

SEPARABILITY

Pub. L. 87-126, §10, Aug. 7, 1961, 75 Stat. 293, provided that: "If any provision of this Act [sections 459b to 459b-8 of this title] or the application of such provision to any person or circumstance is held invalid, the remainder of this Act [such sections] or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby."

§ 459b-1. Acquisition of property**(a) Authority of Secretary; manner and place; concurrence of State owner; transfer from Federal agency to administrative jurisdiction of Secretary**

The Secretary of the Interior (hereinafter referred to as "Secretary") is authorized to acquire by purchase, gift, condemnation, transfer from any Federal agency, exchange, or otherwise, the land, waters, and other property, and improvements thereon and any interest therein, within the area which is described in section 459b of this title or which lies within the boundaries of the seashore as described pursuant to section 459b-2 of this title (both together hereinafter in sections 459b to 459b-8 of this title referred to as "such area"). Any property, or interest therein, owned by the Commonwealth of Massachusetts, by any of the towns referred to in section 459b of this title, or by any other political subdivision of said Commonwealth may be acquired only with the concurrence of such owner. Notwithstanding any other provision of law, any Federal property located within such area may, with the concurrence of the agency having custody thereof, be transferred without consideration to the administrative jurisdiction of the Secretary for use by him in carrying out the provisions of sections 459b to 459b-8 of this title.

(b) Use of funds; fair market value

The Secretary is authorized (1) to use donated and appropriated funds in making acquisitions under sections 459b to 459b-8 of this title, and (2) to pay therefor not more than the fair market value of any acquisitions which he makes by purchase under sections 459b to 459b-8 of this title.

(c) Exchange of property; cash equalization payments; reports to Congress

In exercising his authority to acquire property by exchange, the Secretary may accept title to any non-Federal property located within such area and convey to the grantor of such property any federally owned property under the jurisdiction of the Secretary within such area. The properties so exchanged shall be approximately equal in fair market value: *Provided*, That the Secretary may accept cash from or pay cash to the grantor in such an exchange in order to equalize the values of the properties exchanged.

The Secretary shall report to the Congress on every exchange carried out under authority of sections 459b to 459b-8 of this title within thirty days from its consummation, and each such report shall include a statement of the fair market values of the properties involved and of any cash equalization payment made or received.

(d) Exchange of property; addition to Cape Cod National Seashore

The Secretary may convey to the town of Provincetown, Massachusetts, a parcel of real property consisting of approximately 7.62 acres of Federal land within such area in exchange for approximately 11.157 acres of land outside of such area, as depicted on the map entitled "Cape Cod National Seashore Boundary Revision Map", dated May, 1997, and numbered 609/80,801, to allow for the establishment of a municipal facility to serve the town that is restricted to solid waste transfer and recycling facilities and for other municipal activities that are compatible with National Park Service laws and regulations. Upon completion of the exchange, the Secretary shall modify the boundary of the Cape Cod National Seashore to include the land that has been added.

(e) "Fair market value" defined; appraisal

As used in sections 459b to 459b-8 of this title the term "fair market value" shall mean the fair market value as determined by the Secretary, who may in his discretion base his determination on an independent appraisal obtained by him.

(Pub. L. 87-126, §2, Aug. 7, 1961, 75 Stat. 287; Pub. L. 105-280, §1(a), Oct. 26, 1998, 112 Stat. 2694.)

AMENDMENTS

1998—Subsecs. (d), (e). Pub. L. 105-280 added subsec. (d) and redesignated former subsec. (d) as (e).

§ 459b-2. Establishment**(a) Notice in Federal Register**

As soon as practicable after August 7, 1961, and following the acquisition by the Secretary of an acreage in the area described in section 459b of this title that is in the opinion of the Secretary efficiently administrable to carry out the purposes of sections 459b to 459b-8 of this title, the Secretary shall establish Cape Cod National Seashore by the publication of notice thereof in the Federal Register.

(b) Distribution of notice and map

Such notice referred to in subsection (a) of this section shall contain a detailed description of the boundaries of the seashore which shall encompass an area as nearly as practicable identical to the area described in section 459b of this title. The Secretary shall forthwith after the date of publication of such notice in the Federal Register (1) send a copy of such notice, together with a map showing such boundaries, by registered or certified mail to the Governor of the Commonwealth of Massachusetts and to the board of selectmen of each of the towns referred to in section 459b of this title; (2) cause a copy of such notice and map to be published in one or more newspapers which circulate in each of such towns; and (3) cause a certified copy of such notice, a copy of such map, and a copy of sections 459b to 459b-8 of this title to be recorded at the registry of deeds for Barnstable County, Massachusetts.

(Pub. L. 87-126, §3, Aug. 7, 1961, 75 Stat. 288.)

§ 459b-3. Acquisition by condemnation

(a) Right of use and occupancy for residential purposes for life or fixed term of years; exercise of right of election; impairment of interests of lienholders, etc.; right as running with land; transfer, assignment and termination of right; computation of compensation

(1) The beneficial owner or owners, not being a corporation, of a freehold interest in improved property which the Secretary acquires by condemnation may elect, as a condition to such acquisition, to retain the right of use and occupancy of the said property for noncommercial residential purposes for a term of twenty-five years, or for such lesser time as the said owner or owners may elect at the time of such acquisition.

(2) The beneficial owner or owners, not being a corporation, of a freehold estate in improved property which property the Secretary acquires by condemnation, who held, on September 1, 1959, with respect to such property, an estate of the same nature and quality, may elect, as an alternative and not in addition to whatever right of election he or they might have under paragraph (1) of this subsection, to retain the right of use and occupancy of the said property for noncommercial residential purposes (i) for a term limited by the nature and quality of his or their said estate, if his or their said estate is a life estate or an estate pur autre vie, or (ii) for a term ending at the death of such owner or owners, or at the death of the survivor of them, if his or their said estate is an estate of fee simple.

(3) Where such property is held by a natural person or persons for his or their own life or lives or for the life or lives of another or others (such person or persons being hereinafter called "the life tenant"), with remainder in another or others, any right of election provided for in paragraph (2) of this subsection shall be exercised by the life tenant, and any right of election provided for in paragraph (1) of this subsection shall be exercised by the concurrence of the life tenant and the remainderman or remaindermen.

(4) The beneficial owner or owners of a term of years in improved property which the Secretary acquires by condemnation may elect, as a condition to such acquisition, to retain the right of use and occupancy of the said property for noncommercial residential purposes for a term not to exceed the remainder of his or their said term of years, or a term of twenty-five years, whichever shall be the lesser. The owner or owners of the freehold estate or estates in such property may, subject to the right provided for in the preceding sentence, exercise such right or rights of election as remain to them under paragraphs (1) and (2) of this subsection.

(5) No right of election accorded by paragraphs (1), (2), or (4) of this subsection shall be exercised to impair substantially the interests of holders of encumbrances, liens, assessments, or other charges upon or against the property.

(6) Any right or rights of use and occupancy retained pursuant to paragraphs (1), (2), and (4) of this subsection shall be held to run with the land, and may be freely transferred and assigned.

(7) In any case where a right of use and occupancy for life or for a fixed term of years is retained as provided in paragraph (1), (2), or (4) of this subsection, the compensation paid by the Secretary for the property shall not exceed the fair market value of the property on the date of its acquisition by the Secretary, less the fair market value on such date of the said right retained.

(8) The Secretary shall have authority to terminate any right of use and occupancy of property, retained as provided in paragraph (1), (2), or (4) of this subsection, at any time after the date when any use occurs with respect to such property which fails to conform or is in any manner opposed to or inconsistent with any applicable standard contained in regulations issued pursuant to section 459b-4 of this title and in effect on said date: *Provided*, That no use which is in conformity with the provisions of a zoning bylaw approved in accordance with said section 459b-4 which is in force and applicable to such property shall be held to fail to conform or be opposed to or inconsistent with any such standard. In the event that the Secretary exercises the authority conferred by this paragraph, he shall pay to the owner of the right so terminated an amount equal to the fair market value of the portion of said right which remained on the date of termination.

(b) Suspension of authority for one year and during existence of zoning regulations

(1) The Secretary's authority to acquire property by condemnation shall be suspended with respect to all improved property located within such area in all of the towns referred to in section 459b of this title for one year following August 7, 1961.

(2) Thereafter such authority shall be suspended with respect to all improved property located within such area in any one of such towns during all times when such town shall have in force and applicable to such property a duly adopted, valid zoning bylaw approved by the Secretary in accordance with the provisions of section 459b-4 of this title.

(c) Suspension of authority respecting property used for commercial or industrial purposes

The Secretary's authority to acquire property by condemnation shall be suspended with respect to any particular property which is used for commercial or industrial purposes during any periods when such use is permitted by the Secretary and during the pendency of the first application for such permission made to the Secretary after August 7, 1961 provided such application is made not later than the date of establishment of the seashore.

(d) "Improved property" defined

The term "improved property," wherever used in sections 459b to 459b-8 of this title, shall mean a detached, one-family dwelling the construction of which was begun before September 1, 1959 (hereinafter referred to as "dwelling"), together with so much of the land on which the dwelling is situated, the said 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