

Property Tax Bureau
Informational Guideline Release (IGR) No. 02-208
September 2002

(Amends IGR No. 00-209 and Supersedes Prior Inconsistent Written Statements)

COMMUNITY PRESERVATION FUND

**Chapter 165 of the Acts of 2002
(Amending G.L. Ch. 44B)**

This Informational Guideline Release (IGR) amends IGR No. 00-209, which explained the municipal finance provisions of the Community Preservation Act, to reflect a recent change in the law regarding the purposes for which community preservation fund monies may be used.

Topical Index Key:

Special Funds

Distribution:

Assessors
Collectors
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Accountants/Auditors
Mayors/Selectmen
City/Town Managers/Exec. Secys.
Finance Directors
City/Town Councils
City Solicitors/Town Counsels

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SUMMARY:

These guidelines amend Informational Guideline Release (IGR) No. 00-209, *Community Preservation Fund* (December 2000), which explained the procedures and requirements for implementing the municipal finance provisions of the local option Community Preservation Act (CPA). G.L. Ch. 44B. The amendments reflect a recent change in the CPA regarding the purposes for which community preservation fund monies may be used. Chapter 165 of the Acts of 2002. All other provisions of IGR 00-209 not specifically amended by this IGR, or IGR 01-207, *Community Preservation Fund* (September 2001), remain in effect.

The purpose of the CPA is to give communities a dedicated funding source to expand certain community assets: open space, historic resources, recreational land and community housing. With respect to rehabilitation of those assets, however, cities and towns may only use community preservation fund monies to rehabilitate or restore assets that were originally acquired or created with fund monies. Fund monies cannot be used to rehabilitate or restore assets owned by the municipality before the adoption of the act or acquired with other municipal funds.

Under the recent change in the law, this restriction no longer applies to any rehabilitation or restoration projects involving historic resources. G.L. Ch. 44B §5(b)(2). It does continue to apply, however to such projects involving open space, recreational land and community housing. The change was effective on July 18, 2002 and applies to historic rehabilitation and restoration projects specifically funded by appropriations from community preservation fund monies, or borrowings authorized under Ch. 44B, before and after that date.

In addition, rehabilitation has now been defined for CPA purposes as the remodeling, reconstruction and making of extraordinary repairs to community preservation assets. This standard is similar to that used in G.L. Ch. 44 §7(3A) regarding the types of improvements to public buildings for which a community is authorized to borrow and would generally mean improvements intended to adapt or extend the use or life of the asset. The new definition also includes improvements made to comply with the Americans with Disabilities Act, other federal, state or local building or access codes, and in the case of historic resources, with certain rehabilitation standards established by the federal government. For purposes of consistency in the statute, the term "historic resources" was also substituted for "historic structures and landscapes" wherever it appeared in the definitional section.

AMENDED GUIDELINES:

1. COMMUNITY PRESERVATION FUND ALLOWABLE EXPENDITURES.

Replace Section III-A-6, page 8, of IGR 00-209 with the following amended Section III-A-6. Amendments are shown in *bold italics*.

III. FUNDS

A. Community Preservation Fund

6. Expenditures

a. Expenditure Prerequisites

The Community Preservation Fund is a special revenue fund subject to appropriation. A recommendation by the Community Preservation Committee and an appropriation by the legislative body of the city or town are both required to spend any monies belonging to the fund for particular community preservation purposes. G.L. Ch. 44B §7. Appropriations from any fund financing source, except borrowing, are made by majority vote.

b. Allowable Expenditures

(1) Community Preservation Purposes

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

- (a) The acquisition, creation and preservation of open space.
- (b) *The acquisition, preservation, rehabilitation and restoration of historic resources.*
- (c) The acquisition, creation and preservation of land for recreational use.

- (d) The creation, preservation and support of community housing.
- (e) *The rehabilitation and restoration of open space, land for recreational use and community housing that is acquired or created using monies from the fund.*

These purposes are more specifically defined in the act. (See attached glossary). The term “support” would include expenses such as annual payments to the housing authority to preserve or expand the affordable housing supply.

(2) Related Purposes

Fund monies may also be spent for the following related purposes:

- (a) Annual administrative and operating expenses of the Community Preservation Committee. Annual appropriations for these expenses may not exceed five percent of the year’s estimated annual Community Preservation Fund revenues. See Section III-A-7-b-(1) below for definition of annual fund revenues.
- (b) Annual principal and interest payments on bonds and notes issued to pay for allowable community preservation purposes.
- (c) Damages payable to property owners for real estate interests taken by the city or town by eminent domain for community preservation purposes.
- (d) Matching funds for state and federal grants for allowable community preservation purposes. Participation in the community preservation program does not affect the eligibility of the city or town to receive funds from any other state grant programs. G.L. Ch. 44B §14.

- (e) Property acquisition-related expenses as follows:
 - (i) Appraisal costs.
 - (ii) Expenses for title searches.
 - (iii) Closing fees.
- (f) Preparation, issuance and marketing costs for bonds or notes for borrowings made for community preservation purposes.

c. Prohibited Expenditures

Fund monies may not be spent to:

- (1) Supplant funds being used for existing community preservation expenses. The fund is a supplementary funding source intended to increase available resources for community preservation acquisitions and initiatives.
- (2) Pay for maintenance of any real or personal property.

2. COMMUNITY PRESERVATION ACT DEFINITIONS

Replace the "Glossary of Community Preservation Act Definitions" attachment referenced in Section III-A-6-b-(1) of IGR 00-209 with the attached amended glossary. Amendments are shown in *bold italics*.

GLOSSARY OF COMMUNITY PRESERVATION ACT DEFINITIONS G.L. Ch. 44B §2

"*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 or real property 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 area-wide median income. The area-wide median income shall be the area-wide 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 area-wide median income. The area-wide median income shall be the area-wide 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.*

