

as to why the Secretary believes that such use is not in substantial compliance with such zoning bylaw or why such use is not substantially consistent with such applicable standards, as the case may be. Any such owner shall have sixty days following the receipt by him of that written notification within which to discontinue the use referred to in such notification. Discontinuance of such use within such sixty-day period shall have the effect of prohibiting the Secretary from acquiring such property by condemnation by reason of such use. In any case in which such use is not discontinued within such sixty-day period, the Secretary may, in his discretion, acquire such property by condemnation.

**(d) Conditions for approval by Secretary**

Any zoning bylaw or amendment thereto submitted to the Secretary for approval for the purposes of this subchapter shall be approved by him if such bylaw or amendment contains provisions which—

(1) contribute to the effect of prohibiting the commercial and industrial use (other than a use for a commercial purpose as authorized under section 460x-12 of this title) of all property within the boundaries of such area which is situated within the county or township adopting such bylaw or amendment;

(2) are consistent with the objectives and purposes of this subchapter so that, to the extent possible under Michigan law, the scenic and scientific values of the lakeshore area will be protected;

(3) are designed to preserve the lakeshore character of the area by appropriate restrictions upon the burning of cover, cutting of timber (except tracts managed for sustained yield), removal of sand or gravel, and dumping, storage, or piling of refuse and other unsightly objects or other uses which would detract from the natural or traditional lakeshore scene;

(4) provide that no construction, reconstruction, moving, alteration, or enlargement of any property, including improved property as defined in this subchapter, within the lakeshore area shall be permitted, if such construction, reconstruction, moving, alteration, or enlargement would afford less than a fifty-foot setback from all streets measured at a right angle with the street line, and a twenty-five-foot distance from all contiguous properties. Any owner or zoning authority may request the Secretary of the Interior to determine whether a proposed move, alteration, construction, reconstruction, or enlargement of any such property would subject such property to acquisition by condemnation, and the Secretary, within sixty days of the receipt of such request, shall advise the owner or zoning authority in writing whether the intended use will subject the property to acquisition by condemnation; and

(5) have the effect of providing that the Secretary shall receive notice of any variance granted under, and of any exception made to the application of, such bylaw or amendment.

**(e) Withdrawal or revocation of approval by Secretary; retroactive effect**

The approval of any bylaw or amendment pursuant to subsection (d) shall not be withdrawn

or revoked by the Secretary for so long as such bylaw or amendment remains in effect as approved. Any such bylaw or amendment so approved shall not be retroactive in its application.

(Pub. L. 91-479, § 9, Oct. 21, 1970, 84 Stat. 1078.)

**§ 460x-9. Right of retention of residential use in improved lands**

**(a) Limited term; conforming use; payment for right; sale or lease of right**

Any owner or owners of improved property situated within the area designated for inclusion in the lakeshore on the date of its acquisition by the Secretary may, as a condition of such acquisition, retain, for a term of not to exceed twenty-five years, or for a term ending at the death of such owner or owners, the right of use and occupancy of such property for any residential purpose which is not incompatible with the purposes of this subchapter, or which does not impair the usefulness and attractiveness of the area designated for inclusion. The Secretary shall pay to the owner the value of the property on the date of such acquisition, less the value on such date of the right retained by the owner. Where any such owner retains a right of use and occupancy as herein provided, such right during its existence may be conveyed or leased for non-commercial residential purposes in accordance with the provisions of this section.

**(b) Option to retain use of land; notice to Secretary; payment**

Any person who is—

(1) an owner of improved property described in section 460x-10(a)(2) of this title which is situated within the area designated for inclusion in the lakeshore on the date of its acquisition by the Secretary; or

(2) an occupier of improved property described in section 460x-10(a)(2) of this title which is situated within the area designated for inclusion in the lakeshore on the date of its acquisition by the Secretary, in situations where the fee ownership of such improved property has been heretofore acquired by the United States (whether by donation, purchase, condemnation, exchange or otherwise);

may retain, for a term not to exceed twenty-five years from January 1, 1973, or for a term ending on the death of such owner or occupier, the right of use or occupancy of such property for any residential purpose which is not incompatible with the purposes of this subchapter or which does not impair the usefulness and attractiveness of the area designated for inclusion. Such owner or occupier must notify the Secretary of any intention to exercise such option within 60 days after receipt of the notice referred to in section 460x-10(c)(3) of this title. In situations where the United States has not heretofore acquired fee title to the improved property, the Secretary shall pay to the owner the value of the property on the date of such acquisition, less the value on such date of the right retained by the owner. In situations where the United States has heretofore acquired fee title to the improved property, the occupier may notify the Secretary that such occupier elects to retain continued use and

occupancy of such property pursuant to this section, in which event the occupier shall pay to the Secretary the value of the additional right retained, which value shall be based upon the value of the property at the time of its acquisition by the Secretary.

**(c) Limitation on use in instrument evidencing right; Secretary's power of termination of right**

Any deed or other instrument used to transfer title to property, with respect to which a right of use and occupancy is retained under this section, and any instrument evidencing any right of use and occupancy retained by any occupier under this section, shall provide that such property shall not be used for any purpose which is incompatible with purposes of this subchapter, or which impairs the usefulness and attractiveness of such area, and if it should be so used, that the Secretary may<sup>1</sup> terminate such right. In the event the Secretary exercises his power of termination under this subsection he shall pay to the owner of the right terminated an amount equal to the value of that portion of such right which remained unexpired on the date of such termination.

**(d) Transfer of right to member of immediate family; owner option to terminate; payment by Secretary; "member of the immediate family" defined**

(1) Any owner or occupier of improved property who retains a right of use and occupancy under subsection (b) may convey or lease such right during its existence to a member of such owner or occupier's immediate family for noncommercial residential purposes which are not incompatible with the purposes of this subchapter and which do not impair the usefulness and attractiveness of the area designated for inclusion.

(2) Any owner or occupier of improved property who has retained a right of use and occupancy under subsection (b) may terminate such right at any time, and the Secretary shall pay, within 120 days after the date of such termination, to the owner of the right terminated an amount equal to the value of that portion of such right which remained unexpired on the date of such termination.

(3) As used in this subchapter, the term "member of the immediate family" means spouse, brother, sister, or child, including persons bearing such relationships through adoption, and step-child.

(Pub. L. 91-479, §10, Oct. 21, 1970, 84 Stat. 1079; Pub. L. 97-361, §1, Oct. 22, 1982, 96 Stat. 1720.)

AMENDMENTS

1982—Subsec. (b). Pub. L. 97-361 substituted provisions granting owners and occupiers of improved lakeshore property described in section 460x-10 of this title the right of retention of a compatible residential use for a limited term upon notification of the Secretary and payment for the right retained for former provisions which were redesignated as subsec. (c) and amended.

Subsec. (c). Pub. L. 97-361 redesignated subsec. (b) as (c), and amended it to apply expressly to any instru-

ment evidencing any right of use and occupancy retained by any occupier under this section.

Subsec. (d). Pub. L. 97-361 added subsec. (d).

**§ 460x-10. Improved property**

**(a) General definition**

As used in this subchapter, the term "improved property" means a detached, one-family dwelling, construction of which—

(1) was begun before December 31, 1964, or

(2) for the purposes of section 460x-9(b) or (d) of this title, was begun on or after December 31, 1964, and before October 21, 1970, and has been openly and continuously used, at least during the summer months of each year when similar dwellings in the area are used, as a residential dwelling since such construction was completed, and with respect to the portion of such period after any acquisition of such property by the United States, by the owner, or a member of the immediate family of the owner, of such dwelling on the date of such acquisition,

together with so much of the land on which the dwelling is situated, such land being in the same ownership as the dwelling, as the Secretary shall designate to be reasonably necessary for the enjoyment of the dwelling for the sole purpose of noncommercial residential use, together with any structures accessory to the dwelling which are situated on the lands so designated. The amount of land so designated shall in every case be at least three acres in area, or all of such lesser acreage as may be held in the same ownership as the dwelling, and in making such designation the Secretary shall take into account the manner of noncommercial residential use in which the dwelling and land have customarily been enjoyed.

**(b) Authorization to exclude beach lands**

The Secretary may exclude from the land designated under subsection (a) any beach or waters on Lake Michigan, together with so much of the land adjoining any such beach or waters as the Secretary may deem necessary for public access thereto. If the Secretary makes such exclusion, an appropriate buffer zone shall be provided between any residence and the public access or beach.

**(c) Authorization to exclude recently improved property; termination, compensation, and notice**

(1) The Secretary may exclude from the category of "improved property" under this subchapter any property described in subsection (a)(2) which the Secretary determines is in an area required for public use or development in the immediate future. In making any such determination the Secretary shall take into account the proximity of such property to any other improved property, the development or public use of the lakeshore and the related timetable therefor, and the anticipated availability in the immediate future of funds related to such development or public use.

(2)(A) With respect to any improved property, as defined in subsection (a)(2), with respect to which the occupier has retained a right of use and occupancy under section 460x-9(b) of this

<sup>1</sup> So in original. Probably should be "may".