



*Select Board Regular Session Minutes  
Swampscott High School  
200 Essex Street, Room B129  
July 19, 2023 6:30 PM*

*David Grishman, Chair  
Katie Phelan, Vice Chair  
Mary Ellen Fletcher  
Peter A. Spellios  
Douglas Thompson*

*Sean R. Fitzgerald  
Town Administrator  
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**SELECT BOARD MEMBERS PRESENT:** DAVID GRISHMAN, MARY ELLEN FLETCHER, KATIE PHELAN, DOUG THOMPSON

**MEMBERS ABSENT:** PETER SPELLIOS

**OTHER TOWN OFFICIALS PRESENT:** SEAN FITZGERALD, TOWN ADMINISTRATOR, PETE KANE, ASSISTANT TOWN ADMINISTRATOR/HUMAN RESOURCES DIRECTOR, MARZIE GALAZKA, DIRECTOR OF COMMUNITY & ECONOMIC DEVELOPMENT, GINO CRESTA, DIRECTOR OF PUBLIC SERVICES, GRAHAM ARCHER, FIRE CHIEF, POLICE CAPT. JOSEPH KABLE

**OTHER:** DAVID PETERSON, KLEINFELD, JENNY ARMINI, STATE REPRESENTATIVE, SENATOR CRICHTON

**A. TOWN ADMINISTRATOR'S REPORT** TABLED UNTIL 8/2/23.

**B. PUBLIC COMMENTS:** NONE.

**C. NEW & OLD BUSINESS:**

- 1. INTRODUCTION OF ARTISTS:** DIANNE MARCHESE INTRODUCED THE THREE ARTISTS WHO PAINTED FOUR UTILITY BOXES ON HUMPHREY STREET: LISA BOEMER – HUMPHREY @ BLANEY AND 60 HUMPHREY; CLAIRE DONNELLY – FISH HOUSE; SHAWN STOLARZ – HUMPHREY @ REDINGTON.
- 2. CPA DISCUSSION:** MR. GRISHMAN DISCUSSED THE COMMUNITY PRESERVATION ACT, SETTING UP A COMMUNITY PRESERVATION COMMITTEE, UP TO NINE PEOPLE. THE BOARD IS STILL REVIEW TAX RULES BUT FEELS A CPA IN SWAMPSCOTT CAN GENERATE \$700,000/YEAR + A STATE MATCH (WHICH WAS 38% IN 2022). THIS BOARD ACQUIRED OPEN SPACE AND THE HISTORICAL COMMISSION CAN USE SOME HELP WITH HISTORICAL PRESERVATION. HE WOULD LIKE TO BRING THIS TO ANNUAL TOWN MEETING. THE CPC WILL BRING THIS BEFORE TOWN MEETING. IF TOWN MEETING GIVES THEIR OK, THEN IT WILL BE BROUGHT BEFORE VOTERS.. MS. FLETCHER WOULD LIKE TO SEE WHAT THE FINANCIAL IMPACT WOULD BE AND WHAT OTHER COMMUNITIES HAVE DONE. MR. THOMPSON WANTS PEOPLE TO UNDERSTAND THAT THERE IS A TAX IMPLICATION BUT THAT WE ARE ALSO MISSING OUT ON FREE MONEY.
- 3. KING'S BEACH UPDATE:** THE SELECT BOARD WANTS TO RESOLVE THE PROBLEMS AT KING'S BEACH BUT IT IS A COMPLEX PROBLEM WITH MANY STAKEHOLDERS. THIS IS A HIGH PRIORITY AND WE HAVE BEEN FOCUSED ON ADDRESSING KING'S BEACH AND GETTING FUNDING. THE TOWN HAS RECEIVED \$2.5 MILLION TO START AN AGGRESSIVE EFFORT TO CONNECT LOCAL, STATE & FEDERAL OFFICIALS TO FIX THE PROBLEM. WE'VE GONE THROUGH A FEASIBILITY STUDY WITH KLEINFELDER AND THERE IS POSITIVE MOVEMENT FOR THINGS THAT SEEM EXPENSIVE BUT ARE NOW REACHABLE. THIS IS A COMPLEX PROJECT WITH A LOT OF STAKEHOLDERS AND KLEINFELDER IS WORKING TO BRING IT FORWARD AS FAST AND EFFECTIVELY AS WE CAN. WE LOOKED AT MULTIPLE TECHNICAL WAYS TO FIX THE PROBLEM. THERE IS MORE GROUND WATER FLOWING OUT OF THE LYNN SIDE THAN THE SWAMPSCOTT SIDE. SAVE THE HARBOR SAVE THE BAY RATES WATER QUALITY AND HOW OFTEN A BEACH IS CLOSED DUE TO BACTERIA. WE WOULD LIKE TO GET TO WHERE OTHER BEACHES ARE OPEN FOR 95% OF THE SEASON. STAKEHOLDERS REVIEWED SIX STRATEGIES: SOURCE ELIMINATION, DIVERT & TREAT, DISINFECT WITH CHLORINE, DISINFECT WITH UV LIGHT, EXTEND OUTFALL PIPE INTO NAHANT BAY, RELOCATE OUTFALL PIPE ALONG THE COASTLINE. AFTER REVIEW, THE GROUP DECIDED TO ELIMINATE DISINFECTING WITH CHLORINE & RELOCATING THE OUTFALL PIPE ALONG THE COASTLINE. KLEINFELDER IS RECOMMENDING A PHASED APPROACH INCLUDING UV DISINFECTION, CONTINUATION OF SOURCE ELIMINATION EFFORTS AND CONSIDERATION OF AN OUTFALL EXTENSION. RECENT UPDATES INCLUDE GETTING FUNDING SUPPORT FOR UV DISINFECTION, AND WORKING CLOSELY WITH STATE STAKEHOLDERS, INCLUDING MASS DEP AND POSSIBLY USING ARPA FUNDS AS A FUNDING

SOURCE. MASS DEP HAS EXPRESSED SUPPORT FOR THIS AS A LONG-TERM PERMANENT SOLUTION AND THERE HAS BEEN INTEREST FROM THE EPA.

REPRESENTATIVE ARMINI: WE HAVE A SUPPORTIVE ADMINISTRATION. KING'S BEACH IS THE ONLY BEACH FOR THE CITY OF LYNN. THIS COLLABORATION AND SAVE THE HARBOR SAVE THE BAY BRINGS SUPPORT. SHE ASKED THE SECRETARY AND UNDERSECRETARY TO SEE CLEANING UP KING'S BEACH AS A STATE PRIORITY. THE RIGHT PEOPLE ARE AT THE TABLE, SWAMPSCOTT IS VERY WELL REPRESENTED AND WE ARE MOVING FORWARD. WE'RE WEIGHING TIME & MONEY TO GET THE BEACH OPEN AS SOON AS POSSIBLE. THE EPA CONSENT DECREE IS AN ADMINISTRATIVE ORDER REQUIRING THE TOWN TO INVEST MONEY TO ELIMINATE THE SEWERAGE. SOURCE ELIMINATION WILL TAKE YEARS AND MAY NOT WORK IF LYNN STILL HAS A PROBLEM. WE'RE WORKING TO GET THE STATE TO EXPEDITE THE PERMITTING — FROM 8-9 YEARS TO 2 AND WORKING WITH STATE AND FEDERAL PARTNERS TO ENSURE THE BEACH RETURNS TO ITS STATUS OF A GREAT BEACH. IN RHODE ISLAND, A STORM WATER SYSTEM RUNS DURING REALLY INTENSE RAINFALL EVENTS, A CATCHALL GOES TO THE MOAT WHICH DISCHARGES TO THE BEACH. THIS IS AN OLDER UV TECHNOLOGY. THEY ALSO VISITED A NEWER SYSTEM FOR WASTEWATER IN NEWPORT, WHICH IS HIGHLY EFFICIENT. THIS KILLS THE BACTERIA BEFORE IT REACHES THE OCEAN.

MS. FLETCHER: IN THE CONSENT DECREE, FISHERMAN'S BEACH IS ALSO MENTIONED. WE ALLOCATED FUNDING IN 2016, 2018 & 2020 BUT NOT IN 2022 OR 2023, WE HAVE \$2.5 MILLION IN ARPA FUNDING BUT HAVE ONLY SPENT \$5.5 MILLION. SHE DOESN'T FEEL WE HAVE A CLEAR CAPITAL PLAN WITH SOURCE ELIMINATION, HAS CONCERNS THAT WE AREN'T ADDRESSING OR INVESTING IN SOURCE ELIMINATION AND ARE WE GOING TO AFFECT FUTURE GENERATIONS, THAT WE ARE KICKING THE CAN DOWN THE ROAD. SHE WANTS TO SEE SOURCE ELIMINATION ON THE CAPITAL PLAN AS WELL AS A PAGE ON THE TOWN'S WEBSITE SHOWING THE PLAN AND PROGRESS.

MR. CRESTA: OUR PLAN WAS TO SPEND \$2 MILLION EVERY OTHER YEAR BUT STOPPED DUE TO LOOKING AT UV DISINFECTION. THE TOWN HAS CLAY PIPES WHICH WILL TAKE YEARS TO REPLACE. WE HAVE A GRANT TO LOOK AT A STATUS OF GOOD REPAIR AS WELL AS THE CAPITAL PLAN WITHOUT ADDING A TAX BURDEN BUT AREN'T GIVING UP ON SOURCE ELIMINATION.

MR. THOMPSON FEELS THERE IS MISSING INFORMATION INCLUDING THE COST OF FIXING PIPES.

MS. PHELAN IS CONCERNED THAT IF THE TOWN LINED OR REPLACED ALL OF ITS PIPES, WOULD LYNN BE ON THE SAME SCHEDULE? MR. PETERSON: SWAMPSCOTT STARTED IN 2015 WITH THE CONSENT DECREE, LYNN JUST STARTED IN 2022. IF ONE PROPERTY FAILS, THE BACTERIA LOAD WILL SHUT DOWN THE BEACH.

PUBLIC COMMENTS: THERE WERE PUBLIC COMMENTS FROM RESIDENTS WHO FEEL THE TOWN ISN'T DOING ENOUGH. THEY WOULD ALSO LIKE TO SEE MORE TRANSPARENCY, INCLUDING PUTTING ALL OF THE INFORMATION ON THE TOWN'S WEBSITE, INCLUDING AN UPDATED PRESENTATION, BETTER SIGNAGE AND EDUCATION AT THE BEACH, A COMPREHENSIVE PLAN OUTLINING WHEN STREETS ARE GOING TO BE DONE, MORE TESTING AS WELL AS A CAPITAL PLAN. RESIDENTS ALSO ASKED FOR A JOINT PUBLIC MEETING WITH STAKEHOLDERS AND HAVE QUESTIONS REGARDING UV DISINFECTION, WHERE IT WILL BE LOCATED AND WHY IN SWAMPSCOTT AND NOT LYNN.

TA FITZGERALD: WE NEED TO PRIORITIZE WHERE WE SPEND DOLLARS. WE HAVE A GRANT TO GET A MAP OF EVERY SEWER PIPE AND WHERE IT DRAINS AND A PLAN FOR HOW WE REPLACE PIPES AND PAVE ROADS. WE WILL BE BACK IN THE FALL TO UPDATE THE COMMUNITY ON COSTS, WHICH WILL BE SIGNIFICANT. IT'S A FAIR CRITICISM THAT WE HAVEN'T SPENT ALL OF THE FUNDS AND WE NEED TO GET BACK TO PUTTING THE CAPITAL PLANS TOGETHER. THE SECRETARY RAISED CONCERNS ABOUT UV DISINFECTION AS IT IS NOT SEEN A LOT. KLEINFELDER FEELS IT CAN BE USED AND WENT THROUGH A DETAILED STUDY. WE NEED THE STATE & FEDERAL GOVERNMENTS TO BE FINANCIAL PARTNERS TOO.

4. **12-24 PINE STREET RFP:** TA FITZGERALD: THIS RFP WILL HELP THE TOWN SEEK PARTNERS TO ADVANCE AN AFFORDABLE VETERANS HOUSING PROJECT.

UPON **MOTION**, DULY MADE BY DOUG THOMPSON, SECONDED BY MARY ELLEN FLETCHER, IT WAS UNANIMOUSLY **VOTED** TO APPROVE THE DRAFT RFP FOR 12-24 PINE STREET AS PRESENTED FOR ITS RELEASE: ALL IN FAVOR: YES. ANY OPPOSED: NO. MOTION CARRIES.

**5. PHILLIPS BEACH PARKING EXPANSION:** MR. KANE DISCUSSED NEIGHBORHOOD CONCERNS SUCH AS TRASH LEFT BY BEACHGOERS, UNLINED PARKING SPACES, CREATING LESS SPACES, LACK OF PARKING ON BOTH SIDES. CONSIDERATIONS INCLUDE: PUBLIC STREETS ARE OWNED AND MAINTAINED BY THE TOWN AND ARE TO BE USED BY EVERYONE. PROPOSED CONDITIONS ARE INCREASING PARKING SPACES TO 145, 4 OF WHICH ARE HANDICAP SPACES, DOUBLING THEM AND 257 RESIDENT PARKING SPACES. RECOMMENDATIONS INCLUDE UPDATING PARKING SIGNS TO DIFFERENTIATE BETWEEN RESIDENTIAL AND RECREATION, INCREASE THE AVAILABLE SPACES AND INCREASING THE VIOLATION FEE. GRAHAM ARCHER, FIRE CHIEF: THIS IS A MODIFICATION OF THE RECOMMENDATION MADE BY THE TRAFFIC ADVISORY AND INCLUDES COMMENTS FROM THE PUBLIC. IT IS SCALED BACK, TAKES INTO ACCOUNT MR REEN'S COMMENTS AND CONCERNS. TSAC WAS ASKED TO EXAMINE THE PARKING ISSUE. WE FEEL IT IS BENEFICIAL TO EXPAND RECREATIONAL PARKING. IF THERE IS NO DEMAND, THEN THERE IS NO HARM, CARS WON'T MATERIALIZE. HE ALSO DOESN'T AGREE THAT PEOPLE SHOULD PARK ½ MILE AWAY AND WALK TO THE BEACH. HE IS SENSITIVE TO NEIGHBORS' CONCERNS BUT DOESN'T FEEL IT WILL IMPACT NEIGHBORHOODS AS MUCH AS RESIDENTS FEEL. ADDING 55 RECREATIONAL SPACES WILL NOT HAVE A BIG IMPACT. THIS HAS BEEN REVIEWED FOR SAFETY AND A FIRE TRUCK CAN GET BY AND THIS ISN'T A MAJOR CONCERN.

PUBLIC COMMENTS: RESIDENTS FEEL ENFORCEMENT IS AN ISSUE, QUESTIONING HOW MANY PARKING TICKETS HAVE BEEN ISSUED AND, OF THOSE, HOW MANY WERE ISSUED TO OUT-OF-TOWNERS. THEY DO NOT WANT TO HAVE TO BUY STICKERS TO PARK IN FRONT OF THEIR HOUSES. THERE ARE ALSO CONCERNS WITH TRASH BEING LEFT BEHIND WHICH THEN GETS PICKED UP AND SPREAD BY SEAGULLS. MR. REEN HAS ISSUES WITH OCEAN AVE., IS CONCERNED ABOUT PEDESTRIAN SAFETY DUE TO THE SIDEWALKS AND WIDTH OF THE STREET. ANOTHER CONCERN HE HAS IS THAT THERE ARE TWO LIFEGUARDS WITH MINIMAL EQUIPMENT.

RESIDENTS IN FAVOR STATE THAT PARKING IS AN ISSUE ONLY A FEW TIMES PER YEAR BUT WOULD LIKE TO SEE ADDITIONAL PARKING ADDED.

MR. THOMPSON: THANKED THE AUDIENCE AND IS IN SUPPORT OF THE RECOMMENDATION AS A FULL PACKAGE AND WOULD LIKE TO ADD THAT THE INCREASE IN PARKING IS ONLY A FEW DAYS PER YEAR; THERE HAS TO BE REGULAR ENFORCEMENT; WE SHOULD ADDRESS OCEAN AVE AND TRASH PICKUP, WHICH HE WOULD LIKE TO SEE DONE DAILY.

MS. PHELAN: ENFORCEMENT AND PEDESTRIAN SAFETY HAVE TO BE ADDRESSED AND ASKED IF THE TOWN CAN HIRE A SEASONAL PARKING CLERK. SHE WOULD ALSO LIKE TO SEE A SIDEWALK ON OCEAN AVE. TA FITZGERALD ADDED THAT RETIRED POLICE OFFICERS (SPECIALS) ARE REQUIRED TO WORK 8 HOURS/MONTH AND HE WILL TALK TO THE CHIEF ABOUT HAVING THEM DO PARKING ENFORCEMENT.

MS. FLETCHER DOES NOT SEE EVIDENCE THAT PARKING IS THAT BIG OF AN ISSUE. SHE DROVE ON OCEAN & SHEPARD, COUNTING AND FOUND THAT 34% OF CARS DIDN'T HAVE STICKERS. SHE SUGGESTS INCREASING ENFORCEMENT AND POSSIBLY RUNNING A SHUTTLE FROM THE TEMPLE OR HIGH SCHOOL AND DOESN'T LIKE TAKING AWAY A PARKING SPOT IN FRONT OF SOMEONE'S HOUSE AND MAKING THEM PAY FOR A RECREATION STICKER TO PARK THERE. SHOULD WE BE ELIMINATING ALL RESIDENTIAL PARKING, INCLUDING AT THE TRAIN STATION. SHE IS NOT SUPPORTIVE OF THIS.

MR. GRISHMAN LIKES A LOT OF THE IDEAS AND IS IN SUPPORT. HE DOESN'T SEE ADDING RECREATIONAL PARKING AS A PROBLEM, IS IN SUPPORT OF EXPLORING THE SIDEWALK ON OCEAN AVE. AND LIKES THE IDEA OF HIRING A SEASONAL PARKING CLERK AND RAISING FINES.

UPON **MOTION**, DULY MADE BY MARY ELLEN FLETCHER, SECONDED BY DOUG THOMPSON, IT WAS UNANIMOUSLY **VOTED** TO INCREASE PARKING FINES FROM \$25 TO \$75 ON BLODGETT AVE., BRADLEE AVE., BROWN RD., CHARLES RD., CUTTING RD., LONGLEY RD., OCEAN AVE. AND SHEPARD AVE.: ALL IN FAVOR: YES. ANY OPPOSED: NO. **MOTION CARRIES.**

UPON **MOTION**, DULY MADE BY KATIE PHELAN, SECONDED BY DOUG THOMPSON, IT WAS **VOTED** TO UPDATE THE PARKING RESTRICTION SIGN DESIGN TO BETTER DIFFERENTIATE BETWEEN RESIDENT AND RECREATION PARKING; INCREASE THE NUMBER OF AVAILABLE RECREATION PARKING SPACES IN THE PHILLIPS BEACH AREA; INCREASE THE NUMBER OF HANDICAP-DESIGNATED SPACES; INCREASE TRAFFIC ENFORCEMENT; INCREASE TRASH PICKUP, INSTALL A SIDEWALK ON OCEAN AVE.: ALL IN FAVOR: (GRISHMAN, PHELAN & THOMPSON). ANY OPPOSED: (FLETCHER). **MOTION CARRIES.**

**6. TSAC SPEED PILLOW LOCATIONS:** TABLED UNTIL 8/2/23.

**D. VOTES OF THE BOARD:**

**1. APPROVAL OF THE CONSENT AGENDA**

**CONSENT AGENDA ITEMS:**

1. DOCKSIDE PUB ENTERTAINMENT LICENSE
2. JULY 5, 2023 MINUTES

THE DOCKSIDE PUB ENTERTAINMENT LICENSE AND MINUTES OF JULY 12, 2023, WERE REMOVED FROM THE CONSENT AGENDA.

UPON **MOTION**, DULY MADE BY MARY ELLEN FLETCHER, SECONDED BY KATIE PHELAN, IT WAS UNANIMOUSLY **VOTED** TO APPROVE THE MINUTES OF JULY 5, 2023: ALL IN FAVOR: YES. ANY OPPOSED: NO. **MOTION CARRIES.**

DOCKSIDE PUB, ENTERTAINMENT LICENSE: MS. FLETCHER HAS AN ISSUE WITH OUTSIDE MUSIC AS THE RESTAURANT IS NEXT TO RESIDENCES. MR. INGEMI, OWNER OF THE DOCKSIDE PUB, WILL KEEP THE MUSIC LOW AND STATED THAT THEY HAVE A DECIBEL READER FOR THEIR SALEM RESTAURANT AND ARE ABLE TO KEEP THE SOUND DOWN. HE WILL WORK WITH NEIGHBORS AND THE BOARD SO AS NOT TO DISRUPT ANYONE. HE DOESN'T BELIEVE THE MUSIC WILL BE ANY LOUDER THAN PASSING VEHICLES. TA FITZGERALD RECOMMENDS GIVING THEM THE ENTERTAINMENT LICENSE AND WORKING WITH THEM. MR. THOMPSON SHARES MS. FLETCHER'S CONCERN.

UPON **MOTION**, DULY MADE BY MARY ELLEN FLETCHER, SECONDED BY DOUG THOMPSON, IT WAS UNANIMOUSLY **VOTED** TO APPROVE THE ENTERTAINMENT LICENSE FOR DOCKSIDE PUB: ALL IN FAVOR: YES. ANY OPPOSED: NO. **MOTION CARRIES.**

**E. SELECT BOARD TIME:**

**Ms. FLETCHER:** 1) CODY BUTT IS ON HER WAY TO ALABAMA TO START HELICOPTER TRAINING. SHE GRADUATED WEST POINT; 2) CONGRATULATIONS TO FF SARRO AND FF COPPINGER; 3) A RESIDENT ASKED ABOUT THE PLANNER POSITION. SHE WOULD LIKE TO SEE IT ADDRESSED AT THE NEXT MEETING; 4) JULY 4<sup>TH</sup> RACES WERE A BIG SUCCESS. THANKED VOLUNTEERS, THE RACE ADVISORS, THE SINGER AND PARTICIPANTS.

**MR. GRISHMAN:** WE HAD ANOTHER SUCCESSFUL BENT WATER AT THE BEACH, 800-900 PEOPLE SHOWED UP. THANKED BENT WATER AND HIS CREW WHO HELPED SET UP AND BREAK DOWN. THEY RAISED QUITE A BIT FOR THE FISH HOUSE AND FOR BIG BLUE BARGAINS.

**Ms. PHELAN:** NOTHING TO ADD.

**MR. SPELLIOS:** ABSENT.

**MR. THOMPSON:** NOTHING TO ADD.

UPON **MOTION**, DULY MADE BY KATIE PHELAN, SECONDED BY DOUG THOMPSON, IT WAS UNANIMOUSLY **VOTED** TO ADJOURN AT 10:37 P.M.: ALL IN FAVOR: YES. ANY OPPOSED: NO. **MOTION CARRIES.**

TRUE ATTEST,

*Dianne Marchese*

DIANNE MARCHESE, ADMINISTRATIVE ASSISTANT TO THE TOWN ADMINISTRATOR & SELECT BOARD

MINUTES APPROVED BY THE SELECT BOARD ON AUGUST 2, 2023

ATTACHMENTS:

UTILITY BOXES PRESENTATION

CPA INFORMATION

KING'S BEACH PRESENTATION

12-24 PINE ST. RFP


PHILLIPS BEACH PARKING EXPANSION PRESENTATION

DOCKSIDE PUB ENTERTAINMENT LICENSE

# SWAMPSCOTT 2023 UTILITY BOX PAINTING PROJECT “INSPIRED BY YOU”

Funded by the Swampscott Cultural Council

Several thin, parallel white lines are drawn diagonally across the right side of the image, starting from the top right corner and extending towards the bottom left.

- ▶ The Town Administrator's office secured a \$2,000 grant from the Swampscott Cultural Council, allowing up to four utility boxes along Humphrey Street to be painted
  - ▶ Applications were sent to the Swampscott Art Association, Reach Arts and information was posted on the Town's website and Facebook pages
  - ▶ The Lynn Item and Swampscott Patch also ran announcements
  - ▶ The Town owns ten utility boxes along Humphrey & Essex Streets
- 
- A series of three parallel white diagonal lines extending from the bottom right corner towards the center of the slide.



60 HUMPHREY STREET PAINTED BY LISA  
BOEMER





HUMPHREY STREET @ BLANEY  
PAINTED BY LISA BOEMER



FISH HOUSE  
PAINTED BY CLAIRE DONNELLY



From Claire: I sought inspiration from our picturesque hometown of Swampscott MA. I wanted to capture a few of my favorite parts about our little town, the closeness to the seaside and the allure of the Boston skyline across the sea, and an homage to the late Egg Rock Light. The first lighthouse was first built in 1856, with a fifth order Fresnel lens that displayed a white light but was changed to red a years later due to several wrecks of vessels confusing it with Boston Harbor Head light. The lighthouse was discontinued in 1922. This is a history that many locals are unfamiliar with and even so close to home. Lastly the picturesque harbor with both individuals who enjoy boating, sailing but also those who strive to continue Swampscott long-time history of fishing/lobstering.

The bright colors aim to brighten our streets and catch both walkers, drivers, bikers, boaters and beach goers' eyes as they enjoy a little visual of their beautiful hometown of Swampscott. This is the first electrical box I have done in town but I am eager to become more involved in the public art scene in Swampscott. I have many more ideas to contribute to encourage continual creative growth, community-oriented work, as well as a historical visual depiction of our town's history.

Thank you so much for allowing me to leave my own mark on our town for all to enjoy :)



HUMPHREY STREET AT REDINGTON  
PAINTED BY SHAWN STOLARZ

The town of Swampscott has been active in acquisition of properties for open space, we will be discussing affordable housing on Pine St, and there is a swell of support to provide funding to preserve a number of historic properties in town, including the Pitman House and General Glover House. Tonight we start a public dialogue regarding CPA, which was created to help towns like Swampscott provide a funding source for these initiatives and would require a minimum of 10% of funds to be expended for open space, affordable housing, and historic preservation.

We are already doing many of these initiatives (open space and affordable housing), but how can we do this in a bigger way, in a more sustainable way, and in a way that will be transformative to the future of Swampscott.

195 municipalities have passed a CPA. But what is a CPA. The CPA is Community Preservation Act governed under MGL 44B. This will allow for up to 3% of the tax levy to fund historic preservation, open space acquisition, and affordable housing. Our neighbors in Nahant and Peabody have a CPA.

This discussion tonight can allow an introduction to this concept within the town of Swampscott, as well as outline a series of next steps and timeline.

First and foremost, communities considering a CPA would create a Community Preservation Committee, which statutorily has members of five committees included:

- Conservation Commission
- Historical Commission
- Planning Board
- Park Commissioners/Open Space and Rec
- Housing Authority

For Swampscott, I would recommend adding a member of the Affordable Housing Trust as well as a Select Board member for a total of 7.

The role of the CPC would be to work in conjunction with professional staff to evaluate community needs, as well as affordable housing and preservation needs, and make recommendations to appropriate funds. The CPC would conduct an annual needs study and consult with various municipal agencies. They would hold at least one public hearing as part of an initial process, as well as an ongoing (annual) hearing while providing recommendations and a budget.

We are still reviewing tax rolls and various figures, but ballparking, we believe we could generate somewhere along the lines of \$700-800M with the implementation of a 3% figure. Additionally there is a state match, which in 2022 was approximately 38%. How do the numbers work? Well, assume you have a home assessed for \$500M. There is an exemption on the first \$100M, leaving \$400M. \$400M multiplied by the millage rate 11.74 multiplied by 3%=\$140.88.

This is an exciting opportunity to allow for the town to literally put its money where its values are and provide a recurring revenue source to allow investment in affordable housing projects. We have an incredible AHTF with a wealth of experience, however funds are finite and non recurring in nature. We have made strides to invest in open space, with the largest open space acquisition in a half century that happened a year ago, thanks to this board and town meeting. We have a very hard working Historical Commission who needs sources of funding to preserve our history. This is our moment in time to affect change in a major way.



# DLS

DIVISION OF LOCAL SERVICES  
MA DEPARTMENT OF REVENUE

Christopher C. Harding  
Commissioner of Revenue

Sean R. Cronin  
Senior Deputy Commissioner

## Informational Guideline Release

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Bureau of Municipal Finance Law  
Informational Guideline Release (IGR) No. 19-14  
December, 2019

**(Supersedes IGR No. 00-209, IGR 01-207, IGR 02-208  
And Prior Inconsistent Written Statements)**

### **COMMUNITY PRESERVATION FUND**

**(General Laws c. 44B)**

This Informational Guideline Release (IGR) explains to local officials the procedures and requirements for establishing a special fund that may be appropriated and spent for certain open space, recreational, historic resource and affordable housing purposes.

Topical Index Key:

Borrowing  
Collection Procedures  
Special Funds  
Tax Bills

Distribution:

Assessors  
Collectors  
Treasurers  
Clerks  
Accountants and Auditors  
Mayors/Selectmen  
City/Town Managers/Exec. Secretaries  
Finance Directors  
City/Town Councils  
City Solicitors/Town Counsels

*Supporting a Commonwealth of Communities*

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**COMMUNITY PRESERVATION FUND**

**(General Laws c. 44B)**

**SUMMARY:**

These updated guidelines explain the municipal finance provisions of the Community Preservation Act (CPA), which is found in the General Laws at [c. 44B](#). Under the CPA, any city or town may establish a special “Community Preservation Fund” (CP Fund) that may be appropriated and spent for certain open space (including recreation), historic resource and community housing purposes.

To establish a CP Fund, a community must accept [G.L. c. 44B §§ 3-7](#). There are two alternative methods of acceptance: through [G.L. c. 44B, § 3\(b\)](#) or [G.L. c. 44B, § 3\(b½\)](#). Acceptance requires majority approval of both the community’s legislative body and voters at the next regular municipal or state election. In both cases, the community adopts a property tax surcharge and the surcharge revenue is credited to the CP Fund. A community that accepts the CPA through § 3(b½), however, may also appropriate other municipal revenue to the CP Fund. Under either acceptance method, the total local contribution (surcharge revenue plus other municipal revenue credited to the CP Fund) cannot exceed three percent of the tax levy. As an alternative to legislative body approval, a petition may be submitted for placing the acceptance on the ballot. [G.L. c. 44B, § 3\(h\)](#).

In addition to local revenues, a second source of revenue for the CP Fund is annual distributions received from the state “Massachusetts Community Preservation Trust Fund,” also created under the act. Monies distributed from the state trust fund come primarily from surcharges on fees charged for recording various documents with the Registry of Deeds or Land Court.

A community accepting the CPA must establish a Community Preservation Committee (CPC) to make annual recommendations to its legislative body regarding expenditures from the CP Fund. In each fiscal year, the community must spend or reserve at least 10 percent of the annual CP Fund revenues for each of the CPA’s community preservation purposes: open space (including recreation), historic resources and community housing.

**BUREAU OF MUNICIPAL FINANCE LAW    PATRICIA HUNT, CHIEF**

## **GUIDELINES:**

### **I. COMMUNITY PRESERVATION ACT ADOPTION**

#### **A. Acceptance by Legislative Body and Electorate**

Acceptance requires approval of both the legislative body of the city or town and the electorate at the next regular municipal or state election. [G.L. c. 44B, § 3](#).

##### **1. Legislative Body Action**

A majority of the legislative body of the city or town must first approve a specific proposal to present to the voters. The legislative body is defined as town meeting, town council, city council, board of aldermen or other body with the power to approve budgets, authorize debt and adopt by-laws or ordinances for the community. [G.L. c. 44B, § 2](#).

##### **a. Required Action**

The legislative body of the city or town must approve a specific proposal to present to the voters under either [G.L. c. 44B, § 3\(b\)](#) or [G.L. c. 44B, § 3\(b½\)](#).

- (1) The legislative body accepts G.L. c. 44B, §§ 3-7 by approving a surcharge up to three percent of the real estate tax levy. [G.L. c. 44B, § 3\(b\)](#);

or

- (2) The legislative body accepts G.L. c. 44B, §§ 3-7 by approving a surcharge of not less than one percent and the appropriation of additional revenue from other municipal sources up to two percent of the real estate tax levy. When added together, the surcharge and additional municipal revenue cannot exceed three percent of the real estate tax levy. [G.L. c. 44B, § 3\(b½\)](#). (See Section III below for more information regarding this alternative.)

##### **b. Discretionary Action**

The legislative body may include any or all of the following surcharge exemptions in the proposal to be presented to the voters. [G.L. c. 44B, § 3\(e\)](#):

- (1) An exemption 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 community. [G.L. c. 44B, § 3\(e\)\(1\)](#).

- (2) An exemption for Class Three, Commercial, and Class Four, Industrial, property if the community annually adopts a higher tax rate for those classes. [G.L. c. 44B, § 3\(e\)\(2\)](#).
- (3) An exemption for \$100,000 of the assessed valuation of Class One, Residential, parcels. [G.L. c. 44B, § 3\(e\)\(3\)](#).
- (4) An exemption for \$100,000 of the assessed valuation of Class Three, Commercial, and Class Four, Industrial, parcels. [G.L. c. 44B, § 3\(e\)\(4\)](#).

c. Timing

After the legislative body accepts the CPA and adopts a surcharge plan, the acceptance referendum must be placed before the voters at the next regularly scheduled municipal or state election where the municipality can comply with applicable referendum notice requirements of [G.L. c. 54, § 42C](#), [G.L. c. 44B, § 3\(g\)](#).

For example, the legislative body accepts the CPA and adopts a surcharge at its meeting held on May 1. The next regularly scheduled municipal election is May 20 and the next regularly scheduled state election is November 2. Because the next regularly scheduled municipal election is less than 35 days after the legislative body's acceptance of the CPA, the acceptance referendum cannot be placed on the municipal election ballot because it is not possible to give the city or town clerk the required 35 days advance notice of the referendum. In this case, the acceptance referendum must be placed before the voters at the next regularly scheduled state election because the city or town is able to give the secretary of state the required 60 days advance notice of the referendum.

2. Voter Action

a. Question Form

The referendum question presented to the voters must read as follows:

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?

b. Question Summary

A fair, concise summary and purpose of the CPA provisions that are the subject of the referendum must appear underneath the question. The summary is to be prepared by the community's city solicitor or town counsel and must include the surcharge percentage approved by the legislative body. It should also include any exemptions adopted by the

legislative body and state whether the CPA is adopted pursuant to [G.L. c 44B, § 3\(b\)](#) or [G.L. c 44B, § 3\(b½\)](#) and, if § 3(b½), the maximum percentage of additional municipal revenues that may be appropriated to the CP Fund pursuant to § 3(b½). It should also state the effective fiscal year of the acceptance and any other relevant information. (See the Secretary of the Commonwealth [Elections Division](#) website for additional information on the ballot question and a sample “fair and concise summary.” See also CPA Acceptance – Sample Fair and Concise Summary, Attachment I-1 below.)

c. Question Approval

The question is approved and the statute accepted if a majority of the voters voting on the referendum question vote “yes.”

(See CPA Acceptance – Sample Language, Attachment I-1 below.)

**B. Acceptance by Petition**

An alternative acceptance procedure may be used if the legislative body of the city or town does not accept the CPA and approve a surcharge amount at least 90 days before a regular municipal, or 120 days before a regular state, election. [G.L. c 44B, § 3\(h\)](#).

Under the alternative procedure, the voters of a city or town may file a petition to have a referendum question placed on the ballot seeking acceptance of the CPA, approval of a specific surcharge percentage and approval of any allowable exemptions. The petition must be signed by at least five percent of the registered voters of the city or town and filed with the local board of registrars of voters, board of election commissioners or election commission. The petition must state the surcharge percentage and any exemptions. It should also state whether the CPA is adopted pursuant to [G.L. c 44B, § 3\(b\)](#) or [G.L. c 44B, § 3\(b½\)](#) and, if § 3(b½), the maximum percentage of additional municipal revenues that may be appropriated to the CP Fund pursuant to § 3(b½). It should state the effective date of the acceptance and other relevant information. The board or commission must certify the signatures within seven days of filing. Although the CPA does not provide a format for a ballot question proposed by petition, the question should be in substantially the same form as the ballot question after approval by the legislative body and the city solicitor or town counsel should prepare a fair and concise summary to be printed below the question.

The city or town clerk or secretary of state must then place the question on the ballot at the next regular municipal or state election held after certain minimum time periods. If the question is to appear on a municipal election ballot, the election must be held at least 35 days after the certification of the signatures. For questions appearing on a state election ballot, at least 60 days must elapse before the election can occur. (For additional information on the process of accepting the CPA by petition and sample language for a petition and question, see the Secretary of the Commonwealth [Elections Division](#) website.)

(See CPA Acceptance – Sample Language, Attachment I-1 below.)

**C. Effective Date**

The effective date of acceptance will be:

- The next (or later) fiscal year following the election as expressly stated in the vote.
- The next fiscal year following the election if the vote does not express an effective date.
- The current fiscal year of the election if:
  - Expressly stated in the vote and
  - The tax rate has not been set at the time of the vote.

**D. Notification of Acceptance**

The city or town clerk must notify the DLS Data Analytics and Resources Bureau (DARB) if the statute is accepted. The notification form is available on the [DLS website](#). To receive distributions from State Trust Fund, acceptance must be reported not later than September 15 of the fiscal year following the close of the fiscal year surcharge first assessed.

**E. Amended Acceptance**

At any time after imposition of the surcharge, a city or town may amend its acceptance of the CPA under [G.L. c. 44B, § 16\(a\)](#). Amendment is by majority vote of the legislative body and by referendum.

A city or town may amend the surcharge percentage and exemptions. In addition, if a city or town has accepted G.L. c. 44B, §§ 3-7 under § 3(b) and wishes to appropriate additional municipal revenue to the CP Fund, it must use the amended acceptance process under [G.L. c. 44B, § 16\(a\)](#) and adopt the alternative funding provision set forth in [G.L. c. 44B, § 3\(b½\)](#).

The amendment referendum question should be in a form similar to the CPA acceptance referendum question after approval by the legislative body and must include a fair and concise summary prepared by the city solicitor or town counsel printed below the question. (See Section I.A.2 above.)

The effective date of the amendment is determined in the same manner as the effective date of the original acceptance.

(See CPA Surcharge Rate or Exemption Amendment – Sample Language, Attachment I-2 below.)

**F. Revocation of Acceptance**

Acceptance may be revoked, but the city or town must wait until at least five years after the referendum passes to do so. Revocation is in the same manner as acceptance. If the

city or town accepted G.L. c. 44B, §§ 3-7 by majority vote of the legislative body and by referendum, revocation is by majority vote of the legislative body and by referendum. If the acceptance was by petition ([G.L. c. 44B, § 3\(h\)](#)), then revocation is by petition. The effective date of the revocation is determined in the same manner as the effective date of original acceptance and amendments. The surcharge continues to be assessed, however, until all obligations incurred and funded by the city or town from CP Fund revenues are paid. [G.L. c. 44B, § 16\(b\)](#). (See Section VI-A-3 below for Wind-down of Fund on CPA Revocation.)

Reducing a surcharge to a de minimis amount (for example 0.1 percent) is tantamount to a revocation and the procedures for revocation must be followed.

(See CPA Revocation – Sample Language, Attachment I-3 below.)

#### **G. Simultaneous Revocation and Amendment Questions**

Both revocation and surcharge amendment questions may be presented at the same election. If both are approved, the CPA is revoked but the amended rate applies to any surcharges that must be assessed to wind down the fund. If the revocation is rejected, but the amendment approved, the amended rate applies to future surcharges.

### **II. COMMUNITY PRESERVATION SURCHARGE**

In a city or town that accepts [G.L. c. 44B, §§ 3-7](#), a community preservation surcharge is assessed on the municipality's real estate taxes. (See Section I-C above for effective date of acceptance.) Taxes assessed on personal property, or by water, fire or other tax levying districts within the municipality, are not subject to the surcharge. Amounts generated by the surcharge are not subject to the levy limitations of Proposition 2½.

#### **A. Surcharge Assessment and Billing**

The surcharge is imposed on every type of real estate tax assessment made by the community, including all preliminary, actual, omitted, revised and supplemental assessments. The surcharge must be displayed as a separate item on the tax bills, commitments and warrants issued for those assessments. Assessors should also forward a separate notice of commitment for the surcharge to the accounting officer.

Some communities may not have modifications in their billing software completed in time to bill the surcharge on the first preliminary tax bill. In that case, the surcharge commitment and billing can be deferred to the next tax bill to make the technical changes. The failure to bill a preliminary surcharge installment for technical reasons does not change the surcharge owed. The total surcharge for the year remains the same, but will be payable in fewer installments. We recommend that a stuffer be included with the first tax bill that explains the purpose and calculation of the surcharge, when the surcharge will ordinarily be billed and due, and the procedures for seeking any local option surcharge exemptions. (See Section V-B-1-a below for information on the use of community preservation funds for billing software changes in the first year of implementation.)



**B. Surcharge Amount**

The surcharge is calculated by multiplying the real estate tax on the parcel, as reduced by any property tax exemptions or abatements authorized by [G.L. c. 59](#) or any other law, by the adopted percentage. Therefore, the surcharge to be paid by a taxpayer receiving an exemption or abatement is reduced in proportion to the amount of such exemption or abatement, and real estate parcels that are fully exempt from property taxes are not subject to any surcharge. [G.L. c. 44B, § 3\(c\)](#).

Reductions in real estate tax liability pursuant to [G.L. c. 59, § 5K](#) (senior work-off abatement) and [G.L. c. 59, § 5N](#) (veteran work-off abatement), adopted by local option, must be treated as exemptions for purposes of calculating the community preservation surcharge.

Parcels may also be fully or partially exempt from the surcharge if the community adopts any of the CPA exemptions. (See Section I-A-1-b above.)

**C. Delinquent Surcharges**

Surcharges not paid by the due date accrue interest at the rate set forth in [G.L. c. 59, § 57](#) in the same manner as overdue property taxes in the community. Interest on overdue surcharges belongs to the CP Fund.

**D. Partial Payments**

If a taxpayer expressly directs the tax collector to apply a payment to the regular real estate tax and not the surcharge, the collector must apply the payment as directed. Otherwise, the collector may determine how to apply the payment.

**E. Collection Remedies**

Collectors may enforce collection of the surcharge with any or all of the remedies available for collection of regular real estate taxes, including a tax taking. [G.L. c. 44B, § 4\(c\)](#); [G.L. c. 60](#). The lien for the surcharge arises as of the January 1 assessment date of the fiscal year to which the surcharge relates and terminates the same time as that year's real estate tax lien. Collectors should perform timely takings to ensure that both liens do not terminate. [G.L. c. 60, § 37](#); [G.L. c. 60, § 53](#).

A standard notation should be pre-printed on all municipal lien certificates that real estate taxes in the community are subject to the community preservation surcharge under [G.L. c. 44B](#). Collectors should list separately the amount of any outstanding surcharge on the certificate in the same manner as an outstanding district tax is shown.

**F. Abatements and Exemptions**

All committed surcharge amounts abated or exempted are charged to the community preservation surcharge receivable of the fiscal year. This includes reductions in committed surcharges resulting from an abatement or exemption of the real estate tax,

or an abatement or exemption of the surcharge itself. The abatement or exemption certificate, as well as any abatement and exemption reports to other officers, should state separately the amount of any surcharge abatement or exemption granted.

**G. Refund Accounting**

All refunds of surcharges are accounted for in the CP Fund.

**H. Surcharge Deferrals**

Taxpayers who are eligible to defer property taxes under [G.L. c. 59, § 5\(41A\)](#) may not defer the surcharge.

**I. Surcharge on Classified Land Taxes**

The community preservation surcharge assessed on classified forest land under [G.L. c. 61](#), agricultural or horticultural land under [G.L. c. 61A](#) and recreational land under [G.L. c. 61B](#) is calculated based on the real estate tax generated by the classified value of the property. The surcharge is not assessed on withdrawal, rollback or conveyance taxes imposed under G.L. Ch. 61, 61A or 61B.

**J. Local Option Surcharge Exemptions ([G.L. c. 44B, § 3\(e\)](#))**

1. Decisionmaker

The board of assessors grants or denies all surcharge exemptions.

2. Eligibility Date

Exempt status is determined as of January 1. Any ownership, occupancy, age, income or usage classification requirement for the exemption must be met as of that date.

3. Eligibility Requirements

a. Residential Exemption ([G.L. c. 44B, § 3\(e\)\(3\)](#))

The residential exemption applies to the real estate tax assessed on the first \$100,000 in assessed valuation of all properties classified as Class One, Residential, as of January 1. If the property is multiple-use, the exemption applies to the real estate tax assessed on the first \$100,000 of the portion of the assessed valuation allocated to Class One.

b. Commercial/Industrial Exemptions ([G.L. c. 44B, § 3\(e\)\(2\) and \(4\)](#))

There are two commercial/industrial exemptions that apply to the real estate tax assessed on properties classified as Class Three, Commercial, and Class Four, Industrial, as of January 1.

- (1) The first commercial/industrial exemption ([G.L. c. 44B, § 3\(e\)\(2\)](#)) is a total exemption from the surcharge and applies only in a fiscal year in which the tax rate is split. If a property is multiple-use, the exemption applies to the real estate tax assessed on the portion of the assessed valuation allocated to commercial and industrial.
- (2) The second commercial/industrial exemption ([G.L. c. 44B, § 3\(e\)\(4\)](#)) applies to the real estate tax assessed on the first \$100,000 in assessed valuation of all properties classified as commercial/industrial. If the property is multiple use, the exemption applies to the real estate tax assessed on the first \$100,000 of the portion of the assessed valuation allocated to commercial and industrial.

For example, Anytown has accepted an exemption for the first \$100,000 of value of residential (Class One) properties and an exemption for the first \$100,000 of value of commercial/industrial (Class Three and Four) properties. A property has an assessed value of \$500,000 allocated as follows: \$200,000 Class One and \$300,000 Class Three. The CPA surcharge will be on the real estate tax assessed on \$100,000 Class One and \$200,000 Class Three.

c. Low Income/Low or Moderate Income Senior Exemption ([G.L. c. 44B, § 3\(e\)\(1\)](#))

(1) Eligible Taxpayers

(a) Ownership and Occupancy

An applicant for the low income or low or moderate income senior exemption must be a natural person, who owns and occupies the property as a domicile (primary residence) as of January 1. An applicant may be (1) sole owner, (2) co-owner, (3) life tenant or (4) trustee with sufficient beneficial interest in the property under the terms of trust. All co-owners do not have to occupy the property as a domicile for the exemption to be granted.

The exemption does not apply to residential property owned in whole or in part by a corporation or other business entity.

(b) Age

To qualify as a senior, the applicant must be 60 or older as of January 1.

(2) Income Limits

Each co-owner of the domicile must meet a household annual income standard for the low income or low or moderate income senior exemption to be granted. The income standard is based on the area-wide median income determined annually by the United States Department of Housing and Urban Development. Therefore, assessors must establish new limits for each year.

Annual household income is the income received from all sources regardless of income tax status under federal or state law during the calendar year preceding January 1 by all members of the household 18 or older who are not full-time students, less deductions for dependents other than a spouse and certain medical expenses. That amount must be at or below the allowable income limit for the household type (senior or non-senior) and size.

(See Community Preservation Surcharge Low/Moderate Income Exemption for more information, Attachment II-1 below.)

(3) Exemption Amount

A qualified taxpayer receives an exemption of the entire surcharge attributable to the real estate tax assessed on the Class One, Residential, assessed valuation of the parcel, regardless of ownership share or number of residential dwelling units.

4. Applications

a. Submittal

Taxpayers must apply annually for the low income or low or moderate income senior exemption. Application may be made on [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 Commissioner of Revenue to use forms they have designed so long as the content is essentially the same as [Form CP-4](#).

Assessors may review applications submitted by seniors for a [G.L. c. 59, § 5, Clause 41, 41B or 41C personal exemption or Clause 41A tax deferral](#) to determine eligibility for the low or moderate income exemption as well. In those cases where no further information is needed to establish eligibility for the exemption, it may be granted without requiring completion of a separate application.

b. Deadline

An application for exemption must be filed on or before the deadline for an application for exemption under [G.L. c. 59, § 59](#) – April 1 of the year

to which the tax relates or 3 months after the bill is issued, whichever is later.

c. Denials

Assessors may determine their own forms for denials of exemptions by adapting their ordinary real estate abatement/exemption denial notices.

d. Appeals

Any person aggrieved by a decision of the assessors, or by their failure to act, on an application for exemption may appeal as provided in [G.L. c. 59, §§ 64 – 65B](#).

e. Public Disclosure of Application Information

Applications for exemptions are open for inspection only as provided in [G.L. c. 59, § 60](#). Except in proceedings before the county commissioners, the appellate tax board or a court, applications for exemption are available for inspection only by assessors, the commissioner, deputies, clerks and assistants of either the assessors or the commissioner and such other officials or private auditors of the commonwealth or the city or town who are required to inspect such applications in the performance of their official duties. In addition, the applicant and his designated representative may inspect and obtain a copy of the application.

### **III. ALTERNATIVE MUNICIPAL FUNDING - G.L. c. 44B, § 3(b½)**

#### **A. Purpose**

Cities and towns can qualify for all three rounds of state trust fund distributions by accepting the CPA pursuant to [G.L. c. 44B, § 3\(b½\)](#), adopting (at least) a one percent surcharge on the real estate tax levy and appropriating additional municipal revenues to the CP Fund so that the total funds (surcharge plus additional municipal revenues) equal three percent of the real estate tax levy. (See Section I above for CPA Adoption under [G.L. c. 44B, § 3\(b½\)](#) and Section VI-B below for information on state trust fund distributions from the Massachusetts Community Preservation Trust Fund.)

#### **B. Allowable Sources of Additional Municipal Revenue**

1. General Fund Revenues

2. Available Funds - If subject to a restriction, the funds remain subject to the restriction. For example: (i) sale of real estate proceeds, if not needed to pay off indebtedness, may be appropriated for CPA purposes consistent with the restrictions of [G.L. c. 44, § 63](#); and (ii) existing dedicated housing, open space

and historic preservation funds, however authorized, may be appropriated for a CPA purpose consistent with any restrictions.

3. Gifts for Community Preservation Purposes received from private sources.
4. Prohibited Funds - Funds shall not include any state or federal funds.

**C. Appropriation of Additional Municipal Revenues to the Community Preservation Fund**

1. Adoption of CPA Pursuant to G.L. c. 44B, § 3(b½)

For a city or town to be eligible to appropriate additional municipal revenues to the CP Fund, it must have adopted the CPA pursuant to [G.L. c. 44B, § 3\(b½\)](#). (See Section I-E above for Amendment Procedure for a community that has already adopted the CPA pursuant to [G.L. c. 44B, § 3\(b\)](#) and wishes to appropriate additional municipal revenues to the CP Fund pursuant to [G.L. c. 44B, § 3\(b½\)](#). And see Section VI-C below, for discussion of supplemental appropriations for community preservation projects that do not become part of the CP Fund.)

2. Appropriation by the Legislative Body

The legislative body must vote the appropriation of additional municipal revenues to the CP Fund. The appropriation must:

- a. State a fixed dollar amount.
- b. Be voted before the tax rate is set if appropriating from general fund.
- c. Be voted by June 30 if from available funds.

3. Eligibility for State Trust Fund Distributions (State Matching Funds)

- a. Additional sources of municipal revenue must be appropriated to the CP Fund by June 30, to be counted for the purpose of state trust fund distributions.
- b. To be eligible for three rounds of matching funds from the state trust fund, the city or town must have appropriated additional sources of municipal revenues to the CP Fund so that the total funds (additional appropriated municipal revenues plus surcharge) equal three percent of the real estate tax levy.

**D. Cessation of Appropriation of Additional Sources of Municipal Revenue**

If the city or town no longer appropriates all or part of the additional revenues pursuant to [G.L. c. 44B, § 3\(b½\)](#), the surcharge of not less than one percent remains in effect unless amended or revoked pursuant to [G.L. c. 44B, § 16](#).

#### **IV. COMMUNITY PRESERVATION COMMITTEE**

##### **A. Establishment**

Every city or town that accepts [G.L. c. 44B, §§ 3-7](#) must enact a by-law or ordinance establishing a Community Preservation Committee (CPC). [G.L. c. 44B, § 5](#). The by-law or ordinance must address, at a minimum, the following:

- The composition of the committee.
- The member selection method by election or appointment. The term members will serve.
- In a city, the ordinance must also set forth the mechanisms under which the legislative body may approve or veto community preservation appropriations consistent with the city charter.

The by-law or ordinance should also state whether, upon revocation of the CPA, the committee will continue to provide spending recommendations for remaining community preservation funds that are not required for the satisfaction of outstanding obligations. (See Section I-F above on Revocation of Acceptance and Section VI-A-3 below on Wind-down of Fund on CPA Revocation.)

In order to take advantage of community preservation opportunities, the legislative body should be asked to adopt the by-law or ordinance at the same time it is asked to accept the CPA and approve the surcharge percentage. Any by-law or ordinance adopted at that time may not take effect, however, until the voters subsequently approve the acceptance referendum question and, in towns, all by-law approval procedures under [G.L. c. 40, § 32](#) have been followed.

##### **B. Membership**

The CPC must consist of five to nine members. The members must include a designee from each of the following boards, commissions or authorities:

- The conservation commission ([G.L. c. 40, § 8C](#)).
- The historical commission ([G.L. c. 40, § 8D](#)).
- The planning board ([G.L. c. 41, § 81A](#)).
- The board of park commissioners ([G.L. c. 45, § 2](#)).
- The housing authority ([G.L. c. 121B, § 3](#)).

If these municipal agencies do not exist in the community, the by-law or ordinance may designate other members from agencies or persons performing like duties.

##### **C. Action**

A majority of the members of the CPC shall constitute a quorum and the majority of the quorum may act on committee matters. [G.L. c. 44B, § 5\(c\)](#).

## **D. Role**

The CPC is responsible for evaluating the community preservation needs of the city or town and making recommendations for appropriations from the CP Fund to the community's legislative body as part of the annual budget process. Its role is analogous to that of a capital planning committee in developing a multi-year capital improvement plan for a community and presenting an annual capital budget to its legislative body.

### **1. Annual Needs Study**

The committee must study the community preservation needs, possibilities and resources of the city or town (including consideration of regional community preservation projects), consulting with various municipal agencies, particularly those represented on the committee. It should then develop a community preservation program and financial plan for the city or town. The program should identify long-term and short-term goals and needs, set criteria for evaluating proposed acquisitions and initiatives, prioritize projects and estimate their costs. The financial plan should include a multi-year revenue and expenditure forecast and identify the fund or other municipal financing source for each proposed project. The program and financial plan should be reviewed and updated annually to reflect changes in the community's needs, priorities and resources.

The committee must hold at least one public, informational hearing as part of the initial study and annual review process. Notice of the annual hearing must be posted at least two weeks before the hearing date. In addition, the committee must publish a hearing notice in a newspaper of general circulation in the community for each of the two weeks before the hearing date.

### **2. Annual Recommendations and Budget**

The community preservation budget should include the committee's revenue projections for the fiscal year and identify all appropriations that the committee recommends funding from CP Fund financing sources. CPA appropriations fall into two categories: (1) for the CPC's administrative or operating budget; and (2) for eligible community preservation asset projects. The three community preservation asset categories are: (1) open space (including land for recreational use); (2) historic resources; and (3) community housing. [G.L. c. 44B, §§ 2 and 5\(b\)\(2\)](#). In determining its recommendations to the legislative body, the CPC should first determine whether a project is eligible for CPA funding under [G.L. c. 44B](#). If a project is eligible for CPA funding, the CPC should then determine whether to recommend funding to the legislative body after considering its community preservation program and financial plan (described above), other projects competing for CPA funding and other relevant information. The CPC is not obligated to recommend that the legislative body approve funding for a project simply because the project is eligible for CPA funding. The CPC's recommendations should be included in an annual community preservation budget presented as part of the community's annual budget process and should



include recommendations for the funding of debt service and any other existing or ongoing obligations.

Alternatively, debt service, committee administrative and other expenses to be financed with annual CP Fund revenues may be included in the community's omnibus budget. The community preservation budget should account for the commitment of funds for these expenditures, however.

(See Section V below for information on minimum annual commitment and allowable CPA expenditures.)

3. Additional Recommendations

Throughout the year, the CPC may make additional recommendations on acquisitions and projects to the extent funds are available to support them.

4. Legislative Body Action on Recommendations

The legislative body may make appropriations from or reservations of community preservation funds in the dollar amount recommended by the CPC or it may reject the recommendations of the CPC or, if consistent with the community's charter, local by-laws (including the by-law establishing the CPC) and procedures, the legislative body may reduce any recommended amount.

The legislative body may not increase any recommended appropriation or reservation and it may not change the funding source recommendation of the CPC. In addition, it may not appropriate or reserve any CP Fund monies on its own initiative without a prior recommendation by the CPC. [G.L. c. 44B, § 7](#).

There are four times when appropriations may be made by the legislative body from the CP Fund without a prior recommendation of the CPC:

- Appropriations to an administrative budget of the CPC. Providing administrative and operating expenses to the committee is not included within the "gatekeeper" language of [G.L. c. 44B, § 7](#) which requires a prior recommendation of the CPC. It is, therefore, recommended that the legislative body appropriate an administrative budget for the CPC in the first year of the CPA's implementation if the CPC has not yet been formed.
- Appropriations to pay debt service on debt previously voted by the legislative body after a recommendation of the CPC. (This is because the CPC made the original recommendation to the legislative body to approve the issuance of the debt.)
- Upon revocation of the CPA, unless the community's by-law or ordinance provides that the CPC's recommendation role continues as long as community preservation funds remain that are not required

for the satisfaction of outstanding obligations. (See Section VI-A-3 below on Wind-down of Fund on CPA Revocation.)

- In the first year of adoption of the CPA, before the CPC is formed, the legislative body may appropriate CP Fund annual revenues to an annual budgeted reserve. (See Section VI-A-2-b-(2) below for information on the annual budgeted reserve.) Before an appropriation may be made by the legislative body from the annual budgeted reserve for a CP project or other CP expenditure, however, the appropriation will require a recommendation from the CPC.

## **E. Recordkeeping**

The CPC is responsible for maintaining records relating to the use of the CP Fund. [G.L. c. 44B, § 13](#). These records are subject to disclosure as public records. [G.L. c. 66, § 10](#); [G.L. c. 4, § 7, Clause 26](#).

### **1. Recommendations**

The CPC must keep a record of its recommendations to the legislative body and the specific action taken on them.

### **2. Expenditures**

The CPC should track all appropriations and expenditures made from the CP Fund. The municipal clerk certifies all appropriation votes and the accounting officer maintains the official financial records of the municipality. The CPC should periodically monitor spending from the fund, however, in the same manner as department heads review monthly reports from the accounting officer on the status of their budgets.

### **3. Property Interests**

The CPC must maintain an inventory of all real property interests acquired, disposed of or improved by the community after recommendation of the committee. The inventory must contain, at a minimum, the names and addresses of the grantors and grantees, the amount of consideration and all relevant action dates. It should also reference all documents related to acquisitions, dispositions and improvements, such as purchase and sale agreements, deeds and permanent restrictions on acquired property interests. [G.L. c. 44B, § 12\(a\)](#).

### **4. Reporting**

The community's annual reporting requirements under the CPA are described in Section IX below. The CPC should coordinate with applicable municipal officials to provide the information required by such reports and ensure that annual reports are timely filed.

Under [G.L. c. 44, § 55C\(a\),\(c\)\(1\)](#), a municipal affordable housing trust is required to expend any CP funds it receives only for allowable CP community housing purposes under [G.L. c. 44B, § 5\(b\)\(2\)](#), account for such funds separately and, at the end of the fiscal year, report the expenditure of such funds to the CPC for inclusion in the community preservation initiatives report, Form CP-3, described in Section IX below.

## **V. COMMUNITY PRESERVATION FUND EXPENDITURES**

### **A. Expenditure Prerequisites**

The CP Fund is a special revenue fund subject to appropriation. A recommendation by the CPC and an appropriation by the legislative body of the city or town are both required to spend any monies belonging to the fund. [G.L. c. 44B, § 7](#). (See Section IV-D-4 above for the four instances where a prior recommendation of the CPC is not required for an appropriation of the legislative body.) Appropriations are by majority vote, except in the case of borrowing ([G.L. c. 44B, § 11](#) and [G.L. c. 44, § 2](#)) and eminent domain ([G.L. c. 44B, § 5\(e\)](#)) where a two-thirds vote is required. (See Section VII below on Borrowing and Section VIII-A below on Acquisitions.)

### **B. Allowable Expenditures**

CPA appropriations fall into two categories: (1) for the CPC's administrative or operating budget; and (2) for eligible community preservation projects.

#### **1. Annual Administrative and Operating Expenses of the CPC**

Community preservation funds may be used for the administrative and operating expenses of the CPC. Annual appropriations for these expenses may not exceed five percent of the year's estimated annual CP Fund revenues. [G.L. c. 44B, §§ 6-7](#). (See Section VI-A-2-a-(1) below for definition of "annual fund revenues.") Committee administrative expenses are limited to expenses necessary to support the CPC's statutory responsibilities. (See Section IV above for information on the CPC and its statutory responsibilities.)

##### **a. Eligible Expenditures**

- Clerical support for the CPC (i.e., transcribing CPC meeting minutes).
- Wages or salary of a person providing direct administrative support services to the CPC.
- CPC office supplies.
- Newspaper advertisements for CPC hearings.

- Expenses for contractual or consulting services that assist the CPC in making its decisions or that provide information needed by the CPC to make spending recommendations to the legislative body, including feasibility studies, assessments, appraisals or preliminary plans related to a proposed CPA project under consideration by the CPC.
- Funding for historic resource or affordable housing inventories or historic preservation plans or affordable housing plans or similar plans, the purpose of which is to assist the CPC in performing its statutory duty to study the community preservation needs, possibilities and resources of the city or town and make spending recommendations to the legislative body.
- Tax billing software changes and outside vendors necessary to integrate such software for the implementation of the CPA (first year only). [G.L. c. 44B, § 6.](#)

b. Ineligible Expenditures

- Salaries, wages or benefits or other indirect costs incurred by other general government departments such as assessors, treasurer/collector, accounting officer, town counsel, planning department or others.
- Costs of a study to determine if a particular property is a historic resource. (A particular property is a historic resource if it meets the definition of “historic resource” under [G.L. c. 44B, § 2.](#))
- Costs of studies, assessments, plans or other information required in seeking the designation of a historic district. If, however, the studies, assessments or plans result in information which can assist the CPC in performing its statutory duty to study the community preservation needs, possibilities and resources of the city or town and make spending recommendations to the legislative body, then the costs allocated to that portion of the work could be an allowable CPC administrative expenditure.
- Costs of feasibility studies, assessments, appraisals or plans unrelated to the CPC’s statutory duties or a proposed CP project or related to a project which is not eligible for funding under the CPA.
- Supplemental costs of a community preservation project approved by the legislative body. The CPC’s approved administrative/operating budget appropriation is a separate appropriation from an approved project appropriation. A transfer of funds from one appropriation to another, in this case from the CPC administrative appropriation to a CP project appropriation,

requires approval of the legislative body upon a CPC recommendation. [G.L. c. 44, § 33B.](#)

- Contracted services to implement a particular community preservation project approved by the legislative body, for example, contract legal services regarding the acquisition of a particular parcel of land or architectural services regarding the preparation of construction documents for creation of a community housing development. Such project expenses, together with any other acquisition or construction expenses, must be paid from the project's appropriation, not from the CPC's administrative budget.

## 2. Community Preservation Project Expenditures ([G.L. c. 44B, § 5](#))

### a. Community Preservation Asset Categories

The three community preservation asset categories are: (1) open space (including land for recreational use); (2) historic resources; and (3) community housing. In each asset category, CP funds may be appropriated for the following projects:

#### (1) Open Space:

- (a) The acquisition, creation and preservation of open space.
- (b) The rehabilitation or restoration of open space; provided the open space was acquired or created with community preservation funds.

#### (2) Land for Recreational Use:

The acquisition, creation, preservation, rehabilitation and restoration of land for recreational use.

#### (3) Historic Resources:

The acquisition, preservation, rehabilitation and restoration of historic resources.

#### (4) Community Housing:

- (a) The acquisition, creation, preservation and support of community housing.
- (b) The rehabilitation or restoration of community housing; provided the housing was acquired or created with community preservation funds.

- (c) Appropriations to a municipal affordable housing trust fund created by a municipality pursuant to [G.L. c. 44, § 55C](#); however, the affordable housing trust may expend CP funds only for community housing purposes described in sections (a) and (b) above. [G.L. c. 44, §§ 55C\(a\), \(c\)\(1\)](#).

Whenever possible, the CPC should recommend projects that reuse existing buildings or construct new buildings on previously developed sites. [G.L. c. 44B, § 5\(b\)\(2\)](#).

b. Definitions

The CPA clarifies allowable community preservation project expenditures through its definitions.

- (1) See [G.L. c. 44B, § 2](#) for CPA definitions.
- (2) “Creation” is not defined in [G.L. c. 44B, § 2](#), but was defined by the court in the case of [Seideman v. City of Newton, 452 Mass. 472 \(2008\)](#) to mean “to bring into being or to cause to exist.”

c. Related Project Expenditures

Fund monies may also be appropriated for the following community preservation project related expenditures:

- (1) Annual principal and interest payments on bonds and notes issued pursuant to [G.L. c. 44B, § 11](#) for allowable community preservation purposes.
- (2) Damages payable to property owners for real estate interests taken by the city or town pursuant to [G.L. c. 44B, § 5\(e\)](#) by eminent domain for community preservation purposes.
- (3) 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. c. 44B, § 14](#).
- (4) Property acquisition-related expenses, including:
  - (a) Appraisal costs.
  - (b) Expenses for title searches.
  - (c) Closing fees.

- (5) Preparation, issuance and marketing costs for bonds or notes for borrowings made for community preservation purposes.
- (6) Payments to a nonprofit organization to hold, monitor and enforce usage restrictions on real property acquired with community preservation funds. [G.L. c. 44B, § 12\(a\)](#).

d. Minimum Annual Commitment

Each fiscal year, upon the recommendation of the CPC, the legislative body must appropriate or reserve for future appropriation at least 10 percent of the annual fund revenues for projects in each of the three community preservation asset categories of open space (including land for recreational use), historic resources and community housing. [G.L. c. 44B, § 6](#). Appropriations, including those to a reserve, require a legislative body vote that states the specific dollar amount.

The 10 percent minimum commitment should be based upon a good faith estimate of the annual fund revenues. If it is later determined that the annual fund revenues were underestimated by more than a de minimis amount, the CPC should, when circumstances allow, recommend an appropriation by the legislative body to reach the required 10 percent. (See Section VI-A-2-a below for discussion of Annual Fund Revenues.)

In the first year of implementing the CPA, there are often timing issues involved with establishing the CPC and/or holding a meeting of the legislative body to make community preservation appropriations or reservations before the tax rate is set. As a result, if the 10 percent annual commitments for the first fiscal year of the CP Fund have not been made by the end of the fiscal year, the municipality's accounting officer must make the reservations.

If an appropriation was made to meet the annual 10 percent minimum commitment and the appropriation is not fully expended for one reason or another (the project does not go forward or the project was completed at a cost substantially less than the appropriation) and this results in spending or reserving for that year that is materially less than the required annual 10 percent minimum commitment in that category, then the CPC should, when circumstances allow, recommend an appropriation or reservation by the legislative body to reach the required 10 percent minimum for that category for that year.

Annual debt service expenditures for CPA borrowings count toward meeting that year's 10% minimum for the applicable category.

e. Grant Agreements

It is recommended that a community, in consultation with its legal counsel, develop and utilize a community preservation fund grant

agreement to ensure completion of an approved project and implementation of the project's community preservation purpose. This is particularly important if a grant is made to a non-municipal department, individual, private or non-profit entity, or any entity, agency or grantee over which the municipality has no legal control, in order to protect the municipality's investment and ensure implementation of the project's purpose and compliance with the *Anti-aid Amendment to the Massachusetts Constitution*, if applicable. (See Section V-C-5 below, Prohibited Expenditures, for more information on the *Anti-aid Amendment*.) Communities should consider, as appropriate, the following provisions in grant agreements: name of grantee; non-assignability of grant (without advance written approval of municipality); detailed description of any restoration, rehabilitation or other work to be performed by the grantee; construction specifications and standards; relevant historic rehabilitation standards; time periods for performance; total project budget and listing of all funding sources required for project completion; requirement for commitment of total project funding sources before release of CPA funding; designation of who will inspect and approve any required work; provision for periodic release of funding payments as work is completed and approved; return of grant funds not used to the CP Fund; grantee reporting requirements; grantee matching fund requirements; timing of execution, delivery and recording of required community preservation restriction documents or easements for public access/use; remedies for any breach or non-performance of grantee, including return of CP funds; designation of responsibility for continued maintenance of assets or improvements funded with CP funds; any other requirement or condition of the grant.

f. Project Expenditure Examples

See Community Preservation Fund Project Expenditure Examples, Attachment V-1 below; Community Preservation Fund Allowable Project Spending Purposes, Attachment V-2 below; and CPA Project Eligibility Flow-Chart, Attachment V-3 below.

C. **Prohibited Expenditures**

Fund monies may not be spent:

1. To supplant funds being used for existing expenses, even if they serve community preservation purposes. The CP Fund is a supplementary funding source intended to increase available resources for community preservation acquisitions and initiatives. [G.L. c. 44B, § 6.](#)

Example: Prior to the adoption of the CPA, the municipality voted to borrow for the acquisition of open space. After adoption, CPA funds **cannot** be used to pay the debt service on such acquisition. (See Section VII below on Borrowing.)



2. To pay for maintenance of any real or personal property. [G.L. c. 44B, § 5\(b\)\(2\)](#). See definition of “maintenance”. [G.L. c. 44B, § 2](#).

Examples:

- It is **not** permissible to use CPA funds for a yearly maintenance contract to maintain slate roofs on historic town buildings.
- Expenditures for water use charges for field irrigation, mowing and other maintenance charges are **not** allowable.

Because the CPA definition of "maintenance" was amended to incorporate language from the Internal Revenue Service's then-definition of "repair," case law interpreting whether an item is a “repair” under that IRS regulation may be considered when determining whether an item is “maintenance” for CPA purposes. See [Section 71 of Chapter 139 of the Acts of 2012](#) and [26 CFR § 1.162-4, April 1, 2011](#).

3. For the acquisition of artificial turf for athletic fields. (Applies to projects approved on or after July 1, 2012.) [G.L. c. 44B, § 5\(b\)\(2\)](#).
4. For horse or dog racing or the use of land for a stadium, gymnasium or similar structure. [G.L. c. 44B, § 2](#).
5. In violation of *The Anti-aid Amendment to the Massachusetts Constitution, Mass. Const. Amend. Article 42, § 2, as amended by Article 103*, which provides in relevant part:

*No grant, appropriation or use of public money or property or loan of credit shall be made or authorized by the Commonwealth or any political subdivision thereof for the purpose of founding, maintaining or aiding any...institution...or charitable or religious undertaking which is not publicly owned and under the exclusive control, order and supervision of public officers or public agents authorized by the Commonwealth or federal authority or both.. and no such grant, appropriation or use of public money or property or loan of public credit shall be made or authorized for the purpose of founding, maintaining or aiding any church, religious denomination or society....*

A three-factor test to determine the constitutionality of grants challenged under the first clause of the *Anti-aid Amendment* was developed by the court in [Commonwealth v. School Comm. of Springfield](#), 382 Mass. 665, 675 (1981). That three-part test was applied by the court in [Caplan v. Town of Acton](#), 479 Mass. 69 (2018) when evaluating the constitutionality of a grant of CPA funds under the second clause of the *Anti-aid Amendment*. The three factors are: (i) whether the proposed grant is for the purpose of founding, maintaining or aiding [the institution, private organization, nonprofit, church, etc.]; (ii) whether the effect of the grant is to substantially aid [the institution, private organization,

nonprofit, church, etc.]; and (iii) whether the grant avoids the political and economic abuses which prompted the passage of the *Anti-aid Amendment*.

Although the *Anti-aid Amendment* applies to grants to private entities and religious and charitable organizations, the principle that public funds may not be granted for private purposes and can be used only for public purposes also applies to grants of public funds to individuals. “It is a fundamental principle, conforming to constitutional requirements...and frequently declared, that money raised by taxation can be used only for public purposes and not for the advantage of private individuals.” [\*Opinion of the Justices\*](#) 313 Mass. 779, 784 (1943).

Whenever a grant of community preservation funds is being considered for a private organization or individual or entity over which the city/town has no legal control, municipal counsel should be consulted to ensure compliance with the *Anti-aid Amendment* and relevant case law. (See also Section V-B-2-e above, for information on requiring grant agreements if the recipient is not a municipal department.)

## **VI. FUNDS**

### **A. Community Preservation Fund**

#### **1. Special Revenue Fund**

The CP Fund is a special revenue fund. The accounting officer must establish and maintain it as a separate account. [G.L. c. 44B, § 7.](#)

##### **a. Receipts**

The following receipts are credited to the CP Fund:

- (1) All monies collected from the surcharge. [G.L. c. 44B, § 7\(i\).](#) (For more information on the surcharge, see Section II above.)
- (2) The additional funds from allowable municipal sources appropriated to the CP Fund by the city or town pursuant to [G.L. c. 44B, § 3\(b½\).](#) [G.L. c. 44B, § 7\(ii\).](#) (For more information on Section 3(b½), see Section III above.)
- (3) All proceeds from borrowings made under the community preservation program. [G.L. c. 44B, § 7\(i\).](#) (For more information on borrowing, see Section VII below.)
- (4) All funds received from the Commonwealth for community preservation purposes, including matching fund distributions from the Massachusetts Community Preservation Trust Fund, [G.L. c. 44B, §§ 9 and 10.](#) [G.L. c. 44B, § 7\(iii\).](#) (For more

information on the Massachusetts Community Preservation Trust, see Section VI-B below.)

- (5) All funds received from any other source for community preservation purposes. [G.L. c. 44B, § 7\(iii\)](#).

Examples:

- The CP Fund is credited with any self-help (or other types of) reimbursement grants for a land acquisition financed with community preservation funds.
  - The CP Fund is credited with rents received from the rental of property acquired with community preservation funds.
- (6) Proceeds from the disposal of real property acquired with community preservation funds. [G.L. c. 44B, § 7\(iv\)](#). (See [G.L. c. 44B, § 2](#) for definition of real property.)
- (7) Damages and penalties from persons who knowingly damage properties acquired by cities and towns using community preservation funds. [G.L. c. 44B, § 15](#).
- (8) All income and interest earned on CP Fund monies. [G.L. c. 44B, § 7](#).

b. Turnovers

The collector should pay over to the treasurer all surcharge payments at the same time as regular property tax payments are turned over. [G.L. c. 44B, § 4](#).

c. Investment

The treasurer may invest monies in the CP Fund in savings banks, Massachusetts trust companies, Massachusetts FDIC banking companies or national banks or in shares of co-operative banks, savings and loan associations or federal savings and loan associations doing business in Massachusetts or in the same manner authorized for the investment of trust funds under [G.L. c. 44, § 54](#). [G.L. c. 44B, § 7](#). The treasurer may pool or establish a separate bank account for community preservation cash. A treasurer who pools cash must allocate interest earned on community preservation cash to the CP Fund.

2. Fund Financing Sources

a. Annual Fund Revenues (Annual Recurring Revenues)

A community may appropriate from the estimated annual fund revenues of the CP Fund for allowable community preservation expenditure purposes. It may also reserve those revenues for future appropriation. Appropriations and reservations must state a specific dollar amount.

(1) Definition

For a city or town that has adopted the CPA pursuant to [G.L. c. 44B, § 3\(b\)](#), annual fund revenues consist of the receipts from:

- The surcharge and
- State trust fund distribution for the fiscal year.

For a city or town that has adopted the CPA pursuant to [G.L. c. 44B, § 3\(b½\)](#), annual fund revenues consist of the receipts from:

- The surcharge
- The additional revenue from other allowable sources appropriated to the CP Fund pursuant to [G.L. c. 44B, § 3\(b½\)](#) (See Section III above for more information on Section 3(b½)) and
- State trust fund distribution for the fiscal year.

For the first fiscal year the surcharge is imposed, annual fund revenues will not include receipts from the state trust fund because state trust funds are not distributed to the city or town until after the first fiscal year of surcharge collections is completed.

In estimating the amount of the state trust fund distribution, communities should refer to the Division of Local Services' estimate of state trust fund distributions published each spring. (See Section VI-B below for information on the Massachusetts Community Preservation Trust Fund.)

Communities can appropriate from estimated annual fund revenues until the tax rate is set for that fiscal year.

For example, if a community has based its community preservation appropriations for the fiscal year upon an estimated amount of state matching funds and, later, the amount of actual state matching funds distributed to the community are in excess of the community's estimated amount, the community can appropriate the additional state matching funds only if the tax rate has not been set for the fiscal year. Once the tax rate is set, excess CP Fund revenues over estimates, including excess state matching funds over estimates, will close at the end of the fiscal year to the CP Fund balance and become part of that funding source after the accounting officer reports it. (For more

information on the CP Fund balance, see Section VI-A-2-b-(3) below.)

Spending from appropriations from estimated annual fund revenues can commence July 1 of the fiscal year (of the estimated revenues).

(2) Amount Committed

The actual amount available to support appropriations and reserves for new acquisitions and initiatives in any fiscal year will be affected by surcharge collection rates, as well as by the amount appropriated to cover CPC administrative expenses and existing debt service or other obligations. To ensure the fund does not incur a revenue shortfall, communities should generally limit total appropriations and reservations to no more than the prior year's actual surcharge and the estimated state trust fund receipts. For communities that have adopted the CPA pursuant to [G.L. c. 44B, § 3\(b½\)](#), total appropriations and reservations should be limited to no more than the prior year's actual surcharge, the additional revenue from other allowable sources appropriated to the CP Fund for the upcoming fiscal year and the estimated state trust fund receipts.

(3) Revenue Shortfalls

If budgeted expenditures, reservations and annual fund revenues for a fiscal year compare unfavorably to actual amounts, the shortfall must be raised from the next year's annual fund revenues. Abated or uncollectible surcharges are funded by charges to the surcharge receivable of the fiscal year.

b. Other Fund Financing Sources

Appropriations for allowable community preservation purposes may also be made from other available sources within the fund at any time during the fiscal year. Spending from appropriations from available funds can commence once the appropriation vote is effective, unless the funds include new reservations from estimated annual revenues, in which case spending can commence on July 1.

Other Fund Financing Sources are:

- (1) Special Purpose (Restricted) Reserves – The community preservation funds reserved by the legislative body for future appropriation for one of three categories of community preservation purposes. A separate reserve exists within the CP Fund for each category of community preservation purposes and later appropriations from each reserve are restricted to those

purposes. Appropriations from a special purpose must state a specific dollar amount. Any unappropriated balance in a special purpose reserve at the close of the fiscal year remains in the special purpose reserve. The three special purpose reserves are:

- CP Fund Open Space Reserve (includes recreation)
- CP Fund Historic Resources Reserve and
- CP Fund Community Housing Reserve.

- (2) Community Preservation Fund Annual Budgeted Reserve – The community preservation funds reserved by the legislative body for future appropriation for any community preservation purpose during the fiscal year. Appropriations may be made from estimated annual fund revenues to an annual budgeted reserve. Such appropriations must state a specific dollar amount and must be made before the tax rate is set. Appropriations from the annual budgeted reserve must also state a specific dollar amount and can be made for any community preservation purpose during the fiscal year only. Any unappropriated balance in the annual budgeted reserve at the close of the fiscal year closes to the CP Fund balance. (See below for more information on CP Fund balance.)

A community should vote an annual budgeted reserve if it wants the flexibility to use any annual revenues not appropriated or reserved for a particular community preservation purpose after the tax rate is set.

- (3) Community Preservation Fund Balance – The unspent and unencumbered balance as of year-end that results from (1) actual collections of annual and miscellaneous fund revenues (except bond proceeds) that exceed expenditures and reservations from estimated annual revenues, (2) actual expenditures and encumbrances that are less than appropriations and (3) unspent and unencumbered balance remaining in the Annual Budgeted Reserve.

CP Fund Balance is an available financing source only after the accounting officer closes the municipal accounts for the previous fiscal year and determines the amount of the CP Fund Balance. Appropriations from CP Fund Balance must state a specific dollar amount and can be made during the fiscal year until June 30 when its availability expires. The accounting officer then closes the municipal accounts for the year and determines a new CP Fund Balance for the ensuing fiscal year. The accounting officer must report the year-end CP Fund Balance to the Bureau of Accounts. (See Section IX below on Annual Reporting Requirements.)

The accounting officer should provide a copy of the annual report to the CPC and other boards or officers with financial responsibilities in order to notify them of the CP Fund Balance available for appropriation through the end of the current fiscal year.

- (4) Community Preservation Fund Surplus Bond Proceeds - The unspent and unencumbered balance of proceeds from bonds at the completion or abandonment of a community preservation project for which debt was issued. Appropriations from this source are restricted to a community preservation purpose for which borrowing may be authorized for the same or longer term than the original loan. [G.L. c. 44, § 20](#). (See Section VII-E below for more information regarding appropriations and expenditures from surplus bond proceeds.)

(For more information, see chart “Community Preservation Fund Financing Sources”, Attachment VI-1 below; Sample Appropriation Vote Annual Community Preservation Program Budget, Attachment VI-2 below; and Sample Votes from Community Preservation Fund Financing Sources, Attachment VI-3 below.)

### 3. Wind-down of Fund on CPA Revocation

If a community revokes its acceptance of the CPA pursuant to [G.L. c. 44B, § 16\(b\)](#), all outstanding obligations, including future debt service payments and deficits that are to be financed from CP Fund revenues, must be identified and a determination made whether there are sufficient uncommitted monies available within the fund to meet those obligations. Uncommitted monies include: undesignated fund balance, any annual revenues not yet committed and appropriated and reserve balances that can be used for the purposes of the obligations. This would include the balance in an annual budgeted reserve and, if for payment of a loan issued to purchase open space, monies in an open space reserve.

#### a. When Sufficient Funds Exist To Meet Obligations

If there are sufficient uncommitted monies available within the fund to meet outstanding obligations, the assessment of the surcharge will cease at the end of the fiscal year. The funds needed to pay the remaining obligations should be reserved by the accounting officer and the community should not undertake any new obligations unless they can be funded with remaining unreserved funds or alternatively, with monies from other municipal financing sources. Appropriations from any fund monies remaining after all obligations have been satisfied are restricted to community preservation purposes; however, because the CPA has been revoked, recommendations from the CPC are no longer required unless the municipality’s CPC by-law or ordinance provides otherwise. After revocation, a community cannot authorize new borrowings under



[G.L. c. 44B, § 11](#) and there will be no new 10 percent minimum annual spending requirements for open space (including land for recreational use), historic preservation and community housing. After the surcharge collections cease, the resulting state trust fund distributions will cease. CP Fund operations continue only for the purpose of winding down the fund.

b. When Insufficient Funds Exist To Meet Obligations

If there are not sufficient uncommitted monies available within the fund to meet outstanding obligations, the surcharge must continue to be assessed until sufficient funds become available to pay the remaining obligations. If the surcharge would generate significantly more revenues than necessary, the community may, pursuant to [G.L. c. 44B, § 16\(a\)](#), amend, with prior approval of the Director of the Bureau of Accounts, the surcharge to a percentage that will provide the revenues needed to fund the obligations. See Section I-E above for amendment procedure. As stated above, appropriations from any fund monies are restricted to community preservation purposes; however, because the CPA has been revoked, recommendations from the CPC are no longer required unless the municipality's CPC by-law or ordinance indicates otherwise. After revocation, a community cannot authorize new borrowings under [G.L. c. 44B, § 11](#) and there will be no new 10 percent minimum annual spending requirements for open space (including land for recreational use), historic preservation and community housing. As long as the surcharge is imposed, the community will be eligible for state trust fund distributions.

For example, Anytown revokes the CPA while it has an anticipated \$1 million in CPA debt service outstanding on debt issued to fund open space acquisitions. It has \$300,000 in fund balance, \$250,000 in the Community Housing reserve and \$200,000 in the Historic Resources reserve. Anytown will receive a state trust fund distribution estimated at \$75,000 next FY because it assessed a surcharge this year. The historic and housing reserves can only be used for those purposes and continue to be available for appropriation for eligible projects at any time until exhausted. Therefore, there is \$375,000 available to reserve for appropriation for the debt service (fund balance \$300,000 and anticipated trust distribution \$75,000) as it becomes due in future years. Consequently, Anytown will have to continue to assess a surcharge for one or more years in order to accumulate the additional \$625,000 needed to cover the debt service. Any extra monies left after it has reserved enough additional revenues from surcharges (plus trust fund distributions and investment earnings it receives while it winds down the fund) can be appropriated for any community preservation purpose. After revocation, the surcharge is only assessed to wrap up the fund, so there is no longer an obligation to allocate 10 percent of each of those year's revenues to the three community preservation spending purposes.

Communities do not have the option of ending the surcharge and undertaking to pay outstanding obligations from the tax levy. [G.L. c. 44B, § 16\(b\)](#). However, if a community pays all outstanding obligations in full using tax levy or available funds, the surcharge will cease at the end of the fiscal year.

(See Section I above for an explanation of CPA acceptance, amendment and revocation procedures.)

## **B. Massachusetts Community Preservation Trust Fund**

### **1. Trust Fund**

A Community Preservation Trust Fund is established on the state level for the benefit of cities and towns participating in the community preservation program. [G.L. c. 44B, § 9](#). The state treasurer is the custodian of the fund and is responsible for its investment. All interest and earnings on fund revenues belong to the fund.

Monies distributed from the state trust fund will come primarily from surcharges on fees charged for recording various documents with the Registry of Deeds or Land Court. The trust fund will also be credited with public or private gifts, grants or donations to the state for community preservation purposes and other monies transferred to the fund by the state legislature or otherwise by law.

### **2. Trust Fund Administration**

The Department of Revenue (DOR) is responsible for administering and managing disbursements from the trust fund and certifying those amounts to the state treasurer for payment to participating cities and towns. The trust fund will be charged for administrative and operating expenses incurred by the DOR in an amount not to exceed five percent of annual trust fund revenues.

### **3. Trust Fund Distributions**

On or before November 15 of each year, distributions will be made from the trust fund to each city or town that imposed a surcharge for the fiscal year that ended on the preceding June 30.

The distribution formula includes up to three distribution rounds. All communities that imposed a surcharge the previous year will receive first round distributions. The following communities qualify for any second and third round distributions:

- Communities that assessed the maximum three percent surcharge; and
- Communities that accepted the CPA pursuant to [G.L. c. 44B, § 3\(b½\)](#) and assessed a surcharge of at least one percent and appropriated additional funds to the CP Fund so that the total equals three percent of

the real estate tax levy. (Communities that have accepted the CPA pursuant to [G.L. c. 44B, § 3\(b\)](#) are not eligible to appropriate additional funds to the CP Fund pursuant to [G.L. c. 44B, § 3\(b\)½](#) for state trust fund matching purposes unless they follow the amendment process in [G.L. c. 44B, § 16\(a\)](#) and adopt [G.L. c. 44B, § 3\(b\)½](#). See Sections I-E and III above.)

If less than 10 percent of cities and towns imposed a surcharge the previous year, the DOR may use only one round or other equitable method to calculate the annual distribution amount.

a. Maximum Distribution

The maximum amount a city or town can receive in any year from the trust fund is 100 percent of the total surcharge assessed for the previous fiscal year or, in the case of a city or town that accepted the CPA pursuant to [G.L. c. 44B, § 3\(b\)½](#), 100 percent of the total surcharge assessed for the previous fiscal year plus additional funds appropriated in that fiscal year by the city or town to the CP Fund. This amount must be reported to the DOR annually by September 15. (See Section IX below for Annual Reporting Requirements.)

b. First Round Match Distribution

All communities that imposed a surcharge the previous year will receive first round match distributions. Eighty percent of the fund balance after administrative expenses will be split among eligible communities. Each community will receive at least five percent, but no more than 100 percent, of the total surcharge assessed the previous year or, in the case of a community that accepted the CPA pursuant to [G.L. c. 44B, § 3\(b\)½](#), the total surcharge assessed the previous year plus the additional funds appropriated in that fiscal year to the CP Fund.

c. Second Round Equity Distribution

If the monies in the fund are not fully distributed after the first round, second round equity distributions using the following needs-based formula will be made to communities that adopted the maximum three percent surcharge and communities that accepted the CPA pursuant to [G.L. c. 44B, § 3\(b\)½](#) and imposed a surcharge of at least one percent and appropriated other funds to the CP Fund so that the total equals three percent of the real estate tax levy.

- (1) Step 1. A *base figure* for the equity distribution is determined by dividing the remaining fund balance by the number of cities and towns receiving match distributions.
- (2) Step 2. A *community preservation (CP) raw score* is determined for each city and town in the commonwealth. Each community is

ranked from highest to lowest by equalized valuation per capita and population. The two ranks are added together and divided by two to arrive at the CP raw score for each community.

- (3) Step 3. A *CP rank* is determined for each city and town in the commonwealth by ordering the CP raw scores from lowest to highest. If more than one community has the same raw score, the community with the higher equalized valuation rank receives the higher CP rank.
- (4) Step 4. The cities and towns are divided into *deciles* based on their CP rank. The communities with the highest CP rank are placed in the lowest decile category starting with decile 10.
- (5) Step 5. The *equity distribution amount* for each qualifying city or town is determined by multiplying the Step 1 base figure by the following percentages assigned to the Step 4 decile category of the community.

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

d. Third Round Surplus Distribution

If there are monies still left in the fund, the DOR may also make a third round surplus distribution as follows to the communities that received a second round distribution:

- (1) Step 1. A *base figure* for the surplus distribution is determined by dividing the remaining fund balance by the number of cities and towns receiving first round match distributions.
- (2) Step 2. The *surplus distribution amount* for each qualifying city or town is determined by multiplying the Step 1 base figure by the same percentage used in the equity distribution for the community.

### C. **Supplemental Appropriations**

Appropriations may be made from other municipal funding sources, such as the tax levy, free cash or other available funds, to supplement and carry out community preservation projects. [G.L. c. 44B, § 5\(d\)](#). Those appropriations should be treated as special purpose appropriations which do not close out at fiscal year-end. Such appropriations, however, may not be appropriated directly into the CP Fund. Special purpose appropriations are distinguished from an appropriation of additional funds by a community that has accepted the CPA pursuant to [G.L. c. 44B, § 3\(b½\)](#). Appropriations of additional funds pursuant to G.L. c. 44B, § 3(b½) are appropriated to the CP Fund. (See Section III above.)

## VII. **BORROWING**

Cities and towns may issue general obligation bonds or notes to fund community preservation acquisitions and projects subject to the applicable provisions of [G.L. c. 44](#), which govern the issuance of municipal debt. [G.L. c. 44B, § 11](#). Bond proceeds are to be deposited into the CP Fund. [G.L. c. 44B, § 7\(i\)](#). Although debt issued under c. 44B is general obligation debt, the CPA limits the amount a community may borrow to an amount where the debt service can be paid (together with debt service on any previously authorized borrowings) from the annual community preservation revenues that the community reasonably expects to raise pursuant to [G.L. c. 44B, § 3](#) (surcharge and additional funds pursuant to § 3(b½)) over the term of the borrowing. If for some unforeseen reason, the monies raised from these annual revenues alone should prove insufficient, the debt service must be paid from any other community preservation fund monies available for that purpose and if fund monies are insufficient, from other available municipal funds. The CPA also suggests, but does not mandate, that communities make every effort to limit issuance costs by participating in pooled loan programs and through cost sharing arrangements.

### A. **Purposes and Terms**

Debt authorized under the CPA is limited to those purposes and maximum terms found in [G.L. c. 44, §§ 7 and 8](#). For example, a community may borrow for up to 30 years to fund acquisitions of land for a community preservation purpose, such as open space, because borrowing for municipal land acquisition is allowed under [G.L. c. 44, § 7\(1\)](#) for up to 30 years. The applicable borrowing periods are either established in [c. 44](#) or in the [Director of Accounts Guidelines Asset Useful Life Schedules and Maximum](#)

Borrowing Terms. A community may not, however, borrow to fund a CPA project if the project is not one for which a municipality is otherwise authorized to borrow. For example, a community may not borrow to fund a cash grant to a non-profit to rehabilitate a historic building owned by the non-profit (assuming the grant does not violate the *Anti-aid Amendment* – see Section V-C-5 above). This is because borrowing to fund a cash grant or to rehabilitate a privately-owned building is not an allowable municipal borrowing purpose. However, a municipality could borrow to fund the acquisition of a historic preservation easement on the historic building because a municipality may borrow under [G.L. c. 44, § 7\(1\)](#) to acquire an interest in real estate.

Community preservation funds cannot be used to pay the debt service on borrowings authorized before the CPA was adopted, even if the borrowing was for an allowable community preservation purpose. Fund monies can only be used for debt service on borrowings authorized pursuant to [G.L. 44B § 11](#). Once a community authorizes a borrowing with another financing source for debt service, it cannot amend or change the financing source to a community preservation fund financing source. This is prohibited under the “non-supplanting” provision of the CPA. [G.L. c. 44B, § 6](#).

**B. Temporary and Permanent Borrowing**

Communities should initially use temporary debt to finance community preservation acquisitions and initiatives in order to ensure there are no unspent bond proceeds if an acquisition or initiative unexpectedly fails to close for any reason. Bond anticipation notes may be issued for community preservation purposes in the same manner as any other municipal borrowing and may be cost effective in financing smaller acquisitions and initiatives. Permanent debt may be issued before or after completing a community preservation acquisition or initiative. When bonds are issued in advance of community preservation acquisitions or projects, communities should have an inventory of other eligible parcels or projects and should recognize the risk of incurring an Internal Revenue Service arbitrage rebate penalty. If an arbitrage penalty is incurred, however, it should be paid from the CP Fund.

**C. Amount Borrowed**

A community should refrain from borrowing the maximum amount of debt that could be supported by annual revenues because collection rates and administrative expenses will reduce the actual amount available for debt service payments.

**D. Repayment Terms**

Debt service payments may be made on a “level debt service” or “equal principal” basis. A community may also choose to repay community preservation loans using a schedule that provides for a more rapid amortization of principal if supported by annual fund revenues.

**E. Surplus Bond Proceeds**

In general, the unspent and unencumbered balance of proceeds from bonds at the completion or abandonment of a project for which debt was issued are available funds

for restricted purposes under [G.L. c. 44, § 20](#). Surplus bond proceeds in any amount may be appropriated for any purpose for which the city or town may borrow for an equal or greater term than the term of the loan from which the surplus resulted. Surplus bond proceeds of \$50,000 or less remaining after completion of a project, however, may be applied to the payment of any debt service with the approval of the chief executive officer. In a town, the chief executive officer is the board of selectmen, in a city, the mayor. For more information, see IGR 17-21, Borrowing, Section VIII.

Surplus bond proceeds remaining after a CPA project is completed or abandoned also remain subject to the restrictions of the CPA under [G.L. c. 44B](#). As a result, such surplus bond proceeds may only be appropriated (1) upon a recommendation of the CPC to the legislative body and (2) for a CPA purpose for which the community could borrow for the same or longer term than the original loan. If the surplus remaining after a CPA project is completed is \$50,000 or less, however, the surplus may be applied to the payment of debt service, but only to the debt service of another CPA borrowing and only upon the approval of both the chief executive officer and the CPC.

For example, if there are available surplus bond proceeds in any amount after the completion of an open space acquisition financed with community preservation funds, the surplus may be appropriated, upon the recommendation of the community preservation committee, for another community preservation purpose for which the city or town may borrow for an equal or greater term than the term for which that loan was issued. If the available surplus is \$50,000 or less, however, the surplus may be applied to the payment of debt service for another community preservation borrowing, upon the recommendation of the community preservation committee and the approval of the chief executive officer. [G.L. c. 44B, §§ 5\(b\)\(2\) and \(d\) and 7](#).

#### **F. Treatment of Bond Premiums and Accrued Interest**

Premiums (net of issuance costs) and accrued interest received on bonds or notes authorized pursuant to [G.L. 44B § 11](#) and sold on or after November 7, 2016, must either be:

1. Used to pay project costs and to reduce the amount of the borrowing by the same amount when the borrowing vote so authorizes; or
2. Reserved for appropriation for allowable CPA capital projects for which a loan has been, or may be, authorized for an equal or longer period of time than the loan for which the premiums were received. [G.L. c. 44, § 20](#). A recommendation of the CPC is required for an appropriation of bond premiums or accrued interest. [G.L. c. 44B, §§ 5\(b\)\(2\), 5\(d\), 7](#). For more information, see IGR 17-21, Borrowing, Section V.

#### **G. Surcharge Expiration**

If a community revokes its acceptance of the CPA, the surcharge expires once all obligations, including debt service, that are to be financed from CP Fund revenues are funded. (See Section VI-A-3 above for Wind-down of Fund on CPA Revocation.)



## **H. Legislative Body Vote**

A recommendation of the Community Preservation Committee and approval of the legislative body by a two-thirds vote is required to authorize a borrowing. [G.L. c. 44B, § 11](#) and [G.L. c. 44, § 2](#). The vote should specifically state that the borrowing is pursuant to [G.L. c. 44B, § 11](#).

(See Sample Community Preservation Appropriation Vote - Includes Borrowing Authorization, Attachment VII-1 below.)

## **VIII. COMMUNITY PRESERVATION PROPERTY**

### **A. Acquisition**

Upon recommendation of the CPC, a city or town may acquire, or take by eminent domain, interests in real estate for allowable community preservation purposes. A two-thirds vote of its legislative body is required to take the interest by eminent domain. [G.L. c. 44B, § 5\(e\)](#); [G.L. c. 79](#). All other acquisitions require a majority vote of its legislative body. Real estate interests acquired or taken using monies from the CP Fund may be located in another Massachusetts city or town. [G.L. c. 44B, § 6](#).

An acquisition of an interest in real property with community preservation funds is not subject to the procurement requirements of [G.L. c. 30B, § 16](#); however, notwithstanding the provisions of [G.L. c. 40, § 14](#), the price of a real property interest acquired with community preservation funds must not exceed the value of the property determined through procedures customarily accepted by appraising professionals as valid. [G.L. c. 44B, § 5\(f\)](#).

### **B. Ownership and Management**

The city or town must own any real property interest acquired or taken with community preservation monies. Management of the properties may be delegated by the legislative body to the conservation commission, historical commission, park commission or housing authority, as appropriate, or to a nonprofit corporation created under [G.L. c. 180](#) or nonprofit trust created under [G.L. c. 203](#). Management of properties acquired for future wellhead development may be delegated by the legislative body to a water, water supply or fire district. [G.L. c. 44B, § 12\(b\)](#).

### **C. Usage Restrictions**

Real property interests financed in whole or in part with CP Fund monies must be bound by a permanent restriction, recorded as a separate instrument, which limits the use of the property to the purpose for which it was acquired. The restriction must conform to the requirements of [G.L. c. 184, §§ 31-34](#).

#### **D. Damage**

A city or town, or the attorney general upon request of the city or town, may bring a civil action to recover damages, including punitive damages, from, or seek injunctive relief against, persons who knowingly damage or steal any real property acquired by the city or town using community preservation monies. Damages, costs and interest recovered must be credited to the CP Fund. The superior court has jurisdiction in these cases. [G.L. c. 44B, § 15](#).

#### **E. Disposition**

The proceeds obtained from the disposal of any real estate interest acquired with monies from the CP Fund must be credited to the Fund. [G.L. c. 44B, § 7\(iv\)](#). If the original financing source for the acquisition was restricted, i.e., from the open space special purpose restricted reserve, then the disposition proceeds should be credited to that special purpose restricted reserve.

Although acquisitions of interests in real estate with community preservation funds are specifically exempted from the procurement requirements of [G.L. c. 30B, § 16](#), there is no similar exemption from procurement requirements for dispositions of interests in real estate acquired with community preservation funds. [G.L. c. 44B, § 5\(f\)](#). As a result, a municipality must follow the applicable procurement procedures regarding a disposal of real estate when the real estate is acquired with community preservation funds. If the real estate will be disposed subject to the applicable restriction (described in Section C above), the municipality must follow applicable general legal requirements regarding the disposition of municipal real estate. If the community has determined to dispose of the real estate without the restriction (i.e., it has been determined that it is impossible to develop planned recreational fields on a site due to latent site constraints), then the community must also follow the restriction release procedures set forth in [G.L. c. 184, § 32](#). In addition, Article 97 of the Amendments to the Massachusetts Constitution may apply to a real estate disposition. [Mass. Const. Amend. art. 97](#). Municipal legal counsel should be involved whenever a community proposes an acquisition or disposition of an interest in real estate.

### **IX. ANNUAL REPORTING REQUIREMENTS**

Community preservation communities are required to submit information regarding the CP Fund annually as follows:

- Form CP-1, “*Community Preservation Surcharge Report*,” submitted via the [DLS Gateway System](#) under Miscellaneous Forms, Year End Accounting, to the DLS Data Analytics and Resources Bureau (DARB) by September 15.
- Form CP-2, “*Community Preservation Fund Report*,” submitted via the [DLS Gateway System](#) under Miscellaneous Forms, Year End Accounting, to the Bureau of Accounts by October 31.

- Schedule A-4, “*Community Preservation Fund, Chapter 44B*,” submitted via the [DLS Gateway System](#) under Taxrate, Tax Rate – BOA, to the Bureau of Accounts.
- Part 3, Special Revenue Funds, “*Schedule A*,” submitted via the [DLS Gateway System](#) under Schedule A, to the Bureau of Accounts.
- Form CP-3, “*Community Preservation Initiatives Report*,” to the EOEEA by September 15. The Form CP-3 is available from [Mass GIS](#) after entering your community’s password provided by DARB. (Note that under [G.L. c. 44, § 55C\(a\),\(c\)\(1\)](#), a municipal affordable housing trust is required to expend any CP funds it receives exclusively for allowable CP community housing purposes under [G.L. c. 44B, § 5\(b\)\(2\)](#), account for such funds separately and, at the end of the fiscal year, report the expenditure of such funds to the CPC for inclusion in the Form CP-3.)

## **X. ACCOUNTING ISSUES**

In order to segregate all sources of revenue and expenses associated with the CPA program into one fund, all activity should be recorded in a special revenue fund. Revenues recorded in the CP Fund, other than revenues from bond and note proceeds, are subject to appropriation. The following is a list of CP activity and their respective accounting treatment.

- A. The assessors will issue a separate notice of commitment for the community preservation surcharge, which will be recorded by the accounting officer in the CP Fund.
- B. Collections reported will be recorded directly into the CP Fund.
- C. Amounts received from the state Massachusetts Community Preservation Trust Fund will be recorded in the CP Fund.
- D. All expenditures of community preservation funds should be recorded as a direct expenditure in the CP Fund.
- E. Actual revenues should close to the CP Fund balance at the end of the year.
- F. Amounts appropriated for administrative and operating expenses of the CPC are considered annual operating expenses and any unspent and unencumbered balance should be closed to the CP Fund balance at the end of the fiscal year.
- G. The unspent and unencumbered balance of an appropriation for a community preservation project, including a particular acquisition or initiative, should be closed to the CP Fund financing source from which the appropriation was funded. Unless the community has, by charter, by-law or ordinance, established a different procedure for closing special purpose appropriations, the appropriation should close after notice from the CPC that the appropriation purpose has been completed.

- H. Revenue from bond proceeds should be recorded as another financing source directly to the CP Fund. However, if a project is expected to include improvements that will take place over a period of longer than one year, a capital project fund may be established.
- I. Short-term notes should be recorded as a liability in the CP Fund.
- J. Amounts appropriated or reserved from estimated annual CP Fund revenues or from other fund financing sources should be reported on the tax rate recapitulation sheet via the [DLS Gateway System](#) as an appropriation from the CP Fund on page 4. Schedule A-4 must be submitted with the recapitulation to document fund revenues and appropriations.
- K. Revenue deficits in the CP Fund that result from a fiscal year's operations (actual revenues, expenditures and reservations) comparing unfavorably to the approved budget (budgeted revenues, appropriations and reservations) for the year must be reported on the Schedule A-4 submitted with the tax rate recapitulation in [Gateway](#) and raised from the current year's annual fund revenues.
- L. If acceptance of the CPA is revoked, any unspent and unencumbered CP Fund revenues and available funds at that time must be reserved for the payment of existing obligations, including future debt service and deficits.

(Please refer to Attachment X-1 below for sample of Budgetary and Actual Accounting entries for recording reservations, commitments, liens, and abatements.)

## **XI. ATTACHMENTS**

### **Attachment I-1**

#### **COMMUNITY PRESERVATION ACT ACCEPTANCE**

##### **SAMPLE LANGUAGE**

**(Samples should not be used without the advice of municipal counsel.)**

##### **SAMPLE LEGISLATIVE BODY VOTE**

##### **G.L. c. 44B, § 3(b)**

**ARTICLE/ORDER:** To see if the city/town will vote to accept General Laws Chapter 44B §§ 3-7, known as the Community Preservation Act, which establishes a special “Community Preservation Fund” that may be appropriated and spent for certain open space, historic resources and community housing purposes; and to approve under Section 3(b) of G.L. c. 44B a property tax surcharge in an amount not to exceed 3% of the taxes assessed annually on real property, which will be dedicated to the Fund and be imposed starting with taxes assessed for fiscal year \_\_\_\_\_ beginning on July 1, \_\_\_\_; [and to exempt from the surcharge any or all of the following: (1) 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 community as defined in the Act; (2) Class Three, Commercial, and Class Four, Industrial, real property in any year the town adopts a higher tax rate for those classes; (3) the real estate tax on \$100,000 of the assessed valuation of Class One, Residential, parcels; or (4) the real estate tax on \$100,000 of the assessed valuation of Class Three, Commercial, and Class Four, Industrial parcels,] or take any other action relative thereto.

**MOTION:** Moved/ordered that the city/town vote to accept General Laws Chapter 44B §§ 3-7, known as the Community Preservation Act, which establishes a special “Community Preservation Fund” that may be appropriated and spent for certain open space, historic resources and community housing purposes; and to approve under Section 3(b) of G.L. c. 44B a property tax surcharge that shall be in the amount of \_\_\_\_ % of the taxes assessed annually on real property, which will be dedicated to the Fund and be imposed starting with taxes assessed for fiscal year \_\_\_\_\_ beginning on July 1, \_\_\_\_; [and to exempt from the surcharge the following: insert applicable exemptions, if any].

##### **G.L. c. 44B, § 3(b½)**

**ARTICLE/ORDER:** To see if the city/town will vote to accept General Laws Chapter 44B §§ 3-7, known as the Community Preservation Act, which establishes a special “Community Preservation Fund” that may be appropriated and spent for certain open space, historic resources and affordable housing purposes; and to approve under Section 3(b½) of Chapter 44B: (1) a property tax surcharge in an amount not less than 1% of the taxes assessed annually on real property and (2) the appropriation of other municipal revenues into the Fund in an amount up to 2% of the taxes assessed annually on real property, such surcharge and supplemental appropriations shall, when added together, not exceed 3% of the taxes assessed annually on real property and shall be dedicated to the Fund, the surcharge to be imposed and appropriations made starting in fiscal year \_\_\_\_\_ beginning on July 1, \_\_\_\_;[and to

exempt from the surcharge any or all of the following: (1) 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 community as defined in the Act; (2) Class Three, Commercial, and Class Four, Industrial, real property in any year the town adopts a higher tax rate for those classes; (3) the real estate tax on \$100,000 of the assessed valuation of Class One, Residential, parcels; or (4) the real estate tax on \$100,000 of the assessed valuation of Class Three, Commercial, and Class Four, Industrial parcels,] or take any other action relative thereto.

**MOTION:** Moved/ordered that the city/town vote to accept General Laws Chapter 44B §§ 3-7, known as the Community Preservation Act, which establishes a special “Community Preservation Fund” that may be appropriated and spent for certain open space, historic resources and affordable housing purposes; and to approve under Section 3(b½) of Chapter 44B: (1) a property tax surcharge in an amount of \_\_% (not less than 1%) of the taxes assessed annually on real property and (2) the appropriation of other municipal revenues into the Fund in an amount up to \_\_% (not more than 2%) of the taxes assessed annually on real property, such surcharge and supplemental appropriations shall, when added together, not exceed 3% of the taxes assessed annually on real property and shall be dedicated to the Fund, the surcharge to be imposed and appropriations made starting in fiscal year \_\_\_\_\_ beginning on July 1, \_\_\_\_\_; [and to exempt from the surcharge the following: insert applicable exemptions, if any].

## **SAMPLE PETITION**

### **G.L. c. 44B, § 3(b)**

We the undersigned request that the question of accepting sections 3 to 7 of Chapter 44B of the General Laws of Massachusetts, also known as the Community Preservation Act, which establishes a special “Community Preservation Fund” that may be appropriated and spent for certain open space, historic resources and affordable housing purposes be placed on the ballot for the next regular \_\_\_\_\_ [municipal or state] election. Acceptance will approve under Section 3(b) of Chapter 44B a property tax surcharge of \_\_% (not more than 3%) of the taxes assessed annually on real property, which will be dedicated to the Fund and imposed starting with taxes assessed for fiscal year \_\_\_\_\_ beginning on July 1, \_\_\_\_\_. [It would also exempt the following from the surcharge: insert applicable exemptions, if any].

### **G.L. c. 44B, § 3(b½)**

We the undersigned request that the question of accepting sections 3 to 7 of Chapter 44B of the General Laws of Massachusetts, also known as the Community Preservation Act, which establishes a special “Community Preservation Fund” that may be appropriated and spent for certain open space, historic resources and affordable housing purposes be placed on the ballot for the next regular \_\_\_\_\_ [municipal or state] election. Acceptance will approve under Section 3(b½) of Chapter 44B: (1) a property tax surcharge of \_\_% (not less than 1%) of the taxes assessed annually on real property and (2) the appropriation of other municipal revenues into the Fund in an amount up to \_\_\_\_\_% (not more than 2%) of the taxes assessed annually on real property, such surcharge and supplemental appropriations shall, when added together, not exceed 3% of the taxes assessed annually on real property and shall be dedicated to the Fund, the surcharge to be imposed and appropriations made starting in fiscal year \_\_\_\_\_ beginning on July 1, \_\_\_\_\_; [and to exempt from the surcharge the following: insert applicable exemptions, if any].

## **BALLOT QUESTION**

**(The following acceptance question must be used. See [G.L. c. 44B, § 3\(f\)](#))**

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?

### **SAMPLE FAIR AND CONCISE SUMMARY**

Sections 3 to 7 of Chapter 44B of the General Laws of Massachusetts, also known as the Community Preservation Act, establish a dedicated funding source to enable cities and towns to (1) acquire, create and preserve open space, which includes land for park and recreational uses and the protection of public drinking water well fields, aquifers and recharge areas, wetlands, farm land, forests, marshes, beaches, scenic areas, wildlife preserves and other conservation areas, (2) rehabilitate and restore land for recreational use, (3) acquire, preserve, rehabilitate and restore historic buildings and resources, (4) acquire, create, preserve and support affordable housing and (5) rehabilitate and restore open space and affordable housing that was acquired or created with community preservation funds.

If these sections are accepted, the funding sources for these community preservation purposes in (MUNICIPALITY) under Section 3(b)[or (b $\frac{1}{2}$ )] of Chapter 44B will be (1) a surcharge of \_\_\_ % on the annual property tax assessed on real property and (2) annual distributions made by the state from a trust fund created by the Act; [and if the CPA is accepted under Section 3(b $\frac{1}{2}$ ), (3) appropriations by the (city council/the town council/town meeting) from other municipal revenue sources in an amount up to \_\_\_ % of the annual property taxes assessed on real property.] The surcharge will be assessed [and if accepted under Section 3(b $\frac{1}{2}$ ), appropriations made] starting in fiscal year \_\_\_\_\_, which begins on July 1, \_\_\_\_\_. [The following will be exempt from the annual surcharge: (1) property owned and occupied as a domicile of a person who qualifies for low income housing, or low or moderate income senior housing, as defined in the Act; (2) real property defined as commercial or industrial for property tax classification purposes under G.L. c. 59, § 2A in years a higher tax rate is adopted for those properties; (3) the real estate tax assessed on \$100,000 of the value of each parcel of residential real property as defined for property tax classification purposes; and (4) the real estate tax assessed on \$100,000 of the value of each parcel of commercial or industrial property as defined for property tax classification purposes.] A taxpayer receiving a regular property tax abatement or exemption will also receive a pro rata reduction in the surcharge.

A Community Preservation Committee will be established by [ordinance/by-law] to study community preservation resources, possibilities and needs and to make annual recommendations to (the city council/the town council/town meeting) on spending the funds. At least 10% of the revenues for each fiscal year will be spent or reserved for later spending on each of the Act's community preservation purposes: (1) open space including land for recreational uses, (2) historic resources and (3) affordable housing.



**Attachment I-2**

**COMMUNITY PRESERVATION ACT  
AMENDMENTS**

**G.L. c. 44B, § 16(a)**

**SAMPLE LANGUAGE**

**(Samples should not be used without the advice of municipal counsel.)**

**LEGISLATIVE BODY VOTES**

**SAMPLE SURCHARGE RATE AMENDMENT**

**ARTICLE/ORDER:** To see if the city/town will amend the surcharge imposed under section 3 of chapter 44B of the General Laws, the Community Preservation Act, from \_\_ % to \_\_ % of the taxes assessed annually on real property, starting with taxes assessed for the fiscal year beginning on July 1, \_\_\_\_.

**MOTION:** Moved/ordered that the city/town vote to amend the surcharge imposed under section 3 of chapter 44B of the General Laws, the Community Preservation Act, from \_\_ % to \_\_ % of the taxes assessed annually on real property, starting with taxes assessed for the fiscal year beginning on July 1, \_\_\_\_.

**SAMPLE EXEMPTION AMENDMENT**

**ARTICLE/ORDER:** To see if the city/town will adopt/eliminate the exemption from the property tax surcharge imposed under section 3 of chapter 44B of the General Laws, the Community Preservation Act, for [state exemption], starting with taxes assessed for the fiscal year beginning on July 1, \_\_\_\_.

**MOTION:** Moved/ordered that the city/town vote to adopt/eliminate the exemption from the property tax surcharge imposed under section 3 of chapter 44B of the General Laws, the Community Preservation Act, for [state exemption], starting with taxes assessed for the fiscal year beginning on July 1, \_\_\_\_.

**SAMPLE AMENDMENT TO ALLOW APPROPRIATION OF ADDITIONAL MUNICIPAL REVENUE TO COMMUNITY PRESERVATION FUND UNDER SECTION 3(b½)**

**ARTICLE/ORDER:** To see if the city/town will vote to amend its acceptance of the Community Preservation Act and accept the Act under Section 3(b½) of Chapter 44B of the General Laws, amend the surcharge imposed under section 3 of chapter 44B of the General Laws from \_\_ % to \_\_ % (surcharge must not be less than 1%) and approve annual appropriations of other municipal revenues into the Community Preservation Fund under Section 3(b½) of Chapter 44B in an amount up to \_\_\_\_ % (not more than 2%) of the taxes assessed annually on real property, such surcharge and supplemental appropriations shall, when added together, not exceed 3 % of the taxes assessed annually on real property and shall be dedicated to the Fund, starting with taxes assessed and appropriations made for the fiscal year beginning on July 1, \_\_\_\_.

**MOTION:** Moved/ordered that the city/town vote to amend its acceptance of the Community Preservation Act and accept the Act under Section 3(b½) of Chapter 44B of the General Laws, amend the surcharge imposed under section 3 of chapter 44B of the General Laws from \_\_ % to \_\_ % (surcharge must be not less than 1%) and approve annual appropriations of other municipal revenues into the Community Preservation Fund under Section 3(b½) of Chapter 44B in an amount up to \_\_\_\_ % (not more than 2%) of the taxes assessed annually on real property, such surcharge and supplemental appropriations shall, when added together, not exceed 3 % of the taxes assessed annually on real property and shall be dedicated to the Fund, starting with taxes assessed and appropriations made for the fiscal year beginning on July 1, \_\_\_\_.

### **BALLOT QUESTION**

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

### **SAMPLE FAIR AND CONCISE SUMMARY**

City/town accepted Sections 3 to 7 of Chapter 44B of the General Laws of Massachusetts, also known as the Community Preservation Act, and established a “Community Preservation Fund” with a dedicated funding source. Fund monies may be spent to (1) acquire, create and preserve open space, which includes land for park and recreational uses and the protection of public drinking water well fields, aquifers and recharge areas, wetlands, farm land, forests, marshes, beaches, scenic areas, wildlife preserves and other conservation areas, (2) rehabilitate and restore land for recreational use, (3) acquire, preserve, rehabilitate and restore historic buildings and resources, (4) acquire, create, preserve and support affordable housing and (5) rehabilitate and restore open space and affordable housing that was acquired or created with community preservation funds.

The funding source is a \_\_\_\_ % surcharge on the annual property tax assessed on real property [and if the CPA was accepted under Section 3(b½), appropriations from other municipal revenues]. [The city/town has adopted the following exemptions from the annual surcharge: (1) property owned and occupied as a domicile of a person who qualifies for low income housing, or low or moderate income senior housing, as defined in the Act; (2) real property defined as commercial or industrial for property tax classification purposes under G.L. c. 59, § 2A in years a higher tax rate is adopted for those properties; (3) the real estate tax assessed on \$100,000 of the value of each parcel of residential real property as defined for property tax classification purposes; and (4) the real estate tax assessed on \$100,000 of the value of each parcel of commercial or industrial property as defined for property tax classification purposes.]

This amendment will [(reduce/increase) the surcharge from (\_\_\_\_)% to (\_\_\_\_)%.] [(reduce/increase) the surcharge from (\_\_\_\_)% to (\_\_\_\_)% and approve (city council/town council/town meeting) appropriation of other municipal revenues into the Fund in an amount up to \_\_\_\_% of the annual property taxes assessed on real property, which when added together, the surcharge and appropriations into the Fund will not be more than 3% of the taxes assessed annually on real property.] [(add / eliminate) the following exemptions from the annual surcharge: (1) property owned and occupied as a domicile of a person who qualifies for low income housing, or low or moderate income senior housing, as defined in the Act; (2) real property defined as commercial or industrial for property tax classification purposes under G.L. c. 59, § 2A in years a higher tax rate is adopted for those properties; (3) the real estate tax

assessed on \$100,000 of the value of each parcel of residential real property as defined for property tax classification purposes; and (4) the real estate tax assessed on \$100,000 of the value of each parcel of commercial or industrial property as defined for property tax classification purposes.] This amendment will take effect starting in fiscal year \_\_\_\_\_, which begins on July 1, \_\_\_\_\_.

The surcharge will continue to be calculated in the same manner by multiplying the real estate tax on the parcel by the adopted percentage. A taxpayer receiving any other exemption or abatement of tax on real property receives a pro rata reduction in surcharge.

### **Attachment I-3**

## **COMMUNITY PRESERVATION ACT REVOCATION Must Follow Same Process as Acceptance [G.L. c. 44B, § 16\(b\)](#)**

**SAMPLE LANGUAGE**  
(Samples should not be used without the advice of municipal counsel.)

### **SAMPLE LEGISLATIVE BODY VOTE**

**ARTICLE/ORDER:** To see if the city/town will vote to revoke the town's acceptance of Sections 3 to 7 of Chapter 44B of the General Laws, the Community Preservation Act, effective for the fiscal year beginning on July 1, \_\_\_\_\_.

**MOTION:** Moved/ordered that the city/town vote to revoke the town's acceptance of Sections 3 to 7 of Chapter 44B of the General Laws, the Community Preservation Act, effective for the fiscal year beginning on July 1, \_\_\_\_\_.

**OR**

### **SAMPLE PETITION**

We the undersigned request that the question of revoking acceptance of sections 3 to 7 of Chapter 44B of the General Laws of Massachusetts, the Community Preservation Act, effective for the fiscal year beginning on July 1, \_\_\_\_\_, be placed on the ballot for the next regular municipal or state election.

### **BALLOT QUESTION**

Shall this (city or town) revoke its acceptance of sections 3 to 7, inclusive of chapter 44B of the General Laws, as approved by its legislative body/proposed by a petition signed by at least five percent of the registered voters of this (city or town), a summary of which appears below?

### **SAMPLE FAIR AND CONCISE SUMMARY**

City/town accepted Sections 3 to 7 of Chapter 44B of the General Laws of Massachusetts, also known as the Community Preservation Act, and established a "Community Preservation Fund" with a dedicated funding source. Fund monies may be spent to (1) acquire, create and preserve open space, which includes land for park and recreational uses and the protection of public drinking water well fields, aquifers and recharge areas, wetlands, farm land, forests, marshes, beaches, scenic areas, wildlife preserves and other conservation areas, (2) rehabilitate and restore land for recreational use, (3) acquire, preserve, rehabilitate and restore historic buildings and resources, (4) acquire, create, preserve and support affordable housing and (5) rehabilitate and restore open space and affordable housing that was acquired or created with community preservation funds. The funding source is a \_\_\_\_

% surcharge on the annual property tax assessed on real property [and if the CPA was accepted under Section 3(b½), appropriations from other municipal revenues]. [The city/town has adopted the following exemptions from the annual surcharge: (1) property owned and occupied as a domicile of a person who qualifies for low income housing, or low or moderate income senior housing, as defined in the Act; (2) real property defined as commercial or industrial for property tax classification purposes under G.L. c. 59, § 2A in years a higher tax rate is adopted for those properties; (3) the real estate tax assessed on \$100,000 of the value of each parcel of residential real property as defined for property tax classification purposes; and (4) the real estate tax assessed on \$100,000 of the value of each parcel of commercial or industrial property as defined for property tax classification purposes.]

A revocation of acceptance will take effect starting in fiscal year \_\_\_\_\_, which begins on July 1, \_\_\_\_\_. However, the surcharge will continue to be assessed in future years until monies in the Community Preservation Fund are sufficient to fully pay all community preservation obligations incurred by the city/town.

If acceptance is revoked, any monies remaining in the Community Preservation Fund must still be appropriated and spent only for the open space, historic and affordable housing purposes allowed by the Act.

## Attachment II-1

### COMMUNITY PRESERVATION SURCHARGE LOW/MODERATE INCOME EXEMPTION

#### Exemption Eligibility Requirements

1. **Applicant must own the property as of January 1.**  
May be (1) sole owner, (2) co-owner, (3) life tenant or (4) trustee with sufficient beneficial interest in property under terms of trust.
2. **Applicant must occupy the property as domicile as of January 1.**
3. **Applicant and each co-owner must have household income for the calendar year before January 1 at or below the limit for that owner's household type and number (see below for formula).**  
For property subject to trust, each co-trustee must meet income standard.

#### Calculation of Each Owner's Household Income

1. **Household Annual Gross Income from all sources.**
  - Includes wages, salaries and bonuses, public and private pensions, retirement income, Social Security, alimony, child support, interest and dividend income, net income from business, public assistance, disability and unemployment insurance, regular contributions/gifts from party outside the household.
  - Includes income of all household members who were 18 or older and not full time students during calendar year.
  - Does not include income imputed to income producing assets that do not actually produce income.
  - Does not include amounts received by an applicant pursuant to a reverse mortgage.
2. **Deduct Dependents Allowance.**
  - Number dependents on January 1 (not spouse) x \$ DCHD allowance.\*
3. **Deduct Medical Expenses Exclusion.**
  - Total out of pocket medical expenses of all household members for calendar year exceeding 3% of household annual gross income (from line 1 above).
  - Out of pocket medical expenses include health insurance premiums, payments to doctors, hospitals and other health care providers, diagnostic tests, prescription drugs, medical equipment or other expenses not paid or reimbursed by employers, public/private insurers or other third parties.
4. **Equals Household Annual Income for CPA Exemption.**
  - Cannot exceed *Annual Income Limit for Household Type and Size*.

\* Currently \$300. Available from [760 Code of Massachusetts Regulations 6.05\(4\)\(b\)](#).

**Attachment II-1 (continued)**

**COMMUNITY PRESERVATION SURCHARGE  
LOW/MODERATE INCOME EXEMPTION**

**Annual Income Limit by Household Type and Size**  
**US HUD AWMI = Area wide median income\*\* issued by HUD**  
**Round all calculations to nearest \$50.00**

**Household Type: Property owned by senior (60 or older)**

<b>Household Size</b>	<b>Annual Income Limit</b>
1	$(1.00 \times \text{US HUD AWMI}) \times .70$
2	$(1.00 \times \text{US HUD AWMI}) \times .80$
3	$(1.00 \times \text{US HUD AWMI}) \times .90$
4	$(1.00 \times \text{US HUD AWMI})$
5	$(1.00 \times \text{US HUD AWMI}) \times 1.08$
6	$(1.00 \times \text{US HUD AWMI}) \times 1.16$
7	$(1.00 \times \text{US HUD AWMI}) \times 1.24$
8	$(1.00 \times \text{US HUD AWMI}) \times 1.32$

**Household Type: Property owned by non-senior (under 60)**

<b>Household Size</b>	<b>Annual Income Limit</b>
1	$(.80 \times \text{US HUD AWMI}) \times .70$
2	$(.80 \times \text{US HUD AWMI}) \times .80$
3	$(.80 \times \text{US HUD AWMI}) \times .90$
4	$(.80 \times \text{US HUD AWMI})$
5	$(.80 \times \text{US HUD AWMI}) \times 1.08$
6	$(.80 \times \text{US HUD AWMI}) \times 1.16$
7	$(.80 \times \text{US HUD AWMI}) \times 1.24$
8	$(.80 \times \text{US HUD AWMI}) \times 1.32$

**\*\*Available at <http://www.huduser.org/portal/datasets/il.html>. Click the applicable fiscal year, and then under “Median Family Incomes”, click “Median Family Documentation” for the fiscal year. Then “click here” button MFI Documentation for FY. Select Massachusetts under “Select a state”, and then select your city or town and county. Then, “View County Calculations” for the Median Family Income for your city or town. Insert this number for “US HUD AWMI” in chart above.**



## Attachment V-1

# COMMUNITY PRESERVATION FUND PROJECT EXPENDITURE EXAMPLES

## I. COMMUNITY PRESERVATION ASSET CATEGORIES

The three community preservation (CP) asset categories are: (1) open space (including land for recreational use); (2) historic resources; and (3) community housing. In each asset category, CP funds may be appropriated for the following projects.

### A. Open Space

1. The acquisition, creation and preservation of open space.
2. The rehabilitation or restoration of open space; provided the open space was acquired or created with community preservation funds.

### B. Land for Recreational Use

The acquisition, creation, preservation, rehabilitation and restoration of land for recreational use.

### C. Historic Resources

The acquisition, preservation, rehabilitation and restoration of historic resources.

### D. Community Housing

1. The acquisition, creation, preservation and support of community housing.
2. The rehabilitation or restoration of community housing; provided the housing was acquired or created with community preservation funds.
3. Appropriations to a municipal affordable housing trust fund created by a municipality pursuant to [G.L. c. 44, § 55C](#); however, the affordable housing trust may expend CP funds only for allowable community housing project purposes described in sections (1) and (2) above. [G.L. c. 44, §§ 55C\(a\), \(c\)\(1\)](#).

Whenever possible, the Community Preservation Committee (CPC) should recommend projects that reuse existing buildings or construct new buildings on previously developed sites. [G.L. c. 44B, § 5\(b\)\(2\)](#).

## II. EXPENDITURE EXAMPLES

The following are examples of allowable expenditures of CP funds. The below listing is not all-inclusive.

### A. Open Space

“Open space” for CP purposes is defined in [G.L. c. 44B, § 2](#) as “includ[ing], 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.”

- Acquisition – Acquisition of real property or an interest in real property is allowable for open space purposes, including the acquisition of agricultural land, grasslands, fields, forest land, watershed land, fresh and salt water marshes and other wetlands, ocean, river, stream, lake and pond frontage, beaches, dunes and other coastal lands, land to protect scenic vistas, land for wildlife or a nature preserve, land for recreational use and land to protect existing and future well fields, aquifers and recharge areas. The price of the acquisition must not exceed the value of the property as determined through “procedures customarily accepted by the appraising profession as valid.” [G.L. c. 44B, § 5\(f\)](#). The city or town must own any real property interest acquired with community preservation monies. Management of the properties may be delegated by the legislative body to the conservation commission, historical commission, park commission or housing authority, as appropriate, or to a nonprofit corporation created under [G.L. c. 180](#) or nonprofit trust created under [G.L. c. 203](#). [G.L. c. 44B, § 12\(b\)](#). Real property interests financed in whole or in part with CP Fund monies must be bound by a permanent restriction which conforms to the requirements of [G.L. c. 184, §§ 31-34](#). [G.L. c. 44B, § 12](#). The restriction must be enforceable by the city or town or the Commonwealth. It may also run to the benefit of and be enforced by a nonprofit, charitable corporation or foundation selected by the city or town. Funding may be appropriated from the CP Fund to pay a nonprofit organization created under [G.L. c. 180](#) to hold, monitor and enforce the restriction on the property. [G.L. c. 44B, § 12](#).
- Acquisition - Appropriation of CP funds to a conservation fund established by [G.L. c. 40 § 8C](#) is allowable; however, any expenditure of such funds remains subject to the restrictions imposed by the CPA, including the requirement that any land acquired must be bound by a restriction described in [G.L. c. 44B, § 12](#). Therefore, the conservation commission may spend CPA funds only for those purposes that are authorized by both [G.L. c. 40 § 8C](#) and the CPA, for example, acquisition of land for open space purposes. To ensure that these requirements are carried out, the CPC recommendation and any legislative body appropriation vote should expressly include these conditions.

- Rehabilitation – Expenditures for rehabilitation and restoration of open space (not including lands for recreational use) are not allowable unless the open space was acquired or created pursuant to [G.L. c. 44B, § 5\(b\)\(2\)](#). For example, funding is allowable for rehabilitation of municipal forest land, provided the forest land was acquired with community preservation funds. CP funds cannot be used, however, to fund any expenditure that would fall within the CPA definition of “maintenance,” even if the expenditure is required by a forest management plan. [G.L. c. 44B, §§ 2 and 5\(b\)\(2\)](#).

## **B. Land for Recreational Use**

“Recreational use” for CP purposes is defined in [G.L. c. 44B, § 2](#) as “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.” The CPA definition limits recreational use to an outdoor recreational pursuit.

- Acquisition – Acquisition of land for recreational use is allowable. See Acquisition of Open Space above.
- Rehabilitation - Capital improvements, as defined in [G.L. c. 44B, § 2](#), to municipally-owned recreation land that make the land or related recreational facilities more functional for their intended outdoor recreational use are allowable including, but not limited to, installation of trails for walking, hiking, horseback riding or skiing; installation of water lines and pathways in community gardens; installation of irrigation lines for athletic fields; and installations or replacements of outdoor playground equipment.
- Purchase of tennis rackets, basketballs, golf carts and other recreational equipment is not allowable because the expenditure does not acquire, create, preserve, rehabilitate or restore any land for recreational use.
- Installation of bleachers at an athletic field is not allowable because recreational use under the CPA does not include use of land for a stadium or similar structure. [G.L. c. 44B, § 2](#).
- Rehabilitation - Installation of restrooms for the use of a municipally-owned outdoor recreational facility such as athletic fields or a swimming pool is allowable as rehabilitation of land for recreational use, provided the restrooms make the land or related recreational facilities more functional for the intended outdoor recreational use. However, the use of CP funds for the installation of restrooms in a building or facility that primarily serves purposes unrelated to the outdoor recreational purpose is not allowable.

- Acquisition, Creation and Rehabilitation - Funding for rehabilitation (capital improvements or extraordinary repairs) of an outdoor swimming pool owned by a private nonprofit organization in exchange for the municipality's receipt of a public recreational use restriction and easement for the public's use of the swimming pool is allowable if it does not violate the *Anti-aid Amendment*. In this example, if the municipality had not required a public recreational use restriction and easement for the public's use in exchange for the CPA funding, the expenditure would likely not satisfy the three-factor test that the courts have established to determine allowable expenditures under the *Anti-aid Amendment*. (See IGR Section V-C-5 above, for information regarding the *Anti-aid Amendment*.) A grant agreement with the grant recipient should also be required to ensure grant funds are expended for the approved CP purpose. (For more information on grant agreements, see IGR Section V-B-2-e above.)
- Creation – Funding for the construction of non-commercial athletic fields, outdoor tennis and basketball courts, golf courses and outdoor swimming pools on municipal land is allowable as creation of lands for recreational use.
- Creation – Funding for the installation of soccer fields, including water lines for irrigation, on land owned by a private boosters club is allowable provided the municipality obtains a public recreational use restriction and easement commensurate with its expenditure of CPA funding. (See IGR Section V-C-5 above, for information regarding the *Anti-aid Amendment*.) A grant agreement with the grant recipient should also be required to ensure grant funds are expended for the approved CP purpose. (For more information on grant agreements, see IGR Section V-B-2-e above.)
- Funding for construction (creation) of a new indoor community recreational facility or to rehabilitate an existing indoor community recreational facility is not allowable because an indoor community recreational facility is not within the CPA definition of “recreational use” as it houses indoor recreational uses and is similar to a gymnasium. [G.L. c. 44B, § 2.](#)
- Funding for a feasibility study or engineering or other studies for a new indoor community recreational facility or to rehabilitate an existing indoor community recreational facility is not allowable because the project itself is not eligible for CPA funding. Nor would funding for such studies be allowable under the CPC's administrative and operating budget to enable the CPC to determine whether to recommend funding for the project because the project itself is not eligible for funding under the CPA. If the project itself is not eligible for CP funding, then funding to study or plan the project is also not allowable.
- Funding for the installation of a paved “pathwalk” is not allowable when the “pathwalk” is in the nature of a functional sidewalk and not a “trail”

within the CPA definition of “recreational use.” *Mauch v. Town of Norwell*, Plymouth Superior Court No. PLCV2015-00517, Order on Motion for Summary Judgment, December 18, 2015.

### C. Historic Resources

“Historic resources” for CP purposes is defined in [G.L. c. 44B, § 2](#) as a “building, structure, vessel real property, document or artifact that is listed 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.”

- Rehabilitation and Restoration - Funding is allowable for the rehabilitation of a historically significant municipally-owned building listed on the state register of historic places, provided the expenditure falls within the CPA definition of “rehabilitation,” is not within the CPA definition of “maintenance” and the work complies with the Standards for Rehabilitation stated in the U.S. Secretary of the Interior’s Standards for the Treatment of Historic Properties. [G.L. c. 44B, § 2](#).
- Acquisition, Rehabilitation and Restoration - Funding is allowable for rehabilitation of the exterior of a building designed by H.H. Richardson, located on Main Street, owned by a nonprofit, is much-photographed and a prominent feature of the downtown and has been determined by the local historic preservation commission to be “significant in the history, archaeology, architecture or culture” of the city or town, in exchange for the municipality’s receipt of a historic preservation restriction from the nonprofit, provided the expenditure falls within the CPA definition of “rehabilitation,” is not “maintenance” and the work complies with the Standards for Rehabilitation stated in the U.S. Secretary of the Interior’s Standards for the Treatment of Historic Properties and provided the grant does not violate the *Anti-aid Amendment*. (See IGR Section V-C-5 above for information regarding the *Anti-aid Amendment*. See also IGR Section V-B-2-e above, for information on grant agreements.)
- Acquisition, Rehabilitation and Restoration – Funding to restore or rehabilitate religious-content stained glass windows of an active church building (within the CPA definition of historic resource) in exchange for conveyance of a historic preservation restriction to the municipality is not allowable because such funding is in violation of the *Anti-aid Amendment*. [Caplan v. Acton](#), 479 Mass. 69 (2018). In applying the three-part test, the court determined: (i) the stated purpose of the proposed grant was for historic preservation and there was insufficient evidence to demonstrate a hidden purpose to aid the church; (ii) the effect of the grant would be to substantially aid the church; and (iii) the grant would not avoid the political and economic abuses which prompted the passage of the *Anti-aid Amendment*. After weighing and balancing the three factors, the court concluded that even if the sole motivating purpose of the grant was to preserve historic resources, “the other factors in our analysis – especially

the third factor, to which we accord special weight – still compel the conclusion that the stained glass grant runs afoul of the anti-aid amendment.” [Caplan](#), 479 Mass at 95-96.

Acquisition, Rehabilitation and Restoration - Funding for a loan program established by by-law or ordinance to fund rehabilitation work on privately-owned historically significant buildings (falling within the CPA definition of “historic resources”) in exchange for the city/town’s receipt of a historic preservation restriction on the property is allowable provided the loan does not violate the *Anti-aid Amendment*. (See IGR Section V-C-5 above, for information regarding the *Anti-aid Amendment*.) The loan repayments must be credited to the CP Fund. [G.L. c. 44B, § 7\(iii\)](#). And, at the end of the fiscal year, the loan repayments will become part of the CP Fund Balance which will be available as a financing source for appropriation after the accounting officer closes the municipal accounts for the previous fiscal year and determines the amount of the CP Fund Balance. (Municipalities should seek advice from their local counsel regarding the documentation needed to implement such a program.)

- Rehabilitation - Painting that is an integral part of a larger, eligible rehabilitation or restoration project, i.e., painting after extraordinary repairs or restoration of walls, woodwork, trim or siding (etc.) is allowable. However, periodic painting or repainting of a historic building on a recurring basis would be in the nature of “maintenance” and not be eligible for CPA funding.
- Restoration – Painting to restore a historic building to its original historic color is allowable. For example, a historic building originally painted yellow was painted purple in the 1970s. In this case, restoring the building to its historic yellow color is not periodic or recurring painting and is not “maintenance.” However, repainting the building yellow in a few years after its original painting would be “maintenance” and is not allowable.
- Preservation - Funding to move a historic lighthouse, within the CPA definition of “historic resource,” away from the edge of an ocean bluff that is eroding due to ocean wave and storm action such that the lighthouse is in danger of falling into the ocean, is an allowable CPA expenditure for the purpose of “preservation.” “Preservation” is defined narrowly in [G.L. c. 44B, § 2](#) as “protection of personal or real property from injury, harm or destruction.” If the lighthouse is owned by a nonprofit, legal counsel should be consulted to ensure that the *Anti-aid Amendment* is not violated. (See IGR Section V-C-5 above, for information regarding the *Anti-aid Amendment*.) A historic preservation restriction running to the municipality should be required to ensure the continued preservation of the lighthouse which was the purpose of the CPA expenditure.
- Funding for an inventory of historic buildings within the municipality is not allowable as a CP project expenditure because an inventory is not a “historic resource” under the CPA definition. However, preparing the

inventory may be fundable, in whole or in part, under the CPC's administrative and operating budget if the inventory will assist the CPC in performing its statutory duties, including reviewing the community's community preservation "needs, possibilities and resources." [G.L. c. 44B, § 5\(b\)\(1\)](#). (See IGR Section V-B-1 above, Community Preservation Fund Expenditures, Annual Administrative and Operating Expenses of the CPC, for more information.)

- A document on file at the municipal clerk's office is not a historic resource under the CPA unless the document has been determined by vote of the local historic preservation commission to be "significant in the history, archeology, architecture or culture of a city or town." [G.L. c. 44B, § 2](#). For example, the birth record of Benjamin Franklin or the municipality's original charter could be determined by the local historic preservation commission to be "significant in the history, archeology, architecture or culture of a city or town."
- If a municipal document is determined by vote of the local historic preservation commission to be "significant in the history, archeology, architecture or culture of a city or town," then CP funding is allowable for the "acquisition, preservation, rehabilitation and restoration" of the physical document. For example, CPA funding could be used to de-acidify the paper, repair tears, remove harmful films and residues and encase the document in protective mylar. These expenditures would be allowable as "restoration" or "preservation" of the historic resource – the document.
- Funding for cataloguing, indexing, scanning, digitizing, transcribing or otherwise preserving the information content of municipal documents rather than preserving or restoring the physical historic resource itself, is not allowable. The historic document is the "historic resource."
- Funding for the codification of a municipality's by-laws or ordinances is not allowable because the expenditure does not acquire, preserve, rehabilitate or restore a "historic resource" under the CPA definition.
- Funding to research and write a history of the municipality is not an allowable expenditure because the expenditure does not acquire, preserve, rehabilitate or restore a "historic resource" under the CPA definition.
- Funding for the acquisition, preservation, rehabilitation or restoration of replicas of historic resources is not allowable because "replicas" are not within the CPA definition of historic resource.

#### **D. Community Housing**

- Acquisition and Creation - Funding for the municipality to acquire condominium units to be rented or later sold to income-eligible persons is



allowable, provided the units are made subject to an affordable housing restriction to be held by the municipality. [G.L. c. 44B, § 12](#). The proceeds of any rental or sale would be credited to the CP Fund. [G.L. c. 44B, § 7\(iv\)](#).

- Acquisition and Creation - Funding for the municipality to acquire affordable housing restrictions on properties where restrictions have expired or are about to expire is allowable. [G.L. c. 44B, § 12](#).
- Creation - Funding for the construction of affordable housing units that will be subject to an affordable housing restriction held by the municipality pursuant to [G.L. c. 44B, § 12](#) in a mixed-use development is allowable, provided the community preservation funds are used only for the affordable units and for the proportionate share of costs incidental to creating the affordable housing on the site, i.e., site surveys, environmental assessments, architectural and engineering fees, permit processing fees, legal and accounting fees, and similar expenses that are typically included in an appropriation for a municipal construction project.
- Acquisition and Creation - Funding for a Habitat for Humanity affordable housing project creating housing units that will be subject to an affordable housing restriction running to the municipality is allowable.
- Acquisition and Creation - Funding for a program to assist income-eligible persons make a down payment on a home in return for the municipality's acquisition of an affordable housing restriction on the unit is allowable.
- Rehabilitation - Funding for "rehabilitation" as defined in [G.L. c. 44B, § 2](#) - capital improvements or extraordinary repairs to community housing, including replacement of kitchen cabinets, flooring, windows, doors and roof, a fire alarm upgrade and improvements to comply with the Americans with Disabilities Act - is allowable provided the property to be rehabilitated was acquired or created with community preservation funds and provided the work is not within the CPA definition of "maintenance." If the property was not acquired or created with community preservation funds, CPA funding for "rehabilitation" is not allowable. [G.L. c. 44B, §§ 2, 5\(b\)\(2\)](#). If allowable, but the property is not municipally-owned, then municipal counsel should be consulted to ensure that the *Anti-aid Amendment* is not violated, whether an affordable housing restriction should be required and to determine grant agreement terms. (See IGR Section V-C-5 above, for information regarding the *Anti-aid Amendment* and IGR Section V-B-2-e above, for information on grant agreements.)
- Support - By definition, expenditures in "support of community housing" must be "for the purpose of making housing affordable". [G.L. c. 44B, § 2](#). As a result, the housing asset itself must be made affordable by the expenditure.

- Support – CP funding is allowable for the following rental assistance program. A municipality enters into an agreement with a nonprofit or local housing authority (LHA) to manage a rental assistance program where the nonprofit/LHA finds landlords with suitable units to participate in the program and income-eligible tenants seeking affordable housing. The program documents include two co-terminus contracts: (1) a housing assistance payment contract (contract) between the landlord and the nonprofit/LHA and (2) a lease between the landlord and the income-eligible individual (tenant). The lease requires that the tenant pay the landlord an “affordable” or “reduced” rent for the lease term. The contract requires the nonprofit/LHA to pay the landlord a rental assistance payment while the tenant occupies the unit. When added together, the total amount of the lease payment and rental assistance payment to the landlord will be equal to a fair market rent for the unit. The allowable costs of the program include the management fee to the nonprofit or LHA and the housing assistance payments to the landlords that participate in the program.

In this example, the housing unit is made affordable by the expenditure during the term of the contract with the landlord and the lease for the unit. In addition, funding would also be allowable for a last month’s rent and/or security deposit paid to a landlord pursuant to a contract and lease under the above program, both of which are returnable to the CP Fund at the end of the lease/contract term. The payments by the municipality to the nonprofit or LHA to manage the rental assistance program would not be a violation of the *Anti-aid Amendment* because the payments are in exchange for management services provided by the nonprofit or LHA under the agreement. See [\*Commonwealth v. School Committee of Springfield\*](#), 382 Mass. 665 (1981). (Municipalities should seek advice from their local counsel regarding the documentation needed to implement such a program.)

- Funding for an affordable housing needs assessment is not allowable as a CP project expenditure because it does not acquire, create, preserve, rehabilitate, restore or support any particular housing asset. However, the needs assessment is fundable under the CPC’s administrative and operating budget if it will assist the CPC in performing its statutory duties. (See IGR Section V-B-1 above, for more information on annual operating expenditures of the CPC.)
- Funding to a nonprofit to provide housing counseling and foreclosure prevention services to income-eligible individuals would not be an allowable expense as “support” of community housing because a housing asset is not made affordable by the expenditure. Nor would the expenditure be allowable as “acquisition,” “creation” or “rehabilitation” of community housing. It also would not be allowable as “preservation” of community housing because “preservation” is narrowly defined as “protection of personal or real property from injury, harm or destruction.” [G.L. c. 44B, § 2.](#)

- An appropriation to a municipal affordable housing trust fund created by a municipality pursuant to [G.L. c. 44, § 55C](#) is allowable. Such appropriations, however, are expendable by the affordable housing trust fund only for allowable community housing project purposes under [G.L. c. 44B, § 5\(b\)\(2\)](#) – acquisition, creation, preservation and support of community housing and rehabilitation or restoration of community housing acquired or created with community preservation funds. [G.L. c. 44, § 55C\(a\),\(c\)\(1\)](#). If a community desires to appropriate funds to its municipal affordable housing trust fund for a specific project, for example, the rental assistance program described above, the CPC’s recommendation and the legislative body’s appropriation vote should restrict the use of the funds for that particular project.

**ATTACHMENT V-2 - COMMUNITY PRESERVATION FUND ALLOWABLE PROJECT SPENDING PURPOSES (G.L. c. 44B, § 5)**

	OPEN SPACE	HISTORIC RESOURCES	RECREATIONAL LAND	COMMUNITY HOUSING
	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	Building, structure, vessel, real property, document or artifact listed on the state register of historic places or determined by the local historic preservation commission to be significant in the history, archeology, architecture or culture of the city or town	Land 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  Does <u>not</u> include horse or dog racing or the use of land for a stadium, gymnasium or similar structure	Housing for low income individuals and families and low or moderate income seniors  Moderate income is less than 100%, and low income is less than 80%, of US HUD Area Wide Median Income
<b>ACQUISITION</b> - Obtain property interest by gift, purchase, devise, grant, rental, purchase, lease or otherwise. Only includes eminent domain taking as provided by G.L. c. 44B	Yes	Yes	Yes	Yes
<b>CREATION</b> - Bring into being or cause to exist. <i>Seideman v. City of Newton</i> , 452 Mass. 472 (2008)	Yes		Yes	Yes
<b>PRESERVATION</b> - Protect personal or real property from injury, harm or destruction	Yes	Yes	Yes	Yes
<b>SUPPORT</b> - Programs providing grants, loans, rental assistance, security deposits, interest-rate write downs or other forms of assistance directly to individuals and families who are eligible for community housing, or to entity that owns, operates or manages it, <u>for the purpose of making the housing affordable</u>				Yes, provided the housing asset itself is made affordable by the expenditure
<b>REHABILITATION AND RESTORATION</b> - Capital improvements, or extraordinary repairs to make assets functional for intended use, including improvements to comply with federal, state or local building or access codes or federal standards for rehabilitation of historic properties	Yes, if open space asset acquired or created with CP funds	Yes, provided that rehabilitation complies with Secretary of Interior's Standards for Treatment of Historic Properties	Yes (includes replacement of playground equipment)	Yes, if housing asset acquired or created with CP funds
<b>APPROPRIATIONS TO AFFORDABLE HOUSING TRUST G.L. c. 44, § 55C</b>				Yes; however, trust is required to spend CPA funds for CPA community housing purposes.
<p>Maintenance expenditures are prohibited for all assets even if they could otherwise be considered acquisition, creation, preservation, support, rehabilitation or restoration</p> <p>Maintenance means incidental repairs that do <u>not</u> materially add to value of property or appreciably prolong property's life, but keep property in condition of fitness, efficiency or readiness</p>				

**ATTACHMENT V-3**  
**CPA PROJECT ELIGIBILITY FLOW-CHART**  
Refer to CPA definitions under [G.L. c. 44B, § 2](#) for words in *italics*.

1	<p>-Does the expenditure provide funding to an affordable housing trust? If YES, go to 3.</p> <p>-Does the expenditure relate to one of the three community preservation assets – (1) <i>open space</i>, including land for <i>recreational use</i>; (2) <i>historic resources</i>; (3) <i>community housing</i>? If YES, go to 2. If NO, the expenditure is not eligible for CPA funding.</p>
2	<p>-If the expenditure is related to <i>open space</i> but not to land for <i>recreational use</i>, go to 4.</p> <p>-If the expenditure is related to land for <i>recreational use</i>, go to 6.</p> <p>-If the expenditure is related to a <i>historic resource</i>, go to 7.</p> <p>-If the expenditure is related to <i>community housing</i>, go to 8.</p>
3	<p>A city or town may appropriate money in any year from the Community Preservation Fund (CP Fund) to an affordable housing trust fund under <a href="#">G.L. c. 44, § 55C</a>. The trust must spend CPA funds for an allowable CP community housing purpose. Start at 8 below for determining allowable expenditures.</p>
4	<p>-Does the expenditure <i>acquire</i>, create or <i>preserve</i> open space?</p> <p>-If YES, the expenditure is eligible for CPA funding. But, go to 10 if the asset is owned by a nonprofit, private entity or individual.</p> <p>-If NO, does the expenditure <i>rehabilitate</i> or restore open space? If YES, go to 5.</p> <p>-If NO, the expenditure is not eligible for CPA funding.</p>
5	<p>-Was the <i>open space acquired</i> or created with CPA funds?</p> <p>-If YES, the expenditure is eligible for CPA funding. But, go to 10 if the asset is owned by a nonprofit, private - entity or individual.</p> <p>-If NO, the expenditure is not eligible for CPA funding.</p>
6	<p>-Does the expenditure <i>acquire</i>, create, <i>preserve</i>, <i>rehabilitate</i> or restore land for <i>recreational use</i>?</p> <p>-If YES, the expenditure is eligible for CPA funding. But, go to 10 if the asset is owned by a nonprofit, private entity or individual.</p> <p>-If NO, the expenditure is not eligible for CPA funding.</p>
7	<p>-Does the expenditure <i>acquire</i>, <i>preserve</i>, <i>rehabilitate</i> or restore a <i>historic resource</i>?</p> <p>-If YES, the expenditure is eligible for CPA funding. But, go to 10 if the asset is owned by a nonprofit, private entity or individual.</p> <p>-If NO, the expenditure is not eligible for CPA funding.</p>
8	<p>-Does the expenditure <i>acquire</i>, create, <i>preserve</i> or <i>support community housing</i>?</p> <p>-If YES, the expenditure is eligible for CPA funding. But, go to 10 if the asset is owned by a nonprofit, private entity or individual.</p> <p>-If NO, does the expenditure <i>rehabilitate</i> or restore <i>community housing</i>? If YES, go to 9.</p> <p>-If NO, the expenditure is not eligible for CPA funding.</p>
9	<p>-Was the <i>community housing acquired</i> or created with CPA funds?</p> <p>-If YES, the expenditure is eligible for CPA funding. But, go to 10 if the asset is owned by a nonprofit, private entity or individual.</p> <p>-If NO, the expenditure is not eligible for CPA funding.</p>
10	<p>The <i>Anti-aid Amendment to the Massachusetts Constitution</i>, Mass. Const. Amend. Article 42, § 2, as amended by Article 103, restricts grants of public funds to private organizations. A three-factor test to determine the constitutionality of grants challenged under the <i>Anti-aid Amendment</i> has been developed by the court: (i) whether the proposed grant is for the purpose of founding, maintaining or aiding [the institution, private organization, nonprofit, church, etc.]; (ii) whether the effect of the grant is to substantially aid [the institution, private organization, nonprofit, church, etc.]; and (iii) whether the grant avoids the political and economic abuses which prompted the passage of the <i>Anti-aid Amendment</i>. <a href="#">Commonwealth v. School Comm. of Springfield</a>, 382 Mass. 665, 675 (1981). <a href="#">Caplan v. Acton</a>, 479 Mass. 69 (2018). Massachusetts case law likewise prohibits gratuitous payments, gifts or grants of public funds (which include CPA funds) to individuals. <a href="#">Opinion of the Justices</a>, 313 Mass. 779, 784 (1943). Consult with municipal counsel whenever these grants are being considered.</p>

ATTACHMENT VI - 1 CHART - COMMUNITY PRESERVATION FUND FINANCING SOURCES					
	ANNUAL FUND REVENUES		FUND BALANCE	BUDGETED RESERVES	BORROWING
	CPA ADOPTION - <a href="#">G.L. c. 44B, § 3(b)</a> (Traditional Surcharge)	CPA ADOPTION - <a href="#">G.L. c. 44B, § 3(b½)</a> - Surcharge + Alternative Annual Financing Sources (Blended Surcharge)			
<b>Definition / Source</b>	Annual recurring revenues. - Surcharges (up to 3%) assessed for FY. - State trust fund distribution received during FY (beginning in 2 <sup>nd</sup> year of fund operation and based upon surcharge assessed in previous FY).	Annual recurring revenues - Surcharges (at least 1%) assessed for FY. - Appropriations from other municipal financing sources to the CP Fund made from the tax levy (general fund) before the tax rate set or from available funds until 6/30. (Cannot exceed 2% of the year's tax levy and, when added to the surcharge, the total cannot exceed 3% of the tax levy.) - State trust fund distribution received during FY (beginning in 2 <sup>nd</sup> year of fund operation and based upon surcharge assessed in previous FY and additional funds appropriated to the fund)	Unspent funds generated by favorable operations during the previous FY that are available for appropriation. - Appropriation turn-backs, including unappropriated balance annual budgeted reserve. - Actual receipts in excess of budgeted revenues. - Investment interest. - Miscellaneous non-recurring revenues.	- <u>Annual Budgeted Reserve</u> : reserved by legislative body for future appropriation for any CPA purpose during FY. - <u>Special Purpose (restricted) Reserve</u> : reserved by legislative body for future appropriation for one of the three CPA purposes: (1) open space (including recreation), (2) historic resources and (3) community housing.	Debt repaid with future fund revenues.  Proceeds from notes, bonds or other debt obligations issued for a CPA purpose.
<b>Limitations</b>	- Legislative body <i>must</i> spend or reserve 10% of each year's annual revenues for each CPA purpose: (1) open space (including recreation), (2) historic resources and (3) community housing. - Cannot spend from appropriations from revenues until FY begins ( <i>i.e.</i> , 7/1).	- See "Traditional Surcharge" for 10% minimum annual commitments. (Additional funds from other financing sources are annual revenues for purposes of meeting the annual 10% commitments.) - Cannot spend from appropriations <u>from revenues</u> until FY begins ( <i>i.e.</i> , 7/1) - Appropriations from other financing sources require legislative body vote that states the specific dollar amount being appropriated from the tax levy (general fund) or available funds to the community preservation fund. If financing source is restricted, restriction stays with the funds.	May be appropriated by legislative body for any CPA purpose.	Appropriations <i>to</i> a particular reserve require legislative body vote that states the specific dollar amount and source being reserved.  Appropriations <i>from</i> the annual budgeted reserve may be made for any CPA purpose during the FY only and any unappropriated balance at year-end closes to fund balance.  Appropriations <i>from</i> a particular special purpose reserve are limited to that CPA purpose.	Legislative body <i>must</i> specifically vote borrowing under CPA ( <a href="#">G.L. c. 44B, § 11</a> ) and two-thirds vote required ( <a href="#">G.L. c. 44, § 2</a> ).  Borrowing limited in amount to debt service payable from estimated surcharge revenues and, for "blended" surcharge communities, estimated additional revenues pursuant to § 3(b½).  Borrowing subject to purpose and term limitations under <a href="#">G.L. c. 44</a> .  Appropriations <i>from</i> proceeds remaining after purpose completed restricted to a CPA purpose for which borrowing may be authorized for same or longer term than original loan. <a href="#">G.L. c. 44, § 20</a> .

**ATTACHMENT VI - 1**
**CHART - COMMUNITY PRESERVATION FUND FINANCING SOURCES**

	<b>ANNUAL FUND REVENUES</b>		<b>FUND BALANCE</b>	<b>BUDGETED RESERVES</b>	<b>BORROWING</b>
	<b>CPA ADOPTION - <u>G.L. c. 44B, § 3(b)</u> (Traditional Surcharge)</b>	<b>CPA ADOPTION - <u>G.L. c. 44B, § 3(b<sup>1/2</sup>)</u> - Surcharge + Alternative Annual Financing Sources (Blended Surcharge)</b>			
<b>Available to Appropriate</b>	Until tax rate set for FY Once rate set, only CPA available funds (budgeted reserves or fund balance) or borrowing may be used as financing source.	See Traditional Surcharge for “Available to Appropriate” information regarding surcharge revenues. For other financing sources, any time after appropriation into fund if appropriating from available funds (or after 7/1 for appropriations from general fund revenues).	Any time after accounting officer reports prior FY fund activities and balance to DOR until 6/30 close of current FY.	Annual budgeted reserve - during FY ( <i>i.e.</i> 7/1 to 6/30). Special purpose reserves - any time (or after 7/1 for new reservations from annual revenues).	Anytime.
<b>Similarity</b>	General fund annual tax levy (taxes, state aid, receipts).  Enterprise fund annual revenues (user charges and fees).	For surcharge revenues, see Traditional Surcharge “Similarity” information. For additional funds appropriated to the community preservation fund, similarity is with general fund and available funds appropriated into special purpose funds ( <i>e.g.</i> , conservation fund).	Free cash Enterprise fund free cash (retained earnings).	Stabilization fund ( <i>i.e.</i> , general fund monies reserved for later appropriation for municipal purpose). Enterprise fund budgeted surplus.	Other municipal debt.



## ATTACHMENT VI-2 SAMPLE APPROPRIATION VOTE - ANNUAL COMMUNITY PRESERVATION PROGRAM BUDGET

**ARTICLE:** TO ACT ON THE REPORT OF THE COMMUNITY PRESERVATION COMMITTEE ON THE FISCAL YEAR 20XX COMMUNITY PRESERVATION BUDGET AND TO APPROPRIATE OR RESERVE FOR LATER APPROPRIATION MONIES FROM COMMUNITY PRESERVATION FUND ANNUAL REVENUES OR AVAILABLE FUNDS FOR THE ADMINISTRATIVE EXPENSES OF THE COMMUNITY PRESERVATION COMMITTEE, THE PAYMENT OF DEBT SERVICE, THE UNDERTAKING OF COMMUNITY PRESERVATION PROJECTS AND ALL OTHER NECESSARY AND PROPER EXPENSES FOR THE YEAR, OR TAKE ANY OTHER ACTION RELATIVE THERETO.

**MOTION:** I move that the town vote to appropriate or reserve from Community Preservation Fund annual revenues or available funds the amounts recommended by the Community Preservation Committee for committee administrative expenses, debt service, community preservation projects and other expenses in Fiscal Year 20XX, with each item to be considered a separate appropriation.

### PROPOSED FISCAL YEAR 20XX COMMUNITY PRESERVATION BUDGET

THE COMMUNITY PRESERVATION COMMITTEE RECOMMENDS THAT THE FOLLOWING AMOUNTS BE APPROPRIATED OR RESERVED FROM FISCAL YEAR 20XX COMMUNITY PRESERVATION FUND REVENUES, UNLESS OTHERWISE SPECIFIED, FOR FISCAL YEAR 20XX COMMUNITY PRESERVATION PURPOSES WITH EACH ITEM CONSIDERED A SEPARATE APPROPRIATION:

<u>ESTIMATED REVENUES FY XX</u>	<u>AMOUNT</u>	
CPA SURCHARGE & 3(b½) REVENUES	\$500,000	
STATE TRUST FUND DISTRIBUTION	100,000	
<b><u>TOTAL ESTIMATED REVENUES</u></b>	<b><u>\$600,000</u></b>	
<b><u>BUDGET FY20XX</u></b>		
<b><u>PURPOSE</u></b>	<b><u>RECOMMENDED</u></b>	<b><u>FUNDING SOURCE</u> (if other than FY annual fund revenues)</b>
<b>Appropriations</b>		
Community Preservation Committee Administrative Budget	30,000	
For the acquisition of Green Acre Farm debt service (open space)	\$60,000	
For the rehabilitation of the historic town library (historic preservation)	\$50,000	
<b>Reserves</b>		
<b>Special Purpose (Restricted) Reserves</b>		
Open Space	0	
Historic Resources	\$10,000	
Community Housing	\$60,000	
<b>Undesignated Reserve</b>		
Annual Budgeted Reserve	\$390,000	

A COMMUNITY MAY CHOOSE TO INCLUDE DEBT SERVICE, COMMUNITY PRESERVATION COMMITTEE AND OTHER EXPENSES TO BE FUNDED FROM COMMUNITY PRESERVATION FUND FINANCING SOURCES IN ITS OMNIBUS BUDGET RATHER THAN IN THE COMMUNITY PRESERVATION BUDGET. IT MAY ALSO MAKE SEPARATE SPECIAL PURPOSE APPROPRIATIONS FROM FUND FINANCING SOURCES DURING THE YEAR. VOTES FROM FUND SOURCES SHOULD BE MADE AS FOLLOWS:

<u><b>SOURCE</b></u>	<u><b>VOTE</b></u>
Annual revenues	<ul style="list-style-type: none"> <li>• To appropriate \$10,000 from FY20XX Community Preservation Fund revenues for _____.</li> <li>• To reserve \$250,000 from FY20XX Community Preservation Fund revenues for FY20XX Community Preservation Fund purposes (FY20XX Annual Budgeted Reserve)</li> <li>• To reserve \$100,000 from FY20XX Community Preservation Fund revenues for Open Space.</li> </ul>
Fund Balance	<ul style="list-style-type: none"> <li>• To appropriate/transfer \$75,000 from Community Preservation Fund balance to _____.</li> </ul>
Annual Budgeted Reserve	<ul style="list-style-type: none"> <li>• To appropriate/transfer \$75,000 from FY20XX Community Preservation Annual Budgeted Reserve to _____.</li> </ul>
Special Purpose Reserves	<ul style="list-style-type: none"> <li>• To appropriate/transfer \$75,000 from Community Preservation Fund Open Space Reserve to _____.</li> </ul>
Excess Bond Proceeds	<ul style="list-style-type: none"> <li>• To appropriate/transfer \$10,000 from Community Preservation – Parcel X Land Acquisition Loan balance to _____.</li> </ul>

## Attachment VII-1

### SAMPLE COMMUNITY PRESERVATION APPROPRIATION VOTE (INCLUDES BORROWING AUTHORIZATION)

ARTICLE: TO SEE IF THE TOWN WILL VOTE TO ACQUIRE BY PURCHASE OR EMINENT DOMAIN A PARCEL OF LAND DESCRIBED AS ASSESSORS MAP 30 LOT 125 CONSISTING OF APPROXIMATELY 25.2 ACRES FOR OPEN SPACE PURPOSES [STATE SPECIFIC CATEGORIES WITHIN OPEN SPACE] UNDER THE COMMUNITY PRESERVATION ACT, AND TO APPROPRIATE OR TRANSFER FROM THE COMMUNITY PRESERVATION FUND ANNUAL REVENUES OR AVAILABLE FUNDS, OR TO AUTHORIZE THE TREASURER WITH THE APPROVAL OF THE SELECTMEN TO BORROW UNDER THE COMMUNITY PRESERVATION ACT, A SUM OF MONEY TO FUND SUCH ACQUISITION AND APPLY ANY NET PREMIUM AND ACCRUED INTEREST RECEIVED AS A RESULT OF SUCH BORROWING TO THE COSTS OF THE PROJECT AND REDUCE THE BORROWING AUTHORIZATION BY THE SAME AMOUNT, AND TO AUTHORIZE THE GRANTING OF A PERMANENT RESTRICTION ON SAID PARCEL PURSUANT TO SECTION 12 OF CHAPTER 44B OF THE GENERAL LAWS OR TAKE ANY OTHER ACTION RELATIVE THERETO.

MOTION: I move that the town authorize the Conservation Commission to purchase a parcel of land described as Assessors Map 30 Lot 125 consisting of approximately 25.2 acres for open space purposes [state specific categories within open space] under the Community Preservation Act and to fund such acquisition, that \$5,000,000 be appropriated with \$400,000 to be appropriated from FY20XX Community Preservation Fund revenues, \$100,000 to be transferred from the Community Preservation Fund Open Space Reserve, \$1,000,000 to be transferred from the Community Preservation Fund balance and that \$3,500,000 be borrowed by the treasurer, who is authorized with the approval of the selectmen, to issue any bonds or notes that may be necessary for that purpose, as authorized by General Laws Chapter 44B, § 11, or any other general or special law, for a period not to exceed the maximum number of years authorized by law and to authorize the treasurer to apply any net premium and accrued interest received as a result of such borrowing to the costs of the project and reduce the borrowing authorization by the same amount and to authorize the granting of a permanent restriction on said parcel pursuant to section 12 of Chapter 44B of the General Laws to the following: [insert identity of proposed holder of restriction here].

(Note - If a specific term for the borrowing is important for community preservation planning purposes, it should be set forth in the Community Preservation Committee's recommendation and the legislative body vote. Two-thirds vote is required for an eminent domain acquisition pursuant to [G.L. c. 44B, § 5\(e\)](#) and for borrowing [G.L. c. 44, § 2](#). The vote should state that the purchase is for specific categories within "open space", rather than just "open space purposes," to avoid later disputes over the uses to be allowed, such as active vs. passive recreation. Town meeting acquisition votes should include authorization for the granting of a permanent preservation restriction. A separate permanent restriction is required for a real property interest acquired with Community Preservation funds. [G.L. c. 44B, § 12.](#))

Attachment X-1

**SAMPLE ACCOUNTING ENTRIES**

1. The legislative body appropriates the following amounts from *estimated revenues*:

\$300,000	For open space acquisitions
60,000	For open space reserve
60,000	For historic resources reserve
60,000	For community housing reserve
20,000	For committee operating expenses

In addition, \$100,000 was appropriated from *the Historic Resources Reserve Fund Balance* for the acquisition of a historic site.

Accounting entries 1a, 1b, 1c, 1d and 1e are recorded in the Community Preservation Special Revenue Fund. Budgetary entries (1a, 1b and 1c) are illustrated in uppercase to distinguish them from actual entries (1d and 1e).

- 1a. To record estimated revenues budgeted.

ESTIMATED REVENUE	\$ 500,000	
BUDGETARY CONTROL		\$ 500,000

Subsidiary Ledger

COMMUNITY PRESERVATION SURCHARGE	\$ 500,000	
SUBSIDIARY REVENUE CONTROL		\$ 500,000

- 1b. To record amounts appropriated from estimated revenues.

BUDGETARY CONTROL	\$ 500,000	
APPROPRIATIONS		\$ 500,000

Subsidiary Ledger

SUBSIDIARY APPROPRIATION CONTROL	\$ 500,000	
OPEN SPACE LAND ACQUISITION		\$ 300,000
RESERVE FOR OPEN SPACE		\$ 60,000
RESERVE FOR HISTORIC RESOURCES		\$ 60,000
RESERVE FOR COMMUNITY HOUSING		\$ 60,000
OPERATING EXPENSES		\$ 20,000

**1c. To record amounts appropriated from Historic Resources Reserve Fund Balance.**

BUDGETARY FUND BALANCE	\$	100,000	
APPROPRIATION			\$ 100,000

Subsidiary Ledger

SUBSIDIARY APPROPRIATION CONTROL	\$	100,000	
HISTORIC SITE ACQUISITION			\$ 100,000

**1d. Actual entry to record amounts appropriated to fund balance reserves.**

Unreserved, undesignated Community Preservation Fund Balances	\$	180,000	
Fund balance reserved for open space			\$ 60,000
Fund balance reserved for historic resources			\$ 60,000
Fund balance reserved for community housing			\$ 60,000

**1e. Actual entry to record appropriation from fund balance reserved for historic resource.**

Fund balance reserved for historic resources	\$	100,000	
Fund balance reserved for expenditures			\$ 100,000

**2. The assessors forward a notice of commitment for FY2002 to the accounting officer showing a committed real estate tax of \$2,000 and community preservation surcharge of \$60.**

General Fund

Real estate tax receivable 2002	\$	2000.	
Deferred revenue property tax			\$ 2000.

Other Special Revenue Fund

Community preservation surcharge receivable 2002	\$	60.	
Deferred revenue community preservation			\$ 60.

**3. The taxpayer pays the full amount of the bill for \$2,060.**

General Fund

Cash	\$	2000.	
Real estate tax receivable 2002			\$ 2000.

Deferred revenue property tax	\$	2000.	
Revenue			\$ 2000.

Other Special Revenue Fund

Cash	\$ 60.	
Community preservation surcharge receivable 2002		\$ 60.
Deferred revenue community preservation Revenue	\$ 60.	\$ 60.

4. Subsequent to the taxpayer paying the bill of \$2,060, the taxpayer applies for an abatement. The assessors grant an abatement of \$500 for the real estate tax and \$15 for the community preservation surcharge.

General Fund

Overlay 2002	\$ 500.	
Real estate tax receivable 2002		\$ 500.

Other Special Revenue Fund

<i>Deferred revenue community preservation</i>	\$ 15.	
<i>Community preservation surcharge receivable 2002</i>		\$ 15.

5. The collector issues a refund for \$500 for the real estate tax and \$15 for the community preservation surcharge.

General Fund

Real estate tax receivable 2002	\$ 500.	
Cash		\$ 500.
Revenue	\$ 500.	
Deferred revenue property tax		\$ 500.

Other Special Revenue Fund

<i>Community preservation surcharge receivable 2002</i>	\$ 15.	
<i>Cash</i>		\$ 15.
<i>Revenue</i>	\$ 15.	
<i>Deferred revenue community preservation</i>		\$ 15.



# KING'S BEACH WATER QUALITY IMPROVEMENTS PROJECT UPDATES

## SELECT BOARD MEETING



**JULY 19, 2023**

*Source: Spencer Hasak, March 2022*



# Agenda

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Project Need

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Project Goals

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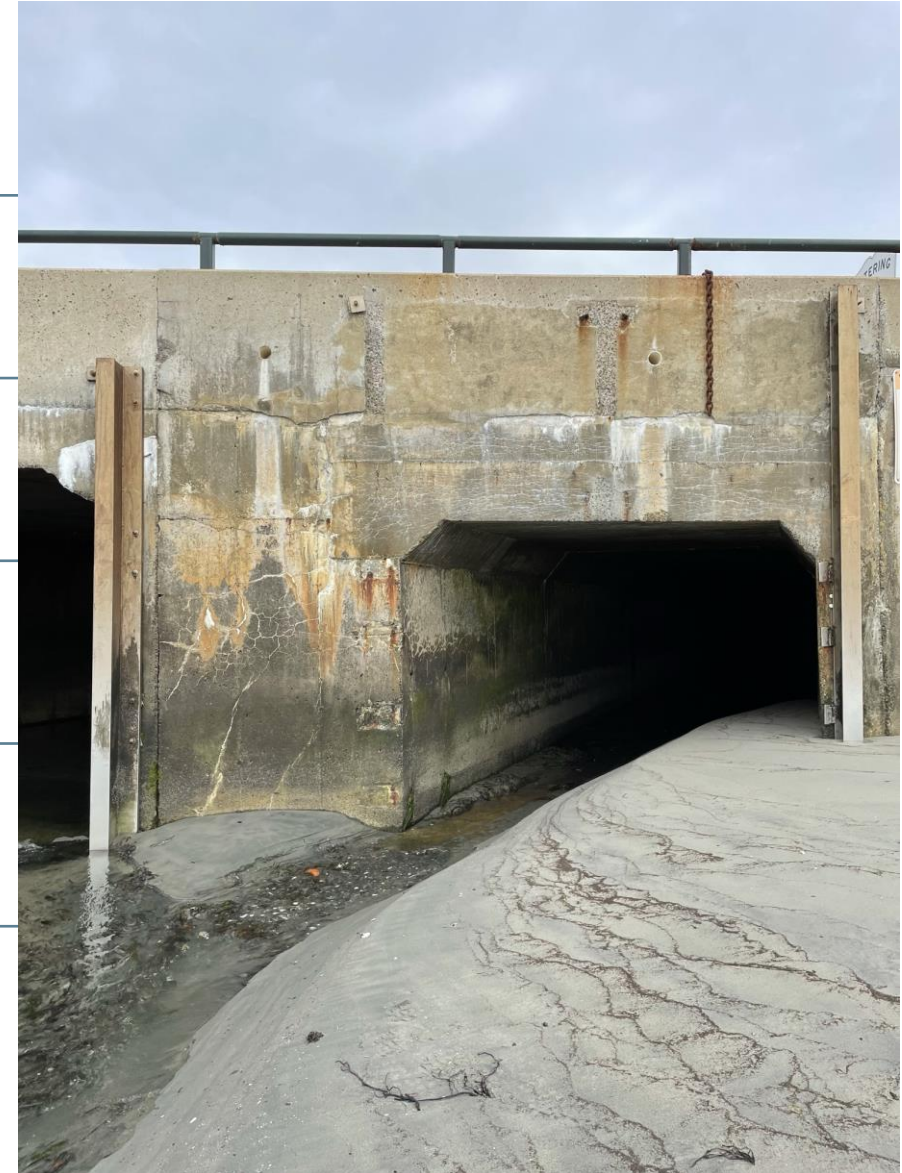
Alternatives Evaluation

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Recommendations

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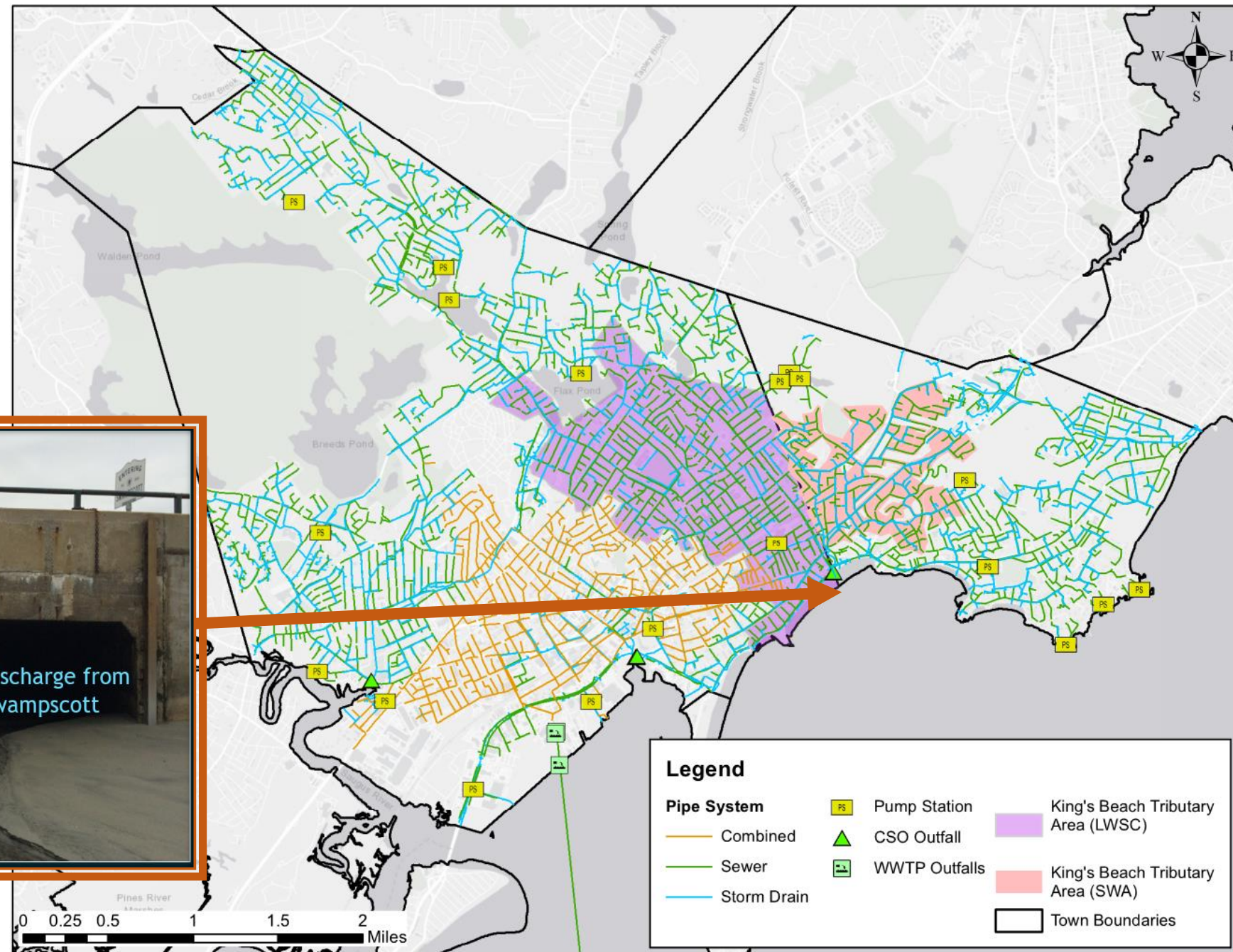
Project Updates





# Project Need

# Lynn / Swampscott Drainage Overview





# Boston-Area Beach Water Quality

Updated with 2022 Data

Note 2022 was a dry summer

Beach	Six-year average safety rating (2017-2022)	2022	2021	2020	2019	2018	2017
Pleasure Bay	100%	100%	100%	100%	100%	100%	100%
City Point	99%	100%	100%	100%	100%	97%	94%
Nantasket	98%	94%	100%	98%	97%	100%	98%
M Street	97%	94%	94%	94%	100%	100%	100%
Carson	98%	100%	92%	100%	100%	93%	100%
Revere	96%	98%	94%	100%	87%	98%	98%
Winthrop	94%	94%	100%	100%	78%	100%	94%
Constitution	94%	97%	91%	98%	90%	94%	95%
Nahant	91%	81%	77%	96%	93%	100%	100%
Short	91%	94%	89%	94%	88%	100%	80%
Wollaston	88%	88%	82%	85%	87%	93%	92%
Savin Hill	88%	94%	70%	89%	79%	100%	94%
Malibu	87%	95%	73%	91%	83%	91%	91%
King's	76%	74%	68%	70%	79%	75%	92%
Tenean	76%	89%	63%	79%	67%	78%	81%
All Beaches	92%	93%	86%	93%	89%	95%	94%
Rainfall (in)	39.28	23.95	50.38	38.54	38.04	51.94	32.85

Percent of samples under DPH Enterococcus  
single sample limit of 104 CFU/100mL  
Source: Save the Harbor Save the Bay



# Project Goals

## Project Goals

Convene	Convene steering group
Establish	Establish existing flows and bacteria concentration
Conduct	Conduct alternatives review <ul style="list-style-type: none"><li>• Target eliminating bacteria during dry weather under most conditions</li></ul>
Compare	Compare Alternatives
Develop	Develop a Recommended Strategy



# **Alternatives Evaluation**



# Overview of Alternatives

#	Strategy	Description
1	Source Elimination	“Find and Fix” sources of bacteria entering storm drains <ul style="list-style-type: none"><li>- House Connections</li><li>- Broken Sewers</li><li>- Street Runoff</li></ul>
2	Divert and Treat	Pump stormwater base flow to Lynn Water and Sewer Treatment Plant
3	End of Pipe Treatment	Disinfection with Chlorine
4	End of Pipe Treatment	Disinfection with UV Light
5	Dilution	Extend Outfall into Nahant Bay
6	Divert	Relocate Outfall along Coastline

# Key Metrics Comparison

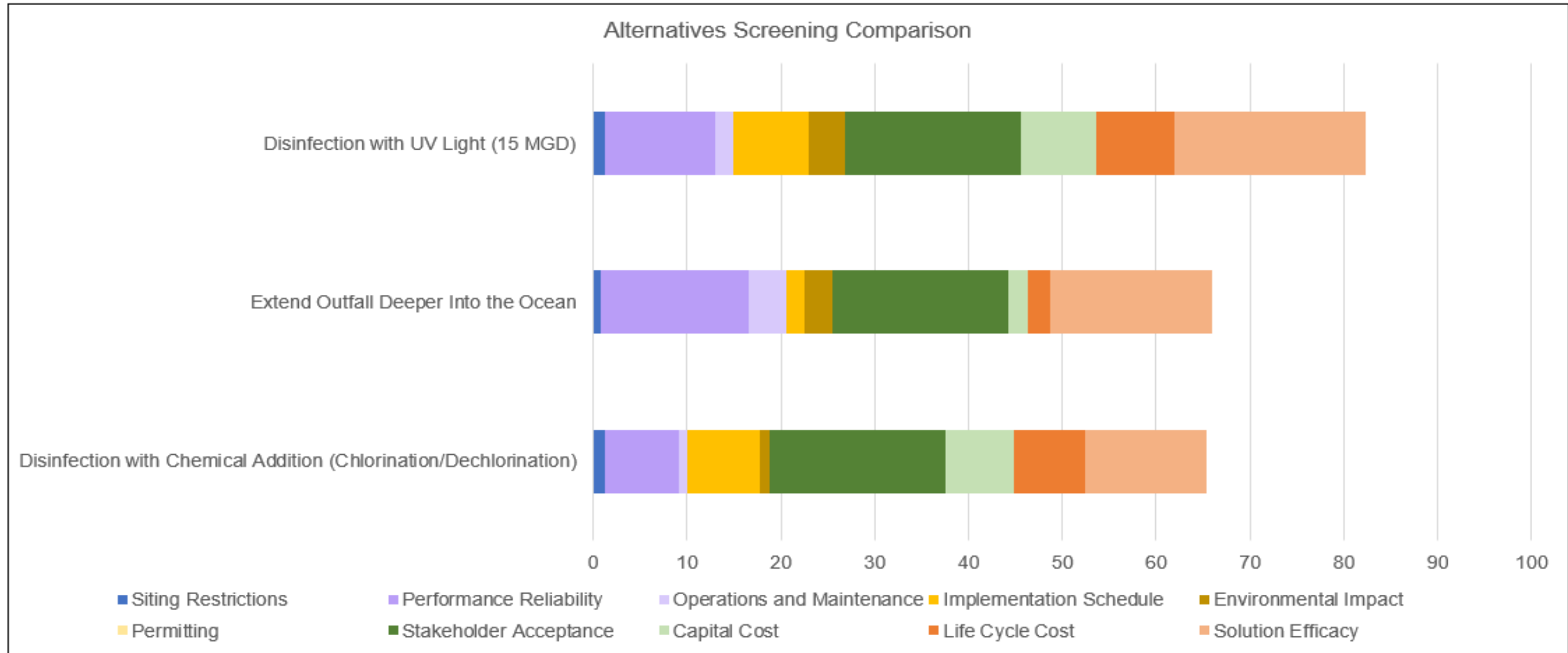
Alt #	Description	Capital Cost	Net Present Value	Implementation Duration	% Beach Days Open <sup>3</sup>	Peak Flow Capacity (MGD)
1 <sup>1</sup>	Source Elimination (Swampscott)	\$17,500,000	\$12,800,000	5 years	80-90%	n/a
	Source Elimination (Lynn)	<i>In 2022, Lynn initiated their IDDE program. The scope of rehabilitation and the associated costs are not known at this time</i>				
2	Pump DWF to LWSC	\$16,200,000	\$32,300,000	2.3 years	80-90%	5
3 <sup>2</sup>	Chemical Disinfection	\$27,000,000	\$25,400,000	3.3 years	80-90%	5
4 <sup>2</sup>	UV Disinfection	\$25,000,000	\$23,300,000	3.1 years	85-97%	15
5 <sup>2</sup>	Extend Outfall	\$55,800,000	\$49,000,000	8.8 years	90-94%	10
6	Relocate Outfall	\$86,700,000	\$66,100,000	5.8 years	70-80%	15

<sup>1</sup> Communities obligated to continue Source Elimination under consent orders and/or NPDES stormwater permits

<sup>2</sup> Alternatives that Steering Committee recommended for detailed evaluation

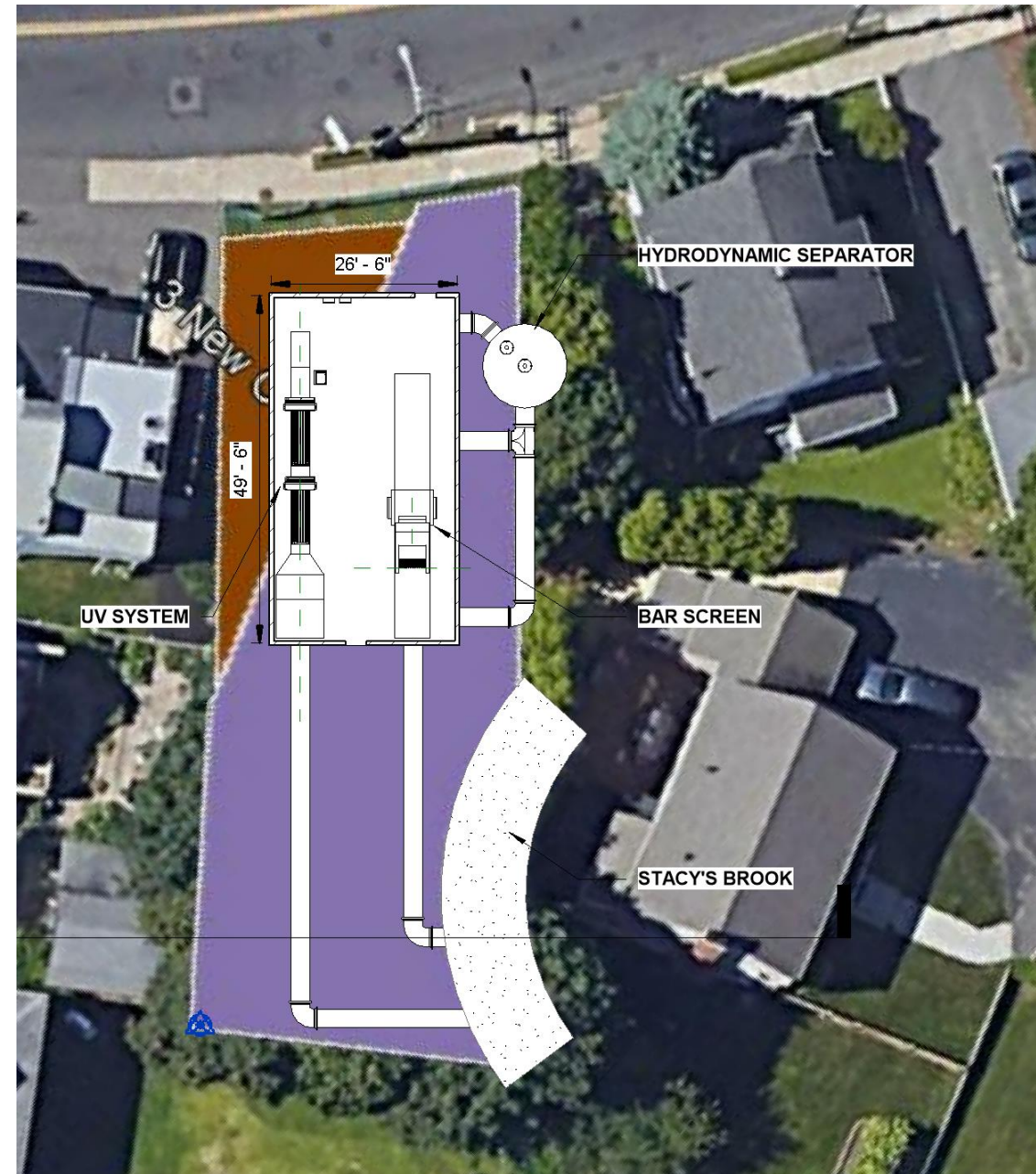
<sup>3</sup> Preliminary estimate based on historical precipitation records, beach closure data, and preliminary sizing of alternative solution

# Ranking of Preferred Alternatives



## Alternative 4 – UV Disinfection

- Conceptualized Layout at Town-Owned Lot on New Ocean Street
- Building Footprint 1,290 SF
- Pre-Treatment
  - Screening and Hydrodynamic Separator
- Assume No Standby Power (can revisit)







## Alternative 5 – Outfall Extension

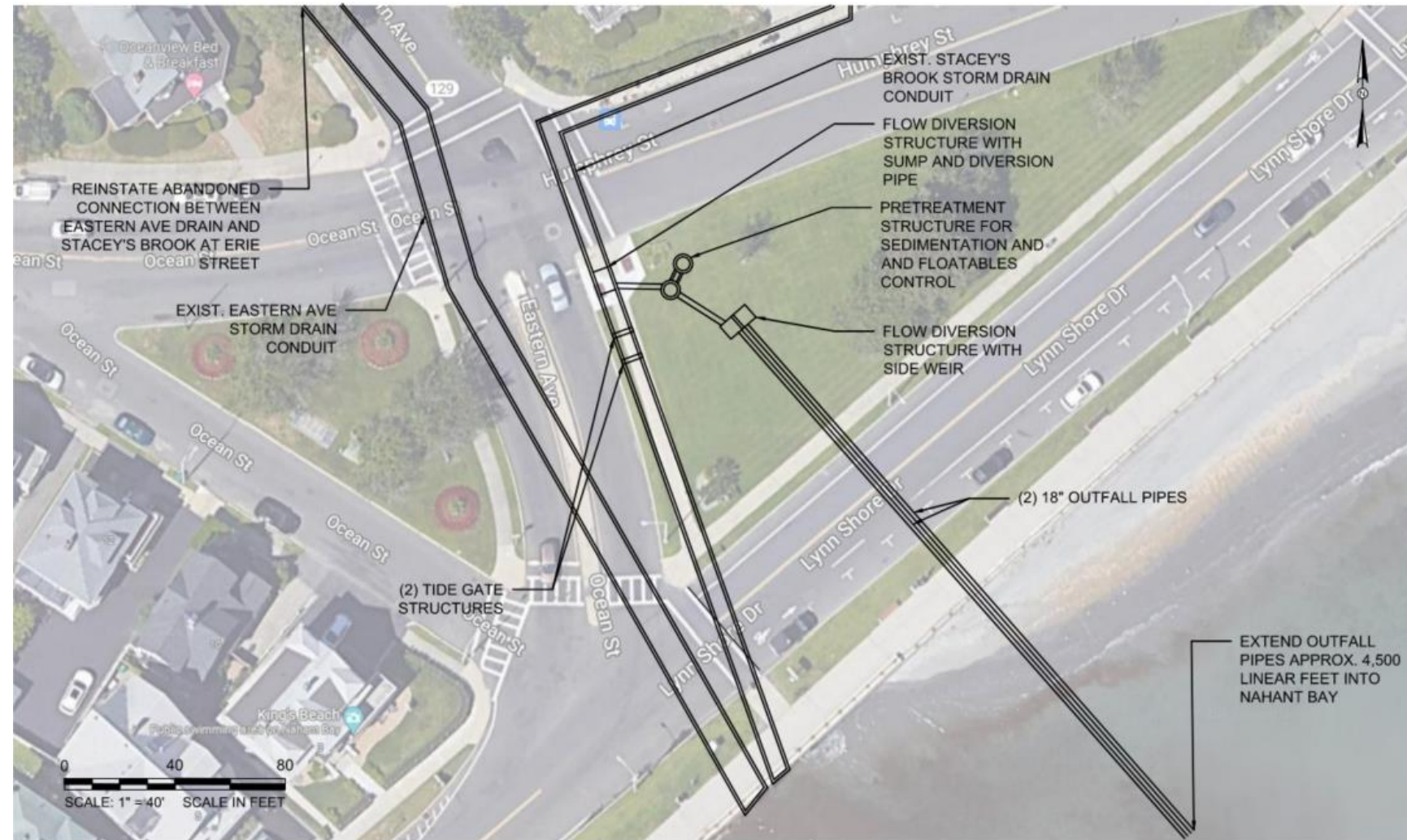
- 4,500-foot extension (prelim estimate)
- Assumes gravity discharge
- Eelgrass evaluation
- Dilution analysis
- Extensive Environmental Permitting
- Article 97 Legislation required





## Alternative 5 – Outfall Extension

- Conceptualized Flow Control Structures and Overall Layout
- Added Tide Gate Structure
- Added Pretreatment/Sedimentation Trap







# Recommendations

# Recommendations

## Phased Approach Recommended

- Seek approval for UV disinfection
- Continue source elimination efforts
- Consider outfall extension at future time

## Implementation Steps

- Funding Strategy
- Pre-Design (hydraulics; sampling; piloting)
- Preliminary Design
- Final Design & Permitting
- Construction



# Recent Updates

# Recent Updates

## Ultraviolet Disinfection (Funding Approach)

- Meetings with MassDEP Secretary Tepper and Undersecretary Cooper
- Technical reviews with MassDEP staff
- Consideration for MassDEP SRF loan program

## Source Elimination

- Initial technical scoping for Phase 2 of source elimination IDDE and sewer rehabilitation design
- Contemplate ARPA as funding source

## Outfall Extension

- Technical work on hold
- MassDEP express support for this as long-term permanent option
- Extraordinary level of local & state collaboration
- Engagement with EPA and Federal partners



# Discussion/Next Steps

TOWN OF SWAMPSCOTT

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# REQUEST FOR PROPOSALS

FOR THE  
LEASE OR PURCHASE  
OF THE

## PINE STREET REDEVELOPMENT AREA

FOR THE  
PURPOSE OF CREATING

## VETERANS AFFORDABLE HOUSING & VETERANS CENTER

LOCATED AT

10 NEW OCEAN STREET & 12-24 PINE STREET  
SWAMPSCOTT, MA

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Proposal Deadline

9:00 am  
Monday, XXXXXX, 2023

Proposal Submission To

Business Manager  
Swampscott Town Hall  
22 Monument Ave  
Swampscott, MA 01907

## **1) Property Description**

The Town of Swampscott is offering for long-term lease or sale through the Request for Proposals (“RFP”) process, in accordance with Massachusetts General Laws Chapter 30B, land and improvements known as the Pine Street Redevelopment Area (“Property”), located at 10 New Ocean Street and 12-24 Pine Street, Swampscott, Massachusetts. The Property is comprised of two parcels: 1) designated as Assessor’s Map 3, Lot 3 and comprises 0.696 acres of land, more or less (less about 0.3 acres currently leased to a retail establishment); and 2) designated as Assessor’s Map 3, Lot 4 and comprises 0.360 acres of land, more or less. The Property is the site of a Veterans of Foreign Wars building (“Building 1”) and warehouse/industrial structure (“Building 2”) totaling about 16,800 gross square feet. Building 1 is currently occupied, while Building 2 is currently vacant. The Property is located in the B1 Business Zoning District.

Building 1 is a wood-frame building constructed in 1994 and classified as a “lodge.” Building 2 is a masonry structure constructed around 1945 and classified as a “factory.” Located at the corner of Pine and Erie Streets, Building 2 is bordered on its west side by the Stacey’s Brook underground drainage culvert. Neither of the buildings is anticipated or required to be reused in the redevelopment of the property. The Town is in the process of finalizing the acquisition of 12-24 Pine Street and is seeking proposals for the potential redevelopment of these adjoining lots.

A portion of 10 New Ocean Street (not subject to this RFP) includes a cannabis dispensary establishment that operates through a lease from the Town (approximately 0.3 acres at the southern portion of Assessor’s Map 3, Lot 3).

For the purposes of this RFP, the term “Town” shall mean the Town of Swampscott, the term “Town Administrator” shall mean the Town of Swampscott Town Administrator (and shall be interchangeable and synonymous with “Administrator”), and the term “Select Board” shall mean the Town of Swampscott Select Board (and shall be interchangeable and synonymous with “Board”). The aforementioned terms shall also mean “or its designee.” The term “Project” shall mean and refer to redevelopment of the property at 12-24 Pine Street and a portion of 10 New Ocean Street, Swampscott, Massachusetts, known as the Pine Street Redevelopment Area.

## **2) Purpose**

The Town is requesting proposals from interested parties (referred to herein as the “Respondent”), with statements of qualifications, to lease or purchase and repurpose the Property in accordance with the objectives and restrictions specified herein. It is the goal of the Town that the Property be converted to serve as veterans affordable housing by complying with the restrictions and preferences set forth in this RFP. The Town is interested in creating between 30 and 40 rental units of affordable housing for veterans on the Property.

The Town has a purchase and sale agreement with the owner of 12-24 Pine Street and is in the process of finalizing the acquisition of the property. Closing is anticipated to occur after this RFP is closed and a Respondent has been selected.



All proposals must provide for the inclusion of a VFW 1240 Post for veterans to gather together. It is anticipated that the Post will be at least 3,000 s.f. and will have amenities, including canteen, restrooms, and meeting room(s).

The Town **will not** lease or sell the Property for any other use other than for veterans affordable housing and the related uses expressly stated herein.

### 3) Zoning and Other Restrictions

Interested parties should review for themselves the zoning and other permitting requirements within the B-1 Business Zoning District and the Town's Zoning By-Laws. The Town is receptive to entertaining a Local Initiative Petition in accordance with M.G.L. Chapter 40B to facilitate the construction of this Project in a neighborhood-sensitive manner, which may still require waivers from certain existing local zoning and other requirements. The Town encourages the greatest compliance with existing zoning and local requirements while still meeting the purposes of this RFP.

### 4) Recommendations

Projects that meet the above requirements will be looked at more favorably by incorporating the following elements:

- Inclusion of 100% affordable units, including but not limited to the restriction of all units to low- and/or moderate-income housing, consistent with the requirements of the Department of Housing and Community Development's regulations at 760 CMR 56.00.
- The creation of veterans housing including the imposition of a local preference. Further consideration should be given to an additional preference for individuals over 55 years old.
- Incorporation of a new 3,000 s.f. VFW Post 1240 to include a canteen, restrooms, and meeting spaces for the VFW and veteran-related organizations, which space will be leased to the VFW Post 1240 on a long-term basis.
- Structuring the transaction as a ground lease, with a term of up to 99 years, utilizing an upfront payment structure.

### 5) RFP and Anticipated Post-Selection Schedule

An outline of dates for this RFP along with the anticipated schedule after a Respondent is selected is provided below. Estimated dates are marked with an asterisk.

<b>Request for Proposals Released</b>	Wednesday, July 26
<b>Pre-Submittal Meeting and Property Viewing</b>	Wednesday, August 9
<b>Close of Questions Period</b>	Wednesday, September 6
<b>Proposals Due</b>	Monday, September 25

<b>Review of Proposals Begins</b>	Late September *
<b>Selection of Proposal</b>	Early-mid October *
<b>Negotiations Between Town and Respondent</b>	Mid-late October *

Respondent shall complete its due diligence (e.g., title, inspections) within ninety (90) days from selection. Closing shall occur thirty (30) days from receipt of all final, un-appealable permits and approvals for the Project, but no earlier than ninety (90) days after selection.

## 6) Proposal Packages, Project Information and Submission Deadline

Parties interested in responding to this RFP are invited to submit a proposal in accordance with the following terms and conditions. With submission of a response to this RFP, the interested party acknowledges that they have read and understand the requirements and conditions herein.

Availability of Proposal Packages – All interested parties must obtain a copy of this RFP.

Submission Deadline – Sealed proposals must be received by the Business Manager no later than 9:00 am on Monday, XXXXX, 2023. Late, faxed, or emailed proposals will not be accepted. The front page of the proposal package must be clearly marked with the words “Pine Street Redevelopment Area Proposal.”

Pre-Submittal Meeting and Property Viewing – Interested parties will have the opportunity to attend a pre-submittal meeting, to be held at the Pine Street Redevelopment Area, 12-24 Pine Street, Swampscott, Massachusetts, on Wednesday, XXXXX, 2023, at 10:00 am, at which time Town representatives will review the materials included in this RFP. Town representatives will then conduct a viewing of the Property for interested parties. Interested parties may, on a separate date, arrange to conduct an inspection of the Property for purposes and under conditions agreeable to the Town.

Questions – Written responses will be provided to requests for clarification or interpretation of the meaning of the provisions of this RFP, including the documents attached hereto and will be distributed to all parties who have received an RFP. The Town is not obligated, in any way, to waive RFP requirements, or create exceptions, for Respondents who choose not to attend the pre-submittal meeting or Property viewing. Written questions must be submitted to the Business Manager, 22 Monument Avenue, Swampscott, MA 01907, with “Pine Street Redevelopment Area RFP Query” clearly marked on the outside no later than 9:00 am on Wednesday, XXXX, 2023.

## 7) Proposal Review and Selection Process

Review Authority – Commencing in late September 2023, the Review Committee (comprised of the Town Administrator, Assistant Town Administrator (Administration), Director of Community & Economic Development, and one or two members of the Select Board) will begin to review submitted proposal packages. The Review Committee may delegate the review tasks and accompanying responsibilities to its designee, which may be

any individual, individuals, or a committee to be formed or already existing, as the Review Committee deems in its sole discretion to be appropriate.

Review Basis – Each proposal will be evaluated and scored based on the proposal's responsiveness to Town interests, the proposed use, and other selection criteria as specified in Appendix B. The statement of qualifications of each Respondent will be reviewed and scored to identify those who possess the development and construction experience, good standing in the industry, and the financial stability and capacity to develop the Project to completion.

Distribution of Proposals – During the review process, the proposal packages may be directed to such Town boards, committees, and individuals whose comments and observations the Review Committee deems will assist in the decision process. The Review Committee may seek advice and input from any Town boards, committees, or individuals, and from Town Counsel, during the review process.

Additional Information/Interviews – The Review Committee may request additional information of one or more Respondents relative to a proposal or qualifications. Requests shall be in writing with the expectation of a written response within a specified time. Respondents may also be invited to appear before the Review Committee and/or Select Board, which shall occur at an open, public meeting as required by applicable law or as determined by the Review Committee. Failure to comply with this request will result in a rejection of the proposal. The right to an interview does not automatically extend to all whose proposals are accepted for review but is granted at the sole discretion of the Review Committee or the Board.

Ranking and Award – The Review Committee will rank the submitted proposals in accordance with their respective scores. From this ranking, the Review Committee may select proposals for further review. The Review Committee, along with the Select Board, shall award the Project to the proposal that is most advantageous to the Town taking into consideration the selection criteria and the financial terms of all proposals that meet the minimum criteria.

Right to Withdraw – Proposals may be withdrawn without penalty prior to the submission deadline by written request to the Business Manager.

## **8) Rights Reserved by Town**

- The Town reserves the right, in its sole discretion, to select one or more finalists to submit and negotiate a more fully-developed response. The Town reserves the right to waive minor irregularities or defects contained in any proposal and to allow exceptions to the specifications and requirements herein, provided that such waiver or exception does not materially alter the conditions under which all proposals were submitted.

- Each Respondent must include sufficient supporting material to allow a meaningful and comprehensive evaluation of its proposal. The Town reserves the right to disqualify any proposal or response due to insufficient supporting or explanatory information, or to request additional supporting information.
- The Town reserves the right to reject or accept, in its sole discretion, any conditional proposal that is submitted.
- The Town reserves the right to reject any and all proposals, or to cancel the RFP, with no penalty, if deemed to be in the best interests of the Town.

## 9) Minimum Submittal Requirements

The proposal package must consist of a lease/sale value proposal and a Project proposal. Each Respondent must, at a minimum, submit the information and meet the standards indicated below. Failure to meet minimum submittal requirements will be sufficient cause to reject a proposal. Respondents are solely responsible for reviewing all the provisions of this RFP and any attachments, prior to submitting the proposal. Proposals that are incomplete, not properly endorsed, or are otherwise in conflict with the requirements of this RFP may be rejected.

Original/Copies – In a sealed package, submit one (1) unbound original and six (6) bound copies of the proposal, complete with all back-up materials for each proposal package. Submit the proposal package by 9:00 am, Monday, XXXXX, 2023, to:

Business Manager  
Swampscott Town Hall  
22 Monument Avenue  
Swampscott, MA 01907

- a. Format – Proposals must be submitted in an 8 ½" x 11" format for text, and to the extent practical, for graphics. Oversized pages or graphics should be folded to 8 ½" x 11".
- b. Proposal Security – Proposal security in the form of a certified check, cashier's check or bid bond payable to the "Town of Swampscott" in the amount of five percent (5%) of the Respondent's proposed lease/sale value must accompany the proposal package. The proposal security of parties not selected will be returned within a reasonable time after the date of an award. Proposal packages which fail to include security, or those of responding parties who fail to provide the aforementioned security by the submission deadline, will be summarily rejected as non-responsive.
- c. Project Proposal  
To include the following elements:

- Cover Letter – A cover letter must include a statement of interest, identify the Respondent individual or entity, the proposed Property operator and name (if different than Respondent), address and contact information of all individuals with an interest in the Respondent.
- Project Description – The Project proposal must include details about the intended use, proposed buildings (new or reused), site improvements and elements, architectural and site plans, and any other details relevant to define the Project. The project description shall include a description of the number and type of affordable veterans units being proposed, together with the level of affordability, proposed amenity spaces, and related details. A summary of the waivers, if any, from existing local regulations (i.e. zoning, planning, conservation, etc.) required for the Project shall also be included.

Plans to be included:

- i. Site Plan (including parking, building footprint(s), walkways, and features)
  - ii. Building Elevations (height, roofline, façade treatment)
  - iii. Interior Floor Plans (unit location, common space, entrances, special use spaces)
- Due Diligence – The selected Respondent will be afforded the ability to perform due diligence prior to any closing or lease finalization. In anticipation of this, the Project Proposal should outline the due diligence the Respondent intends to conduct and the estimated timing to perform those tasks.
  - Project Team Qualifications – The proposal must identify the principal and support members of the project team. A resume for each person must be attached which demonstrates the qualifications, experience, and role of each member of the project team, including their experience with similar projects. References must also be included.
  - Development Experience – Included must be a description of the Respondent's past and current experience in property demolition, rehabilitation, and construction (as applicable to the Project), including similar projects to the current Project. Include client contact names and telephone numbers.
  - Financing and Financial Capacity – The Respondent must indicate how the Project and operations will be financed, including without limitation:

- i. Detailed sources and uses, detailed development budget, and detailed pro forma for the Project.
  - ii. If sources other than equity from the Respondent are required for the Project, details of all such sources, including without limitation, the identity of such source(s), the timing required to secure binding commitments for such source(s) and close on the transaction, and any requirements to be imposed on the Property in connection with such source(s).
  - iii. Copies of a pre-approval or other letters or documentation acknowledging that the Respondent has sufficient financial resources to complete the Project.
  - iv. For each proposed affordable residential unit, provide the number of bedrooms and bathrooms, the income qualification limits for such unit, and the proposed monthly rental for such unit.
  - v. The anticipated real estate tax and other revenue to be paid to the Town by the Project upon Project completion and for at least the first 10 years after completion.
  - vi. Details of a completion guaranty or performance bond to be provided by the Respondent to secure completion of the Project.
  - vii. Any proprietary information may be submitted separately.
- Time Frame – Respondents shall provide a project timeline, including without limitation, the proposed closing date, anticipated commencement of construction date, anticipated completion of construction date, and anticipated stabilization date.
- Other Required Documents – Each Project proposal must include the following executed documents (see Appendix C):
  - i. Disclosure Statement
  - ii. Certificate of Non-Collusion
  - iii. Tax Compliance Certificate
  - iv. Statement of Beneficial Interest
  - v. Certificate of Authority
- d. Price Proposal Form – The proposal package must include a Price Proposal Form (see Appendix C), indicating the proposed dollar amount and payment structure of the lease or sale for the Property. All lease proposals shall be based on a so-called absolute triple net basis (i.e. the Respondent shall be responsible for all costs associated with the Property including the land and all improvements located thereon). Respondents shall use the form attached to this RFP.

**10) Lease / Purchase and Sale Agreement**

The Respondent who is awarded the Project shall be required to enter a binding agreement with the Town to purchase or lease the Property, as applicable (the "Binding Agreement"). The Binding Agreement shall incorporate the terms and conditions of this RFP and shall set forth the customary terms to be contained in the lease or the purchase and sale with the Respondent under similar circumstances and containing such other terms and provisions acceptable to the Town. A Land Development Agreement (as discussed below), an Easement (as discussed below), and, in case of a proposed lease of the Property, a ground lease, and in the case of a sale of the Property, a proposed deed, shall be negotiated and attached as exhibits to the Binding Agreement and shall be executed at the closing. Further included shall be:

- a. The dollar amount of the ground lease (in total over course of lease term) or the purchase price;
- b. Proposed length of ground lease term (not to exceed 99 years), as applicable;
- c. Requirements for a deposit which, with the proposal security, shall be equal to ten (10%) percent of the total ground lease value or purchase price;
- d. A clause affirming the conditions upon which a closing will occur. Once said conditions have been met to the satisfaction of the Town, the closing shall occur within thirty (30) days, time being of the essence;
- e. A clause stating that the use of the Property shall be restricted to the proposed use identified in the proposal;
- f. The Respondent must represent and warrant that it, or its agents, have conducted a full inspection of the Property, and based on such investigation, is aware of the condition of the Property and accepts the Property "as is." The Respondent must acknowledge that the Town has no responsibility for hazardous waste, oil, hazardous material or hazardous substances as those terms are defined under any applicable law, rule, or regulation, local, state, federal, or otherwise, on, in, under or emitting from the Property, or for any other condition or defect on the Property;
- g. A statement that the proposed Land Development Agreement (as discussed below) shall be incorporated by reference in its entirety in the Lease or Purchase & Sale Agreement; and
- h. A provision that the Property will be conveyed subject to a right of reverter reserved by the Town or shall be subject to such other provision that ensures that the future use and occupancy of the Property shall be in accordance with this RFP. Such provision shall



remain in effect until such time as the Respondent obtains financing to complete development of the Project.

## **11) Land Development Agreement and Easement**

### **A. Land Development Agreement**

At the closing of the Property, the Town of Swampscott and the Respondent shall execute a Land Development Agreement (LDA), which shall be recorded with the Essex South Registry of Deeds prior to any financing mortgage or other monetary encumbrance upon the Property. The LDA shall be negotiated, and the terms thereof agreed upon, in conjunction with the negotiation of the Binding Agreement. The LDA shall, at a minimum, specify the terms and conditions that must be satisfied prior to the lease or sale of the Property to the Respondent: (a) the Respondent has a firm commitment from an institutional lender for financing the development and completion of the Project in an amount and upon terms reasonably satisfactory to the Town; and (b) the Respondent has obtained all permits and approvals necessary and appropriate to develop the Project as proposed.

The LDA shall incorporate the Respondent's plan for the Property submitted with its RFP, and shall otherwise include, but not necessarily be limited to, the following:

- 1) Identification of the parties; description of the Property and an affirmation of the award of the Project to the Respondent.
- 2) A statement of the Respondent's obligation to develop, construct and otherwise use the Property in accordance with the RFP, the proposal, the LDA, and other terms and conditions required by the Town.
- 3) Respondent's acknowledgement that it will be solely responsible for securing all necessary approvals, licenses and permits required by government authorities; complying with all applicable state statutes, by-laws, codes and regulations, providing quality workmanship and using first-class materials of high quality.
- 4) A statement that the Respondent will not permit any mechanic's liens or similar liens to be imposed or remain on the Property for more than sixty (60) days.
- 5) A statement of the Respondent's rights relative to the sale, assignment, or refinancing of the Property.
- 6) A statement of the Respondent's obligations to place and maintain insurance on the Property and all improvements thereon.

- 7) General provisions that address the Town's right of access to the Property for the purpose of inspection.
- 8) A statement acknowledging the Respondent's responsibility for all development, construction, and operational costs.
- 9) A statement of the respective rights, obligations, and remedies of the Town in the event of default by the Respondent.
- 10) A statement of the Respondent's financial obligations in the event that the Town finds it necessary to enforce the LDA through legal proceedings.
- 11) A statement of those circumstances under which the Respondent shall indemnify the Town.
- 12) Provisions that address notices, waivers, term of the LDA, binding of parties, exclusivity of written agreement and governing law.

**B. Easement**

An easement for the Stacey's Brook culvert will be reserved by the Town, in the location generally shown in Appendix D. A more detailed plan in recordable form showing the easement area will be created and recorded at the closing.

**12) Selection Criteria and Project Award**

Each proposal will be evaluated and scored based on the proposal's responsiveness to Town interests, including, but not limited to, the selection criteria as specified in Appendix B herewith. The statement of qualifications of each Respondent will be reviewed and scored to identify those who possess the relevant experience, good standing in the industry, the financial stability and capacity to carry the Project to completion and meet the Town's objectives and commitment to maintain the integrity of the neighborhood.

The Respondent selected by the Board will be given exclusive rights to negotiate with the Town the terms of a Binding Agreement as discussed herein. If, at any time, such negotiations are not proceeding to the satisfaction of the Town, in its sole discretion, the Town may choose to terminate said negotiations and return any deposits previously provided to the Town, without any further obligation or liability to the Respondent. The Board may select another Respondent with whom to initiate negotiations.

**13) Other Considerations**

- The Town shall not be responsible for paying any broker's commission, or like compensation to any third party, and the Respondent agrees to indemnify and hold the Town harmless from any claims for such compensation.
- References may be checked for all parties identified as participating on the team.
- Respondents may submit more than one response to this RFP. However, each proposal to develop the Property must be a separate, complete package that can be considered independently.
- The Town Administrator may amend or revise the RFP as a result of questions submitted by Respondents or for any other reason that causes the Administrator to believe it would be in the best interests of the Town to do so. Such amendments or revisions will be sent prior to the submission deadline to all persons or firms who have been provided copies of the RFP.
- The Town assumes no responsibility for delays caused by the U.S. Postal Service or any other delivery service. Late responses will not be accepted nor will additional time be granted to individual Respondents unless the Administrator extends the required submittal date for all Respondents.
- The Town will not be liable for any costs incurred by any Respondents in the preparation and presentation of responses to this RFP or in the participation in views, interviews, negotiations, or any other aspect of this RFP process.
- Respondents are responsible for errors and omissions in their responses, and any such errors and omissions will not serve to alter the Respondent's legal obligations to the Town.
- This RFP and the responses, including all warranties, commitments and representations made in the successful response shall be binding and shall become contractual obligations to be incorporated by reference in the Binding Agreement, unless the Town in its sole discretion waives any such warranty, commitment or representation.
- The selection of a project team does not presume final approval of proposed plans. Submissions will be subject to the terms of the Binding Agreement, the Town of Swampscott's review process, and all required approvals.
- Proposals may not be withdrawn, amended, or modified for a period of one hundred eighty (180) days from the deadline for submission of proposals.

#### **14) Questions**

Please direct all questions regarding this RFP to:

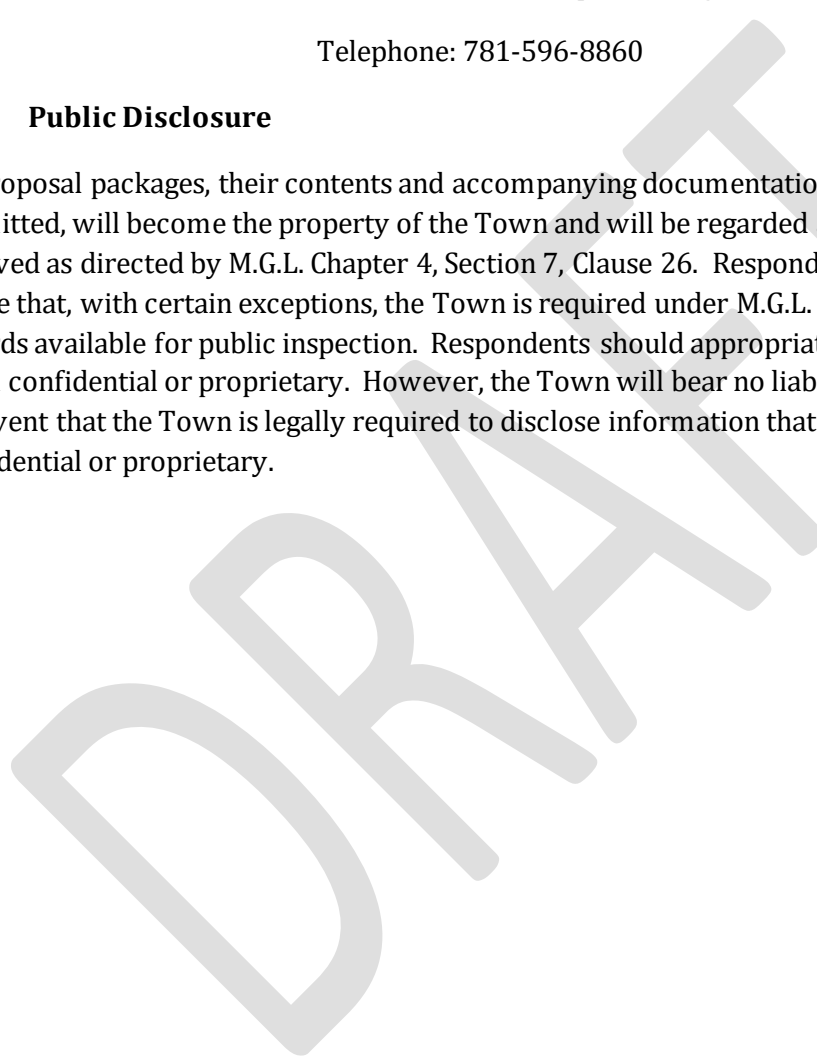
Business Manager  
Swampscott Town Hall  
22 Monument Avenue  
Swampscott, MA 01907

[nswanstrom@swampscottma.gov](mailto:nswanstrom@swampscottma.gov)

Telephone: 781-596-8860

### **15) Public Disclosure**

All proposal packages, their contents and accompanying documentation, no matter when submitted, will become the property of the Town and will be regarded as public records when received as directed by M.G.L. Chapter 4, Section 7, Clause 26. Respondents should be further aware that, with certain exceptions, the Town is required under M.G.L. Chapter 66 to make its records available for public inspection. Respondents should appropriately mark all materials they deem confidential or proprietary. However, the Town will bear no liability to any Respondent in the event that the Town is legally required to disclose information that a Respondent may define as confidential or proprietary.



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**Appendix A – Annual Town Meeting Article, as Amended, Moved & Voted**

Town of Swampscott  
Motion to Authorize the Disposition of 12-24 Pine Street & A Portion of 10 New Ocean Street  
Annual Town Meeting  
May 15, 2023

ARTICLE 11. To see if the Town will vote to authorize the Select Board to convey certain property, as follows: (a) a parcel of land containing 0.360 acres, more or less, and all improvements thereon, located at 12-24 Pine Street, identified as Assessor's Tax Map 3-4-0, and described in a deed recorded with the Essex South District Registry of Deeds in Book 40542, Page 4, and (b) a parcel of land, and all improvements thereon, being a portion of that property located at 10 New Ocean Street, identified as Assessor's Tax Map 3-3-0, and described in a deed recorded with the Essex South District Registry of Deeds in Book 1555, Page 45, said parcel shown on a sketch plan as set forth in Appendix C, on file with the Town Clerk, for affordable housing with a preference for veterans and inclusion of a new VFW Post 1240 and such other purposes as the Select Board shall determine, and on such terms and conditions as the Select Board shall deem appropriate; and to authorize the Select Board to enter into all agreements and take any and all actions as may be necessary or convenient to accomplish the foregoing purposes, or take any action relative thereto.

Sponsored by the Select Board.

Comment: This article directs the Select Board to utilize the acquired property as 12-24 Pine Street to seek and lead redevelopment of the property in order to provide for affordable housing with a preference for veterans and a new VFW Post 1240 for Veterans Crossing.

**ARTICLE 11**  
**Vote in Favor**  
**5/15/23 ATM**

## Appendix B – Selection Criteria for the Pine Street Redevelopment Area

The ranking of proposals shall be evaluated from **Most Advantageous** to **Least Advantageous** and the selection of the Respondent shall be based on criteria and requirements including, but not limited to, the following:

### 1. **Community Benefits or Otherwise**

The Town wishes to attain the highest possible community benefit for the Property when redeveloped. Respondents are recommended to enumerate the various community benefits the Project will bring to Swampscott.

- Most Advantageous – The proposal maximizes public benefits to the Town by having a positive impact on the Town and the neighborhood.
- Least Advantageous – Proposals that do not provide any demonstrable public benefits to the Town and the neighborhood.

### 2. **Lease Value or Purchase Price**

The Town wishes to attain the highest possible lease value or purchase price for the Property in connection with a development proposal that is consistent with the intent and terms of this RFP.

- Most Advantageous – The highest lease value or purchase price with the fewest conditions attached thereto.
- Least Advantageous – Proposals with conditions potentially limiting the lease value or purchase price that the Town will realize.

### 3. **Ground Lease vs Sale**

The Town encourages Respondents to consider a long-term ground lease of the Property rather than a fee simple sale of the Property.

- Most Advantageous – Proposal of a ground lease with an upfront payment structure.
- Least Advantageous – Proposal of a fee simple purchase.

### 4. **Qualifications**

The Town wishes to lease or sell the Property to a Respondent with experience in projects of similar use, type and scale, and specifically transactions with municipalities,

and with the financial capacity to expeditiously complete the task.

- Most Advantageous – Extensive experience with similar projects, specifically with municipalities, and having strong financial capacity.
- Least Advantageous – Limited or no experience with similar projects and/or not having strong financial capacity.

**5. Design Quality**

The new development shall exhibit the highest levels of design creativity as well as sensitivity to the overall neighborhood context. The Respondent's plans and elevations shall define the key design elements of the development.

- Most Advantageous – A creative design solution that maximizes the site's use, melds housing and community uses, and enhances the overall neighborhood.
- Least Advantageous – A design that does not integrate housing and community use and/or which offers a design not consistent with and sympathetic to the overall neighborhood.

**6. Sustainable and Climate-Friendly Design and Construction**

The new development shall exhibit the highest level of design and construction that minimize the environmental impact and rely on and/or generate renewable energy. The Respondent's plans shall define the sustainable elements of the development in site preparation, building construction, site design, and ongoing operations.

- Most Advantageous – A thoughtful and conscientious design and construction solution that minimizes the environmental impact of the construction and operation while also relying on and/or generating renewable energy on site.
- Last Advantageous – A design that does not minimize environmental impact of the construction and operation nor rely on or generate renewable energy.

**7. Maximum Benefit and Minimal Impact**

The new development shall balance the ability to maximize the quantity of housing units while limiting the number of deviations from local regulations.

- Most Advantageous – A design solution that maximizes the development potential for number of housing units while limiting the need for deviations from local regulations.



- Least Advantageous – A design that limits the number of housing units or requires a significant amount of deviations from local regulations.

#### **8. Financial Resources**

The Respondent demonstrates the financial capability to complete the task.

- Most Advantageous – A proposal that includes a positive, historical record of completion of similar projects, including without limitation evidence of the financial strength of the Respondent, and a high likelihood of securing all financial resources required to commence and complete the Project.
- Least Advantageous – A proposal that does not include a positive, historical record of completion of similar projects, including without limitation evidence of the financial strength of the Respondent, and a high likelihood of securing all financial resources required to commence and complete the Project.

#### **9. Ability to Proceed**

The Town wishes to have the Project permitted, the improvements completed, occupied, and operational as soon as possible.

- Most Advantageous – Proposals indicating the shortest reasonable timelines for the closing/lease execution, commencement, completion, and occupancy of the Project.
- Least Advantageous – Proposals for Projects needing longer time horizons for closing/lease execution, commencement, completion, and occupancy.

#### **10. Qualifications and Experience of the Respondent**

The Town requires evidence of the ability of the Respondent to commence substantive permitting work upon award of the contract, including preparation of drawings and plans, and the ability to accomplish the redevelopment and subsequent use of the Property.

- Most Advantageous – Demonstrated ability of the Respondent to lead the development effort and operation from predevelopment to full occupancy/stabilization, including without limitation maintaining compliance with all applicable regulatory requirements.
- Least Advantageous – Inability of the Respondent to demonstrate capacity to lead development effort, operation of the Project, and/or maintain compliance with all applicable regulatory requirements.

**11. Inclusion of Affordable Housing**

The Town desires the inclusion of units to be affordable to families earning 80% or less of the area median income, with such restriction to remain in place for the longest possible duration, but in no event less than 30 years.

- Most Advantageous – Provides that 100% of the housing units will be deed restricted for affordable housing.
- Least Advantageous – Provides that fewer than all of the housing units will be deed restricted for affordable housing.

**12. Inclusion of Veterans Housing**

The Town desires housing that will meet the needs of the community's veterans. Such Projects should identify the sale/lease restriction and design considerations to support this demographic.

- Most Advantageous – Proposals which include a veterans preference for tenancy/sale and design elements appropriate for this population.
- Least Advantageous – Proposals which do not provide a veterans preference nor design elements appropriate for individuals of this population.

**13. Inclusion of Age-Restricted Housing**

The Town desires housing that will meet the needs of the community's growing 55+ year old population. Such Projects should identify the sale/lease restriction and design considerations to support this demographic.

- Most Advantageous – Proposals which include an age-based restriction for tenancy/sale (for individuals 55 years or older) and design elements appropriate for this population.
- Least Advantageous – Proposals which do not provide an age-based restriction nor design elements appropriate for individuals 55 years or older.

**14. Inclusion of Local Preference**

The Town desires housing that will meet the needs of the community's residents. Such Projects should identify the sale/lease preference for current and/or former Swampscott residents.

- Most Advantageous – Proposals which include a local preference tenancy/sale.

- Least Advantageous – Proposals which do not provide a local preference tenancy/sale.

#### **15. Inclusion of VFW Post 1240**

The Property includes the existing VFW Post 1240. The Town desires to see the redevelopment of this Property to include a new home for the veterans to gather. Therefore a Project with a new VFW Post 1240 (Veterans Crossing) is a necessary programming element.

- Most Advantageous – Proposals which include a new VFW Post 1240.
- Least Advantageous – Proposals which do not include a new VFW Post 1240.

## **Appendix C – Required Documents to be Filed with RFP**

1. Price Proposal Form
2. Respondent Entity Disclosure Statement
3. Certificate of Non-Collusion
4. Tax Compliance Certificate
5. Disclosure of Beneficial Interests in Real Property Transaction
6. Certificate of Authority

---

## Price Proposal Form

☐ LEASE☐ PURCHASE

*Please write your price proposal offer (lease value should equal total value over full term of lease):*

---

Print/Type your proposal amount above in written form

---

Print/Type your proposal amount above in number form

**Note:** *Both the written form and the number form should indicate the same total amount. If there is a conflict between the written form and the number form amounts, the written form will control.*

---

Name of Respondent

---

Name of person signing proposal

---

Signature of person signing proposal

Date

---

Title

---

Address

---

City

State

Zip Code

## Respondent Entity Disclosure Statement

Give full names and residences of all persons and parties interested in the foregoing proposal:

(Notice: Give first and last name in full; in case of a corporation, give names of President and Treasurer; in case of a limited liability company, give names of the individual members, and, if applicable, the names of all managers; in case of a partnership or a limited partnership, all partners, general and limited and; in case of a trust, all the trustees)

NAME	ADDRESS	ZIP CODE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Kindly furnish the following information regarding the Respondent:

**1) IF A PROPRIETORSHIP**

Name of Owner:	_____		
	ADDRESS	ZIP CODE	TELE #
Business:	_____	_____	_____
Home:	_____	_____	_____

**2) IF A PARTNERSHIP**

BUSINESS ADDRESS	ZIP CODE	TELE #
_____	_____	_____
PARTNER NAME	ADDRESS	ZIP CODE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**3) IF A CORPORATION**

Full Legal Name: \_\_\_\_\_

State of Incorporation: \_\_\_\_\_

Principal Place of Business ZIP CODE TELE #

\_\_\_\_\_

Qualified in Massachusetts: Yes \_\_\_\_\_ No \_\_\_\_\_

Place of Business in Massachusetts ZIP CODE TELE #

\_\_\_\_\_

Admitted in Massachusetts: Yes \_\_\_\_\_ No \_\_\_\_\_

Place of Business in Massachusetts ZIP CODE TELE #

\_\_\_\_\_

**4) IF A LIMITED LIABILITY COMPANY**

Full Legal Name: \_\_\_\_\_

State of Formation: \_\_\_\_\_

Principal Place of Business ZIP CODE TELE #

\_\_\_\_\_

Qualified in Massachusetts: Yes \_\_\_\_\_ No \_\_\_\_\_

Place of Business in Massachusetts ZIP CODE TELE #

\_\_\_\_\_

Admitted in Massachusetts: Yes \_\_\_\_\_ No \_\_\_\_\_

Place of Business in Massachusetts ZIP CODE TELE #

\_\_\_\_\_



**5) IF A TRUST**

Full Legal Name: \_\_\_\_\_

Recording Information: \_\_\_\_\_

State of Formation: \_\_\_\_\_

Full names and address of all trustees:

NAME	ADDRESS	ZIP CODE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Authorized Signature of Proponent: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**(Note: This form must be included in the proposal submission)**

### **Certificate of Non-Collusion**

Under Massachusetts General Laws Ch. 30B, Section 10, the following Certification must be provided:

“The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.”

(Please Print)

\_\_\_\_\_  
Name of person signing proposal

\_\_\_\_\_  
Signature of person signing proposal

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

**(Note: This form must be included in the proposal submission)**

## Certificate of Tax Compliance

STATE LAW MANDATES THAT TO DO BUSINESS WITH THE TOWN OF SWAMPSCOTT the Massachusetts Revenue Enforcement and Protection Program of 1983 requires that the following be supplied with your bid:

Date: \_\_\_\_\_

Pursuant to Mass. G.L. Ch. 62C, Section 49A, I Certify Under the Penalties of Perjury That I, To My Best Knowledge and Belief, Have Filed All Mass. State Tax Returns and Paid ALL Mass. State and Town Taxes Required under Law.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Town or City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
Social Security Number **OR** Federal Identification Number

Certified by State Office of Minority and Women Business Association (SOMWBA)

Yes \_\_\_\_\_ Date of Certification \_\_\_\_\_

Failure to complete this form may result in rejection of bid and/or removal from Town Bid Lists.

\_\_\_\_\_  
Authorized Signature

**(Note: This form must be included in the proposal submission)**

**Disclosure Statement for Transaction with a  
Public Agency Concerning Real Property  
M.G.L. c. 7C, s. 38 (formerly M.G.L. c 7, s. 40J)**

The undersigned party to a real property transaction with a public agency hereby discloses and certifies, under pains and penalties of perjury, the following information as required by law:

1. Real Property:
2. Type of Transaction, Agreement, or Document:
3. Public Agency Participating in Transaction:
4. Disclosing Party's Name and Type of Entity (if not an individual):

5. Role of Disclosing Party (Check appropriate role):

\_\_\_\_ Lessor/Landlord                      \_\_\_\_ Lessee/Tenant  
\_\_\_\_ Seller/Grantor                      \_\_\_\_ Buyer/Grantee  
\_\_\_\_ Other (Please describe): \_\_\_\_\_

6. The names and addresses of all persons and individuals who have or will have a direct or indirect beneficial interest in the real property excluding only 1) a stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than ten per cent of the outstanding stock entitled to vote at the annual meeting of such corporation or 2) an owner of a time share that has an interest in a leasehold condominium meeting all of the conditions specified in M.G.L. c. 7C, s. 38, are hereby disclosed as follows (attach additional pages if necessary):

Name	Residence
------	-----------

_____	_____
_____	_____
_____	_____
_____	_____

7. None of the above-named persons is an employee of the Division of Capital Asset Management and Maintenance or an official elected to public office in the Commonwealth of Massachusetts, except as listed below (insert "none" if none):

Name

Title or Position

---



---

8. The individual signing this statement on behalf of the above-named party acknowledges that he/she has read the following provisions of Chapter 7C, Section 38 (formerly Chapter 7, Section 40J) of the General Laws of Massachusetts:

*No agreement to rent or to sell real property to or to rent or purchase real property from a public agency, and no renewal or extension of such agreement, shall be valid and no payment shall be made to the lessor or seller of such property unless a statement, signed, under the penalties of perjury, has been filed by the lessor, lessee, seller or purchaser, and in the case of a corporation by a duly authorized officer thereof giving the true names and addresses of all persons who have or will have a direct or indirect beneficial interest in said property with the commissioner of capital asset management and maintenance. The provisions of this section shall not apply to any stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than ten per cent of the outstanding stock entitled to vote at the annual meeting of such corporation. In the case of an agreement to rent property from a public agency where the lessee's interest is held by the organization of unit owners of a leasehold condominium created under chapter one hundred and eighty-three A, and time-shares are created in the leasehold condominium under chapter one hundred and eighty-three B, the provisions of this section shall not apply to an owner of a time-share in the leasehold condominium who (i) acquires the time-share on or after a bona fide arms length transfer of such time-share made after the rental agreement with the public agency is executed and (ii) who holds less than three percent of the votes entitled to vote at the annual meeting of such organization of unit owners. A disclosure statement shall also be made in writing, under penalty of perjury, during the term of a rental agreement in case of any change of interest in such property, as provided for above, within thirty days of such change.*

*Any official elected to public office in the commonwealth, or any employee of the division of capital asset management and maintenance disclosing beneficial interest in real property pursuant to this section, shall identify his position as part of the disclosure statement. The commissioner shall notify the state ethics commission of*

*such names, and shall make copies of any and all disclosure statements received available to the state ethics commission upon request.*

*The commissioner shall keep a copy of each disclosure statement received available for public inspection during regular business hours.*

9. This Disclosure Statement is hereby signed under penalties of perjury.

---

Print Name of Disclosing Party (from Section 4, above)

---

Authorized Signature of Disclosing Party

Date (mm/dd/yyyy)

---

Print Name & Title of Authorized Signer

---

**Certificate of Authority**  
**(To be used by corporations and limited liability companies)**

At a duly authorized meeting of the Board of Directors/Members of

\_\_\_\_\_, held on \_\_\_\_\_,  
(Name of Corporation/Limited Liability Company) (Date)

it was VOTED that \_\_\_\_\_,  
(Name) (Title)

of this corporation/company, be and hereby is authorized to execute proposals, contracts and bonds in the name of said corporation/company, and to affix its seal thereto; and such execution of any proposal, contract or obligation in this corporation's/company's name on its behalf by such office under seal of the corporation/company, shall be valid and binding upon the corporation/company.

I hereby certify that I am the secretary/authorized representative of the above named corporation/company and \_\_\_\_\_ is the duly elected officer  
(Name)

as stated above of said corporation/company, and that the above vote has not been amended or rescinded and remains in full force and effect as of the date of this proposal.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Secretary)

Seal:



## Appendix D – Informational Site Plan

The site plan provided below demonstrates the location of the Property (centered within the image and outlined in red) and relation to abutting properties and street network.

Blue properties = B-1 Business zoned properties

Grey properties = A-4 Residential zoned properties

Property lines shown are for informational purposes only.



# Recommendations for Phillips Beach Parking

## FROM:

Com Dev, DPW, Fire Dept, Police Dept, Town  
Administrator, and Traffic Study Advisory  
Committee





# Concern



Swampscott is a growing, vibrant community with an active population. People move to the town for its quiet nature, various shopping opportunities, ease of access to the Hub, and most importantly our seaside environment.

The town boasts **eight public beaches** – the *most popular* one being **Phillips Beach**.

Parking for this beach is limited to on-street parking which has been provided by the Town via Recreation Parking stickers sold to town residents.

With the growing population and increased desire to use Phillips Beach, **parking** for residents to visit the beach has become **problematic**.

# Existing Conditions

## Current Parking Restrictions



## Current Parking Count

Recreation Parking Spaces	<b>90</b>
(2 of these are Handicap)	
Resident Parking Spaces	<b>312</b>

## Concerns Raised

- Non-residents parking
- No-sticker parking
- Town employees with stickers
- Out-of-town people (disrespect, trash)
- Lack of handicap parking

# Factors Impacting Parking

## Parking Restrictions

- Recreation (beach) parking signs
- Resident parking signs
- Confusion between the Recreation and Resident parking signs



# Factors Impacting Parking

## Enforcement

- The current cost of a parking ticket is \$25 which some may **not** see as a barrier to complying with the parking restriction
- NEED DETAILS ABOUT ENFORCEMENT
  - Calls per week during summer months regarding parking concerns in this area
  - # of citations given per week during summer months regarding parking violations in this area
  - Data on valid vs unsubstantiated calls of violation

**TOWN OF SWAMPSCOTT** **PARKING VIOLATION**  
**NO. 89001**

State: ☐ MA ☐ NH ☐ ME ☐ RI ☐ CT ☐ VT ☐ NY ☐ ☐ WRITE IN

PLATE TYPE: ☐ PA ☐ CO ☐ OTHER SPECIFY: ☐ PLATE NO. COLOR: ☐ G ☐ R ☐ OTHER: ☐

PLATE:  REGISTRATION:

VEHICLE MAKE:  VEHICLE COLOR:  VEHICLE TYPE:

LOCATION OF VIOLATION:

DATE: MONTH  DAY  YEAR  TIME: ☐ A.M. TO ☐ A.M. ☐ P.M. TO ☐ P.M.

OFFICER NAME:  BADGE NO.:

### VIOLATION

1. RESTRICTED PLACE OR PROHIBITED AREA	\$25	9. PARKING ON CROSSWALK	\$25
2. OVERTIME PARKING	\$25	10. PARKING IN FIRE LANE	\$25
3. WHEELS OVER 12" FROM CURB	\$25	11. RESIDENT REGISTRATION VIOLATION	\$25
4. WRONG DIRECTION PARKING	\$25	12. IMPEDING FIRE APPARATUS	\$25
5. PARKING ON SIDEWALK	\$25	13. OTHER	\$25
6. 10 FEET OF HYDRANT	\$25	14. IMPEDING SNOW REMOVAL	\$50
7. OBSTRUCTING DRIVEWAY	\$25	15. HANDICAPPED PARKING	\$100
8. WITHIN 20 FT. OF INTERSECTION	\$25	16. PARKING IN BUS STOP	\$100

VIOLATION CODE (S)	FINE
<input type="text"/>	<input type="text"/>

**Pay This Amount**

**THIS NOTICE MUST BE RETURNED BY MAIL ONLY.**  
DO NOT MAIL CASH. PAY BY POSTAL NOTE, MONEY ORDER OR CHECK MADE PAYABLE TO:  
TOWN OF SWAMPSCOTT  
P.O. BOX 300  
WILFORD, MA 01878

**PLEASE PEEL OFF TAPE AND FOLD FLAP TO SEAL ENVELOPE.**



# Factors Impacting Parking

## Number of Parking Spaces

- Parking spaces are not lined (which is typical for residential areas)
- Ability to park on the side of a street is limited by the road width and space between driveways and intersections/corners





# Considerations



Recommendations for Phillips Beach Parking

These roadways are public streets

- Public streets are owned, maintained, and governed by the local authority
- They explicitly provide for the access and use of the **public** which includes **all** individuals

Ample on-street parking

- The neighborhood has more available on-street parking than most neighborhoods in the community
- Parking is currently available on **both** sides of all streets and many lots are quite large allowing for more distance (and thus **more parking**) between driveways

# Proposed Conditions

## Proposed Parking Restrictions



Recommendations for Phillips Beach Parking

## Proposed Parking Count

Recreation Parking Spaces	<b>145</b>
(4 of these are Handicap)	
Resident Parking Spaces	<b>257</b>

## Logistical Issues

- Road widths (should parking be permitted on both sides of the street)
- Turning ability at corners (limiting vehicles from parking near corners)

# Parking Availability

STREET	AVG ROAD WIDTH	TOTAL SPACES	EXISTING RECREATION	EXISTING RESIDENT	PROPOSED RECREATION	PROPOSED RESIDENT	INCREASE OF RECREATION
Blodgett Ave	24 ft	52	0	52	0	52	0
Bradlee Ave	34 ft	46	0	46	23	23	23
Brown Rd	23 ft	43	0	43	0	43	0
Charles Rd	25 ft	14	0	14	0	14	0
Cutting Rd	34 ft	30	0	30	15	15	15
Longley Ave	24 ft	61	0	61	0	61	0
Ocean Ave	34 ft	96	44	52	61	35	17
Shepard Ave	34 ft	60	46	14	46	14	0
<b>TOTAL</b>		<b>402</b>	<b>90</b>	<b>312</b>	<b>145</b>	<b>257</b>	<b>55</b>

Number of spaces has been evaluated based on distance between street corners/intersections and driveway cuts. Buffers were included at intersections (15') as well as adjacent to driveway cuts (5').

Parking spaces are based on a standard length of 18'.

# Recommendations



We recommend the following:

1. Update the parking restriction sign design to better differentiate between Resident and Recreation
2. Increase the number of available Recreation parking spaces in the Phillips Beach area
3. Increase the number of handicap-designated spaces
4. Increase the parking violation fee from \$25 to \$75.



Phillips Beach has one public access point at the end of Ocean Avenue (adjacent to the private Beach Club).

STREET	COLOR
Blodgett Avenue	Red
Bradlee Avenue	Orange
Brown Road	Yellow
Charles Road	Green
Cutting Road	Light Blue
Longley Avenue	Dark Blue
Ocean Avenue	Purple
Shepard Avenue	Brown



# Context



# TOWN OF SWAMPSCOTT

## OFFICE OF BOARD OF SELECTMEN

ELIHU THOMSON ADMINISTRATION BUILDING  
22 MONUMENT AVENUE, SWAMPSCOTT, MA 01907

# APPLICATION FOR AN ENTERTAINMENT LICENSE

## PART 1: APPLICANT

Applicant Name: Andrew Ingemi

Applicant Phone #: [REDACTED]

Applicant Address: [REDACTED]

Applicant Email: [REDACTED]

## PART 2: TYPE OF LICENSE REQUESTED

☐ Single-Day License

Date & Timeframe: \_\_\_\_\_

☐ Multi-Day License (Specific Dates)

Dates & Times: \_\_\_\_\_

☒ Multi-Day License

(General Days of Week – Check Day and Fill in  
Decided Timeframe)

☒ Mondays 7AM-1AM

☒ Tuesdays 7AM-1AM

☒ Wednesdays 7AM-1AM

☒ Thursdays 7AM-1AM

☒ Fridays 7AM-1AM

☒ Saturdays 7AM-1AM

☒ Sundays 7AM-1AM

## PART 3: BUSINESS ORGANIZATION

Business Name: Dockside Pub

Business Phone #: 978-873-0065

Business Address: 286 Humphrey St. Swampscott, MA 01907

Employer Identification Number: [REDACTED]

If ownership changed in last year, please indicate previous business name, owner, and date you assumed possession:

Was there an approved transfer of Liquor or Common Victualler License within the last year? ☐ Yes ☐ No ☒ N/A

Has anyone who holds direct or indirect interest in the premises ever been denied an entertainment license or had an entertainment license suspended, revoked, or voluntarily surrendered an entertainment license in any jurisdiction?

☐ Yes ☒ No If yes, please attach explanation and dates and indicate the person with the aforementioned interest.

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Has anyone who holds direct or indirect interest in the premises ever been denied an entertainment license or had an entertainment license suspended, revoked, or voluntarily surrendered an entertainment license in any jurisdiction?

**Has the applicant or a director or an officer of the applicant (check all that apply and attach explanation):**

- ## PART 4: ENTERTAINMENT

- ☒ Audio Device (ex. Radio, computer, etc)
- ☒ Jukebox
- ☒ TV(s)/Monitor(s) (27" or under), # of 2  
(Menus on TVs not to be included unless for entertainment purposes as well)
- ☒ Widescreen TV (over 27"), # of 2
- ☐ Projector / Movie Screen, # of \_\_\_\_\_
- ☒ Trivia
- ☐ Board Games
- ☐ Table Games, # of games \_\_\_\_\_ (ex. Ping pong, pool, shuffle board)
- ☐ Automatic Amusement Game(s)
- ☐ Disc Jockey

- ☐ Dancing by Patrons
- ☒ Karaoke
- ☒ Instrumental Music, # of   3
- ☒ Vocal Music, # of   1
- ☐ Exhibition or Trade Show
- ☐ Stage Play, # of stages
- ☐ Floor Show (Please describe such as comedian,  
dance performance, etc)  

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- ☐ Athletic Event (Please describe)  

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- ☐ Other (Please describe)

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If you're applying for any type of automatic amusement game machine, please answer the following:

- Total Number of Games/Machines: \_\_\_\_\_
- Name(s) of Game/Machine: \_\_\_\_\_
- Manufacturer and Manufacturer's Serial Number(s): \_\_\_\_\_
- Will you own the coin-controlled game(s)?  
☐ Yes ☐ No
- If "No," please provide the following information for the owner/vendor:  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_
- Is this game(s) approved by the State Division of Standards? ☐ Yes ☐ No

## PART 5: MANAGER OF RECORD

Please provide the following information on the proposed manager of record:

- Name of Proposed Manager: Andrew Ingemi
- Home Address: [REDACTED]
- Email Address: [REDACTED]
- Work Phone: \_\_\_\_\_
- Home/Cell Phone: [REDACTED]
- Date of Birth: [REDACTED]
- Place of Birth: Salem, MA
- Mother's Maiden Name: [REDACTED]
- Father's Name: Arthur Ingemi

Within the past seven (7) years, has the proposed manager been convicted of a felony or a violation of state or federal narcotics laws? ☐ Yes ☒ No

**\* The same Manager of Record must be on the Liquor or Common Victualler license.**

**STATEMENT OF APPLICANT:** Under the pains and penalties of perjury, I affirm that the answers contained in this application are true to the best of my knowledge and belief, and that there are no other indirect interests in this license other than those indicated in this application.

Signature of Applicant: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Relationship to Business: \_\_\_\_\_