



Massachusetts Department
of Environmental Protection

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A DRINKING WATER PROGRAM FACT SHEET

Conservation Restrictions

For Public Drinking Water Supply Purposes

What is a Conservation Restriction?

A conservation restriction (CR) is a voluntary permanent deed restriction that is binding on all future owners of the property. A CR protects the natural features of the land by preventing future development. A CR must meet the requirements of Massachusetts General Laws (M.G.L) c.184, §§ 31-33¹, be approved by the Secretary of Energy and Environmental Affairs (EEA), and recorded with the appropriate Registry of Deeds. Compared to purchasing land, a CR can be a cost effective way to protect a public drinking water supply. The public water system's legal counsel can assist them with developing a CR.

Who can hold a CR for drinking water supply purposes?

A public drinking water CR can be held by a municipality or a non-profit public water system (such as a water district). However, pursuant to M.G.L c. 40², §§ 39B, 39E and 41; control of the land *must* be placed under the Board of Water Commissioners or Board of Selectmen authorized as such.

Is MassDEP approval required for a drinking water supply CR?

Pursuant to M.G.L c.40, §§ 38, 39B and 41, land acquired for public water supply purposes (including CRs) must have the *consent and approval* of the Department of Environmental Protection (MassDEP). This requirement ensures that a proposed acquisition will benefit a public water supply, and that the proposed uses of the land will not negatively impact water quality.

Does a drinking water supply CR permanently protect the land?

Land acquired for public water supply purposes must be protected for as long as the source is 'active' (meaning the source is maintained to meet 310 CMR 22.00³ and is the primary or backup source for consumer demands). If the source is officially abandoned through MassDEP's permitting process and the CR does not serve to protect any other public water supply, MassDEP may approve the release of the land.

¹ <https://malegislature.gov/Laws/GeneralLaws/PartII/TitleI/Chapter184>

² <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40>

³ <https://www.mass.gov/regulations/310-CMR-22-the-massachusetts-drinking-water-regulations>



What is involved in the MassDEP CR approval process?

MassDEP must review the CR documents (draft CR *and* draft Map) and ensure that a public hearing is held. At a minimum, the following items must be submitted to the MassDEP regional office:

- Permit Application BRP WS 26
- CR documents
- Abutters list

For detailed information about the submittal requirements, please refer to the *Application Completeness Checklist* in the [Instructions and Supporting Material](#) for BRP WS 26; <https://www.mass.gov/how-to/ws-26-sale-or-acquisition-of-land-for-water-supply-purposes>.

What happens after the public hearing?

(1). If the proposed acquisition is approved, MassDEP will issue the public water supplier (PWS) an approval letter. If by this time MassDEP has also approved the CR documents, this approval will be included in the letter. It should be noted that MassDEP approval of the CR is not required in order for MassDEP to approve the proposed land acquisition.

(2). The CR documents must be submitted to EEA for their review and approval. If a consultant is assisting the PWS, they will coordinate the EEA review process. If the PWS does not have assistance, MassDEP will help in coordinating the EEA review.

(3). EEA will contact the PWS when their review is completed. If no changes to the CR documents are required, the PWS will obtain the necessary local signatures and return the signed CR to MassDEP.

(4). MassDEP will forward the CR to EEA for final approval.

(5). The PWS will record the CR and provide a copy to the appropriate MassDEP Regional Office.

How does the Community Preservation Act (CPA) impact land purchased for public water supply?

Pursuant to M.G.L. c.44B §2(a)⁴, municipalities using CPA funds to purchase public water supply land must record a permanent deed restriction meeting the requirements of M.G.L. c. 184, §§ 31-33. The restriction must be enforceable by the municipality or the commonwealth, and may run to the benefit of a non-profit organization. To satisfy this requirement municipalities (usually) grant a CR to a non-profit land trust organization.

⁴ <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter44B/Section12>

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Because these CRs cover land purchased for public drinking water supply purposes, MassDEP must review them to ensure that:

- The Zone I is excluded from the CR, or is identified in the CR documents as inaccessible to the public;
- The 'Permitted Uses' within the CR are compatible with water supply protection. For instance horseback riding, swimming, farming, vehicle use, new structures, certain agricultural practices and other concentrated human activities are activities of concern;
- The CR does not impede, obstruct or delay the PWS's ability to enter the restricted area to conduct water supply related operations and maintenance for compliance with MA Drinking Water Regulations 310 CMR 22.00; and
- The 'Retained/Reserved Uses' identified in the CR enable the PWS to inspect the land and conduct activities specific to drinking water supply operations, including the installation or replacement of a water supply well if necessary.

Where can I get more information and assistance with developing a CR for drinking water supply purposes?

Information and assistance is available by contacting the Drinking Water Program in Boston or the Regions, or by emailing program.director-dwp@state.ma.us; subject: Conservation Restrictions.

MassDEP has developed Model CRs for both public wells and surface water supplies. These are available on the Drinking Water Program website at: <https://www.mass.gov/lists/source-water-protection-forms-and-templates>.

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