Preservation Restrictions and the Community Preservation Act (CPA)

Jess Phelps, Team Leader, Preservation Services
Historic New England
Defining the past. Shaping the future.
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The language of the CPA is untested with regard to some of these questions, so the conclusions herein are not definitive.
Topics

• Preservation Restrictions (PRs)
• Community Preservation Act
• Conditioning grant funds with PRs
• Acquisition of Real Property
• Acquisition of PRs
Preservation Restrictions/Easements

- Legal agreement between a property owner & easement holder to preserve the property by granting the holder a limited property interest
- Recorded with the deed & all future owners bound to agreement
- Improvements and repairs to the property require easement holder’s approval
- In event of violation, easement empowers easement holder to take action to enforce compliance
Protection of Significant Features: Potential Scope of Easements
Protected Interior Features
Historic New England’s Stewardship Easement Program

- Established 1981 to fill a regional need for an easement holding organization
- Four full-time staff to monitor easements
- Comprehensive easements (interior, exterior, and landscape)
- Willingness and resources to enforce against violations (legal defense fund)
- One of the few programs or organizations to take on the critical issue of preserving historic interiors.
90 Easements, 155 Buildings, 760+ Acres of Land
# Community Preservation Act

## Chart 1
COMMUNITY PRESERVATION FUND ALLOWABLE SPENDING PURPOSES (G.L. c. 44B, § 5)

<table>
<thead>
<tr>
<th></th>
<th>OPEN SPACE</th>
<th>HISTORIC RESOURCES</th>
<th>RECREATIONAL LAND</th>
<th>COMMUNITY HOUSING</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>DEFINITIONS</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>(G.L. c. 44B, § 2)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Land to protect existing and future well fields, aquifers, and recharge areas, watershed land, agricultural land, grasslands, fields, forest land, freshwater wetlands 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</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>ACQUISITION</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Obtain property interest by gift, purchase, devise, grant, rental, rental purchase, lease or otherwise. Only includes eminent domain taking as provided by G.L. c. 44B</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>CREATION</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>To bring into being or cause to exist.</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>PRESERVATION</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Protect personal or real property from injury, harm or destruction</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>SUPPORT</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Provide 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 entry that owns, operates or manages such housing, for the purpose of making housing affordable</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>REHABILITATION AND RESTORATION</strong></td>
<td>Yes if acquired or created with CP funds</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes if acquired or created with CP funds</td>
</tr>
<tr>
<td>Make 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</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
</tr>
</tbody>
</table>

**Source:** Community Preservation Coalition
Community Preservation Act and Privately-Owned Properties

DOR Opinion 2006-230:

“There is nothing in the CPA that prohibits the use of funds simply because the property is privately owned.”

In the case of [the property] we understand that the town will acquire a historic preservation restriction and the [private] organization must use the funds received in exchange to finance the rehabilitation. **In other words, it appears the town is receiving an interest in the property to ensure its investment of public funds benefits the public . . . .”**
Conditioning Funding on Grant of PR

- **Example: Falmouth’s CPC:**
  - The CPC reserves the right to require a historic preservation deed restriction as a condition of funding for historic preservation projects. The CPC determines the need for deed restrictions on a case by case basis. If a deed restriction is required, it will be noted under Special Conditions in the Letter of Agreement that is to be signed by the applicant and CPC prior to Town Meeting.
Conditioning Funding on Grant of PR: Unity Church, North Easton, Mass.

**TWO AMERICAN MASTERPIECES:**
La Farge Windows in North Easton, Massachusetts

by Robin Neely

“I have done the Ames window... and have suffered much from it”

By the time John La Farge wrote to his friend historian Henry Adams about the completion of the Angel of Help stained glass window for Unity Church in North Easton, Massachusetts, he was already considered one of America’s leading artists. Well known for works in painting, book illustration, stained glass, and murals, La Farge had just completed what a critic declared in the 1887 Art Review to be “the most elaborate window made in the United States.” What La Farge did not know is that this would be the first of two masterpieces he would create for the church, two important windows that would become the crown jewels in a small New England town already resplendent with architectural treasures.

Source: Stained Glass Magazine (Spring 2007)
A real property interest that is acquired with monies from the Community Preservation Fund shall be bound by a permanent restriction . . . limiting the use of the interest to the purpose for which it was acquired.

The permanent restriction shall run with the land and shall be enforceable by the city or town or the commonwealth.
Community Preservation Act – Section 12(a)

The permanent restriction may also run to the benefit of a non-profit organization, charitable corporation or foundation selected by the city or town with the right to enforce the restriction.

The legislative body may appropriate monies from the Community Preservation Fund to pay a non-profit organization . . . to hold, monitor, and enforce the deed restriction on the property.
Real Estate Acquisition – Keith Homestead
Keith Homestead, Bridgewater, Mass.
Keith Homestead, Bridgewater, Mass.
Lakeside Estates – The Proposed Subdivision

Source: Jennifer Goldson, JM Goldson Community Preservation & Planning
PROJECT STATUS – UNDER AGREEMENT

Town of Bridgewater, MA

Request for Proposals

Disposition of 515 Lakeside Drive
Historic Keith Homestead

August 14, 2013

PRESERVATION restriction AGREEMENT

SOCIETY FOR
THE PRESERVATION OF NEW ENGLAND ANTIQUITIES

The Parties to this Preservation Restriction Agreement (this "Agreement") are the SOCIETY FOR THE PRESERVATION OF NEW ENGLAND ANTIQUITIES, D.B.A. HISTORIC NEW ENGLAND, a Massachusetts charitable corporation having an address at Harrison Gray Otis House, 141 Cambridge Street, Boston, Massachusetts 02114-2702, (hereafter "Grantee") and the TOWN OF BRIDGEWATER, MASSACHUSETTS having an address at 25 South Street, Bridgewater, Massachusetts 02324 (herein together with their heirs, successors, administrators and assigns called "Grantor").

RECEITALS

Grantor is the owner in fee simple of certain property known as the Robert Keith House located at 515 Lakeside Drive, also known as Lots 1 and 2 on Farm House Lane, Bridgewater Massachusetts, consisting of approximately 2.55 acres of land, being more particularly described in Exhibit A attached hereto, together with all improvements thereon (the "Premises"). For Grantor’s title see Certificate of Title No. 116465 in Registration Book 582, Page 65 of the Plymouth County Registry District of the Land Court and that certain deed dated as of August 31, 2011, filed with said Registry District as document number 681425 with said Certificate (the "Deed"). The Premises are also shown in the photographs and diagrams attached as Exhibits B, C and D hereto. The building protected by this Agreement consists of the Robert Keith House (the "Robert Keith House") as labeled and more particularly shown in Exhibits B, C and D.

Grantee is a charitable corporation created in 1910 and exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code. By its Articles of Organization and By-Laws, Grantee is authorized to create, impose, accept and enforce preservation restrictions to protect sites and structures historically significant for their architecture, archaeology or other associations.
Keith Homestead, Bridgewater, Mass.
Direct Acquisition of Preservation Restrictions: Weston, Mass.
Process

• Selection Criteria
  – Historical Significance
  – Visibility from public way/visual prominence
  – Risk of loss/under current threat

• Discussions with owner

• Appraisal (CPC Administrative Funds)

• Town meeting vote

• Purchase and record restriction (with MHC approval)
Project Status

2003: 787 Boston Post Road, $155,000

2004: 809-11 Boston Post Road, $225,000

2007: 823 Boston Post Road, $250,000

2007: 412 Highland Street, $200,000

2011: 116-18 Conant Road, $250,000

2011: 171 North Avenue, $80,000

2012: 699 Boston Post Road, $225,000

2013: 88 North Avenue, $165,000

= $1,030,000

823 Boston Post Road, Weston, Mass.
171 North Avenue, Weston, Mass.
699 Boston Post Road, Weston, Mass.
118 Conant Road, Weston, Mass.
Community Preservation Act – Section 12(b)

Real property interests under this chapter shall be owned and managed by the city or town, but the legislative body may delegate management of such property to the conservation commission, the historical commission . . . .

The legislative body may also delegate management of such property to a non-profit organization . . . .
Co-Holding or Management of HPRs

• Potential options:
  – Co-grantee of easement
  – MOU with non-profit to monitor and enforce historic preservation restriction
Lessons Learned

• Think creatively about CPA and how to best protect your community’s built environment.
• Evaluate each project to determine which pathway will accomplish your goals.
• Towns do not have to necessarily acquire historic properties to prevent demolition or insensitive alteration.
• Consider non-profit easement-holders as can effectively manage risk, oversee rehabilitation efforts, and monitor and enforce the restrictions over time.