

RULES AND REGULATIONS FOR CPF ACQUISITION AND STEWARDSHIP

Community Preservation Fund

The purpose of Rules and Regulations for Acquisition and Stewardship Implementation is to standardize the application of the Community Preservation Fund state statute, Town Law 64-e. The intent is not to create new law but to ensure that the controlling law is applied evenly for all East End Towns primarily through a series of examples demonstrating the proper, as well as the improper, administration of Community Preservation Fund acquisition and stewardship programs.

**ADOPTED BY THE TOWN BOARD OF THE TOWN OF
EAST HAMPTON ON APRIL 7, 2011**

3.(d) The purposes of the fund shall be exclusively, (d) to provide a management and stewardship program for such interests and rights consistent with subdivisions nine and nine-a of this section and in accordance with such plans designed to preserve community character, provided that not more than ten percent of the fund shall be utilized for the management and stewardship program...

The ten percent of the fund limitation for management and stewardship costs relates to the annual fund revenues. The last full calendar year of known revenue shall be used to determine the maximum amount permitted to be expensed for management and stewardship programs.

Example: In preparation of its 2010 budget in late 2009, a Peconic Bay Region Town would look to the complete CPF revenues received in 2008 to determine 10% of the fund for the 2010 budget and for compliance with this section of the statute.

3-a. Preliminary and incidental costs in connection with the acquisition of interests or rights in real property, pursuant to subdivision three of this section, shall be deemed part of the cost of the acquisition for which they were incurred. Such expenditures may include any administrative or other expenditures directly arising there-from. No expenditure shall be charged to the fund, unless authorized by law. A full accounting of such costs for each acquisition of land shall be provided to the Town Board.

Examples of appropriate costs associated with the acquisition of interests or rights in real property include, but are not limited to:

Example: Structural inspections, engineering inspections, environmental inspections, environmental assessments

Example: Survey maps, property flagging, installation of property monuments

Example: topographical or other maps

Example: Title searches

Example: Natural resource inventories

Example: Soil sampling

Example: Storage tank testing

Example: Professional services retained exclusively on behalf of the municipality to effectuate the acquisition of the real property

Example: Real estate taxes due and owing from the date of acquisition

4. Preservation of community character shall involve one or more of the following: (a) establishment of parks, nature preserves or recreational areas; (b) preservation of open space, including agricultural lands; (c) preservation of lands of exceptional scenic value; (d) preservation of fresh and saltwater marshes or other wetlands; (e) preservation of aquifer recharge areas; (f) preservation of undeveloped beachlands or shoreline; (g) establishment of wildlife refuges for the purpose of maintaining native animal species diversity, including the protection of habitat essential to the recovery of rare, threatened or endangered species; (h) preservation of pine barrens consisting of such biota as pitch pine and scrub oak; (i) preservation of unique or threatened ecological areas; (j) preservation of rivers and river areas in a natural, free-flowing condition; (k) preservation of forested land; (l) preservation of public access to lands for public use, including stream rights and waterways; (m) preservation of historic places and properties listed on the New York State register of historic places and/or protected under a municipal historic preservation ordinance or law; and (n) undertaking any of the aforementioned in furtherance of the establishment of a greenbelt.

The establishment of parks or recreational areas described in (a) above shall include outdoor active or passive recreation, as long as the recreational use is appropriate, permissible and not inconsistent with the purpose for which the property was acquired.

Any physical improvements to the property for active recreation including, but not limited to, an aquatic facility, sports fields, manicured park areas, fitness trails, restrooms and playgrounds, cannot be expensed to the CPF. Such capital projects are appropriate for a Town's general fund, capital bonding program, park district or other funding source.

Section 9(c) addresses allowable expenses to enhance access for passive use of open space.

The preservation of cultural resources, such as community theaters, community centers, art galleries, museums, bowling alleys and movie

theaters, is not included as a legitimate “preservation of community character” as defined by this statute.

In order to be eligible for CPF, real property must meet one of the 13 community character criteria set forth above. Land which preserves what could be considered “community character” in general is not sufficient to be eligible for CPF acquisition.

6. The Town Board of any town in the Peconic Bay region which has established a Community Preservation Fund shall, by local law, adopt a Community Preservation Project Plan. This plan shall list every project which the Town plans to undertake pursuant to the Community Preservation Fund. It shall include every parcel which is necessary to be acquired in the Town in order to protect community character. Such plan shall provide for a detailed evaluation of all available land use alternatives to protect community character, including but not limited to: (a) fee simple acquisition; (b) zoning regulations, including density reductions, cluster development and site plan and design requirements; (c) transfer of development rights; (d) the purchase of development rights; and (e) scenic and conservation easements. Said evaluation shall be as specific as practicable as to each parcel selected for inclusion in the plan. The plan shall establish the priorities for preservation and shall include the preservation of farmland as its highest priority. Funds from the Community Preservation Fund may only be expended for projects which have been included in said plan. Said plan shall be updated not less than once every five years, but in no event until at least three years after the adoption of the original plan. A copy of the plan shall be filed with the Commissioner of Environmental Conservation, the Commissioner of Agriculture and Markets and the Commissioner of the Office of Parks, Recreation and Historic Preservation. Said plan shall be completed at least sixty days before the submission of the mandatory referendum required by Section 1449-bb of the tax law. As part of, or in addition, to said Community Preservation Fund Project Plan, each Town Board may also adopt a Management and Stewardship Plan for interests or rights in real property acquired pursuant to this section. No monies from the fund shall be expended for management and stewardship, except as approved in said plan. Said plan may provide management and stewardship projects for up to a three year period and shall provide a description and estimated cost for each project. Said plan shall be approved and adopted by local law and may be updated from time to time at the discretion of the Town Board. Only management and stewardship projects permitted pursuant to Subdivision 9a of this section shall be eligible to be included in the plan.

1. A property must be included in the CPF Project Plan in order to be acquired with CPF monies. A property may be added to the Project Plan at any time subsequent to, and only after a public hearing on the matter. The public hearing must contain the rationale for including the parcel in the Project Plan and must identify the particular category of the preservation of community character set forth in Section 4.

Amendments to the Project Plan shall be forwarded to those individuals listed in section 6.

2. New land acquisitions must be added to the Management and Stewardship Plan after a public hearing on the matter and before monies from the fund are expended for stewardship and management of the land. This public hearing may be combined with the public hearing to acquire the property. The public hearing on the matter and inclusion in the Management and Stewardship Plan may occur at any time subsequent to acquisition of the land. If it can be determined at the time of inclusion, the source of funding for a stewardship project should be provided at the public hearing

9. Land acquired pursuant to this section shall be administered and managed in a manner which: (a) allows public use and enjoyment in a manner compatible with the natural, scenic, historic and open space character of such lands; (b) preserves the native biological diversity of such lands; (c) with regard to open spaces, limits improvements to enhancing access for passive use of such lands such as nature trails, boardwalks, bicycle paths, and peripheral parking areas provided that such improvements do not degrade the ecological value of the land or threaten essential wildlife habitat; and (d) preserves cultural property consistent with accepted standards for historic preservation. In furthering the purposes of this section, the Town may enter into agreements with corporations organized under the not-for-profit corporation law and engage in land trust activities to manage lands including less than fee interests acquired pursuant to the provisions of this section, provided that any such agreement shall contain a provision that such corporation shall keep the lands accessible to the public unless such corporation shall demonstrate to the satisfaction of the Town that public accessibility would be detrimental to the lands or any natural resources associated therewith.

The public use of a CPF parcel must be compatible with the specific purpose for which the land was acquired as set forth in the definitions of "community character" in section 4 herein and in a manner which meets the criteria above. Improvements to open spaces must be to enhance access for passive use.

Example: in reference to 9(c) above, a peripheral parking area does not include an entire parcel acquired with CPF monies to be improved entirely as a parking area unless the entire parcel is a single and separate tax map parcel which is adjacent to a larger tract of CPF land and functions as the peripheral parking area for the abutting preserved land and is considered merged with the larger protected parcel.

In reference to 9(d) above, preserving "cultural property consistent with accepted standards for historic preservation" is intended to include only

historic properties and places, specifically, historic archeological properties and places. The preservation of "cultural property," other than historic, is not permitted by the statute.

For purposes of this section, most properties acquired with CPF monies must be available for public access and enjoyment compatible with the property's characteristics. Public access may be denied if it can be demonstrated that public access could harm the property or its natural resources. Public access for lands encumbered with a conservation easement or agricultural development rights deed is not permitted unless specifically stated in the easement or deed.

Example: A wetlands parcel inundated with tidal wetlands is likely not an appropriate site for public pedestrian access.

Public access may also be denied if the Town determines that public access could threaten the health, safety and welfare of the public.

Example: An unsafe building or land condition may be fenced or otherwise have access prohibited to protect public safety.

Example: Access may be controlled by a physical barrier to prevent dumping and littering.

Example: Motorized access may be prevented due to the environmental sensitivity of the land

9-a. (a) Except for interests or rights in real property acquired for historic preservation purposes, management and stewardship projects shall be only expended for (1) projects which promote the protection or enhancement of the natural, scenic and open space character for which the interests or rights in real property were acquired, or (2) accessory uses related to the purpose for which the interests or rights in real property were acquired consistent with subdivision 9 of this section, or (3) restoration of acquired real property to its natural state, including the demolition of existing buildings and structures.

(1) Management costs for CPF properties must relate to the stated statutory purpose of the parcel acquisition.

Example: for a parcel acquired to protect wetlands, CPF monies cannot be expended to clear native vegetation of the property unless the removal is part of a restoration plan.

Example: Historic properties acquired in fee title cannot be used for other government functions or to house other governmental

departments or staff other than for Community Preservation Fund purposes.

Example: The cost of creation of an access road and peripheral parking area for a CPF parcel is an appropriate CPF management cost.

Example: The cost to manufacture signs for installation on CPF land is an appropriate cost.

Example: The purchase of fencing and gates is an appropriate cost.

Example: The cost for initial debris removal is an appropriate cost.

Example: Land clearing that facilitates the purposes delineated in Section 9 herein. For example, the clearing of invasive plant species and the re-grading of land in order to re-establish tidal wetlands is an appropriate cost, but the clearing and re-grading of land for the purposes of active recreational improvements, is prohibited.

Example: Costs associated with the removal of invasive plant species is an appropriate cost.

Example: The purchase and installation of native plant and shrubs as part of a restoration plan to establish a natural vegetative buffer adjacent to wetlands is an appropriate cost but the purchase and installation of native plant and shrubs to beautify an improved park area is prohibited.

The term "projects" set forth in 9-a(a)(1) above, shall include equipment (including vehicles and other motorized items), tools, supplies and staff necessary to accomplish the management and stewardship purpose for particular properties.

Any equipment, tools or supplies acquired with the Fund must be used exclusively for CPF stewardship and management.

Except for historic preservation properties, the improvement, repair, reconstruction or adaptive construction of buildings upon the CPF land shall not be expensed to the Fund.

9-a. (b) In the case of interest or rights in real property acquired for historic preservation purposes, funds may be expended only for the restoration and rehabilitation of buildings and structures consistent with accepted standards for historic preservation.

The New York State Office of Parks, Recreation and Historic Preservation has determined that projects are evaluated using the Secretary of the Interiors Standards for the Treatment of Historic Properties. These standards in conjunction with the Secretary of Interior's Standards for Rehabilitation (applicable to the federal tax credit program) are the accepted guidelines for historic preservation of CPF properties. (See Appendix)

Example: For a CPF property listed on the National Registry, State Registry or locally designated as historic, permissible CPF stewardship costs include matching funds for a restoration grant, cost of materials and labor, architectural and planning consultants and reports.

Example: Restoration and renovation of historic buildings shall not include the installation or maintenance of historic landscaping plants, hardscaping or the re-creation of the grounds at the time of historic significance.

Permissible CPF stewardship costs do not include costs associated with the modernization or adaptive re-use of historic structures.

Example: The following expenses incurred for an historic structure or property can be expensed to the CPF if they are part of the rehabilitation or restoration of the historic features of the historic property:

Group A(permissible from CPF)

Roof repair or replacement;
Repair or replace exterior siding;
Foundation repair;
Flooring repair or replacement;
Plaster/sheetrock repair or replacement;
Window/doors repair or replacement;
Framing work, sills, soffits, fascia, corner boards, trim, mouldings;
Historic consultant, architect, engineer costs;
Repair of driveway and parking area existing at time of acquisition;
Mandatory ADA-compliant structural modifications

Example: The following expenses incurred for an historic structure or property, can be expensed to the CPF at a rate equal to the total preservation cost multiplied by not more than 20%:

Group B (partially permissible from CPF)

Central air conditioning or heating components
Chimneys (existing)
Electrical wiring and lighting fixtures
Elevators
Escalators
Fire escapes
Plumbing and plumbing fixtures
Sprinkler systems

Total project costs will be derived from adding Group A and Group B expenses. Total project costs multiplied by no more than 20% is the amount of Group B expenses that may be expensed to CPF. Any amount beyond 20% must be paid from a funding source other than CPF. For example: Total Group A expenses = \$100,000 and Total Group B expenses = \$100,000 for a Total Project Cost = \$200,000. $20\% \times \$200,000 = \$40,000$. Therefore \$140,000 may be expensed to CPF and \$60,000 of Group B costs must be expensed to a fund other than CPF.

Example: The following expenses incurred for an historic structure or property cannot be expensed to the CPF:

Group C(not permissible from CPF)

Appliances
Cabinets
Carpeting
Computer, telephone or cable lines
Decks (not part of the original building)
Demolition costs (removal of a building on property site)
Enlargement costs (increase in total volume)
Fencing
Feasibility studies
Furniture
Landscaping
Moving (building) costs
Outdoor lighting remote from building
Parking lot
Patios
Paving
Permit fees or architect, engineering costs for adaptive re-use purposes
Planters
Porches and Porticos (not part of original building)
Retaining walls
Sidewalks
Signage

Storm sewer construction costs
Walkways
Window treatments

Group C expenses cannot be expensed to CPF and therefore are not considered in calculating the total project cost. Furthermore, Group C expenses cannot be considered when calculating a CPF match for a grant

Example: An historical property acquired with CPF cannot be used to house unrelated staff or be used for any purpose other than for which it was acquired consistent with Town Law 64-e. Such historical properties may only be used by a historical society or similar organization or CPF staff. The historic property must be open to the public.

9-a. (c) Expenses related to the customary operation and maintenance of acquired interests or rights in real property shall not be permitted from the fund.

“Customary operation and maintenance of acquired interests or rights in real property” does not include stewardship projects which protect or enhance the natural, scenic, or open space character for which the real property was acquired or projects which provide or sustain public access to the natural, scenic or open space character of the real property. (see 9-a(a)).

Example: stewardship work in furtherance of a wetlands restoration plan is a permissible expense to the CPF

Example: stewardship work based upon a multi-year invasive species removal and abatement plan is a permissible expense to the CPF

Example: “Customary operation and maintenance” includes but is not limited to routine grass mowing not related to a grassland or meadowland restoration plan, utility costs such as electric, heat, water or cable associated with CPF-acquired property, trash removal or the repair of a non-historic structure on CPF-acquired land

Example The costs of establishing a walking trail including the installation of a foot bridge, is permissible as well as the costs of upkeep of the walking trail and foot bridge.

- Example The removal of debris from acquired land is a permissible cost. The annual or recurring clean-up of the land is not a permissible expense to the CPF.
- Example In order for a natural resource stewardship project to be permissible, it must have a project purpose and duration which is supported by expert opinion.
- Example The installation and upkeep of an access road and parking area to improve and support access on CPF open space pursuant to Section 9 is a permissible expense to the CPF.

9-a. (d) Any project funded pursuant to this subdivision must have a useful life of five years or more under section 11.00 of the local finance law.

- Example: The installation of a wood informational kiosk which contains a trail map or other information relative to the open space it is installed upon and which enhances the public's access for passive use thereof, is permissible.
- Example: The purchase of a brush cutting mower for the exclusive use of trail work on CPF lands, is permissible provided such equipment has a useful life of at least 5 years.
- Example: The construction of a wood walkway which enhances the access to the open space for passive use, is permissible.
- Example: The construction of a restroom on the open space is not a permitted CPF expense as although it is a public amenity, it does not enhance the actual access to the open space as required by Section 9(c) .
- Example: The expense of a 4-wheel drive vehicle, truck or other off-road vehicle used exclusively for CPF purposes, is part of a management and stewardship "project" and is a permissible expense as equipment provided it has a useful life of 5 years.

9-a. (e) Any expenditure from the fund for a purpose other than that permitted herein shall be deemed to be prohibited.

Only those expenditures for purposes explicitly cited in the statute are permitted expenditures from CPF.

10. Rights or interests in real property acquired with monies from such fund shall not be sold, leased, exchanged, donated or otherwise disposed of or used for other than the purposes permitted by this section without the express authority of an act of legislature, which shall provide for the substitution of other lands of equal environmental value and fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by legislature. Nothing in this section shall preclude a town, by local law, from establishing additional restrictions to the alienation of lands acquired pursuant to this section. This subdivision shall not apply to the sale of development rights by a town acquired pursuant to this section, where said sale is made by a central bank created by a town, pursuant to a transfer of development rights program established by a town pursuant to section 261-a of this chapter, provided, however (a) that the lands from which said development rights were acquired shall remain preserved in perpetuity by a permanent conservation easement or other instrument that similarly preserves the community character referenced in subdivision four of this section, and (b) the proceeds from such sale shall be deposited in the community preservation fund.

This is the “alienation clause” of CPF which substantially disallows the transfer of rights or interests in real property acquired with CPF monies.

Example: A town may not lease a CPF-acquired property to an individual or entity for public or private purposes as a lease alienates certain rights and creates a possessory interest on the part of the leasee.

Example: A town may enter into a license agreement with a not-for-profit entity whose mission and purpose have a sufficient connection to the purpose for which the property was acquired, to manage or steward a CPF-acquired property or part of a property, provided the use directly relates to the purpose for which the property was acquired and the property is open and accessible to the public. A license agreement does not create a possessory interest in the rights or interests of real property.

Example: A town may enter into a license agreement with a local historical society permitting the society to manage and steward a historic building acquired with CPF monies, provided the property is open and accessible to the public.

Example: A town may not enter into a license agreement with a television station or library or other public or private entity whose use does not directly relate to the statutory purpose for which the property was acquired, to use a CPF parcel or occupy a structure located on a CPF-acquired parcel.

Example: A town may enter into a license agreement with an entity to manage a recreational use on CPF land, provided the recreational use was a stated purpose for which the property was acquired and such use is open and available to the public.

Example: A town may enter into a license agreement with an entity or individual to manage an agricultural use on CPF land, provided the agricultural use was a stated purpose for which the property was acquired.

This section excludes the sale of development rights by the Town acquired pursuant to this section from the alienation restrictions. Development rights acquired without fee title can be placed in a central bank and resold with proceeds to be deposited into the CPF. If a Town wishes to bank development rights it has acquired with the fee title of real property, the Town must set forth the number of development rights to be banked in the resolution authorizing acquisition of the real property.

13. The cost of employees and independent contractors to implement the provisions of this section may only be paid for by the fund where the duties and responsibilities of said employees and independent contractors are directly dedicated to implementing the provisions of this section. Where such employees and independent contractors are not exclusively dedicated to implementing the provisions of this section, no more than the cost of the actual time expended directly dedicated to implementing the provisions of this section may be charged. Such costs shall be expressly identified in the town budget and any plan adopted pursuant to this section before funds for such costs may be expended. In addition, such costs must be documented by a time accounting system, subject to audit.

Costs relating to the activities of elected officials implementing the purposes of this section may not be a charge to the fund.

Town staff may be paid by the CPF for work performed for CPF. Full time staff hours paid by CPF must be solely dedicated to the CPF program.

Any employee whose work time is not exclusively dedicated to CPF must be identified in the town budget and the Management & Stewardship Plan indicating employee costs chargeable to CPF.

The fringe benefits of Town staff whose annual work time is not exclusively dedicated to CPF, may only be expensed to CPF for that same percentage.

Example: A staff person spends 40% of her time performing CPF work during the calendar year. Up to 40% of her salary and fringe benefits may be expensed to CPF.