

CHEBEAGUE & CUMBERLAND LAND TRUST **Policy Concerning Easement Extinguishment or** **Condemnation of Property**

The Chebeague & Cumberland Land Trust has a duty to defend its conservation properties. CCLT will take the following steps if it is faced with condemnation of a property or extinguishment of an easement:

1. Consult with its legal counsel, consider all applicable federal and state law and carefully deliberate how best to proceed.
2. Notify any project partners who have an interest in the threatened property.
3. Ensure that an extinguishment will not result in private inurement or impermissible private benefit.
4. Endeavor to prevent a net loss of important conservation values or impairment of public confidence in the land trust or in easements in general.
5. Refer to the Receipt, Ownership, Sale and Transfer Policy (Standard 6H) regarding conservation values protection and board approval.
6. Ensure the Land Trust is fairly compensated by the condemning authority. To be prepared for this possibility, the Trust will endeavor to document the percentage of the property's full value represented by the easement

Certified by:



Kerry McCormack, Secretary



Date

Background Information Regarding Extinguishment and Condemnation
(Not part of the Policy)

In rare instances, an easement may be extinguished (for instance, when a conservation easement holder merges fee and conservation easement interests or due to condemnation – the state's exercise of its eminent domain power). To the extent possible, a land trust should ensure that the conservation values will continue to be protected on the land following the extinguishment or ensure that additional conservation action is taken. Extinguishment of an easement should never be considered lightly, should only be an option of last resort, and should always consider the precedent that might be set and how extinguishment may impact the viability of the conservation easement tool itself. In the instance of condemnation, Land Trust will be prepared for the condemnation action, including having the percent of value data for the interests being condemned.

Condemnation

Eminent domain is the inherent power of the state to seize a citizen's private property, expropriate property, or seize a citizen's rights in property with due monetary compensation, but without the owner's consent. The property is taken either for government use or by delegation to third parties who will devote it to public or civic use or, in some cases, economic development. The most common uses of property taken by eminent domain are for public utilities, highways, and railroads however it may also be taken for reasons of public safety.

The term "condemnation" is used to describe the formal act of the exercise of the power of eminent domain to transfer title to the property from its private owner to the government. This use of the word should not be confused with its sense of a declaration that property is uninhabitable due to defects. The latter usually does not deprive the owners of the title to the property condemned but requires them to rectify the offending situation or have the government do it for the owner at the latter's expense.

Condemnation via eminent domain indicates the government is taking ownership of the property or a lesser interest in it, such as an easement. In most cases the only thing that remains to be decided when a condemnation action is filed is the amount of just compensation, although in some cases the right to take may be challenged by the property owner on the grounds that the attempted taking is not for a public use, or has not been authorized by the legislature, or because the condemnor has not followed the proper procedure required by law.

Other Extinguishing Situations

Foreclosure. If there is a pre-existing lien on the property that has not been subordinated to the conservation easement, foreclosure of such a lien may allow a new owner to receive title to the property free of any conservation easement placed on the land subsequent to the date of the lien.

Marketable title acts. Almost half of the states have marketable title acts that provide, after a certain term of years, that restrictions on real property are automatically extinguished. Several states have statutes that specifically exempt conservation easements. Land trusts should have a policy of rerecording the conservation easement deed if required by their state statute to ensure that the easement's restrictions are not invalidated.

Changed conditions. There is a long-standing legal doctrine that may prevent the enforcement of restrictions on land if the surrounding land use has changed so much that the restrictions no longer fulfill their original purpose. There is some question as to whether this doctrine applies to conservation easements, and the American Law Institute's 2000 Restatement of the Law Third, Property (Servitudes) states that changed conditions, such as surrounding development, are not consideration that permits modification or termination of servitude. Having broad or multiple conservation purposes can help a land trust prevent a claim of changed conditions.

Merger. Under the law of most states, if the holder of a conservation easement becomes the owner of the restricted property, these rights merge, and the easement is automatically extinguished. If the easement is co-held, or the easement is transferred to another holder while the original holder accepts the fee interest, the merger will be defeated.

It is possible for a land trust to terminate an easement through its own action, but this is highly unlikely, and generally would not be desirable. If public benefits were lost by such a termination, it could result in an investigation or penalties by the state's attorney general. Moreover, it could cast doubt on the integrity of the organization and on the use of easements in general. As a matter of policy, a land trust should not consider voluntarily releasing a conservation easement, even for compensation, except under the most extraordinary circumstances.