used for? Could they be used for some consultant work in developing CPA projects? Does it matter if consultants are paid for from the administrative funds or the specific use funds?

  ANSWER:
  It really does not matter. Communities have used admin funds for all kinds of expenses, from mundane operating costs to funding appraisals, hiring consultants, doing mailings, etc. We mention that some of these costs can be paid for from non-admin pots to give communities more flexibility. If you would like to fund some of these things from your administrative fund, that's fine.

- How much should we expect the implementation of CPA to cost us in increased administrative costs? Will adoption cause significant increases in workload and expenses for town finance offices?

  ANSWER:
  To date, implementation of the CPA has been significantly less costly and burdensome than communities had initially anticipated. In Hopkinton, for example, they did not have to add any new staff positions and their total spending on software upgrades was $2200, half of which they would have spent anyway for routine upgrades. Communities should check with their software vendors, as some are offering free upgrades which include provisions for the CPA. People have also reported that dealing with the CPA is similar to a Proposition 2 ½ override, which many towns have already dealt with. It should also be noted that the Cape Cod Land Bank has been collecting a CPA-like surcharge, and has reported no problems with increased costs despite initial concerns that implementation would be costly.

Revenue/Surcharge/Trust Fund Related

- If I were to have made between my wife's part-time job & my full time job $100K last year & this year I find myself unemployed, how does CPA deal with this when our family is now surviving on my wife's $20K part time job & my unemployment? If I file for an abatement, it will show what I earned last year, but not take in account that I was laid off from my job since then. Is there a way to still get the abatement?

  ANSWER:
  According to the Dept. of Revenue, there is no provision in property tax law for a change in circumstances that happens subsequent to the date by which you need to file for abatement. So, if you had sufficiently high income the prior year, you would then have to pay the CPA surcharge, even if you lose your job the day after the abatement filing deadline.

- Are the state matching CPA funds distributed to towns based on actual surcharge dollars collected or those assessed?

  ANSWER:
  The state matching funds are distributed based on the total amount that was levied, regardless of how much of that had been collected by the time that your municipal financial officer had certified your CPA revenues to the Dept. of Revenue. This is because it is assumed that the full amount of the surcharge will eventually be collected since it carries the weight of an ordinary property tax and failure to pay the surcharge could result in a lien on the property.

- How can communities calculate the effects of the low-income exemption?

  ANSWER:
  While it is possible to calculate how many residents in each community are eligible for the exemptions, based on local income levels, it is hard to estimate how many people will actually apply for the exemption. While it appears that many may be qualified, to date anecdotal evidence shows that few have actually claimed senior citizen and low-income exemptions. It is impossible to say whether or not this trend will continue or why it exists, although some people have reported that the low number of people requesting the exemptions is due to either people realizing that the amount at stake is so low that it was not worth the effort, or people who are reluctant to submit their income-tax returns, which is a requirement of the exemption application

- The local Historical Society, a private nonprofit, is about to launch a $2 million fundraising campaign. They have come to us requesting $275,000 specifically for an Archival Center. They have said that they will not break

ground until 2-3 years in the future and they do not need the money until then but they want the commitment for use in fundraising. The Community Preservation Committee has proposed that we commit $175,000 in next year's funds and $100,000 in following year. Our Town Manager says that DOR says the Town Meeting cannot appropriate funds that far in advance. Is that true?

ANSWER:
DOR has said that you may not appropriate future years' money. You may reserve funds now for future spending but they have to come out of the money available to you now, not future pots. You do have a couple of options open to you. One is that you could appropriate the portion for this year as you plan to and then make a verbal commitment to the Society that you will recommend the balance of the money as soon as it is available to you. Or you could even suggest that there is a non-binding vote at Town Meeting to see if people support spending the money next year. While non-binding, this may be more assurance to the Society's donors that there is a serious commitment on the part of the town to fully fund the $275,000.

- We have found that one of the big reasons people do not take advantage of the low-moderate income exemption is the lengthy and confusing paperwork that is required. Is there any way around this?

  ANSWER:
  IGR No. 00-209 from DOR discusses the requirements for the low/mod income exemption and states that - Taxpayers must apply annually for the low income or moderate income senior exemption. Application may be made on the attached Form CP-4, OR OTHER FORMAT DEVELOPED BY THE ASSESSORS TO OBTAIN THE SAME INFORMATION. Assessors do not need to obtain prior approval of the Property Tax Bureau [of DOR] to use forms they have designed so long as the content is essentially the same as form CP-4 - This is on page 9 of the document.

- A married couple lives together. One is over 60 the other is not. How would the elderly CPA exemption work in this case?

  ANSWER:
  Based on the Sept. 2001 IGR from DOR, only the individual applying for the exemption need be 60, but the income of all members of the household will be considered for purposes of determining eligibility for the low/moderate income senior exemption. A standard form exemption application is attached to that IGR.

- What is the impact of the state-matching percentage if we reduce the surcharge from 3% to some lower number? If there is sufficient money in the fund, can the match still be 100%?

  ANSWER:
  The match can still be 100% and you should expect it to be for the next 2-3 years. There are essentially two rounds of state matching funds. In the first round, 80% of the money is distributed to all of the communities until they all have a 100% match. If that happens, then there is no second round and any extra money rolls over to the next year. If that first 80% of the money is not sufficient to pay everyone 100%, then a second round occurs, in which the remaining 20% is distributed just to those communities that have a 3% surcharge. So eventually there will be a benefit to having a 3% surcharge, but it will not be manifested for another few years until that first 80% is not enough to cover everyone at 100%.

- What is the process for lowering the CPA surcharge?

  ANSWER:
  The only way to amend the surcharge or exemptions is through a Town Meeting (or City Council) vote followed by voter approval at the ballot. A signature petition may NOT be used. When revoking the CPA entirely after the 5 years, it must be done in EXACTLY the same way as it was adopted (either signature petition or TM vote, both followed by election).

- After our community passes the CPA and residents taxes are increased, how do we know that state funding will not dry up? What happens if the State Legislature just decides to change the CPAs funding mechanism?

  ANSWER:
  The state CPA Trust Fund currently has more money than was originally anticipated. As of January of 2003, there was $60 million in the fund. The October, 15, 2002 payout was just under $18 million, providing all eligible communities with a 100% match. With these numbers in mind, it is expected that all communities who have adopted CPA will receive 100% matches for 2003 and at least the following two, even if a large city like Springfield or Boston were to approve CPA over the next two years. Regarding legislative efforts to weaken the Act, while such efforts are possible, it would be highly unlikely that the source of revenue for the Trust Fund would be reduced or eliminated for several reasons. First, it is important to understand that the Trust Fund has a dedicated revenue source that is separate from the annual legislative appropriations process. Thus, even when the state is facing a fiscal crisis like the current one, the money in the Fund is legally untouchable for any use other than those approved under CPA without a significant change in the law. Second, in order to change or eliminate the fees at the Registry of Deeds that fund

the Trust Fund, a major piece of legislation would have to be passed. Because of the broad based coalition that worked on the original passage of the Act for well over a decade, the likelihood of such legislation being successful is small. Not only that, but with so many towns having passed the Act, there is a broad constituency with a stake in its survival.

- How should the fund be set up as the money from the surcharge starts to come in?

  ANSWER:
  The Massachusetts Department of Revenue (DOR) has written several policy guides which describe in detail many of the financial procedures required to implement the CPA. As of March, 2002, the two most relevant guides are the following, each of which is a PDF file and must be viewed with the free Reader from Adobe. The two guides are both entitled Community Preservation Fund. The first was issued in 2000. The second was issued in 2001 and amends the prior report. These two guides should be looked at together since the second one amends but does not replace the first. Additional guides will be added to the publications section of the DOR website as they are written. They are usually found in the sections called "Informational Guideline Releases (IGRs)" or "Bulletins." Additional revenue/taxation CPA questions which are not addressed in these documents should be addressed to the DOR.

- Is there a limit as to how far ahead a town can plan to bond for CPA? are 10 year, 20 year (or more) bonds allowed?

  ANSWER:
  DOR has stated in its IGR that the maximum term of a bond issue shall be the term that would otherwise be permitted for the purpose under G. L. c.44. In other words, the maximum term for borrowing under the CPA is no different than for any other municipal purpose.

- What happens when a person or organization wants to make a donation to a towns CPA fund? Are these additional funds eligible for the state match?

  ANSWER:
  Section 7 of the CPA states the monies that shall be deposited in the community preservation fund, including funds from ". . . any other source for such purpose." consequently, a town could receive a donation for deposit in the fund. This would not increase the amount of state match for which the town would be eligible because the state match calculation is based solely on local surcharge receipts.

- What CPA funds can be spent after the tax rate is set in a community?

ANSWER:
Tax rates are usually set by the end of December. Up until that point, the CPC may make recommendations to Town Meeting for the expenditure of any previously reserved funds, any non-reserved fund balance, and any borrowing. Once the tax rate has been set, and until the end of that current fiscal year (through 6/30) the only funds that may be spent are those that come from one of the three reserve accounts (open space, historic, or housing) or funds from any borrowings. The unencumbered funds (non-reserved) may not be spent until July 1. This is the result of new guidance issued by the Department of Revenue in Bulletin 2002-12B issued in September, 2002 and available on their website.

The CPA and Town Meeting

- Once an article is approved at an Annual Town Meeting for use of CPA funds to purchase land and then the meeting is adjourned, can the Board of Selectmen put an article on a Special Town Meeting Warrant, months later, to rescind the original article which was approved at the Annual Town Meeting?

  ANSWER:
  The answer to this question is very simple: NO. Only the Community Preservation Committee may recommend CPA related articles to Town Meeting, so the Selectmen may not put an article on the warrant related to the expenditure of CPA funds. The Community Preservation Committee, if it wished to, could recommend a subsequent vote to rescind a previous Town Meeting vote, but it is the only body with that authority.

- We are trying to determine how other communities are structuring their warrant articles, i.e., does each proposal have a separate article? If we bundle them, is there an opportunity for line-item veto of individual projects or must Town Meeting approve all or nothing?

  ANSWER:
  There is a wide variety in how CPCs present their articles to Town Meeting. Some have a single "bundled" CPA article. Others have each proposed project as a separate article. A third possibility is to have one CPA article with a separate motion for each project. Each discrete appropriation needs to be voted on separately. Town Meeting could decide to vote them all up or down, but that should be irrespective of how they are presented. If you are concerned that there may be confusion on this issue, I suggest that you either have one CPA article, but each project is a distinct motion, or have a separate article for each project. In these cases, it should be more clear that a separate vote is required for each expenditure. We would be happy to provide examples of any of these three types of warrant articles upon request.

- How much latitude does Town Meeting have to alter the recommendations of the CPC? If there is a warrant article which TM then debates, can they make modifications to it and pass the new modified article, or would they run into trouble since they are not allowed to do anything not recommended by the CPC? Is there a shade of gray that might be acceptable, like changing the number of acres of an open space purchase or the number of affordable units in a housing project, but leaving the central tenants of the project unchanged? What if there are members of the CPC at TM and changes are done with their blessing?

  ANSWER:
  It is clear from the statute and the DOR Guidance that Town Meeting may only appropriate funds for a project pursuant to a recommendation of the CPC - Town Meeting may approve, reject or reduce the appropriation for the project recommended by the CPC. The statute and DOR Guidance make clear that Town Meeting cannot approve an appropriation for a project on its own initiative. Consequently, the only safe/conservative reading of the statute and guidance is that Town Meeting cannot alter the scope of a project recommended by the CPC as doing so would result in approval of a project that is different from that recommended by the Committee. This is true even if, on the floor of Town Meeting, CPC members agree with the changes.

- On CPA warrant articles, do we have to use exact dollar amounts for proposed appropriations or can we just use percentages?

  ANSWER:
  It is find to use percentages in the warrant articles but actual motions and votes at the Town Meeting must have actual dollar amounts.

- A citizen decides to amend the warrant article to add a new project that had not been previously considered by the CPC. I believe this would be outside the scope of the article, since the project never had adequate review by either the CPC or the public by virtue of holding a public hearing on the project. I am unclear at to whether a citizen could amend the warrant article to add back in a project that was previously denied funding through the CPC when making its determinations.

  ANSWER:
  Under no circumstances may a project be voted on at town meeting that was not recommended by the CPC. This means that no citizen could add back a project that you voted not to recommend. This is clear both in the CPA statute and DOR's guidance.

- Is within the CPC's purview to amend the warrant article on a previously denied project? How about amending the article as late as the actual day of town meeting?

  ANSWER:
  It is possible that the CPC could amend the warrant on a previously denied project. It is certainly fine with regard to the CPA statute, as the CPC has the express authority to recommend or not recommend projects as it sees fit. Whether or not this can be done up until the day of Town Meeting really depends on local and state laws regarding TM warrants, which are independent of the CPA. Your moderator or selectmen could probably advise you on this.

- Finance Committees typically review all warrant articles, comment on them, and can make recommendations to make alterations to the article. Their opinion or redraft of the article is printed in the warrant directly after the originally submitted warrant article. They are the only entity in the town that has the ability to alter an article before it is debated on town meeting floor. Does the Finance Committee have the ability to recommend and change the article to decrease the amount funded to a line item? Could the Finance Committee decide to amend the warrant article to add a new project that had not been previously considered by the CPC? Could the Finance Committee amend the warrant article to add back in a project that was denied funding through the CPC when making its determinations?

  ANSWER:
  The Finance Committee can certainly make any recommendation that it wishes and these are often printed along with the Selectmen's' recommendations in the warrant. However, by law and for obvious reasons, they are not permitted to make recommendations that are illegal. Since only the CPC may recommend a project to TM and because TM has only the authority I mention at the top of this email, the Finance Committee could not add a new project not recommended by the CPC nor could they make a recommendation to change an existing project other than to recommend for it, against it, or for a lower appropriation. Thus, they also could not reintroduce a project voted down by the CPC. They or the Town Counsel could work with the CPC to make changes that are required by law (i.e. if they felt that a project did not meet the requirements of the CPA). However, this should not result in a project that is substantively different than what the CPC intended, without their input.

- Do we have to have separate votes at Town Meeting for each CPA project?

  ANSWER:
  The Dept. of Revenue has said that this is up to individual communities.

They will not tell cities and towns how to conduct their votes, so you can have just one vote for everything, separate articles, separate motions, or any combination. The only thing that is important is that people understand all of the different projects that they are voting on.

- Should a CPC recommend more projects than it can afford for each category in case Town Meeting does not approve one or more projects in the different funding areas?

  ANSWER:
  We would advise you to be careful here as you could run into trouble. Note that in addition to the powers Town Meeting to vote up or down a project or to lower an appropriation, if they vote down a project, they may vote to reserve part or all of what would have been appropriated to the appropriate CPA reserve account. If you recommend more projects than you have funds for, you could wind up with a combination of projects and reservations that exceeds your funds.

- What happens if a Town Meeting rejects a Community Preservation Committee recommendation for CPA spending? Is the spending that was recommended but rejected automatically then reserved in some account? Or does the committee have to go back and re-recommend something else right away so that the money can be spent or reserved for some other CPA purpose? Or, at town meeting, are they allowed to reject spending for one purpose and negotiate with the committee right then and there to spend it for something else?

  ANSWER:
  Neither the statute nor the DOR Guidance is clear on what to do in this situation. As a practical matter or based on the spirit of the process established under the Act, obtaining revised committee recommendations on the floor of town meeting or having town meeting negotiate with the committee regarding recommendations at that time would not be feasible. To the extent that town meeting approves a reduced appropriation for a project or rejects a project all together, the amount the committee recommended for appropriation that is not approved would be automatically reserved and available for appropriation, subject to committee recommendations, in future years.

  A conservative reading of the DOR guidance suggests that amounts reserved need to be reserved to one of the three reserve accounts the guidance states must be established in the fund. However, as the reduction/reservation situation makes clear, money may be reserved by default/failure to appropriate the recommended amount, in which case there would be no designation to a particular reserve fund. The DOR has indicated that they do not believe a community has to designate each

reserved dollar to a particular reserve account thereby tying it at the time of reservation to one of the three purposes, except to the extent that an amount needs to be designated to one of the three purposes in order to meet the 10% of fiscal year revenues requirement. Consequently, any amount not appropriated because of a reduction or rejection of a recommendation of the committee would automatically remain in the community preservation fund for future appropriation, and to the extent necessary to meet the 10% of fiscal year revenues requirement, such amounts would need to be deposited into the applicable reserve account or accounts designated for future use for one of the permitted CPA purposes.

The Community Preservation Committee

- Can a Community Preservation Committee (CPC) enter into agreements prior to local legislative approval? For example, it is often the case that they would like to go to Town Meeting with a concrete project proposal. What if that requires that they sign an option on a property? It would be helpful if they could go to Town Meeting and be able to tell folks that they have a guarantee they can purchase the land.

  ANSWER:
  By statute, the CPC is constituted for the sole purpose of studying community preservation needs and making recommendations for expenditures. Thus, a CPC does not have the power to enter into any agreements on behalf of the town or city. In addition, general laws require that there be an appropriation made by the legislative body before any town or city official enters into a contract providing for the expenditure of city or town funds.

  If town meeting appropriates CPA funds for a permitted CPA expenditure and it authorizes the Committee to expend those funds, then the committee would have the necessary legal authorization to enter into any commitments to spend those funds.

  If a CPC feels that it is important to enter into an agreement with a potential seller prior to Town Meeting (or City Council) approval, one option is to have a third party secure the option and then assign it to the town. This third party could be a Land Trust or a private individual. Alternatively, the city or town itself could pay for the option, in effect making a loan to the CPC until the funds are approved at a subsequent Town Meeting or City Council to pay it back.

- How much should the CPC take on? In small towns where Committee members also have numerous other responsibilities, is it reasonable to

ask that people do considerable research and planning before they bring potential CPA projects before the Committee?

ANSWER:
In several smaller towns, CPC members have asked that residents who bring projects to their attention first develop a researched proposal so as to help them maintain a reasonable workload.

- Must we recluse ourselves if we are a member/officer of the proponent of a project (e.g. Land Trust, Open Space Committee, Historic Commission, Housing Authority, etc.) comes before us with a project? Or only if there is an actual conflict or personal/financial interest in a proposed project? It seems that inevitably this issue will come up with every project since all three funding areas must have representation on the committee.

  ANSWER:
  Definitely not in the first case. It is expected that different members will advocate for different priorities and it should not be surprising that a CPC representative of the Historic Commission, for example, would advocate strongest for historic projects. That is fine as that person is in the best position to understand the project and to explain to the rest of the Committee why it's important. You are right to suggest that if there is an actual personal/financial interest in a proposed project, then the affected member should recluse him or herself (although, unfortunately, that doesn't always happen, politics being what it is). A good rule of thumb in these matters is to avoid even the appearance of impropriety.

- Section 5 (3) (c) says the CPC must have a quorum to conduct business, which is a majority of the committee members, and that it shall approve its actions by majority vote. Is that a majority of the full committee, or just a majority of the quorum that shows up at that particular meeting?

  ANSWER:
  All that is needed is a majority vote of those present and voting at a meeting that has a quorum.

- In section 5 (b) of the CPA, the Community Preservation Committee is directed to "study the needs, possibilities and resources of the city or town regarding community preservation. " What kind of a report should be produced as a result of this directive and to whom should it be submitted?

  ANSWER:
  The short answer is that it is entirely up to the members of the CPC. The goal is that the committee examines the needs and priorities of the community and that the final committee recommendations to Town Meeting are an accurate reflection of the will of the community. How the

CPC goes about this is up to each individual community. Some have produced 50 page long-range planning documents, others have simply used their notes at CPC meetings and public forums to inform their decisions. The results of each CPC study are used only to help them come up with their recommendations, and they do not need to be submitted to any state agency for review.

Local Control

- The CPA is a state law and some people are worried that there will be many strings attached.

  ANSWER:
  While it is true that the CPA was passed as a piece of state-wide legislation, it is designed to give individual communities the power to make and fund decisions that will affect their own town or city. Every aspect of the Act is decided on a local level by the voters in each individual community, from initial adoption of the CPA and the decision on the level of the surcharge, to the designation of the members of the Community Preservation Committee and the final decisions about what areas should eventually be funded by local and state-matched CPA money. It should also be noted that all of the money from a CPA surcharge, along with the state matching funds are deposited in a local CPA fund. Any expenditures from this local fund much be approved by a Town Meeting (or City Council) vote.

Recreation

- The Parks and Rec Dept. has requested seed money for a feasibility study for a new pool for Memorial Park. Would this be eligible for CPA funding?

  ANSWER:
  The answer to this second question is a qualified yes. The CPA allows for the creation of active and passive recreational facilities, and while structures such as gymnasiums and most other buildings are not allowed, the creation of a swimming pool could be. It is analogous to the creation of other recreational facilities such as a skateboard park, which has already been done in Bedford and Marshfield. There is some discussion as to whether it would be better to have the swimming pool be part of a larger park that is being created, so that you are using CPA funds to create the park and the pool is simply a part of it. It appears that that would be more clearly allowed. Just creating a swimming pool is a bit of a gray area, and it would really depend on what your committee and your Town Counsel are comfortable with.

- If a town creates new tennis courts with CPA recreation funds, can fees be charged for use of the courts? If so, should the proceeds of these fees then be deposited back into the CPA fund, or could some or all of them go into a more general town fund or a town enterprise fund (if such a fund maintains the facility)?

  ANSWER:
  The CPA does not address the ability to charge fees for the use of property funded under the CPA, and the section of the Act detailing the funds that must be deposited in the community preservation fund does not include fees charged for the use of such property. As a policy matter, this makes sense as any fees charged for the use of the property would presumably be charged for the purpose of covering operating expenses associated with the property and the community preservation fund is not intended to cover operating expenses.

  Cities and towns are explicitly authorized under the general laws, however, to charge fees for the use of its recreational and playground facilities. G.L. c.45, s.14. Cities and towns are also authorized to establish revolving funds for self-supporting recreational facilities under G.L. c.44, s.53D. If a city or town established such a revolving fund in connection with its tennis courts or other recreational facilities funded under the CPA or otherwise, the revenues from the user fees would be deposited into the revolving fund and the parks and rec commission (or whichever other official or entity is authorized in such city or town) may spend such funds without further appropriation to pay operating expenses associated with such facilities. If a city or town does not establish a revolving fund for the recreational facilities, then the revenues from any such user fees would have to be deposited in the general treasury of the city or town and appropriated for any permissible municipal purpose by the legislative body in the same way that any other general, unrestricted revenues are appropriated. G.L. c.44, s.53. The fees could not be deposited back into the CPA fund. See DOR Guidance regarding supplemental appropriations.

- If CPA funds are used to pay for playing fields adjacent to a school, with the idea that they be available to school sports teams, can the school claim first rights to the playing fields? In other words, can it say that the fields will be used by their soccer team from 4-7 every day or do the fields have to be open to the public at any time?

  ANSWER:
  It is up to the town to decide how it wants to use the field. The only legal requirement for CPA purposes is that it is restricted to use as a recreational field and that the town own it. Beyond that, the CPA does not stipulate who should have access.

- Is it okay to use CPA funds to build a playground on public school property?

  ANSWER:
  Yes.

- Could CPA funds be used to purchase or maintain easements for town recreation trails, including snowmobiles or does the CPA limit recreation to non-motorized activities.

  ANSWER:
  There is nothing in the Act that prohibits CPA expenditures for motorized recreational vehicles.

- Have any towns utilized CPA funds for recreational projects, other than purchasing land? If raw land is purchased for recreational use, it might require some improvements to make it usable for recreation, including grading, installation of an irrigation system, construction of a parking lot, etc. Are these improvements valid uses of CPA funds? Would they be valid uses if applied to an already owned piece of land that needs only the improvements to become a recreation area?

  ANSWER:
  Many communities have either completed or are in the process of completing recreation projects. The improvements you mention would be fine, regardless of whether the land is purchased now or was previously owned by the town. The one exception might be the use of CPA funds to construct a parking lot, although if it is an incidental part of a larger project, it could be allowable. The other things mentioned would be fine and have been done in other communities. One note on the already-owned piece of land - these improvements would be allowable so long as they are creating a new recreational facility where none existed previously. For example, if residents currently play ball on an unimproved area of grass, CPA funds could be used to improve that area to create a formal soccer field. This would fall under creation of a recreational resource since CPA funds would be used to construct a soccer field on a previously unimproved lot, regardless of what the prior use of that lot was. One thing to note is that a goal of the CPA is to create new recreational opportunities, so it would not be allowable, for example, to simply replace a goalpost on an existing soccer field. Improvements to existing facilities are currently limited to preservation.

- A rail trail corridor, in its entirety, is owned by the Massachusetts Executive Office of Transportation and Construction (EOTC). Recent conversations with the EOTC indicate that they would enter into a license agreement for a town to design, construct, and maintain the trail.

Therefore, the EOTC would still own the land and the town would be allowed to create a rail trail on the property. The terms of the license agreement would be for 1 year with automatic renewal unless either party gave the other 30 days notice. The EOTC has indicated that they do not have any future plans for to reinstate rail service along this corridor.

The clauses of the CPA as it relates to rail trail development states that funding for recreational purposes is limited to the "acquisition, preservation, and creation of land for recreational use." Further, acquisition is defined as obtaining "by gift, purchase, devise, grant, rental, rental purchase, lease or otherwise."

Could a municipality use its local CPA discretionary funds for creation of the rail trail, through the acquisition of land by means of a license agreement with the EOTC?

ANSWER:
Section 12 (a) of the CPA requires that a permanent deed restriction accompany the acquisition of any real property under the CPA. While there is generally not a strict definition of a when such an expenditure constitutes a real property interest, it is commonly accepted to be in cases when the purchase or lease extends at least thirty years. Because the lease between the Town and EOTC would only be for a one-year term, the lease would not constitute a real property interest under the Act that would trigger the requirement for a permanent deed restriction (which the EOTC would presumably not permit). As a practical matter it is generally not a good idea for a city or town to invest public funds in a capital asset that it will have no guaranty of control over beyond a one-year period. However, because it appears that EOTC's requirement for no more than a 1 year lease is due not to their imminent plans to reopen the rail line but to standard policy, this expenditure could be justifiable given that with this knowledge, the city or town is in a position to say that it is highly unlikely the public's investment would be lost with near-term reopening of the rail line. This is more a policy decision for cities and towns than a legal issue.

- The text of the Act does not appear to mention anything about being able to use the 70% of CPA funds (after the obligatory 10 percent to use of the three uses) for recreation. Where does this come from?

ANSWER:
Section 5(b) of the CPA states the purposes for which the CPA funds can be used, including the acquisition, creation and preservation of recreational lands. Consequently, once you satisfy the three 10% requirements stated in section 6, you are free to use the remaining CPA funds for these recreational purposes.