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**DLS**  
DIVISION OF LOCAL SERVICES  
MA DEPARTMENT OF REVENUE

## ***Ask DLS: Community Preservation Act - Rail Trails***

This month's *Ask DLS* features frequently asked questions concerning a recent amendment to [G.L. c. 44B, § 5](#) allowing communities to use Community Preservation Act (CPA) moneys for "rail trails." Please let us know if you have other areas of interest or send a question to [cityandtown@dor.state.ma.us](mailto:cityandtown@dor.state.ma.us). We would like to hear from you.

### **What is the amendment and how does it impact CPA allowable uses?**

Found in Section 22 of [Chapter 24 of the Acts of 2021](#), this amendment, in essence, allows a community to use CPA money to build a rail trail over old, abandoned railroad tracks. It does this by permitting the acquisition of land held for railroad purposes for recreational use. Such an acquisition requires the recommendation of the community preservation committee, approval of the legislative body and a conservation restriction. Additionally, said land remains subject to any property interests, including restrictions or reversionary interests. The exact language of the amendment is:

"Subsection (b) of section 5 of chapter 44B of the General Laws, as so appearing, is hereby amended by adding the following paragraph:-

(4) The community preservation committee may recommend and the legislative body of a city or town may approve appropriations from the fund to acquire land, or real property interests therein, held for railroad purposes to be used by the city or town for recreational use as a rail trail as defined in section 35A of chapter 82. Notwithstanding subsection (a) of section 12, land, or real property interests therein, acquired pursuant to this paragraph shall remain subject to any property interest, including restrictions or reversionary interests, required to be held by the grantor or the United States pursuant to the federal National Trails System Act of 1968, as amended. Notwithstanding the definition of real property interest in section 2, land, or real property interests therein, acquired pursuant to this paragraph shall be considered a real property interest for purposes of this chapter, and a conservation restriction that meets the requirements of sections 31 to 33, inclusive, of chapter 184 shall be required."

## What is a “rail trail?”

The definition of rail trail can be found in [G.L. c. 82, § 35A](#). A rail trail “shall mean property converted from the former use as a railroad right-of-way to a use as a publicly-owned, improved and maintained corridor for bicycle, pedestrian and other non-motorized public transportation, recreation and associated purposes.” Many times, such trails are used for walking or bike lanes that connect to other towns and transportation hubs. They are multipurpose public paths created from former railroad corridors.

## Why was an amendment necessary to permit this spending purpose?

Prior to the amendment, such spending was not allowable because of two statutory impediments, described below. In sum, the CPA does not provide for acquisition of land the recreational use of which cannot be ensured because of the seller's reservation of a right to return the land to commercial use.

1. The CPA precludes acquisition of an interest in land consisting of "an estate at will or at sufferance and any estate for years having a term of less than 30 years. . . ." [G.L. c. 44B, § 2](#). Estates at will are characteristically "uncertain and defeasible." *Benedict v. Morse*, 51 Mass. 223, 229 (1845). "Estates at will may be determined by either party by three months' notice in writing for that purpose . . . ." [G.L. c. 186, § 12](#). (In this context, "determine" means "terminate." See *O'Reilly v. Frye*, 263 Mass. 318, 320 (1928).) Rail bed land owners would have the right to resume the commercial use of the property on the exact timetable specified at [G.L. c. 186, § 12](#) as such land, held for railroad purposes, is ordinarily subject to a reversionary interest in case the railroad is reactivated. Without specific statutory authority, as seen in the amendment, CPA funds cannot be used to purchase such an interest in land. See generally [G.L. c. 44B, § 12](#).

2. Real property interests purchased with CPA monies "shall be bound by a permanent deed restriction that meets the requirements of chapter 184, limiting the use of the interest to the purpose for which it was acquired." [G.L. c. 44B, § 12\(a\)](#). To comply with [G.L. c. 184, § 31](#), the mandated restriction would have to create "an [enforceable] right...in perpetuity...whether or not stated in the form of a restriction, easement, covenant, or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land...appropriate to retaining land" in recreational use as defined by the CPA. Any resumption of a use of land for railroad purposes would seem to be incompatible with a deed restriction requiring perpetual recreational use as defined at [G.L. c. 44B, § 2](#). It did not appear possible to limit the land to recreational use within the meaning of the CPA and impose the mandated deed restriction. Without specific statutory authority, as seen in the amendment, property cannot be acquired under the CPA without the deed restriction called for at [G.L. c. 44B, § 12\(a\)](#).

The amended statute addresses these impediments by adding the “notwithstanding” language seen above.