

# J M Goldson

community preservation  
+ planning

August 13, 2014

TO: Middleborough Community Preservation Committee  
FROM: Jennifer M. Goldson, AICP, JM Goldson community preservation + planning  
RE: **Review of Summer 2014 Pre-Applications**

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At the CPC's request, per its July 10, 2014 meeting, I have reviewed the pre-applications received by July 1, 2014 for eligibility. This review includes three pre-applications: (1) Acquisition of the Oliver Estate; (2) Nemasket Apartments Window Project; and (3) Robbins Museum Rehabilitation and Preservation Project. My findings are summarized below for your consideration. Please note that my findings are from the perspective of a professional planner and that I do not offer legal opinions.

## **(1) Acquisition of the Oliver Estate**

CPA Category: Historic Preservation, Open Space, and Recreation

CPA Funding Request: \$57,000 (Total Project Cost = \$544,000)

Project Purpose: To acquire the 54-acre Oliver Estate, which includes an historic house, carriage house, and barn.

Based on the information provided in the pre-application as well as further verbal information at the July 10 CPC meeting, the Oliver Estate acquisition project appears eligible for CPA funds. There are three primary components required to determine eligibility for a project of this sort per the CPA statute (MGL c.44B) - compliance with resource definitions, eligible purposes, and permanent deed restrictions.

### Section 2 - Resource Definitions

**Historic Resources:** Resource(s) must be listed on the State Register of Historic Places or determined to be significant by the local historic commission. A portion of the proposed acquisition area is within the Muttock Historic and Archeological District, listed on the State and National registers of historic places. The acquisition area is also part of the Peter Oliver Jr. - Sprout House estate that is also listed on the State and National registers. Therefore, the property appears to comply with the definition of an historic resource per the CPA statute.

**Open Space Resources:** Eligible resources can include protection of forest land, river frontage, and land for wildlife [habitat]. The Oliver estate has woodlands that are predominantly dry and flat with many mature trees, close to 4,000 ft. of frontage on the north side of the Nemasket River, and portions of the property that are mapped as Priority Habitat/Estimated Habitats for Rare Wildlife and as BioMap2 Core Habitat. Therefore, the property appears to comply with the definition of an open space resource per the CPA statute.

**Recreation Resources:** Recreational use includes passive recreational use. The proposal, as stated at the July 10 CPC meeting, includes development of trails and canoe access to the Nemasket River. Therefore, the proposal appears to comply with the definition of recreational use.

### Section 5(b)(2) - Eligible Purposes

The CPA statute permits the CPC to make recommendations for specific purposes under each of the CPA categories including acquisition of historic resources, open space resources, and land for recreational use.

This project appears to comply with the eligible purpose of acquisition under each of these three categories.

Section 12(a) - Permanent Deed Restrictions

A real property interest that is acquired with CPA funds must be bound by a permanent restriction limiting the use of the interest to the purpose for which it was acquired and must meet the requirements of MGL c.184. The restriction may run to the benefit of a nonprofit corporation, charitable corporation, or foundation. The proposed acquisition, as described verbally at the July 10 CPC meeting, will include the execution of a Conservation Restriction, which may be held by MA Dept. of Fish and Game or Wildlands Trust of Southeastern MA, and a Preservation Restriction for the portion of the property with the historic Oliver house and outbuildings, which may be held by The Trustees of Reservations. Such restrictions would be executed at closing. Therefore, the proposal appears to comply with the requirement for permanent restrictions.

**(2) Nemasket Apartments Window Project**

CPA Category: Community Housing

CPA Funding Request: \$25,000 (Total Project Cost = \$71,960)

Project Purpose: To preserve community housing at the Middleborough Housing Authority's Nemasket Apartments.

Based on the information provided in the pre-application, the Nemasket Apartments Window Project appears eligible for CPA funds. There are two primary components required to determine eligibility for a project of this sort per the CPA statute - compliance with resource definitions and eligible purposes.

Section 2 - Resource Definitions

Community Housing: The CPA statute defines community housing as housing for low and moderate income individuals and families, including low and moderate income senior housing. Low-income housing is defined as housing for households with incomes less than 80% of the Area Median Income (AMI) as defined by US Dept. of Housing and Urban Development (HUD). Moderate-income housing is defined as housing for households with less than 100% AMI, as defined by HUD. The Nemasket -1 Apartments consist of 40 units designated for low-income senior and disabled housing and therefore appears to comply with the statutory definition of community housing.

Section 5(b)(2) - Eligible Purposes

The CPA statute permits the CPC to make recommendations for specific purposes under each of the CPA categories including preservation of community housing. Note that rehabilitation of community housing is only permitted for housing that is acquired or created with CPA funds. This project appears to comply with the eligible purpose of preservation of community housing due to the necessity of window replacements to ensure water tightness of the housing. (See attached 5/30/13 memo from Lizbeth Heyer, DHCD.)

**(3) Robbins Museum of Archaeology Rehabilitation and Preservation Project**

CPA Category: Historic Preservation

CPA Funding Request: \$15,000 (Total Project Cost = \$45,000)

Project Purpose: To undertake building rehabilitation for the purpose of preservation of significant archaeological collections.

Based on the information provided in the pre-application, the Robbins Museum of Archeology Rehabilitation and Preservation project may be eligible for CPA funds with the resolution of issues as described below. There are three primary components required to determine eligibility for a project of this sort per the CPA statute - compliance with resource definitions, eligible purposes, and public benefit.

Section 2 - Resource Definitions

Historic Resources: The definition of historic resources includes artifacts that are listed on the state register of historic places or have been determined by the local historic preservation commission to be significant in the history, archaeology, architecture or culture of the town. According to the Massachusetts Historical Commission

(per phone conversation with Michael Steinitz on 8/13/14) archeological artifacts (that are not located at an archeological site) are not included on the state register.

**Therefore, for the collections to comply as historic resources per the CPA statute, the applicant would need to secure a letter from the Middleborough Historical Commission stating that the Robbins collections are significant as required by Section 2.**

Section 5(b)(2) - Eligible Purposes

The CPA statute permits the CPC to make recommendations for specific purposes under each of the CPA categories including preservation of historic resources. Assuming that a determination of local significance by the Historical Commission is secured for the collections, as described above, this project appears to comply with the eligible purpose of preservation of historic resources. The preservation of the collections would result from the rehabilitation of the building and grounds to prevent moisture seepage, which affect the environment of the collection display and storage areas, and improve security.

However, the proposal includes rehabilitation of the c.1910 Robbins Museum building that may not fully comply with the Secretary of Interior Standards for the Treatment of Historic Properties (as required per Section 2, definition of "Rehabilitation").<sup>1</sup> According to documentation on the Massachusetts Cultural Resource Information System, the building that houses the Robbins Museum is listed on the National Register of Historic Places as a contributing property to the Middleborough Center Historic District.<sup>2</sup> Resources that are listed on the National Register (individually or as contributing to a district) are also listed on the State Register and, as such, the building is an historic resource per requirements of the CPA statute. The scope of work includes replacing 38 windows with new windows, enclosing 19 windows on the first floor, replacing doors with steel doors, and replacing exterior siding with new siding.

**The significance and condition of the existing windows, doors, and siding will need to be established as well as an evaluation of the proposed replacement items' design and materials to determine compliance with the Secretary of the Interior Standards.**

Public Benefit

The legal record owner of the subject property is the Massachusetts Archaeological Society, Inc., which is a private non-profit organization. The CPA statute does not prohibit use of CPA funds for projects on privately-owned property, however, under the Anti-Aid Amendment to the MA Constitution, public money cannot be used to further a private purpose. To be eligible for CPA funds, a project on private property must advance a public purpose. Since the museum is open to the public, the expenditure of CPA funds may be considered a legitimate public purpose (*Helmes v. Commonwealth*, 406 Mass. 873), however it is common for CPCs to require the execution of a preservation restriction or public access easement to further demonstrate public purpose. This is similar to the CPA-funded project at the Middleborough Historical Association Mill House Buildings where the Association is required to grant a public access easement to the Town as a condition of CPA funding.

**Therefore, the applicant may consider granting a preservation restriction or public access easement to the Town to further demonstrate public purpose.**

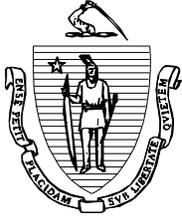
I am scheduled to meet with Suanna Crowley at the Robbins Museum on 8/14/14 to review the scope of work and expect to report verbally to the CPC at its meeting that evening.

Please don't hesitate to contact me directly with any questions at 617-872-0958 or [jennifer@jmgoldson.com](mailto:jennifer@jmgoldson.com).

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<sup>1</sup> Per a phone conversation with Kathy Roth, Community Preservation Coalition, on 8/13/14, the Coalition concurs that a CPA-funded rehabilitation of the building, since it is an historic resource, be in compliance with the Secretary of Interior Standards.

<sup>2</sup> Note: The National Park Service nomination form lists the property as "7 Jackson Street, Industrial Building, now Robbins Museum of Archeology (ca 1900): a 3-story end-gable-roof aluminum-sided building."



Commonwealth of Massachusetts
DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT

Deval L. Patrick, Governor ♦ Timothy P. Murray, Lt. Governor ♦ Aaron Gornstein, Undersecretary

Redacted header information

To: All Local Housing Authorities
From: Lizbeth Heyer, Associate Director
Division of Public Housing and Rental Assistance
Re: Utilization of CPA Funds for Preservation of Existing Public Housing Units
Date: May 30, 2013

Many Housing Authorities have inquired about the potential for using Community Preservation Act ("CPA") funding for work on existing public housing units, and some confusion on this topic exists among municipalities. DHCD has reviewed the CPA statute as it applies to such work and is providing this notice to help clarify the type of activities that it believes would be appropriate for CPA funding and those activities that would not be appropriate. Please note that this guidance is advisory in nature and is not binding on your community.

Section 5(b)(2) of the Community Preservation Act, MGL chapter 44B, provides that community preservation funds may be utilized "for the acquisition, creation, preservation and support of community housing .... provided, however, that funds expended pursuant to this chapter shall not be used for maintenance." State public housing meets the definition of "community housing", namely, "low and moderate income housing for individuals and families, including low or moderate income senior housing."

It is important to note that both the recreational use and historic preservation provisions of the CPA provide for "rehabilitation" of those resources with CPA funds, the former through a CPA amendment signed into law in 2012. However "rehabilitation" of "community housing" is not a permitted use of CPA funds. The legislature's original intent for CPA was to spur the creation of additional affordable housing units in the Commonwealth, and with that in mind, CPA was passed with a specific prohibition on rehabilitation activities on existing community housing units (unless those units were acquired or created with CPA funds).

While activities classified as "rehabilitation" are not allowed, "preservation" work on existing community housing resources is allowed. In general, work that protects the housing structure (not residents) from future injury, harm or destruction is permitted under CPA.

### **Preservation Activities (appropriate for CPA funding)**

Preservation is defined in Section 2 of the CPA as “protection of personal or real property from injury, harm or destruction.” The following is a partial list of activities related to existing community housing units that DHCD believes could be classified as “preservation” and funded by CPA monies:

- Building envelope and site work to preserve the structural integrity of the housing
- Roof, siding and window replacements to assure the water tightness of the housing
- Upgrading of dangerous electrical or plumbing services
- Replacement of dangerous building systems which threaten the housing units
- Installation of hard-wired smoke alarms, sprinklers and other building fire suppression systems

### **Rehabilitation Activities (not allowed with CPA funding)**

Rehabilitation is defined in Section 2 of the CPA as “capital improvements, or the making of extraordinary repairs, to...community housing for the purpose of making such...community housing functional for their intended uses, including, but not limited to, improvements to comply with the Americans with Disabilities Act and other federal, state or local building or access codes.” The following is a partial list of activities that DHCD believes do not rise to the level of “preservation,” but are more properly described as “rehabilitation” and therefore not appropriate for CPA funding:

- Replacement of kitchen cabinets
- The installation of more energy efficient windows (if not necessary to assure the water tightness of the housing), building systems (if not necessary to assure the ongoing safety of the building) or appliances.
- Improvements solely needed to comply with ADA and other federal, state or local building or access codes
- Installation of generators primarily for the comfort and safety of residents in power outages
- Repaving or repair of parking lots and walkways

### **Maintenance Activities (not allowed with CPA funding)**

Maintenance is defined in Section 2 of the CPA as “incidental repairs which neither materially add to the value of the property nor appreciably prolong the property’s life, but keep the property in a condition of fitness, efficiency, or readiness.” The following is a partial list of common maintenance activities which would not be appropriate for CPA funding:

- Outside landscaping or tree work
- Cleaning services or other ongoing services to the housing units

- The painting and refinishing of walls and floors

### **Mixing CPA funding with other sources of funding**

In some cases a housing authority may wish to pursue modernization projects that include both preservation work allowed by the CPA (for example, the replacement of deteriorated and leaking siding), and other work that does not meet the preservation standard (for example, exterior wall insulation). Such projects are acceptable as long as the LHA tracks the cost of the allowable scope through a reasonable means of cost estimating, and only uses CPA funding for the allowable portion of the project cost. Applicable soft costs should be fairly apportioned. The balance not covered by CPA funds may be funded by Formula Funding, operating reserves (if approved), or other allowable sources.