

MEMORANDUM

To: Acton Community Preservation Committee ("CPC")

From: Stephen D. Anderson and Mina S. Makarious
ANDERSON & KREIGER LLP

Re: Acton/CPA - Allowable Uses of CPA Funds for FY 2015 Appropriations (for consideration at 2014 Annual Town Meeting) (Vol. III)

Date: November 22, 2013

You have asked us to review the Community Preservation Act ("CPA") funding applications for FY 2015 appropriation, and have requested our opinion as to whether these proposals are eligible for funding under the CPA. This memorandum analyzes the following pending proposals for CPC consideration:

- **1.¹ Morrison Farm Improvements-Historic Foundations, Pond Trails, Parking**
- **14. Morrison Farm Community Garden Well & Irrigation**
- **12. NARA Park Improvements**

As amended in 2012, the CPA permits municipalities to use CPA funds for the following purposes (G. L. c. 44B, § 5(b)(2)):

- (a) acquisition, creation and preservation of open space;
- (b) acquisition, preservation, rehabilitation and restoration of historic resources;
- (c) acquisition, creation, preservation, rehabilitation and restoration of land for recreational use²;
- (d) acquisition, creation, preservation and support of community housing; and
- (e) rehabilitation and restoration of open space and community housing that is acquired or created using monies from the fund; provided, however, that funds expended pursuant to this chapter shall not be used for maintenance.

¹ The application numbers used in this memorandum reflect those on the CPA Project Applications List 2014 (<http://doc.acton-ma.gov/dsweb/Get/Document-39999/CPA%20Project%20Applications%20List%202014.pdf>). We did not have this list when preparing the first two volumes of recommendations and therefore did not use this numbering system.

² The statute was amended again, effective February 2013, to allow the use of community preservation funding for the acquisition of artificial turf for athletic fields where the project to acquire such artificial turf was approved prior to July 1, 2012. G. L. c. 44B, § 5(b)(2) (as amended by St. 2013, c. 3, § 5).

CPA funds cannot be expended for maintenance under any circumstances.

The following table provides a helpful summary of these purposes:

	Open Space	Historic Resources	Land for Recreational Use	Community Housing
Acquisition	√	√	√	√
Creation	√	-	√	√
Preservation	√	√	√	√
Rehabilitation	®	√	√	®
Restoration	®	√	√	®
Support	-	-	-	√
Maintenance	-	-	-	-

® = If acquired or created using CPA funds.

Proposal 1. Morrison Farm Improvements-Historic Foundations, Pond Trails, Parking
[YES]

The Morrison Farm Committee (“MFC”), on behalf of the Board of Selectmen, requests \$416,500 for various improvements to Morrison Farm. As explained in our FY 2014 recommendations, the farm is a 32-acre property located between Ice House Pond and Woodland Cemetery, both Town-owned properties. The rear of the property is wooded and interlaced with walking trails. The front of the property contains open fields with a farmhouse, garage, barn and three out buildings.

Project Overview

The requested funding would be used for a subset of the Morrison Farm Implementation Plan (the “Plan”) discussed in our recommendations regarding the MFC’s FY 2014 application, as follows:

- (1) Survey of the Robbins Homestead and Ice House Foundation at the Farm;
- (2) Stabilization of the Robbins Homestead cellar hole;
- (3) Creation of a new handicap-accessible trail along the west side of Ice House Pond;
- (4) Creation of a picnic area near the Ice House trailhead; and
- (5) Creation of an improved parking lot at Ice House Pond.

The Plan addresses several CPA categories –with many of the elements fitting into more than one category of historic, open space and recreational land uses. Each category is addressed below.

- **Historic.** Features involving historic resources in this year’s proposal include (1) the survey of the Robbins Homestead and Ice House Foundation; and (2) the stabilization of the Robbins Homestead cellar hole. The Robbins Homestead and the Ice House Foundation (as well as the farm itself) are included on the Acton Historical

Commission's Cultural Resource List.³ The Acton Historical Commission ("AHC") has also issued a letter in support of the proposal."⁴

- Ice House. The Ice House is an important location in the history of the town.⁵ The project proposes that an archeologist be retained to survey the Ice House foundation, including marking it with posts or other landscape elements to delineate the volume of the former structure. The survey work would also be documented through an historic inventory form to be filed with the Massachusetts Historical Commission and the AHC. Following the archeological survey, the walls would be flushed to finish grade. A future project may include creation of an informational kiosk with historical photos of the structure.
- Robbins Memorial. The current memorial, which commemorates Captain Joseph Robbins and the start of the American Revolution, contains a small rock with a plaque, a cellar hole currently filled with bittersweet and other noxious weeds, and a well. Despite the historical importance of this site, very few individuals visit the area. Under the supervision of the Massachusetts Historical Commission, and in coordination with the AHC, an archaeologist would complete a survey and the work would be documented in an historic inventory form. A future project would include hiring masons to refurbish and stabilize the cellar hole and an information kiosk installation to explain the relevant Revolutionary War events, outline the Robbins Home site and explain the importance of the Robbins family in Acton.
- **Open Space and Recreational.** In addition to those activities discussed in this year's proposal and below, the Committee envisions the whole of Morrison Farm to be available for both active and passive recreational opportunities.⁶
 - Trails and Boardwalk. The MFC proposes the creation of an ADA-accessible trail that would run along the west side of Ice House Pond, allowing visitors to enjoy the wildlife and vistas of the pond. Included in this work are walking paths along the west side of the pond from the trailhead at the lower parking lot, two small boardwalk crossings over seasonable sheet flow run offs, and a 680-foot

³ The Cultural Resource List was not included in the application, but it is available to the public at this address: <http://www.acton-ma.gov/DocumentCenter/Home/View/373>.

⁴ Letter from William A. Klauer, Chair Historical Commission, to Community Preservation Committee (Nov. 9, 2013) (Attachment E to the Morrison Farm application). The AHC has noted that, although it is providing the letter of support it has "not inspected the applications to ensure that the specifics" of the Robbins House and Ice House foundation restorations "attain the criteria of the Secretary of the Interior's preservation standards."

⁵ The Ice House, located to the east of Morrison Farm, was originally used as a saw mill in the 1750s, but was converted into an Ice House in 1856. The foundation which remains dates back to 1932.

⁶ The Plan takes into account planning documents such as the Open Space and Recreation Plan and Acton 2020, by providing facilities that are up to date, accessible and address the needs of underserved populations. The Recreation Department, for example, is investigating methods for providing therapeutic, inclusive and adaptive recreation opportunities.

boardwalk that will extend over a marsh area at the northern edge of Ice House Pond. These new paths would support and encourage use on the current trails that exist in the white pine forest.

- Parking Improvements and Picnic Area. The Plan anticipates an increase in park use, and therefore, requested funds to expand the parking areas at Morrison Farm. In this year's proposal, the MFC proposes to retain the footprint of the existing Ice House parking lot, but reconfigure its shape to accommodate 15-20 vehicles. The boat launch in this area will also be refurbished and new signs installed to welcome visitors to Morrison Farm and direct them to walking trails and historic sites. A small picnic area will also be included adjacent to the parking area.⁷

CPA Defined Terms

The following definitions apply under the CPA, G.L. c. 44B, § 2, with respect to this project:⁸

- “Historic resources” means “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.”
- “Open space” means “but not be limited to . . . agricultural land, grasslands, fields, forest land , fresh and salt water marshes and other wetlands, . . . lake and pond frontage, . . . lands to protect scenic vistas, land for wildlife or nature preserve and land for recreational use.”
- “Preservation” means “protection of . . . real property from injury, harm or destruction.”
- “Recreational use” means, “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...”
- “Rehabilitation” means “capital improvements, or the making of extraordinary repairs, to historic resources, open spaces, lands for recreational use . . . for the purpose of making such historic resources, open spaces, lands for recreational use . . . 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; provided, that with respect to historic resources, ‘rehabilitation’ shall comply with the Standards for Rehabilitation stated in the United States Secretary of the Interior’s Standards for the Treatment of Historic Properties codified in 36 C.P.R. Part 68; and provided further, that with respect to land for recreational use, ‘rehabilitation’ shall include the replacement of playground equipment and other capital improvements to the land or the facilities thereon

⁷ As explained with respect to the FY 2014 proposal, in 2007, the East Acton Village Planning Committee received funds to improve the East Acton Village Green. Additionally, the Bruce Freeman Rail Trail system will eventually pass directly by Morrison Farm. This could put a strain on the parking spaces available. Signage would be posted to prevent “packing” of the lots.

⁸ “Creation” and “restoration” are not defined in G.L. c. 44B, § 2.

which make the land or the related facilities more functional for the intended recreational use.”

Findings

The portions of the Plan proposed for FY 2015 CPA appropriations advance the following purposes of the amended CPA:

1. Acquisition, creation and preservation of open space;
2. Acquisition, preservation, rehabilitation and restoration of historic resources; and
3. Acquisition, creation, preservation, rehabilitation and restoration of land for recreational use.

The Plan will preserve open space, including a white pine forest, wet meadow, and open hayfield, and the ADA-accessible boardwalks will protect these areas by preventing visitors from trampling the fragile ecosystem, especially the marsh area.

The Plan will preserve, rehabilitate and restore historic resources, including the Ice House Foundation and the Robbins Memorial and Homestead, which qualify as historic resources under the CPA because they are included on Acton Historical Commission’s Cultural Resource List. The proposed work, including the archeological survey and refurbishment and stabilization of the cellar wells, constitutes preservation of and “extraordinary repairs” to historic resources. Informational kiosks, signage, and improved parking will render these historic resources more accessible, promote a greater respect for this area’s rich history, and further the purpose of preserving the resources themselves. To the extent applicable, the CPC should require that any rehabilitation work on the historical resources comply with the Standards for Rehabilitation codified in 36 C.P.R. Part 68.

The proposal will also preserve, rehabilitate and restore land for recreational use. The proposal will make capital improvements to the land by installing ADA-accessible boardwalks and picnic space, refurbishing the boat launch and reconfiguring the parking areas. These improvements will create year-round recreational opportunities. The CPA defines recreational uses to include, without limitation, “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,” so these improvements qualify for CPA funds. Further, the reconfiguration of the parking areas is a “capital improvement” which increases the functionality of the recreational areas.⁹

⁹ The MFC’s FY 2014 proposal raised issues regarding the use of CPA funds for the Morrison Nature & History Center, the potential demolition of the barn at Morrison Farm, and the balancing provisions of CPA expenditures in G.L. c. 44B, § 6 given the size and complexity of the project as proposed last year. Those issues are not presented in the current proposal. To the extent those issues arise in connection with the FY 2015 proposal, please refer to our FY 2014 recommendation.

Proposal 14. Morrison Farm Community Garden Well & Irrigation [YES]

The Recreation Commission requests \$20,000 to install a private water well and irrigation system to deliver water to plots in the Morrison Farm Community Garden and a 200 amp electrical service to operate the well. The actual cost of the project is \$23,249, with \$3,249 offset by funding from the Recreation revolving fund. A portion of the revolving fund amount will come from annual Community Garden rental fees.

The Plan (described in connection with Proposal 1 above) proposes preserving farming at the site in the form of 41 organic community garden plots and an active orchard. Due to the high demand for municipal water and the current restriction on using hoses to water gardens, the MFC determined it would be beneficial to have a water source for the Community Gardens independent from the municipal water supply. The Recreation Commission consulted with the Acton Water District, which recommended use of an independent well. The Recreation Commission believes such a well would be a cost-effective and reliable water supply alternative for the community gardens compared to more expensive treated municipal water.¹⁰

The CPA defines recreational uses to include, “the use of land for community gardens.” It defines rehabilitation to include, “capital improvements, or the making of extraordinary repairs, to...lands for recreational use . . . for the purpose of making such...lands for recreational use . . . functional for their intended uses.” The improvement to the on-site water system to service the community gardens is a capital improvement benefitting a statutorily enumerated recreational use to make it more functional for its intended use and therefore qualifies for CPA funds.

Proposal 12. NARA Park Improvements [YES]

The Recreation Commission requests \$47,474 for the following improvements at NARA Park:

- Purchase and installation of additional shade structures (\$8,668);
- Replacement and delivery of two canopy tents in the picnic area (\$17,565.75);
- Purchase of components for the NARA elevated stage in the NARA amphitheater (\$14,375); and
- Bathhouse security upgrades (\$6,505).

CPA funding may be used for the “acquisition, creation, preservation, rehabilitation and restoration of land for recreational use.” The following definitions apply under the CPA:

- “Maintenance” means “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.”
- “Preservation” means “protection of personal or real property from injury, harm or destruction.”

¹⁰ The Recreation Commission notes that despite the new water supply, water conservation will continue to be practiced at Morrison Farm in keeping with the Community Gardens’ emphasis on sustainability.

- “Recreational use” means “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.”
- “Rehabilitation” means “capital improvements, or the making of extraordinary repairs, to ...lands for recreational use...for the purpose of making such...lands for recreational use 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;...and provided further, that with respect to land for recreational use, ‘rehabilitation’ shall include the replacement of playground equipment and other capital improvements to the land or the facilities thereon which make the land or the related facilities more functional for the intended recreational use.”

Each of the four proposed improvements to the park qualifies for funding as rehabilitation of lands for recreational use.

The purchase and installation of shade structures is a “capital improvement” which makes the park functional for its intended use. The shade structures will be installed on the NARA beach and the children’s playground. Each is being placed in response to comments from park users that such shade structures are necessary for enjoyment of the park in the summer. The shade structure in the playground area may also qualify for funding under the express definition of “rehabilitation” as including “the replacement of playground equipment.” Although not traditional “playground equipment,” the tents make the “land or the related facilities more functional for the intended recreational use.”

The picnic area tents serve a similar purpose. As the Recreation Commission explains, new tents are necessary because the existing tents have “reached the end of their useful life.” The tents serve the important functional purpose of shade for NARA Camp activities and generate rental income which supports the park. The picnic area tent replacements may also be funded as “preservation.” The Recreation Commission reports that the tents “may no longer be serviceable or safe once dismantled to make room for the construction of the permanent Picnic Pavilion.”¹¹ In addition, given the size of this expenditure and the tents’ importance to the park’s operations, the replacement tents are not merely purchased as part of normal “maintenance,” but are capital improvements that “materially add to the value of the property.”

The NARA stage components are part of a “capital improvement” that makes the amphitheater portion of the park functional for its intended use. In addition, some of the funds for this portion of the project will be used to obtain an ADA compliant ramp, which qualifies for funding as an “improvement[] to comply with the Americans with Disabilities Act and other federal, state or local building or access codes.”

While a closer call than the other three elements of the proposal, the Bathhouse is an important element of the recreational use of the Park, and upgrading its security is likely eligible for

¹¹ Although the tents will be relocated when the permanent Picnic Pavilion is complete, they will be relocated to other areas of the park and will continue to serve the Park’s functionality.

Acton Community Preservation Committee
November 22, 2013

funding as “rehabilitation” of the lands for recreational purposes. As explained in the proposal, NARA Park derives income from and in support of its operations. The security upgrades are a “capital improvement” that makes the Bathhouse and therefore the Park more functional for its intended purpose by protecting Park activities from future break-ins.