Cape Cod Housing Finance Toolbox

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Cape Cod Commission

Utile | Outwith Studio

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Introduction

Funding the development of housing, especially affordable housing is an enormous challenge to any public or private organization hoping to ameliorate the housing crisis. Because of the high costs involved, assembling the right mix of funds becomes central to all housing development, and the complexity of affordable housing development only exacerbates the challenge. How can local and regional governments use financial tools to make affordable housing development easier (and thus more prevalent)? What tools are available to fund development, as well as the infrastructure that enables development?

Parsing these questions requires both a conceptual and technical understanding of the housing resources available. Of course, housing finance is as complex and multi-layered as housing itself, funding everything from household-level downpayment assistance to development-level construction lending to emergency rental assistance managed by nonprofits. To cut down on the complexity and noise of the housing finance ecosystem, this memo focuses on funding and financing tools dedicated to new housing development. Some of these are resources for market-rate development, but the bulk of the focus is on the (mostly public) resources for affordable housing development. To some degree, this assessment also focuses on infrastructure, since infrastructure development is a major constraint to housing production on the Cape.

This document is meant to serve several purposes

1. Provide a framework for understanding the landscape of housing tools. Describe which tools are available and appropriate for which type of entities, and how those tools can be deployed to complement one another.
2. Link sets of finance tools to Cape-Cod-specific development challenges.
3. Identify key issues that need to be addressed for the Cape's funding challenges.
4. Provide recommendations to address gaps in funding sources, development of alternative funding mechanisms, and other funding and financing related issues.

Ultimately, the goal is for local government officials, advocates, housing providers, and other stakeholders to have the tools to understand the housing finance ecosystem, address gaps in the system, and have a framework for imagining new or modified funding frameworks as development opportunities arise.

Conceptual Schema for Housing Finance

As housing providers, town governments, advocacy groups, and other organizations and stakeholders approach questions of funding and financing, it can be useful to have a working model of the housing finance system in the abstract. A "schema" for housing finance can cut down the noise of various funding providers and programs, the intention of different funding sources, and the layer of funding.

Funding Recipients

First and foremost, it is important to consider what type of organization is seeking funding for housing development. This will determine what types of funding are reasonably attainable and well-suited for an organization's structure and interests.

Regional Market-Rate Developers

Real estate developers operating at a regional or national scale have become more prominent in Massachusetts (and the US generally) during the recent boom years of multifamily development. Like the national single-family homebuilding industry, these organizations tend to take on much larger and in some cases more complex projects than smaller local actors. Regional market-rate developers tend to be interested in larger multifamily developments, which due to zoning and existing land use patterns, tend to be found on large parcels and/or along large commercial corridors. Projects tend to be of sufficient size to support on-site management, and conform to standards that allow for straightforward management and resale.

Typically, these players will have some of the most straightforward paths to funding development, using a mix of their own capital and private bank financing at market rates. The rents and prices in hot markets like the Cape can make market-rate developments pencil easily, so the challenge for these developers tends to be in attaining entitlements for development.

Small and Local Developers

Small local developers are a large group of actors engaged in a broad range of housing development activities, from single-family rehabilitations to multi-unit development projects. Their personal and financial goals are extremely varied, though they can be contrasted with other actors for their overall willingness to take on smaller and more difficult sites than other groups, their flexibility in approaching development, and their willingness to take on smaller proportional returns than larger actors. They can be one-person organizations or moderately sized operations. They are comparatively nimble in the strategies they can use. Small and local developers may use a more complex mix of funding resources. Standard sources like developer equity and bank financing are used, but sources like seller financing, hard money, and other forms of private lending are common (see Landscape of Funding and Finance Tools for more information on these tools). Only a subset of this group will typically take on the administrative burden and timelines of government funding programs, and managing affordable housing units may be a discouraging prospect for some in this category.

Tax Credit Specialists

A third group of mostly private development organizations are medium- to large-scale tax credit specialists, focusing primarily on Low-Income Housing Tax Credits (LIHTC). Tax credit programs and especially LIHTC are the driving force of most contemporary affordable housing development. However, the administrative burden and realistic timeline of tax credit awards means the system tends to favor larger actors who can pull off larger developments (typically of roughly 45–120 units). Tax Credit Specialists have specialized knowledge in regulatory and compliance, large project entitlements, mixed-income lending programs, and tax credit equity markets. Of any provider, they have the most layered capital stack, and again, this favors larger projects with economies of scale.

Individual Households

Individual households are sometimes the recipients of funding resources. Of course, most homebuyers purchase their home with mortgage debt, so in that way most households engage with the housing finance ecosystem. But some individual households are also recipients of targeted public resources, including downpayment assistance, subsidized finance, and rental assistance. This memo will touch on some tools meant for individual households, but most of these tools are unrelated to housing production, so are not included here.

Local Government

Many funding resources related to housing are funneled through local government. Particularly for infrastructure projects that enable housing (e.g., wastewater or road infrastructure), local government is the typical recipient. Beyond infrastructure, local government entities, including local housing authorities and affordable housing trusts, can receive funds for housing development. Because local government does not serve a particular housing niche, it can be thought of as foundational to housing development of other types of funding recipients.

Funding Sources

Federal Sources

Federal funding for housing is typically provided through the Department of Housing and Urban Development, or (in the case of tax-related schemes) the Department of Treasury. Typically, the federal government devolves administration of these programs to state or local government actors, including the Massachusetts Executive Office of Housing and Livable Communities and Barnstable County government. These sources include Low-Income Housing Tax Credits, Community Development Block Grants, and HOME Partnership funds—all of which are key in today's housing finance system.

State Sources

Funding for housing by the Commonwealth of Massachusetts typically comes as competitive grants, loans, and forgivable loans. Many programs are administered by the Executive Office of Housing and Livable Communities, though some programs (particularly lending facilities) are administered by quasi-public agencies like MassHousing. Funding sources directly administered by the state include the Housing Stabilization Fund and Community Scale Housing Initiative. The state also administers the Low-Income Housing Tax Credit program.

Quasi-Public Sources

The state has granted some aspects of government authority to "quasi-public" institutions. These are separate, non-state nonprofit organizations that are nonetheless authorized by state law and given explicit powers through legislation. In housing, the quasi-publics are often used to administer lending and related financial programs. There are three key state-level quasi-publics for housing finance purposes: MassHousing (the Massachusetts Housing Finance Agency), the Massachusetts Housing Partnership, and MassDevelopment (the Massachusetts Development Finance Agency).

Regional and Municipal Sources

Local towns have the ability to offer limited funding and financing for housing through their annual budgets, as well as other funds and trust accounts. For housing, municipal funding sources like Affordable Housing Trust Funds and Community Preservation Committees can be key in executing projects large and small.

Private Sources

Non-governmental actors are key in today's housing finance system as providers of private equity and debt (including standard financial sources like bank loans). Private sector financiers include banks, community development financial institutions, real estate investment trusts, private equity funds, family offices, individual lenders, opportunity funds, and more. The private sector also provides the up-front capital that makes the tax credit system work for housing. Though some private lenders and funders can offer straightforward products, overall the private market of housing finance is more complex and opaque than (still complex) public sector sources. By nature, this memo's descriptions of private funding sources will be generalized.

Funding Types

The form of funding has implications for the viability of projects and the ongoing financial relationships established between recipients and source entities.

Grants

Grants are provisions of capital that do not need to be repaid. Public subsidies are sometimes grant programs, and certain private organizations (like nonprofit foundations) make grants. Most grantmaking programs are competitive, and are often awarded on an annual basis. Some grants are monitored for performance, and recipients who do not meet certain goals may need to repay grant funds. Grants in the housing space include local Community Preservation Act funds for housing development, federal HOME Partnership funds and Community Development Block Grants, the state's CommonWealth Builder program for moderate-income housing (which on the Cape is only available in the Town of Barnstable), and MassWorks funding for infrastructure. Grants can also be private, typically coming from foundations related to organizations and companies or individuals and families. Family foundations and the foundation arms of labor unions have been growing their role in the affordable housing space in recent years in response to the housing crisis.

Loans

Loans are a type of debt—provisions of capital that are repaid over time. Financial institutions or individual lenders make loans to finance construction of housing. Repayments are often done periodically over the “term” of the loan, but some also involve large "balloon" payments after a period of time, or may only involve balloon payments. Most loans are interest-bearing, though not all are. Some loans are tax advantaged.

Some loans, especially public affordable housing finance programs, are classified as “forgivable loans,” meaning payments are deferred and can be forgiven if certain conditions are met. In this case, the loans are effectively grants.

Most housing development subsidies offered by the Commonwealth are structured as loans. This includes most of the development lending programs operated by MassHousing and the Massachusetts Housing Partnership, the two quasi-public state agencies most involved in affordable housing development. In many cases, these state subsidy programs are forgivable loans, such that they often operate as grants from the perspective of the developer. Multifamily lending from MassDevelopment, another quasi-public, is also structured as a loan.

Beyond those direct public programs, loans are the most common private funding and financing sources. Bank financing, which represents the vast majority of capital available for development, is offered as a loan.

Loan Insurance, Guarantees, Liquidity, and Secondary Market Purchasing

One major form of housing subsidy that is underappreciated is the public and quasi-public backing of loans made by private institutions. This can take many forms, such as a guarantee to purchase a loan conforming to certain standards, offering insurance policies to the same effect, operating a market to purchase conforming loans, and the provision of liquidity to banks that make certain kinds of loans. Historically, this has been the most transformative form of public subsidy in the United States. The quasi-public secondary loan market set up by government sponsored entities Fannie Mae, Freddie Mac, and Ginnie Mae fueled the homeownership boom in the middle of the 20th Century. This form of subsidy can also distort markets in harmful ways. For instance, in the 1930s, the Federal Housing Administration's mortgage insurance underwriting standards institutionalized segregation through mortgage lending. Likewise, the secondary market for subprime mortgage lending fueled predatory lending practices in the 2000s. The mixed legacy of this form of subsidy aside, actors in the housing system can continue to look to mortgage insurance, secondary market purchases, and publicly-backed lending facilities as a way to build affordable housing.

Current developers can consider lending options backed by this sort of subsidy, including:

- Fannie, Freddie, FHA-conforming multifamily development and rehabilitation loans, which (depending on the loan program) are offered by MassHousing and MHP, as well as private financial institutions.
- Private affordable development loan programs given liquidity by the Federal Home Loan Bank of Boston.

Developers and public actors should also be cognizant of any non-subsidized secondary market considerations that enable certain types of housing development, such as the Residential Mortgage-Backed Security market and other private securitization efforts. State and regional governments creating their own secondary market structures for certain types of lending could also be a future (if more speculative) avenue for targeted private lending.

Bonds

Bonds are another type of debt that must be repaid over time. They are similar to loans, but instead of financial institutions providing capital for housing providers, bonds are issued by companies or governments and are purchased by investors.

Bonds are interest-bearing, and some bonds are tax advantaged, making them attractive to investors.

In the housing space, bonds are mostly issued by local government (or by a quasi-public agency on behalf of local government) and used to pay for infrastructure that enables development or to take on large development projects. Prominent local infrastructure investment programs available to towns, like District Improvement Financing,[1] are structured as bonds. Certain quasi-public affordable housing lending programs from MHP and MassDevelopment are also structured as bonds, offering a tax-advantaged way to finance housing construction. Local Community Preservation Act funds can also be used to pay for bond debt. CPA bonds have been used to take on large and complex housing development projects that require more capital than would be available from CPA funds otherwise.

When towns think through bond financing, they should consider whether the bonds they take on will be General Obligation or Special Obligation (Revenue) bonds. General Obligation (GO) bonds must be repaid regardless of the performance of a specific revenue stream. Special Obligation or Revenue bonds are tied to a specific funding source, such as funds from a Special Assessment on specific properties. Most bonds available to towns will be GO bonds, though they can be linked in principle to specific funding sources (like CPA).

Tax credits and other tax strategies

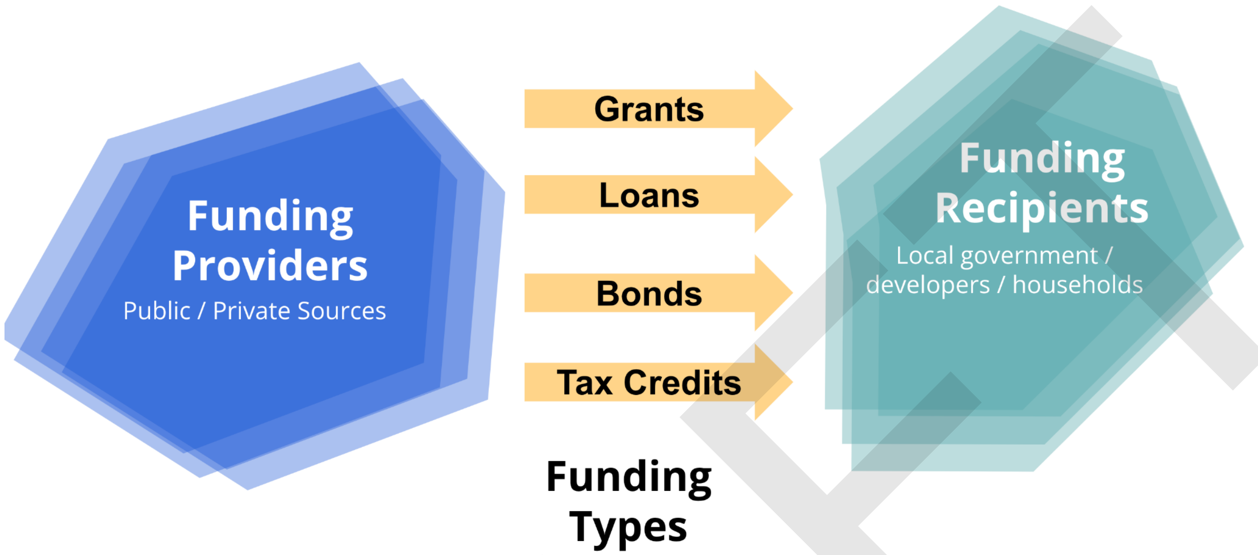
Tax credits are a form of funding wherein the government relieves an organization of its tax burden in exchange for a certain outcome, like affordable housing development. Tax credits can save money for the developer and in some cases are used directly by the recipient, as in the case of Massachusetts Brownfield Tax Credits. In other cases, the credits are sold to other organizations to raise up-front capital, like with Low-Income Housing Tax Credits.

Beyond tax credits, governments can use other tax strategies to assist affordable or attainable housing development. One strategy is offering relief from local property

[1] A type of bond program known as Tax Increment Financing in most other states.

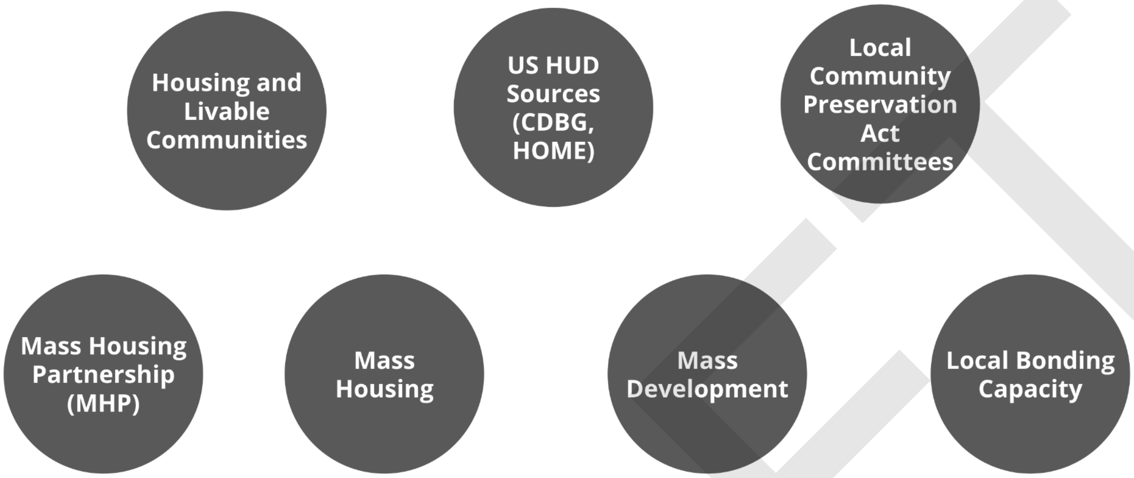
taxes. In Massachusetts this is formalized through the Urban Center Housing-Tax Increment Financing program (UCH-TIF), which allows municipalities to provide tax relief in exchange for mixed-income housing development in downtowns and village centers.[2] The Housing Development Incentive Program (HDIP) offers a similar incentive (plus tax credits) for market-rate development in state-designated Gateway Cities. HDIP has not been a viable solution for recent development on the Cape. The Town of Barnstable is the only Gateway City on Cape Cod, and the program is only authorized in the Downtown Hyannis Growth Incentive Zone. Beyond that limited geography, the state's HDIP tax credits have been unavailable in recent years due to a lack of funding capacity. By contrast, the UCH-TIF program can be utilized by any town with a designated commercial center, and state funds are not needed to award the local property tax relief.

[2] Note that Massachusetts' Tax Increment Financing (TIF) program is not what is termed Tax Increment Financing elsewhere, which is called District Improvement Financing (DIF) here.

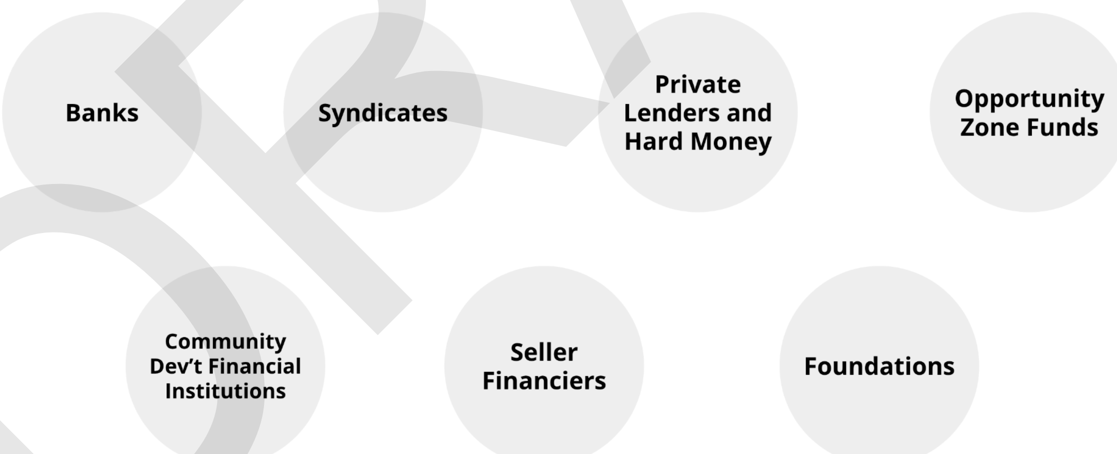


Types of Funding Recipients

Example Funding Providers: Public



Example Funding Providers: Private



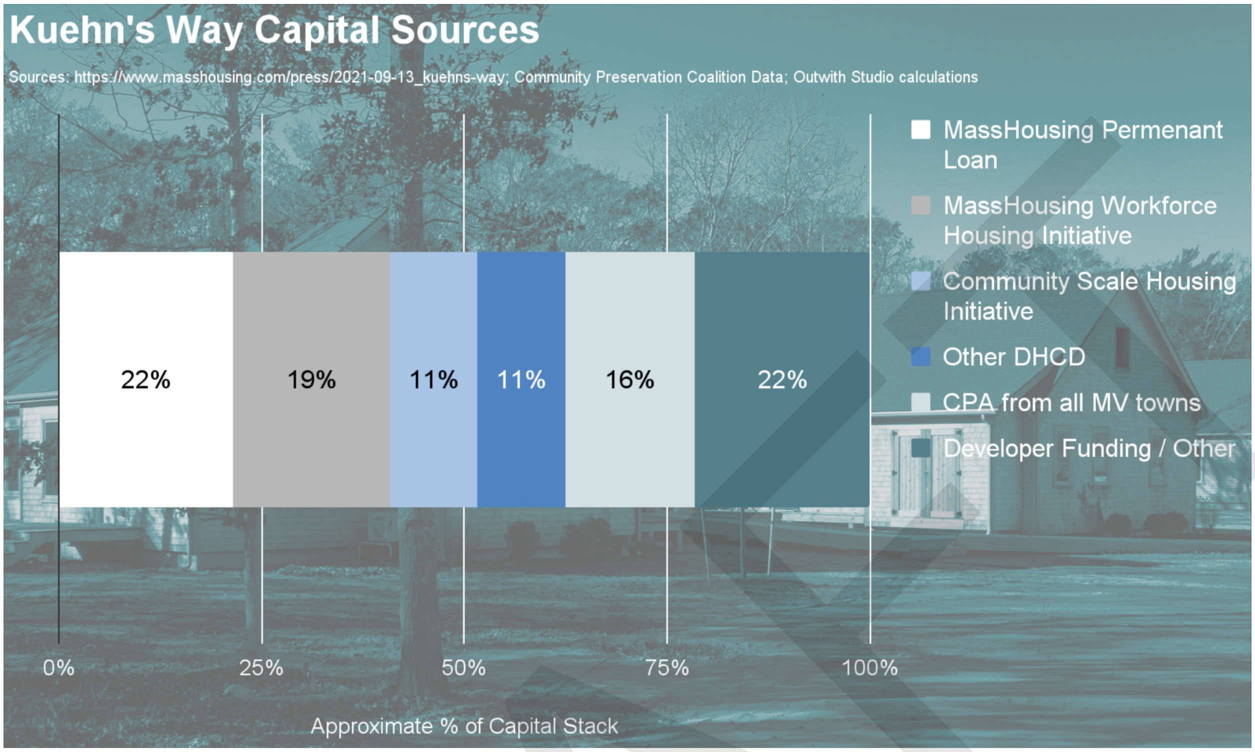
The Stack

Few housing developments are developed using a single funding source. Typically only the smallest projects can be funded through developer equity, a.k.a. cash. Most projects must create a “stack” of capital sources that will get a project over the finish line, including equity sources and debt. Since affordable developments are less attractive to private capital, they rely on public subsidy programs for their capital stack. The limitations of those subsidies means that many subsidy programs are often necessary, and the capital stack of affordable housing can often include 10 or more sources, each with their own ornate requirements.

To illustrate the complexity of the stack even for small projects, there is the example of the Kuehn’s Way project on Martha’s Vineyard. This is a 20-unit project in clustered duplexes developed by the Island Housing Trust and opened in 2022. Two of its units are set aside for households earning up to 30% Area Median Income, and 18 units are reserved for 80% AMI. The land for Kuehn’s Way was acquired jointly with the Martha’s Vineyard Land Bank, which preserved a portion of the property.

The project took 10 years to complete and had a multi-layered capital stack:
The developer brought its own equity, assembled from its own reserves (some of which are based on private foundation gifts). In addition, it received funds from:

- The MassHousing Workforce Housing Initiative,
- MassHousing permanent financing,
- The state’s Community Scale Housing Initiative,
- Other state subsidies administered by the then Department of Housing and Community Development, and
- Community Preservation Act funds from all towns on Martha’s Vineyard, some of which provided multiple grants over multiple years.



Any housing developer or public body will need to contend with the complexity and administrative burden of the present affordable housing finance system. Assembling the stack will take patience and persistence. To the extent possible, regional organizations and towns should help developers (especially smaller organizations) navigate this system. When approaching a housing development project, developers and supportive towns should work through the landscape of available funding tools, as well as the broad schema of housing finance, to locate what obvious and non-obvious funding sources may be available. Ultimately, communities will likely want to advocate for and enact policies that will reduce the complexity of affordable housing finance.

Issues Identified

Through both the landscape analysis and conversations with entities working on Cape Cod and beyond, a number of key issues were identified as barriers to funding (affordable) housing development:

Funding sources may exist but may not always be capitalized or available.
Federal and state programs exist for affordable housing development and many are appropriate for work on the Cape. However, these are mostly limited resources that must be periodically re-capitalized by lawmakers after running dry. Affordable housing developments must compete for them—often multiple years in a row. Such competition means projects are of high quality and resilient, but it also limits how much housing can be built and how quickly. Putting projects together, even small ones, often takes 5-10 years.

Resources for middle-income and so-called "workforce" housing development are particularly limited.
Most programs address households with incomes of up to 60% or 80% of Area Median Income (AMI, a federally defined measure of income calculated regionally). On Cape Cod, households with higher incomes are often also struggling to afford housing, given the competition for housing from the vacation market. Housing cost-burdens may be high and homes may simply be unavailable for households making up to 150% or 200% AMI. There are a handful of public funding sources that address the needs of middle-income households, typically up to 120% AMI. These resources are especially scarce and competitive.

The complexity and administrative burden of existing funding sources limits availability and increases costs.
Affordable housing developments often take upwards of 10 funding sources to get over the finish line, including a mix of public subsidies, private debt, and sometimes money raised through donations. Each source may have its own underwriting

standards and funding terms. In many cases, funding sources may limit a projects' reliance on any one source. The complexity of managing this many funding applications and funder requirements adds significant time and cost to projects. While there are understandable reasons that these requirements exist, the sum of the requirements does not encourage a strong or swift response to the housing crisis.

Recent inflation and interest rate hikes have exacerbated the affordability by increasing construction and borrowing costs.

The macro conditions that emerged in the wake of the COVID-19 pandemic make it harder for affordable housing projects to pencil and for individual households to access housing. Construction materials and labor cost much more than they used to. Rent and housing price inflation have exceeded many other categories. Following the Federal Reserve's interest rate increases, lenders have increased their loan's interest rates to maintain the spread between assets and liabilities, increasing costs for all. This is not the same environment as 2019. Of course, these are problems that did not emerge on the Cape, but they do affect housing here, and local actors can work creatively to ameliorate the local impacts of this new environment.

Financing can be difficult for mixed-use developments.

Within this constrained financing environment, non-standard projects have had particular difficulty accessing capital. Mixed-use projects with commercial and residential components are one such example. They take a wider range of expertise to develop and manage, newcomers to the space often face challenges, and they are overall vulnerable to a wider range of risks. Anecdotally, developers have found it more difficult to get financing for these projects versus single-use residential developments

Towns are reluctant to issue debt for infrastructure or other purposes.

Fiscal prudence is a reasonable goal for any municipality. Town administrators and voters do not want to make their communities vulnerable by overextending towns with debt or spending. While understandable, this reluctance sometimes means fiscally sound investments responding to community needs are not made by towns. Infrastructure, which typically requires government debt issues to construct, faces such underinvestment locally. A lack of infrastructure (especially wastewater infrastructure) is a major impediment to housing development on the Cape. Beyond infrastructure, direct local investment in affordable housing can be debt-financed, but few Cape communities have taken this route. Even when it would be fiscally sound, not all of the tools in the toolbox are being used on Cape Cod.

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Recommendations

The following are a set of recommendations to address the issues identified in this assessment. This list is hardly exhaustive. Rather than proposing all potentially viable solutions, this is a targeted list of the most important near- and medium-term issues to address. Each of these recommendations would require funding to initiate implementation. Beyond the recommendations included here, there are opportunities to develop new funding vehicles to address specific problems in the housing finance system. Organizations and communities should be on the lookout for new funding and financing opportunities that may arise, including the creation of new resources and advocacy for policy changes.

1. Encourage local adoption of existing municipal finance tools.

Massachusetts authorizes a limited set of tools local governments can use to raise and spend funds for housing and related infrastructure and services. However, not all municipalities on Cape Cod have made use of the tools they have. In some cases, such as tools to issue debt, there are concerns about creating ongoing financial liabilities. Other tools are simply new, and towns may be waiting to see their performance elsewhere. Though local hesitation may be warranted, Cape Cod communities should not let opportunities for viable and fiscally responsible action go by the wayside. The tactics listed under this strategy are the most important for towns to address if they want to tackle the housing crisis.

1A. Bond against local Community Preservation Act funds.

The Community Preservation Act (CPA) is the most important locally controlled tool for affordable housing funding. CPA is a surtax on local property, typically set between 1% and 3% of a property owner's tax bill. In most communities, there are CPA exemptions for certain types of property owners (e.g., low-income households or low- and moderate-income seniors) and/or for taxes on the first $100,000 of property value. The CPA funds collected in each town are put into a segregated fund, and that fund also receives an allocation of a state CPA fund (which varies year to year).

CPA funds can only be spent on certain funding categories: community housing, historic preservation, and open space and recreation. Each of these categories *must* be allocated 10% of each year's funding, and the remaining 70% of CPA funds must be spent on these categories, though towns may allocate the proportion of that 70% any way they see fit. (A small portion of the fund may also be spent on fund administrative costs.) Each year, town allocations of CPA funds are recommended by a community (typically a "Community Preservation Committee") and approved by Town Meeting. CPA appropriations can be project-specific and determined annually, or CPA funds can be placed in a local Affordable Housing Trust Fund, which can hold them and spend them as needed (as long as the projects they eventually fund accord with CPA spending requirements).

CPA spending has recently become controversial, after an analysis revealed many towns with CPA do not spend the required 10% on housing. All the Cape Towns were found to have met the spending requirements, however.

Crucially, local CPA receipts can also be earmarked as a funding stream against which towns can issue debt (municipal bonds). Towns will bond against CPA in order to raise large amounts of money for construction of housing or the other authorized purposes. The most prominent use of CPA bonds is land acquisition, but bonds can also be used to preserve expiring affordability restrictions, to fund critical upgrades to existing affordable housing, to rehabilitate CPA-funded units, and more. CPA funds can also be used for infrastructure (water/sewer) development.

Few Cape towns have issued CPA-backed bonds. This has limited their capacity to fund significant housing investments. Towns should consider their CPA bond options and issue debt accordingly to invest in housing.

Case Studies

- In Sandwich, CPA bonds were used to preserve affordability at an existing development and to finance construction of new affordable housing, creating 30 senior and family townhomes on Housing Authority land.

The CPA-bond-funded Terrapin ridge development in Sandwich, which opened in 2021. (Image via Dellbrook JKS)

- In West Tisbury on Martha's Vineyard, CPA bonds were issued in support of a 9-unit project by the Island Housing Trust.

The Island Housing Trust's Scott's Grove project in West Tisbury was funded in part through CPA bonds. (Image via Island Housing Trust)

- On Nantucket, voters approved $5 million in CPC bonds and are considering another $5 million in bonds, all of which helped to capitalize the Nantucket Affordable Housing Trust. The total $10m in bonds (should the latter issuance be approved by voters) are earmarked for up to 11 projects spanning land acquisition to construction.

Resources

- Community Preservation Coalition, "Webinar: CPA Bonding 101 (January 2022)," https://www.communitypreservation.org/webinars#anchor_bonding
- Massachusetts Housing Partnership, "Create, preserve, support: Using Community Preservation Act funds to foster local housing initiatives," https://www.mhp.net/assets/resources/documents/CPA-guidebook-2016_lowres.pdf
- Town of Sandwich, https://www.mhp.net/assets/resources/documents/Terrapin-Ridge-Sandwich-Leane-Drake-051019.pdf

Implementation

1. Towns, potentially working with the Cape Cod Commission, should study their CPA receipts and project revenues for future years.

2. Using those projections, towns should estimate allocations to CPA's funding categories, including the required spending on program categories, additional voluntary allocations to those categories, and CPA administration.

3. Calculate the size of a bond the town could theoretically issue for housing. CPA bonds for housing can only be made against CPA revenues available for housing (i.e., excluding, minimally, required spending on other funding categories and administration). The calculation can be done with tools from the state's Department of Revenue Division of Local Services. Bond size will reflect interest rates. Towns should talk with the Division of Local Services, MassDevelopment, MassHousing, or other agencies active in the municipal bond market to estimate rates and the ultimate size of the CPA bond.

4. Work with local and regional affordable housing developers to assess development opportunities where CPA bonds could play a transformative role, either by funding land acquisition, otherwise becoming a major component of the funding stack, or by becoming a minor but crucial bridge source and getting a project to the finish line.

5. The local Community Preservation Committee should determine which project is most important to fund with CPC bonds (based on impact), and recommend a bond issuance to Town Meeting (or Town Council).

6. Town voters should adopt a warrant approving CPA bonding for the specified project. A two-thirds vote is needed to approve CPA bonds (rather than a simple majority for PAYGO CPA projects).

7. Working with a municipal bonding partner and the town's fiscal administrator, the town should issue a CPA-backed bond, and direct funds to their intended use.

1B. Use District Improvement Financing (DIF) to fund infrastructure improvements in key locations

District Improvement Financing (DIF) is a method of raising funds for infrastructure and other community improvements associated with new development. Under a DIF, a community designates a certain area of town as a DIF district. The town issues bonds to pay for new infrastructure in that district, which enables new development there. The increases in taxes associated with that new development are earmarked to pay down the bonds. In theory, DIFs are a way to enable new development without pulling capital funds from elsewhere in the budget, since no existing budget resources are implicated. In practice, DIF should only be used where new development is highly likely to occur as a result of investment and where development is contingent on public investment. The town must still pay the bonds regardless of the outcome of development, so strong links between the development and the DIF are key.

The debt risk created by DIFs has understandably caused community members to be wary of the tool. Nonetheless, many communities have used DIF to great effect. The Cape Cod Commission, housing providers, and local advocates should work with Town governments to identify opportunities for DIF.

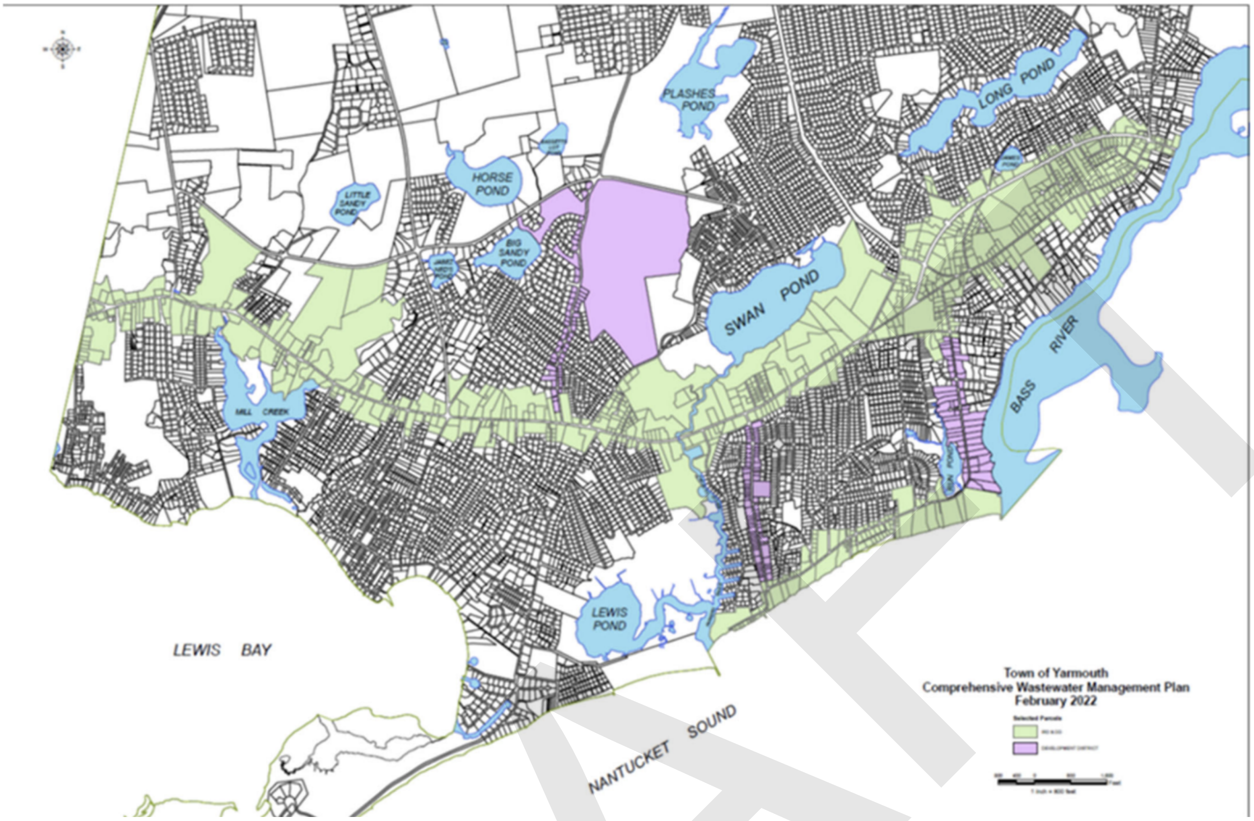
Case Studies

- Easton's master plan called for concentrating growth (including residential growth) at its major commercial hub, Five Corners. The town's voters approved a DIF District, which would add sewer capacity, sidewalks, bike lanes, and traffic improvements to the area, in order to enable mixed-use development. While mixed-use development has not yet been built, the sewer lines have enabled residential development in the area.

Easton, MA used DIF to install sewer lines and unlock mixed-use development.

- Concord, NH has established numerous DIF districts (called TIF in New Hampshire), including the Sears Block TIF District in downtown Concord. The site of a former Sears department store, an incomplete development in the late 1990s left the buildings partially demolished. The City acquired the block and demolished the remaining structures in 2002. The City and a private developer used TIF, private funds, and other revenue sources to redevelop the block into "Capitol Commons." Across the City, DIFs have funded roadway, utility, and parking improvements, as well as preparation of sites for new development.

- In 2023, Yarmouth filed a DIF plan for wastewater and other infrastructure improvements along Route 28 in West Yarmouth. The district will support and enable construction of affordable and senior housing developments, mixed-use development, and commercial development.



Yarmouth adopted a DIF district in 2022 along Route 28 in West Yarmouth.

Resources

- MassDevelopment, DIF Guide https://www.massdevelopment.com/assets/what-we-offer/DIF/V8_5.29.19_-_DIF_Guide_-_MassDevelopment_DIF.pdf
- Yarmouth DIF Financing Plan, https://www.yarmouth.ma.us/DocumentCenter/View/17200/FINAL-DIF-3_26_2023

Implementation

1. Towns and the Commission should identify areas where residential and mixed-use development could occur, but for access to infrastructure. This should include commercial corridors, underutilized commercial and industrial properties, and village centers. This process should include engagement with the local community, discussions with large and small

property owners, and references to existing plans.

2. Apply for and receive technical assistance to study current taxable values and property tax revenues, the potential for new development, projected taxable value and revenues under various development scenarios, the cost of infrastructure, and methods of payment (pay-as-you-go or DIF bond financing).

3. Conduct a public engagement process related to the establishment of a DIF district, educate community members on the financial workings of a DIF, discuss potential development outcomes, and adjust plans as needed.

4. If wishing to proceed, towns should work with a consultant (public or private) to establish the components of the DIF plan:
    a. A development district (the area where investments will be made)
    b. An invested revenue district (the parcels that will have any increases in taxes diverted into a DIF account)
    c. A development program (the plan for public and private investment in the development district, including infrastructure and real estate investment)
    d. An invested revenue district development program (the plan for development on DIF-revenue parcels, used to calculate estimated DIF revenues)

5. Once this plan is in place and vetted by the public, go to Town Meeting (or Town Council) to enact DIF legislation and adopt the prepared DIF plan.

6. If bonding against DIF revenues, work with MassDevelopment to issue DIF bonds.

1C. Work with large property owners to use the Local Infrastructure Development Program.

M.G.L. Chapter 23L creates a tool for privately-initiated and funded infrastructure construction through the Local Infrastructure Development Program (LIDP, or a 23L District). Using 23L, one or more property owners in a given area wishing to bring infrastructure to their property can petition their town to create a special assessment on their property and adopt an infrastructure development program. MassDevelopment may then issue bonds to fund that infrastructure, and that debt is repaid through the special assessment. The program is voluntary for property owners, and 100% of the owners in the proposed special assessment district must agree to the plan for it to move forward. In most cases, the bonds issued under Chapter 23L would only be repayable by the special assessment on properties, not by local taxes or any other state or local resources. This shifts the burden of infrastructure financing from public to private, and new tax revenue into a town's general fund more quickly than under a DIF. However, after construction, that infrastructure is transferred to the (public) entities typically responsible for that infrastructure, so towns must plan for ongoing operations and maintenance.

Towns should take a proactive role in facilitating the creation of 23L districts to support housing development, acting as a convener for private property owners who may be interested in the opportunities involved. Because 100% of property owners must agree to the special assessment and infrastructure development program, Chapter 23L would work best for one or two large property owners. This includes large tracts of underutilized commercial and industrial lands, as well as redevelopment of large institutional properties. However, a town could work with a more dispersed set of property owners and build a district from those who are interested. (Districts need not be contiguous, but contiguous districts help limit unnecessary costs.)

Chapter 23L is an unusual variant of more traditional value capture methods seen around the US. Traditional Special Assessments Districts (SADs) impose a mandatory fee on properties that get a unique benefit from a piece of public infrastructure or an ongoing public service. Indeed, 23L is literally a Special Assessment District, but it is voluntary (unlike the traditional variant). Similarly, negotiated development agreements are common across Massachusetts.

Case Studies

To date, no developments in Massachusetts have used the Local Infrastructure Development Program, despite over a decade of the opportunity existing. This is perhaps due to the privately initiated structure of the program and lack of education in the marketplace about it. However, while there are no available case studies of 23L, there are similar cases that offer insights.

- In 2009, the City of Quincy and a developer executed a development agreement related to the redevelopment of properties in downtown Quincy. As part of the agreement, the developer committed to constructing utilities, roadways, parking facilities, and open spaces. These investments were financed through a municipal general obligation bond, but paid by the developer in an arrangement with a special purpose governmental unit called a “121A Corporation.” This deal was not executed using Chapter 23L (which was not yet enacted), but it still serves as a useful precedent. In this arrangement, the municipality served as a bond-issuing pass-through, similar to the structure of 23L. The debt was voluntarily and contractually paid by a private property owner, and the payments came from non-tax revenues paid by the private entity.

  While there were some advantages to a 121A Corporation, a 23L deal could have been even more advantageous in Quincy, had it been enacted. In a 23L project, Special Assessments are in addition to property taxes (not the case in this 121A transaction, which used that type of organization’s tax advantages to subsidize the infrastructure payments). Additionally, the City was still issuing a General Obligation bond and was ultimately responsible for repayment, should the project fall apart. A 23L bond is the sole responsibility of landowners in the defined district.

Resources

- MGL Chapter 23L text, https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter23L
- MassDevelopment Infrastructure Bonds brochure (2022), https://www.massdevelopment.com/assets/what-we-offer/brochures/Infrastructure_Financing_2022.pdf
- Gerald Korngold (2022), *Land Value Capture in the United States*, Lincoln Institute of Land Policy, https://www.lincolninst.edu/publications/policy-focus-reports/land-value-capture-in-united-states
- US DOT FHA (2021), *Value Capture: Primer on Special Assessment Districts*, https://www.fhwa.dot.gov/ipd/pdfs/value_capture/fhwa_hin_21_003.pdf
- US DOT FHA (2020), *Value Capture: Development Agreements and Other Contract-Based Value Capture Techniques—A Primer,* https://www.fhwa.dot.gov/ipd/pdfs/value_capture/fhwa_hin_21_001.pdf

Implementation

1. Individual towns should work with MassDevelopment, align on program priorities, and identify MassDevelopment staff who can interface with individual property owners.

2. Towns identify and reach out to larger property owners with land suitable for new housing development, particularly property owners who have already expressed an interest in housing. This could include underutilized commercial, industrial, and institutional, especially those within a reasonable distance of existing sewer facilities that could be expanded. Individual property owners should likewise reach out to the relevant towns when considering their development options or exploring the use of Chapter 23L.

3. Where possible and necessary, towns (with assistance from MassDevelopment and optionally in consultation with the Cape Cod Commission) should assist property owners to determine what type of housing and mixed-use development would be suitable for a site, given

infrastructure investment. Using that analysis as an input, property owners could then determine what income could be generated from the site, and therefore how much could be dedicated to a Special Assessment under Chapter 23L under current lending terms.

4. Begin workshopping conceptual plans with local leadership, planning officials, relevant stakeholders, and the local community. Where possible, develop a smooth path to development entitlements and support for the (private) infrastructure investment.

5. Property owners should develop detailed development and financial plans that respond to community input, with assistance from the Commission, towns, and MassDevelopment where appropriate.

6. Towns should assist property owners in drawing up a petition to Town Meeting for the establishment of a Special Assessment District. Take that petition to Town Meeting and advocate for its adoption.

7. Simultaneously, work to receive development entitlement under zoning and other land use controls.

8. Upon approval of the development and the Special Assessment District, work with MassDevelopment to issue the bonds, and proceed with construction accordingly.

1D. Use Chapter 40R when rezoning for medium- to high-density housing.

Chapter 40R is a state incentive program to encourage relatively high-density housing in so-called Smart Growth Districts. Under Chapter 40R, a town creates a zoning overlay district (and, if desired, design standards) that are adopted into law.

These zoning provisions must allow higher density housing by-right, with optionally a form of Site Plan Review. They have been used to great effect across Massachusetts through rehabilitating historic abandoned structures, reusing large institutional properties, creating and rehabilitating village districts, and incentivizing transit-oriented development. To qualify, Smart Growth districts likewise must allow at least eight units per acre for single-family homes, 12 units per acre for duplexes, triplexes, and townhomes, and 20 units per acre for multifamily buildings of at least 4 units.

While mostly a zoning incentive for private property owners, the Commonwealth also incentivizes adoption of Chapter 40R districts by municipalities. Depending on the net new number of units enabled by the Chapter 40R district, municipalities can receive $10,000–$600,000 in state incentive funds. In addition to adoption incentive, communities receive an additional $3,000 per unit permitted under Chapter 40R. School districts may also be eligible for additional funding under Chapter 40S for students living in Chapter 40R developments. Chapter 40S funds are only available when taxes generated by Chapter 40R developments do not cover school costs and when other state resources are not available.

Municipalities should consider using Chapter 40R when creating new medium- or high-density housing zones. Not using 40R is essentially leaving funding on the table, especially where form-based provisions and by-right permitting are likely to be used. Though by-right permitting might create apprehension in the community, legally enforceable design standards and site plan review under 40R can bring certainty to the form of projects.

Presently, Chapter 40R adoption and permitting incentive funds are paid from the state’s capital budget, and are therefore restricted to capital expenditures. Payments are also relatively small given the scale of housing or infrastructure costs. A community could nonetheless elect to use these incentives to help fund housing-enabling infrastructure or other capital improvements related to housing development. In this way, Chapter 40R could provide both a zoning mechanism and capital to address the housing crisis.

Case Studies

- Northampton has adopted two Chapter 40R districts, a small "urban residential" overlay and an overlay redeveloping a 16-acre unused state hospital property. The latter includes housing at various scales built in a vernacular New England style. The hospital redevelopment district brought in $200,000 in zoning incentive payments and an additional $120,000 in permitting incentive payments from the first phase of redevelopment.

The Village Hill 40R district in Northampton.

- Easton's Queset Commons district enabled the development of 280 homes in the town. Initial zoning Incentive payments in the district were $350,000. By passing the district and permitting units, the town also demonstrated meaningful progress on its affordable housing production goals, and therefore the state upheld the town's denial of a Chapter 40B comprehensive permit.

Resources

- Executive Office of Housing and Livable Communities (2023), Chapter 40R Information Page, https://www.mass.gov/info-details/chapter-40r
- Executive Office of Housing and Livable Communities (2018), *Guidance or M.G.L. c. 40R and 760 CMR 59.00*, https://www.mass.gov/doc/guidance-for-mgl-c-40r-and-760-cmr-5900smart-growth-zoning-and-starter-home-zoning/download
- CHAPA (2018), *The Use of Chapter 40R in Massachusetts 2018 Update*, https://www.chapa.org/sites/default/files/TheUseofCh40R_2018.pdf
- Minco Development (2015), "Here is what happens when 40R is put to practice," https://www.mincocorp.com/here-is-what-happens-when-40r-is-put-to-practice/

Implementation

1. The Commission should work with individual towns to assess what areas the towns are looking to rezone for compact and relatively high-density residential or mixed-use development. The towns, in consultation with the Commission, should assess what scale of development might be warranted given the community's goals and the infrastructure capacity of the area. If the scale is aligned with Chapter 40R's density requirements (given above), the Commission should work with the given town to assess the potential to use 40R as a zoning mechanism.

2. The Town should submit a density plan and map for informal review by the Executive Office of Housing and Livable Communities before proceeding.

3. Local staff and Planning Board members, the state's Executive Office of Housing and Livable Communities, the Cape Cod Commission, and potentially outside consultation to develop a proposed zoning amendment

that implements a Chapter 40R-compliant Smart Growth Overlay District. If possible, towns should “test-fit” development in the proposed district under these rules, and use any resulting materials to communicate the intention to the public. In addition to the zoning text and a map of the district, the Town should prepare tables calculating the net new zoned units and, if desired, mandatory design standards that would accompany zoning.

4. The Town should hold a public process to review and comment on the district, and amend the proposed zoning accordingly (while remaining compliant with 40R and related regulations).

5. The Town should submit the package of materials (text, maps, tables, etc) to EOHLC for a preliminary determination of eligibility.

6. The Town’s legislative body (typically Town Meeting) should adopt the zoning amendment implementing the district. Simultaneously, the legislative body should adopt a resolution to dedicate any resulting incentive payments to a local Affordable Housing Trust (if one exists), or otherwise appropriate the funds for housing. Upon passage, the Town should submit an application to EOHLC for incentive payment.

7. Upon receipt of the incentive payment (and any subsequent incentive payments based on permitting), the Town should transfer all funds to a local Affordable Housing Trust or otherwise dedicate the funds to housing purposes.

1E. Maximize receipts from the Rooms Excise Tax, adopt the Short-Term Rental Community Impact Fee, and dedicate these funds to housing.

Massachusetts' municipalities are able to charge a local excise tax on hotels, motels, and other lodging. The rate of the tax can be up to 6% of the price of the room and is determined locally. Most Cape communities have already maximized the rate of the rooms excise tax at 6%. Sandwich is the last community at an earlier maximum of 4%, and it should increase that rate to the current maximum. On the Cape, a further 2.75% of the room price is charged to fund the Cape Cod and Island Water Protection Fund, which invests in water quality and wastewater infrastructure projects.

Beginning in January 2023, the towns of Cape Cod have the option of adopting an additional fee for short-term rentals (STRs). This is an additional charge of up to 3% of STR prices. However, only three Cape communities have adopted the STR Impact Fee: Falmouth, Provincetown, and Wellfleet. Each municipality on Cape Cod should adopt the Community Impact Fee. The fee can apply to two types of short-term rentals: (a) STRs in 2- and 3-family units where one unit is occupied by the property owner and (b) STRs that are one of at least two STRs under the same ownership in a given town. Towns must adopt the STR Community Impact Fee separately from the Rooms Excise Tax, and the fee applying to each type of STR must be adopted separately.

By default, at least 35% of the Community Impact Fee must be deposited to a separate account and held for appropriation by Town Meeting or Town Council for affordable housing or infrastructure projects. State regulations do not specify in detail what qualifies for affordable housing or infrastructure projects, except that infrastructure projects must be the kind that would typically receive a bond. Presumably, funds from this account could be appropriated to an Affordable Housing Trust Fund.

Resources

- M.G.L. Chapter 64G § 3D, https://malegislature.gov/Laws/GeneralLaws/PartI/TitleIX/Chapter64G/Section3D
- Department of Revenue, Room Occupancy Excise Tax Information, https://www.mass.gov/info-details/room-occupancy-excise-tax

- Division of Local Services (2019), FAQ on the 2019 Short-Term Rental Legislation, https://www.mass.gov/doc/room-occupancy-excise-faqs-short-term-rentals/download

Implementation

1. Towns without the Community Impact Fee should analyze the short-term rentals in their community using any administrative data and data collected from short-term rental websites. This analysis should examine the type of short-term rental operations being run, how many short-term rentals would fall into each category.

2. Project how much revenue might be raised by the Community Impact Fee, and assess the types of projects that could be funded by the allocation to affordable housing and infrastructure. Decide whether the allocation to those spending categories must be increased beyond 35% for the fee to be worthwhile to the Town.

3. Depending on the outcomes of this analysis, draft town meeting warrant article(s) (or town council bill(s)) that would enact the Community Impact Fee on one or both types of STRs. There must be separate pieces of local legislation to enact the Community Impact Fee for each type of STR. If desired, include in this legislation an allocation to housing and infrastructure beyond the required 35%.

4. On an ongoing basis, report on the STRs in town, the Community Impact Fees collected, and the projects funded. Create an annual plan for how the revenue will be spent.

5. Monitor STRs in town and enforce payment of the fee by relevant STRs.

1F. Audit assessments regionally to identify systematic irregularities, and advocate for assessment reform as needed.

In recent years, concerns have been raised about the accuracy of tax assessments for housing—broadly for communities across the US and specifically for the Cape. Preliminary research has found potential under-assessments and over-assessments for properties, where assessments are found not to reflect market values both before and after sales. Moreover, under-assessments are found to affect more expensive residential properties while over-assessments are found to affect less expensive residential properties. In general, this could mean less wealthy property owners are overpaying in taxes and wealthier property owners are underpaying in taxes, all while towns are missing out on due revenue.

Of course, preliminary and spot research cannot be conclusive for the region or any specific town. The Cape could benefit from a region-wide audit of assessments compared to market data, in order to determine what systematic adjustments may be necessary, if any. Following such an audit, the region would need to study the impacts of a mass re-assessment, including effects on town finances and individual property owners.

Case Studies

- In 2019, a City-Council-ordered audit of the property assessment system in Philadelphia had glaring errors in its methods of valuation, compliance with local and state laws, and its lack of documentation of key processes. Assessors were to be treating sold and unsold properties differently, and found considerable underassessments in some cases. This was after a 2014 reform to the system brought annual assessments to the city.

Resources

- Jack Edmonston (2019), “Property taxes don’t reflect market value,” *Cape Cod Times*, https://www.capecodtimes.com/story/opinion/columns/2019/02/09/property-taxes-don-x2019-t/6043349007/
- Allison Thurmond Quinlan (2023), Plenary Session slides, OneCape Conference, https://onecape.capecodcommission.org/#1690393745452-e2faa28a-e710
- Christopher Berry (2021), “Reassessing the Property Tax,” *SSRN.* https://bpb-us-w2.wpmucdn.com/voices.uchicago.edu/dist/6/2330/files/2019/04/Berry-Reassessing-the-Property-Tax-Jan21.pdf
- Daniel McMillen and Ruchi Singh (2019), “Assessment Regressivity and Property Taxation,” *The Journal of Real Estate Finance and Economics*, https://link.springer.com/article/10.1007/s11146-019-09715-x
- Natee Amornsiripanitch (2020), “Why are Residential Property Tax Rates Regressive?,” *SSRN*, https://papers.ssrn.com/sol3/Papers.cfm?abstract_id=3729072

Implementation

1. The Commission or individual towns should, on their own or with assistance, begin collecting data related to assessments. This should include a time series of assessments over at least the last decade, property sales data from the last decade, reassessment requests, and any other relevant administrative data.

2. The Commission or individual towns should commission the audit from a third party. The audit should analyze horizontal and vertical inequalities in assessments, using in part the relationship between sales-demonstrated market values and assessed values. The audit should also look at assessing department practices and the handling of reassessment petitions.

3. Comprehensive reassessments should be conducted and local assessment practices should be reformed if the audit shows those steps to be necessary.

2. Strategically pool regional resources for additional investments in housing and infrastructure.

2A. Encourage cross-community Community Preservation Act allocations, create a model CPA application and review process for Cape Cod communities.

Nearly all housing developments will only be physically located in one community, of course, but they will be part of the regional housing market. Other regions, such as the towns of Martha's Vineyard, have recognized the regional nature of the housing market, and provided local funding for projects across town borders. Community Preservation Act funds have been the most prominent sources of local cross-municipal housing funding (in part because they are among the most prominent local funding sources in general). Indeed, some Cape Cod towns have already recognized the value of cross-border CPA

The Cape Cod Commission, housing organizations, advocates, and local officials should encourage cross-municipal spending by Community Preservation Committees and Town Meeting voters.

To aid the process of cross-municipal funding on the developer side, Towns should attempt to standardize and streamline their processes for local funding applications, especially for CPA. Presently, each municipality maintains its own application system and timelines. A standard application would decrease the administrative burden on housing providers seeking funding, as would a standardized funding timeline. Developing such an application would require regional research into existing CPA application processes and timelines, engagement with local Community Preservation Committee members, local Affordable Housing Trust members, and (affordable) housing developers to determine what the needs are from both local officials and developers. After a model application was developed, it would need to be adopted (without amendment) by local CPCs, and ideally a single timeline could be established.

Barnstable County could also consider establishing a regional universal application for CPA funds. Under such a scenario, a housing developer could make a single application into a regional system, and that application could be forwarded to participating municipalities. Compared to other states, Massachusetts has made significant headway in creating single applications and review processes for different subsidized lending programs and grants, through both the MassHousing OneStop application and the state's Community One Stop for Growth system. No such universal application exists for local funding sources. A single Countywide application would significantly innovate on the present system and reduce administrative burdens.

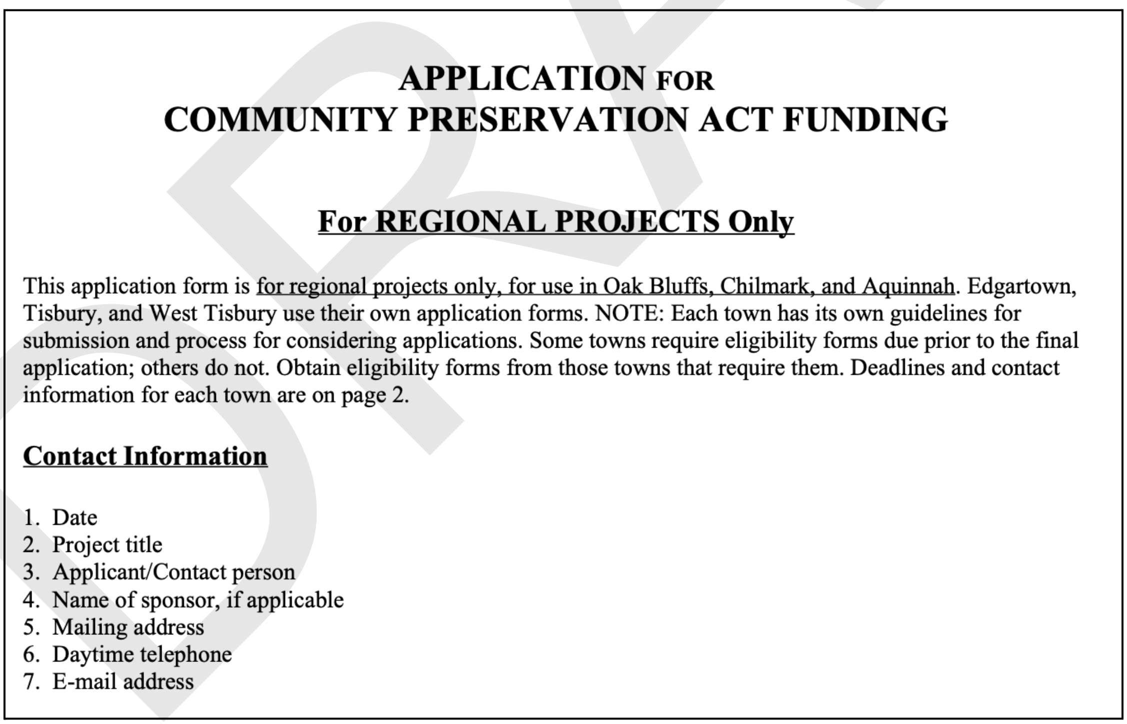
Case Studies

- The Island Housing Trust's Kuehn's Way project in Tisbury, Martha's Vineyard, received CPA appropriations from all towns on the island. The appropriations ranged in size from less than $10,000 to $100,000, and some towns made multiple appropriations over multiple years.

- The towns of Dennis and Harwich collaboratively purchased conservation land in 2010, each using CPA funds and other state resources.

- Three towns on Martha's Vineyard have established a single application document for regional projects. The single application is filled out by a developer requesting CPA allocations from more than one town with specific requests listed for each town. The application is then sent to each relevant town on the local CPC's timeline.

Kuehn's Way in Tisbury, funded in part with CPA appropriations from each Martha's Vineyard Town.



APPLICATION FOR
COMMUNITY PRESERVATION ACT FUNDING

For REGIONAL PROJECTS Only

This application form is for regional projects only, for use in Oak Bluffs, Chilmark, and Aquinnah. Edgartown, Tisbury, and West Tisbury use their own application forms. NOTE: Each town has its own guidelines for submission and process for considering applications. Some towns require eligibility forms due prior to the final application; others do not. Obtain eligibility forms from those towns that require them. Deadlines and contact information for each town are on page 2.

Contact Information

1. Date
2. Project title
3. Applicant/Contact person
4. Name of sponsor, if applicable
5. Mailing address
6. Daytime telephone
7. E-mail address

A portion of the regional CPA application for three towns in Martha's Vineyard.

Resources

- Martha's Vineyard Regional CPA Application, https://www.oakbluffsma.gov/DocumentCenter/View/4970/Application-form-REGIONAL
- Community Preservation Coalition, "Regional Projects Are A Growing Area of Success For CPA," https://www.communitypreservation.org/success-stories/news/regional-projects-are-growing-area-success-cpa

Implementation

1. The Cape Cod Commission should convene a meeting of town leaders, including Select Board, Planning Board, and Community Preservation Committee members. The meeting should discuss the regional impact of all affordable housing projects, potential cross-community opportunities, and potential unified processes. The Commission should take in the various funding and administrative priorities of the towns, especially as they relate to CPC and Town Meeting administration.

2. In response to that meeting, the Commission should draft a unified CPA funding application that could be individually adopted by the Cape's towns. The Commission should also study whether there could be a unified schedule for CPA applications and decisions, given the administrative constraints of each town. The Commission should publish a proposed unified schedule and note what adjustments might need to be made in the processes of each town to make the schedule work. The Commission and supportive local leaders should advocate for adoption of the unified processes.

3. The Commission should monitor project proposals and publish a list of cross-community funding priorities.

4. The Commission should study the viability of a single portal for proposers submitting applications through which applications could be distributed to and reviewed by local CPCs.

2B. Hold reserves in a public or private investment fund that can invest in housing.

Local governments work with small but significant treasuries of money needed for everyday operations as well as long-term reserves. Across the Cape, there are hundreds of millions of dollars in local funds moving through the financial system. Reserves are that portion of the local treasuries that are set apart from regular operating funds, working more as a “savings account” or a “rainy day fund” than the rest of the local government funds that are used to pay for staff and resources. Reserves are separate from the appropriations local governments make for housing programs or other services.

On the Cape, there is roughly $83 million in local stabilization reserve funds as of FY2022.[3] These funds are held as insurance against risk or for unforeseen projects. In the meantime, they are invested to generate interest. Most local government reserves will be held by private banks, who can offer a full range of operating and investment support. Some local governments also deposit a portion of funds in Local Government Investment Pools (LGIPs), where local government reserves are grouped together to increase investment efficiencies. In Massachusetts, the state treasurer oversees the Massachusetts Municipal Depository Trust (MMDT), a public LGIP.

State regulations limit the types of investments that can be made with reserves, and the investment objectives that local governments take on. Capital preservation and liquidity are paramount. State regulation would preclude direct investment of

[3] MA Department of Revenue Municipal Databank, “Community Comparison Report,” https://dlsgateway.dor.state.ma.us/reports/rdPage.aspx?rdReport=Community_Comparison_Report&rdRequestForwarding=Form

local reserves in housing, but towns can use their capital in a way that still advances housing affordability.

Most immediately, towns could work with private banks to negotiate down interest received on public deposits in exchange for lower interest rates for affordable housing developers and/or low-income homebuyers. This would require a complex balancing of capital patience and relative risk with the state requirements of capital preservation and liquidity, and any negotiation with a private bank would be best carried out at a regional level. More speculatively, towns could advocate for an investment option (through MMDT or another intermediary) that allows more mission-driven investment in local housing production.

Schematically, each town could pool a portion of its reserves in an investment vehicle with the reserves of other town governments and agencies. The return on those reserves would be akin to the returns on short-term investment vehicles where reserves are typically held (i.e., relatively low). The investment vehicle would lend at below-market rates for affordable development and/or low-income homebuyers, while maintaining a spread against the reserves that is more favorable than typical spreads. The investment vehicle could use that favorable spread as insurance to maintain liquidity for local governments. In the case of a government needing to sell its shares in the vehicle.

Case Studies

- Since the passage of the Public Banking Act, several California cities have explored opportunities to set up local wholesale banks that hold public monies and lend in socially driven ways. The San Francisco Board of Supervisors recently voted to institute the first municipal bank in the country. Regarding affordable housing, the San Francisco Treasurer has proposed using public funds to lend against mezzanine debt for developments (especially middle-income development), to provide mortgages for an existing small site acquisition program, and for individual ADU financing.

  The California public banking situation is different from the strategy described here. The proposed banks will be municipal, rather than regional. They will also be government institutions, and while MMDT is a public body, the private banks who could execute these functions are not. Nonetheless, the public bank movement is a similar innovation in local government reserve management, its proposed lines of business are similar to what might be useful to Cape Cod, and its strategies could serve as a model to work from.

- Beyond public banks, local governments in California are enabled explicitly to invest in certain types of affordable housing debt, mostly through public housing authorities.

Resources

- Government Financial Officers Association (2023), *Should We Rethink Reserves?*, https://www.gfoa.org/materials/rethinkingreserves
- https://sftreasurer.org/files/2019-08/4.%20Appendix%20B%20-%20Lines%20of%20Busines_03-01-19.pdf
- San Francisco Treasurer's Municipal Bank Feasibility Task Force, *Final Report*, https://sftreasurer.org/banking-investments/municipal-banking-feasibility-task-force
- Halah Ahmed, et al. (2023), "Municipal Bank of LA: Housing Solutions and Portfolio Options," *Jain Family Institute,* https://jainfamilyinstitute.org/wp-content/uploads/2023/05/Affordable-Housing-Memo_JFI-Berggruen-5.5.23.pdf
- Andrew Kaufman (2023), "Pooling Piggybanks: The Case for Combining Ontario's Municipal Reserves," *CD Howe Insittute*, https://www.cdhowe.org/public-policy-research/pooling-piggybanks-case-combining-ontarios-municipal-reserves#local-government-investment-pools-in-ontario--current-landscape-and-future-opportunities

Implementation

1. Representatives of the Massachusetts Municipal Depository Trust, the Commonwealth's Department of Revenue's Bureau of Municipal Finance Law,

Town staff, the Cape Cod Commission and financial sector stakeholders should be convened. At this discussion, determine the viability of a longer-term reserve vehicle for housing-related investments. Determine whether it would be legally viable and under which circumstances, the legal structure of any potential pool and investments, liquidity and capital protection guardrails that would need to be in place, and potential for a vehicle within the MMDT framework.

2. Depending on the outcome of that conversation, work with MMDT and/or private sector financial institutions to set up such an investment vehicle, establish agreements about time horizon and liquidity measures, the type and geography of housing investments to be made.

3. Work with local officials to assess their local reserves, determine each town's fiscal risk profile, develop risk "tranches" that classify the amount of funds needed under different risk scenarios. Identify towns with portions of their reserves that are relatively low risk and that are motivated to make proactive housing investments.

4. Encourage those identified towns to move low-risk funds into the new housing investment pool for local reserves.

5. Guide investment by the pool in Cape-related housing developments or lower income Cape households lending.

6. Monitor the performance of the pool, risk profile of the investments made, and liquidity measures.

2C. Establish an entity that can collect PAYGO contributions from local governments to pool resources for larger strategic investments.

Pay-as-you-go (PAYGO) funding is the simple practice of using existing public monies to fund capital expenditures, rather than using debt. PAYGO is the most fiscally prudent approach to capital spending, but it also limits the scale of what can be accomplished. Infrastructure investment often requires large up-front sums of capital, and thus in relatively small local governments with small annual budgets (like those on the Cape), PAYGO approaches may be unrealistic and ineffective. To make them effective, Cape Cod's communities could pool their PAYGO resources in a single, regional entity that could invest in expensive and regionally significant infrastructure projects.[4]

The Cape Cod and Islands Water Protection Fund is an entity that already works in a similar vein. In this case, it is a fund specific to the Cape, Martha's Vineyard, and Nantucket that provides low-cost financing for wastewater infrastructure and water quality projects.[5] The fund is capitalized by a 2.75% surcharge on lodging (traditional hotel, motel, and bed and breakfast options, as well as short-term rentals). A regional PAYGO fund would work similarly, but its contributions would come from voluntary contributions by municipalities, its remit could work beyond wastewater and remediation, and it would make grants (since low-cost debt is already available through other means).

In October 2023, the Healy-Driscoll administration proposed a state-level PAYGO local infrastructure bank that would invest in local infrastructure.[6] The fund is intended to serve as a replacement for current federal infrastructure investments once those funds are depleted. The legislature would appropriate money to the

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[4] This would be separate from the reserve investment pool recommended in strategy 2B. That entity would be responsible for investing local fiscal reserves, whereas this entity would be responsible for making capital expenditures (such as developing infrastructure).
[5] https://www.capecodcommission.org/our-work/cape-cod-and-islands-water-protection-fund/
[6] https://www.mass.gov/news/governor-healey-files-legislation-unlocking-800-million-to-compete-for-federal-funding

fund annually. A regional PAYGO fund could serve complementary purposes, with the state and regional PAYGO funds leveraging each other to take on projects with overall less risk to local community budgets.

Crucially, the state PAYGO fund and a proposed regional PAYGO fund should not be seen as redundant resources. Cape towns would compete with all municipalities in the Commonwealth for state PAYGO funds (as they currently do for MassWorks funding and other infrastructure programs). Furthermore, the state fund is also already replacing existing federal resources, not local ones. A regional PAYGO infrastructure fund should instead be understood as an alternative to local or regional bonding for infrastructure—one that's more complex to set up, but could unlock new town funds where bonding is not an option.

Case Studies

- The Logan–Todd Regional Water Commission in Kentucky is a EPA-designated water system partnership, through which 12 local water systems partnered to access new water resources for their region. The Commission was initially unsuccessful in attaining financing for intermediate, small-scale solutions to water access issues. It was only when the Commission pursued a large and transformative system upgrade and the 12 water systems agreed to ongoing payments (through water purchase agreements) that the regional water commission was successful in attaining financing.

- The Metropolitan Washington Council of Governments (MWCOG) Regional Environmental Resources Management Program is a suite of infrastructure and education activities set up by an intermunicipal government entity in the DC area. The program deals with energy and greenhouse gas emissions, municipal solid waste, resiliency infrastructure, and more. The program is funded by three sources: a portion of dues from member governments in MWCOG, public and private grants, and a voluntary "Regional Environmental Fund." This is a supplemental opt-in contribution from local governments on a PAYGO basis. Though the program is largely focused on planning, education, and coordination activities, it is actively funding the research and planning phase of energy infrastructure projects and contributes to small green infrastructure initiatives with these voluntary PAYGO contributions.

- The South Orange County Wastewater Authority (SOCWA) is an intergovernmental “Joint Powers Authority,” a type of independent organization authorized under California law. SOCWA coordinates the wastewater activity of 10 entities—either municipalities or water districts. Through SOCWA, these entities form subgroups called “Project Committees” that take on individual infrastructure projects serving their constituents. Project Committees are governed by Memoranda of Understanding (MOUs), which specifies what work is to be done and how funding is to be provided. Typically projects are funded through municipal contributions committed through the MOUs. SOCWA may or may not issue debt in relation to those projects and paid for by MOU-committed revenue.

- Massachusetts’ regional planning associations and the MBTA are funded in part through local (mandatory) PAYGO contributions that invest regionally, sometimes through competitive grant programs.

Resources

- “Intermunicipal Agreements: A Best Practice,” https://www.mass.gov/doc/best-practices-of-inter-municipal-agreements-mcwt/download
- US EPA (2022), “Logan-Todd Regional Water Commission Strength In Numbers A Water System Partnerships Case Study,” https://www.epa.gov/system/files/documents/2022-06/WSP_Logan-Todd_Case%20Study_508.pdf
- Cape Cod Commission, “Cape Cod and Islands Water Protection Fund,” https://www.capecodcommission.org/our-work/cape-cod-and-islands-water-protection-fund/

  Anna Bernstein (2020), “An Introduction to Joint Powers Authorities, their Funding Mechanisms, and Why California Should Utilize One in Order to Create an Effective Forest Management System to Prevent Wildfires,”

https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=1210&context=hastings_business_law_journal

Implementation

1. A group of municipalities interested in regionally scaled infrastructure and non-debt funding should be convened.

2. This group should explore what types of infrastructure the group as a whole would invest in, what scale of funding commitment may be possible, and what governance structure could be viable for the group as a whole. Through this process, the group should identify any communities or existing entities that have the interest and capacity to take a leadership role as a coordinating entity.

3. Working with legal counsel, determine what entity structure would be needed for a regional PAYGO fund and determine whether any existing entities (including Barnstable County) would be legally, fiscally, and politically able to take on this role.

4. The coordinating entity (such as a town) should establish the PAYGO fund in accordance with the findings of the previous implementation step. This may include establishment of a body within county or local government, establishment of a new regional authority under state law, establishment of a new fund administered by an existing state agency, or (as a last resort) working with the legislature to establish a wholly new authority.

5. The coordinating entity should gauge with individual towns the level of commitment towns are open to making and work with town counsel to set up memoranda of understanding (MOUs) with individual towns. These MOUs should be affirmed by local legislative action (e.g., Town Meeting warrants).

2D. Provide stable sources of operating funds for housing providers, including local housing authorities.

Though capital funding is most obviously needed to construct new housing, operating resources are a hidden constraint on affordable housing development. Through conversations with housing providers on the Cape and beyond, operating funds were identified as a pain-point for many providers, particularly for smaller organizations. This was noted as a specific reason for the disappearance of many community-scale housing providers. Not only does a lack of operating funds limit capacity to take on new projects, it can also limit funding that is available, since funders are reluctant to let a capacity-limited organization take on the responsibility of additional units to manage. Providers, including local housing authorities, have stated that a lack of operating funds was the reason they would be ineligible for development funds, even where opportunities existed.

State and regional government, local governments, and private foundations could ameliorate this concern by making explicit grants for operating funds at small housing providers, including local housing authorities. By stabilizing an organization and increasing capacity, more affordable housing is likely to follow.

Resources

- Mackenzie Abrogust (2020), "Why Do Nonprofits Fail? A Quantitative Study of Form 990 Information in the Years Preceding Closure," Dissertation, School of Public Service, Old Dominion University, https://digitalcommons.odu.edu/cgi/viewcontent.cgi?article=1045&context=publicservice_etds
- National Council of Nonprofits, "Operating Reserves for Nonprofits," https://www.councilofnonprofits.org/running-nonprofit/administration-and-financial-management/operating-reserves-nonprofits

Implementation

1. A meeting of regional nonprofit leaders, local Housing Authority directors, leaders in the business community, community advocates with history in the

housing space should be convened to hold a discussion on operating funds.

2. Through this conversation, the Commission should identify priority organizations that (a) are at risk due to lack of operating funds or could start/expand housing operations with increased operating funds.

3. Regional leaders should organize a fundraising effort for operating grants that could expand housing services.

4. Towns should budget for annual operating allocations to their local housing authorities.

3. Advocate for state-level policy reforms and funding sources.

3A. Advocate for CPA regulatory reforms to create flexibility for projects on the Cape.

The Community Preservation Act (CPA) is the most impactful local funding source for housing. A full description of the program and its required funding categories is above at recommendation 1A. Bond against local Community Preservation Act funds. Key in this discussion is that there are three allowed spending categories for CPA funds (including "community housing"). Each category must receive 10% of a town's annual CPA revenues, and the remaining 70% (more or less) can be spent on any of the three.

While CPA is one of the most useful local housing tools, it is not always optimized for the housing crisis as seen on the Cape. First, the minimum 10% allocation for community housing is not enough to meet the crisis on the Cape (or many other places in Massachusetts). The state should consider increasing the required allocation to housing to ensure spending on housing is adequate. Individual communities *could* adopt increased requirements for their local Community Preservation Committees, but an increased requirement is best set at a state level.

Second, CPA could be opened up to fund more middle-income housing developments. Presently, it can fund units open to households making up to 100% of AMI, though most units are restricted to 80% AMI to count on the town's Subsidized Housing Inventory. Low-income housing remains the most difficult category of housing to pencil out financially, and as such the majority of state housing funding is directed at low-income housing. Nonetheless, investment in middle-income housing is still needed, especially on the Cape, where the vacation market has increased prices for middle-income housing dramatically.. There are only a handful of subsidy programs that are aimed at middle-income housing (most notably the MassHousing Workforce Housing Initiative).

Opening CPA to middle-income projects (up to or greater than 125% Area Median Income) would give communities another tool to work with. Since CPA is locally controlled, this would allow Cape communities to address its regionally specific middle-income needs without the requirement of a new statewide funding program.

Resources

- Community Preservation Coalition, "CPA Overview," https://www.communitypreservation.org/about
- Community Preservation Coalition, "The Most Important Rule to Remember for All CPA Housing Projects: Income Limits Apply to All CPA Housing Expenditures," https://www.communitypreservation.org/housing-income-limits
- Tufts Center of State Policy Analysis, "Housing and the CPA," https://mahousingsolutions.com/

Implementation

1. The Cape Cod Commission should study the impact of increasing the required allocation of funds to housing. The study should take into account

the existing allocations by town over the past decade and project any future changes. This should be reported in raw dollar figures and the estimated number of units an increase could support, based on CPA's place in project funding stacks.

2. The Commission should study the impact of increasing the allowable AMIs for CPA spending. It should assess how funds are spent now and the income levels they support. The Commission should work with local CPC officials to understand their recommendation process, as well as developers working at different income levels. If current CPA funds are not reaching households at 100% AMI, it is likely that towns are either not seeing projects at that level or are focused on building up their Subsidized Housing Inventory. If that is the case, opening up the CPA legislation may not be worth the risk.

3. The Commission and towns should take the results of these studies and, if desired, draft and advocate for legislative changes to CPA.

3B. Advocate for clearer guidelines for spending of STR CIF funds.

The local option Short-Term Rental Community Impact Fee (authorized under MGL c. 64G § 3D) enables municipalities to collect an additional tax on short-term rentals above the base room excise tax that can be collected on all lodging. By law, 35% of the funds from the Community Impact Fee must be reserved for "affordable housing and local infrastructure projects." The meaning of those terms are left undefined, both in the law and accompanying regulations. The proportion of that 35% reserve allocated to affordable housing is also left up to local discretion.

In some ways, the current flexibility of CIF funds could prove useful. For instance, perhaps this is a source of funds for workforce housing developments, capitalizing housing developments for up to 120% Area Median Income or more. Determining whether that is viable should be a priority.

The state of the Community Impact Fee leaves towns and housing providers with questions. What are the income limits for housing units receiving CIF funding? Are there restrictions on the use of funds and who can receive them? Can CIF receipts be leveraged? There are also real concerns that no CIF funds will be spent on affordable housing, as local infrastructure projects could reasonably take up the entire 35% reserve, and there are no minimum proportions of spending for different categories, as there are with the Community Preservation Act funds. In some cases, infrastructure spending could enable housing (such as the installation of wastewater treatment), and would thus still help resolve the housing crisis. But infrastructure spending of that sort is also not guaranteed.

The Cape Cod Commission, local governments, and regional advocacy groups should push for more explicit regulatory guidance and potential amendments to §3D to ensure there is CIF funding reserved for housing and that the potential uses of funds are unambiguous. Advocates could also push for a greater amount reserved for affordable housing and infrastructure (beyond the 35%), so that CIF funds are not simply used as an offset for funding reductions elsewhere in local budgets.

Resources

- M.G.L. Chapter 64G § 3D, https://malegislature.gov/Laws/GeneralLaws/PartI/TitleIX/Chapter64G/Section3D
- Department of Revenue, Room Occupancy Excise Tax Information, https://www.mass.gov/info-details/room-occupancy-excise-tax
- Division of Local Services (2019), FAQ on the 2019 Short-Term Rental Legislation, https://www.mass.gov/doc/room-occupancy-excise-faqs-short-term-rentals/download

Implementation

1. The Cape Cod Commission, working with towns, should formulate a position on the interpretation of “affordable housing” within the framework of the Community Impact Fee. This should reflect both common and technical

readings of the phrase and the needs of Cape communities.

2. Working with the Division of Local Services, seek clarity on the interpretation of affordable housing.

3. After assessing CIF spending by Cape towns, the Commission should provide guidance to towns on allocation of CIF funds.

4. If necessary, work with towns to adopt local legislation that mandates a higher portion of CIF funds be dedicated to housing and/or infrastructure.

5. If necessary, work with legislative leaders to amend the text of the law to be more specific in either its definitions of key terms or in the breakdown of allocated spending.

3C. Advocate for the introduction of a local option real estate transfer fee.

Local governments have few opportunities to tap into the incredible appreciation of real estate values that has occurred in the last decade. The methods they do have are insufficient. Local property taxes must be adjusted regularly, and property value assessments do not always reflect market values. Levy limits, which translate into property taxes, cannot grow with market appreciation, due to the limits of Prop 2.5. Furthermore, increased property taxes are capturing unrealized gains, which (while broadly reasonable) can have undesirable effects for fixed-income residents.

An alternative source of funds outside of the property tax system is a real estate transfer fee. This is a tax on real estate transactions, such that a portion of value increases are captured when gains are realized. Such a fee would provide an additional source of funds for local government that could be used for affordable housing—the viability of which is directly and negatively impacted by real estate appreciation.

Presently, real estate transfer fees are not a taxing power given by Massachusetts to local governments. Many communities support the creation of a local option to impose the fee. From the Cape, Provincetown, Truro, and Wellfleet have thrown in their support. Towns on the Islands and the wealthy communities of Boston's inner core have also signed on. These towns have filed their own home rule petitions in the General Court, and they support statewide local option legislation. Non-governmental institutions and organizations also support these efforts.

Under the 2023 local option proposal, communities could impose a real estate transfer fee of between 0.5% and 2% of the purchase price for sales over $1 million and with the opportunity for additional exemptions.

The Cape Cod Commission, local governments, and regional advocacy groups should continue their advocacy for this initiative, as it's one of the most targeted ways of generating new revenue.

Case Studies

- Real estate transfer fees are commonplace in states across the US, including Massachusetts. Local real estate transfer fees are more rare, but are found in Pennsylvania and other states. Targeted transfer taxes aimed at high-value properties (so-called mansion taxes) are also less common, but exist statewide in Connecticut, Vermont, New York, Hawaii, New Jersey, Washington, and in the District of Columbia. Local transfer fees on high-value properties have recently been adopted by jurisdictions like Oakland, Santa Fe, and Los Angeles, and are being actively considered in Chicago and other cities. Toronto recently amended their local land transfer tax to include graduate rates at higher property values.

Resources

- LOHA Coalition, Real Estate Transfer Fee: Legislation, https://www.realestatetransferfee.org/legislation
- Michael Leachman and Samantha Waxman (2019), "State "Mansion Taxes" on Very Expensive Homes," Center for Budget and Policy Priorities, https://www.cbpp.org/sites/default/files/atoms/files/1-24-19sfp.pdf
- Jung Choi, et al. (2018), "Exploring the Viability of Mansion Tax Approaches," Urban Institute Housing Finance Policy Center, https://www.urban.org/sites/default/files/publication/98423/exploring_the_viability_of_mansion_tax_approaches_19.pdf
- Patricia Atkins, et al. (2015), "Real Estate Transfer Taxes: Widely Used, Little Conformity," *State Tax Notes* https://gwipp.gwu.edu/sites/g/files/zaxdzs6111/files/downloads/Real%20Estate%20Transfer%20Taxes-%20Widely%20Used%2C%20Little%20Conformity.pdf
- Sarah Holder, et al. (2023), "Affordable Housing Taxes Sweep the Ballots in Three US Cities," Bloomberg CityLab, https://www.bloomberg.com/news/articles/2023-11-08/mansion-tax-ballot-initiative-proves-popular-as-voters-weigh-housing-measures

Implementation

1. Local officials, including those from towns who have not yet supported a local option transfer fee, should be convened to gauge interest and strategize on advocacy efforts.

2. Interested communities should advocate independently, as part of a regional coalition, and in conjunction with statewide coalitions to work with General Court leadership and the Cape's state lawmakers to pass the local option bill.

3D. Advocate for increased capitalization of existing housing funding programs.

As demonstrated in the landscape analysis, the Commonwealth has numerous programs that fund housing development, including tax credits, tax exemptions, grants, forgivable loans, and more. While these programs exist, they are not always capitalized to move on opportunities. The Cape Cod Commission, local governments, and regional advocacy groups should regularly be advocating for full funding of these programs to meet the demand for subsidy that addresses the housing crisis. In October 2023, the Healy-Driscoll administration advanced the Affordable Homes Act that would increase investment in the space by $4.1 billion (as well as a raft of housing policy changes).

The Cape Cod Commission, local governments, and regional advocates should heavily support this legislation and the programs that compose the legislation.

Cape advocates should moreover continue the push for similarly significant future proposals. According to the state the present legislation will "support the production, preservation and rehabilitation of more than 65,000 homes statewide." This is both a powerful level of investment *and* it will not address the full extent of the housing crisis, which will require statewide investment in hundreds of thousands of homes (including construction of 200,000 homes by 2030). Given this context, continued investment will be needed.

Resources

- The Affordable Homes Act (housing bond bill)
    - Text: https://www.mass.gov/files/documents/2023/10/18/Housing%20Bond%20Bill%20and%20Filing%20Letter%20FINAL%20PDF.pdf
    - Fact-Sheet: https://www.mass.gov/doc/affordable-homes-act-fact-sheet/
    - Policy Briefs: https://www.mass.gov/lists/housing-bond-bill

- CHAPA Statement: https://www.chapa.org/housing-news/chapas-statement-on-the-housing-bond-bill

Implementation

1. Town officials, advocates, and Cape Cod Commission officials should work with state legislative leadership and the Cape's representatives to push the housing bond bill forward. This advocacy should be executed by individuals and each separate organization, as well as through regional and statewide coalitions.

2. Working with housing advocates, the Commission and towns should develop an advocacy program around ongoing housing funding priorities, and communicate those priorities as a coalition to state legislators.

Prioritization

To aid advocates, policymakers, and implementers sort through these recommendations, the following is a list of high-priority recommendations. Priorities were qualitatively determined by weighing the potential impact on generating new funding for housing or housing-related infrastructure, the potential impact of those funds on new unit development and/or affordability, and the ease of implementation. Recommendations excluded from this list should still be pursued, but implementation may be more difficult or generate fewer funds. Some recommendations (e.g., using Chapter 40R for medium- or high-density rezonings) may be high-priority recommendations for non-funding reasons, but have a relatively low funding-related impact.

Highest Priority Recommendations

- 1A: Bond against local Community Preservation Act funds.
- 2B. Hold reserves in a public or private investment fund that can invest in housing.
- 2D. Provide stable sources of operating funds for housing providers, including local housing authorities.
- 3C. Advocate for the introduction of a local option real estate transfer fee.
- 3D. Advocate for increased capitalization of existing housing funding programs.

Conclusion

This memo has attempted to illuminate the shape of the housing finance ecosystem, existing funding opportunities for a range of project types, the gaps and challenges in the current system, and some immediate recommendations to address identified issues. Ideally, beyond near-term policy changes, advocacy work, and tool development, readers of this memo will be equipped to think creatively about housing finance, and begin to develop their own solutions to funding challenges for their specific projects or communities. Solving the full range of housing funding challenges are beyond the scope of any individual organization, town, county, or even state. Nonetheless, individual actors at the local and regional scale can make material progress through ad hoc innovations in housing finance and concerted advocacy.