

**Peconic Bay Community Preservation Fund**  
**Advisory Opinion**  
**Historic Preservation Acquisition and Use Policy**

**Advisory Opinion 2016-10**

**Issued December 19, 2016**

**Opinion Requested By:** Town of East Hampton

**Issue Presented:** The Town of East Hampton requests guidance on the general policy of acquisition and use of historic preservation properties.

**Sections of Law:** Town Law, Section 64-e

**A. General Discussion**

State Town Law, Section 64-e (4)(m) provide that “the 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” are within the definition of “community character” and therefore are properties that are eligible for acquisition under the Community Preservation Fund. The key requirement for acquisition is that the property be designated as an historic place or property by either state or local government.

State Town Law, Section 64-e (9) speaks to the use of historic properties or places acquired by the CPF. In part the statute states:

9. Lands 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; .....and (d) **preserves cultural property consistent with accepted standards for historic preservation.**

State Town Law, Section 64-e (9-a) also makes provisions for the use of “stewardship funds to restore or rehabilitate historic places or properties: In part the statute states:

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

## **B. Recommended Policies**

1. The first determination that should be made with regard to preservation of a place or property for historic preservation is whether the state or local government has designated the property or place as “historic” under applicable state or local law. If so, the property or place is eligible for acquisition. If not, such property or place cannot be acquired under the category of historic preservation.
2. If the property or place is eligible for acquisition for historic preservation purposes, the property or place must be included in the Town’s CPF Project Plan under the procedures provided for under State Town Law, Section 64-e (6). **The CPF Project Plan is the key document providing the basis for acquisition and the future use of an historic property or place.**
3. **The plan should outline, in detail, why the property is historically significant, including its historic use and ownership (e.g. (i) private residence with architecturally significant features or (ii) a village hall or green that was used as a public meeting place.**
4. An affirmative finding should be made **before** acquisition as to whether a property is appropriate for “public use and enjoyment”.
5. The determination as to “public use and enjoyment” should be the major factor in determining the appropriate interest in the property or place that needs to be acquired.
6. **If there is no finding that “public use and enjoyment” is appropriate, the local government should acquire a lesser interest in the property such as a façade easement, or other lesser interest that is necessary to protect the historic significance of the property.**

7. **If it is found based upon the history of the property, that there is an opportunity for “public use and enjoyment”, then the town may find that fee title acquisition is appropriate so as to permit such public use and enjoyment.**
8. At the time of acquisition, where the fee is acquired and public use is to be permitted, the Town shall prepare and adopt a Management Plan for the property that outlines the rules and regulations for public use and enjoyment of the property. In said Plan, the Town must clearly identify an outside source of non-CPF funding which will be utilized for ongoing operation and maintenance.
9. Any modifications of the Management Plan modifying the rules for public use and enjoyment shall be accomplished as a change to the CPF Project Plan and shall require a public hearing.
10. Stewardship funds for historic restoration or rehabilitation may only be utilized for property and places which are owned in fee by the Town. The use of stewardship funds shall be consistent with State Town Law 64-e, all local laws adopted pursuant to said state law, and previously approved policies adopted by the Town for the use of stewardship funds on historic properties and places.

#### **C. Historic Properties and Places Already Acquired by the Town**

1. Where the Town already owns an historic property or place in fee which was purchased with CPF funds and the Town has not (a) made a determination that “public use and enjoyment” is appropriate, or (b) approved a management plan for such a property, or (c) established rules and regulations for the public use and enjoyment of such a property, the Town shall utilize the procedures of this policy before permitting public use and enjoyment.
2. The Town shall amend its CPF Project Plan to authorize public use of such historic property or place. A public hearing shall be required.
3. The Town shall make a finding that public use and enjoyment for such property is appropriate.
4. The Town shall approve a management plan for the property or place.
5. The Town shall approve rules and regulations to administer the public use and enjoyment of the property.

#### **D. Revenues**

1. Finally, when CPF historic preservation properties are utilized for public use and enjoyment, it is possible and most probable that the properties may generate revenue for the Town, such as through a license agreement for the use of the property.
2. This raises the question as to the disposition of such revenues.
3. The state statute does not deal directly with this issue. The statute does require that when CPF lands are alienated or when development rights from CPF lands are disposed of that any revenues in such cases be deposited back in the CPF Fund.
4. In addition, it has been the policy when CPF acquired agricultural lands owned by a town are licenses for use by a farmer, the proceeds are also deposited in the CPF fund.
5. In addition, CPF stewardship money is statutorily permitted to be expended for the restoration or rehabilitation of historic properties.
6. Given this legislative history and established policies, it is our opinion that any revenues so generated by historic properties should be used to meet the intent and policy of the statute with regard to historic preservation. In the first instance, such revenues may be utilized to benefit the historic CPF property where they were generated. Absent such utilization, such revenues shall be returned to the CPF Fund.
7. Where revenues generated at an historic property by the Town are used to benefit said property, such revenues shall be segregated by the Town for stewardship and management of that property.
8. The Town, pursuant to a license agreement, may provide that such revenues may be retained and utilized by the licensee for the stewardship and management of the property, consistent with the stewardship and management plan for such property.
9. The licensee for any CPF historic property shall only be a not-for-profit entity where the purpose historic preservation is expressly stated as one of the purposes of the entity.
10. All revenue generating activities at a CPF historic property shall be uses which are consistent with the historic use of the property as stated in the CPF project plan (e.g. where a CPF historic property has historically been utilized as a fairgrounds, its continued use would be permissible. Where a property was listed as historic as a renowned artist's studio, its use for cultural activities related to the arts would be permissible, however a carnival would not be compatible).
11. All revenue generated at CPF historic properties by a licensee shall be subject to audit or other such similar controls determined to be necessary by the Town to insure such revenues are generated and utilized consistent with the law, rules, and policies governing the CPF.
12. Any funds not devoted to the stewardship and management to the specific CPF historic property where they were generated, shall be deposited in the Town CPF Fund.