

MAINE STATE LEGISLATURE

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To: Maine Legislators
From: Attorney General Steve Rowe *BSR*
Date: July 28, 2005

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Re: Recent Supreme Court Decision on Eminent Domain

In response to a number of inquiries regarding the recent U.S. Supreme Court decision involving the scope of state authority to take private property by eminent domain, this office prepared the attached letter.

We have also prepared a compilation of the various Maine statutes that contain eminent domain provisions. Because the document is lengthy, I have not attached it. However, if you would like a copy, please contact Dottie Perry in this office and she will forward one to you. You can contact Dottie at 626-8599 or dottie.perry@maine.gov. Simply ask for the list of eminent domain statutes.

If you have questions or would like more information on this subject, please feel free to contact me. Thank you.



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July 22, 2005

Members
122nd Maine Legislature
State House Station
Augusta, Maine 04333

RE: Recent U.S. Supreme Court Eminent Domain Decision

Dear Legislators:

On June 23, 2005, the U.S. Supreme Court issued a decision involving the scope of state authority under the Fifth Amendment of the U.S. Constitution to take private property by eminent domain, *Kelo v. New London*, 2005 U.S. LEXIS 5011 ("*Kelo*"). I have received calls from a number of legislators asking what impact the *Kelo* decision has on the exercise of eminent domain under Maine law, particularly its use by municipalities with respect to residential property.

The Maine Legislature has enacted a variety of statutes, both specific and general in their scope, authorizing the exercise of the eminent domain power. And while the *Kelo* case offers guidance about the applicability of the Fifth Amendment to the U.S. Constitution, the similar but distinct provision in Article I, § 21 of the Maine Constitution is of course not addressed in that decision and is subject to interpretation by the Maine Law Court. As a result, any analysis of the legally permissible scope of the eminent domain power is dependent on the facts, the statutory provision involved, and judicial interpretation by Maine's courts.

Within these limitations, I offer the following information on what the Supreme Court decided in the *Kelo* case, the holdings in relevant Maine case law precedents, and the range of eminent domain statutes in current Maine law. It should be emphasized at the outset that the Supreme Court expressly recognized the ability of the states to establish limits more restrictive than those that flow from the Fifth Amendment.

Summary of *Kelo v. City of New London*

The *Kelo* case involved the City of New London's plan to re-develop an economically depressed district by constructing a new hotel, restaurants, retail stores, residences and office space. To allow for the new construction, the City authorized the acquisition of property in the development area by eminent domain. A Connecticut statute expressly authorized the use of eminent domain to promote economic development. Several landowners in the area of the planned development challenged this use of the City's eminent domain authority. The landowners argued that the development plan failed to serve a *public purpose*, and therefore failed to satisfy the Fifth Amendment's requirement that government may take private property only for *public use*.

The Supreme Court found that the development plan served a public purpose and therefore constituted a public use under the Takings Clause of the Fifth Amendment. In reaching this conclusion, the Court determined that the plan did not benefit a particular class of identifiable individuals. The Court noted that the City's determination of whether economic rejuvenation was justified under the circumstances was entitled to deference, and that there was no basis for excluding economic development from the concept of public purpose. Importantly, the Court's opinion only addresses the limits that the United States Constitution places on the exercise of eminent domain authority, and is careful to point out that states are free to place restrictions on the use of this authority that go beyond the Federal Constitutional limits:

We emphasize that nothing in our opinion precludes any state from placing further restrictions on its exercise of the takings power. Indeed, many states already impose "public use" requirements that are stricter than the federal baseline. Some of these requirements have been established as a matter of state constitutional law, while others are expressed in state eminent domain statutes that carefully limit the grounds upon which takings may be exercised. *Kelo v. New London*, 2005 U.S. LEXIS 5011 at 36-37 (citations omitted).

Limits on State Eminent Domain Authority under Maine Law

A. Maine Constitution

Article I, Section 21 of the Maine Constitution provides: "Private property shall not be taken for public uses without just compensation; nor unless the public exigencies require it." This language differs from the takings clause of the U.S. Constitution with the additional requirement of "public exigencies." The U.S. Constitution's takings clause simply states: ". . . nor shall private property be taken for public use, without just compensation." U.S. Const. Amend. V.

B. Maine Caselaw

The language of Article I, § 21 of the Maine Constitution establishes a two-pronged test: private property can only be taken for a public use, and only where public exigencies require it. The Law Court has recently described the “public use” requirement as follows.

The distinction between a public and a private use to a large extent depends on the facts of each case... As a general rule, property is devoted to a public use only when the general public, or some portion of it (as opposed to particular individuals), in its organized capacity and upon occasion to do so, has a right to demand and share in the use... The public has to be able to be served by the use as a matter of right, not as a matter of grace of any private party.

Blanchard v. Department of Transportation, 2002 ME 96, ¶ 29 (citations omitted).

The “public exigencies” prong of the test, which is not part of the Fifth Amendment, is subject to a less stringent standard of judicial review.

... the question of determining *exigency* has long been considered to be a political decision for the Legislature to make, free from judicial review (unless it can be said there is no rational basis upon which exigency could be found)... in authorizing a taking by eminent domain the Legislature may make a finding of public use and delegate the determination of exigency to the municipality or public-service corporation which exercises the taking authority.

Ace Ambulance Service, Inc. v. City of Augusta, 337 A.2d 661, 663 (Me. 1975)(citations omitted).

A brief review of the case law under the Maine Constitution’s takings clause reveals two decisions that address the exercise of the eminent domain power for purposes of economic development. In a 1957 *Opinion of the Justices*,¹ the Maine Supreme Judicial Court found that a proposed statute which would authorize a city to acquire property by eminent domain to resell or lease for industrial development, was unconstitutional because its basic purpose was private and not public. The Court noted that the action would be for the direct benefit of private industry and the proposal amounted to no more than the taking of one party’s property for sale or lease to another party on the ground that the second party’s use of it would be economically or socially more desirable. *Opinion of the Justices*, 131 A. 2d 904 (Me. 1957).

In *Maine State Housing Authority v. Depositors Trust Co.*, the Maine Supreme Judicial Court found constitutional the law authorizing the Maine State Housing Authority to use eminent domain to acquire blighted areas and construct low-income housing. The Court declined to review the Legislature’s determination of what may be considered a public exigency, declaring that whether a public exigency exists that requires the taking of private property is a matter to be determined by the Legislature. The Court thus limited its review to the question of whether the

¹ An opinion of the Justices is not binding precedent, but rather reflects the opinions of the individual Justices on the question(s) presented.

use for which a taking is authorized by the Legislature would be a public use. Mindful of the presumption of constitutionality of statutes, and giving deference to the Legislature's judgment, the Court found that the Maine State Housing Authority's use of eminent domain in the manner authorized by the statute would be a public use, and therefore the statute authorizing that taking did not violate the Maine Constitution. *Maine State Housing Authority v. Depositors Trust Co.*, 278 A. 2d 699 (Me. 1971).

C. Relevant Maine Statutes

There are numerous Maine statutes authorizing the taking of property by eminent domain. The following discussion, while not intended to be a comprehensive listing of these statutes, provides examples that illustrate the range of circumstances in which municipalities² are authorized to use eminent domain, with particular attention to those relevant to economic development.³

The general municipal eminent domain power statute is found at 30-A M.R.S.A. § 3101, which applies only to takings not authorized by another statute. Section 3101 permits a municipality to acquire real estate or easements for "any public purpose" using the condemnation procedure for town ways, subject to two very significant limitations: 1) the municipality may not take any land without the consent of an owner if the owner or the owner's family reside in a dwelling house located on the land; and 2) land taken under this provision may only be used for the purpose for which it was originally taken.

Kelo held that owner occupied residential property could be taken by eminent domain consistent with the Fifth Amendment. That result could not occur in a taking under Section 3101 because of the requirement of owner consent; however, § 3101 expressly states that it does not apply to any taking authorized "by any other law." Accordingly, we must look to the precise terms of the particular statute that forms the legal basis of a taking. Maine law contains quite a number of such statutes. Examples include: 23 M.R.S.A. § 3022-3023 (local highways and easements); 30-A M.R.S.A. 3402 (sewers and drains); 30-A 3510 (transportation districts); and 30-A M.R.S.A. § 4746 (housing authorities).

² While we focus here on municipalities, we note that the state and its agencies are authorized to acquire property by eminent domain under a number of statutes. *See, e.g.*, 1 M.R.S.A. § 814 (expansion of state government in the Capitol area), 12 M.R.S.A. § 1812 (parks and historic sites), 20-A M.R.S.A. § 3305 (schools), 23 M.R.S.A. § 153-B (highway related projects), 23 M.R.S.A. § 8003 (Northern New England Passenger Rail Authority), 37-B M.R.S.A. § 301 (military facilities), and 38 M.R.S.A. § 1364 (mitigation of uncontrolled hazardous substance sites). In addition, private utilities are given certain limited eminent domain powers; *see, e.g.*, 35-A M.R.S.A. § 3136 (electric transmission and distribution lines), 35-A M.R.S.A. § 4710 (natural gas), and 35-A M.R.S.A. § 6408 (water).

³ This description of relevant statutes does not attempt to include the procedures by which a municipality reaches its decision to proceed with a particular project or the need to take property to effectuate that project. These procedures of course provide an important opportunity for citizen input.

Several statutes are relevant to economic development efforts of municipalities. An urban renewal authority created by a municipality may use eminent domain power to acquire property to prevent, clear and redevelop blighted areas; this may include the transfer of the acquired property to a redeveloper, pursuant to 30-A M.R.S.A. §§ 5101-5122. A municipality may also adopt a community development plan to provide either low and moderate income housing or public facilities to expand economic opportunity under 30-A MRSA §§ 5201-5205. Under the latter statutes, a municipality has general authorization to acquire by eminent domain “any vacant or undeveloped land” and “any developed land and structures, buildings and improvements existing on the land located in designated slum or blighted areas for the purposes of the demolition and removal or rehabilitation and repair or redevelopment of property so acquired.” 30-A M.R.S.A. § 5203(3)(A). Land taken by municipalities under their authority pursuant to § 5203 may generally not, within 10 years of the date of acquisition, be sold undeveloped or unrehabilitated without first offering it to the prior owners.

Perhaps the broadest statutory authority for economic development that incorporates eminent domain authority is found in 30-A M.R.S.A. §§ 5221-5235, which govern municipal development districts. Designation of a development district is subject to several conditions, including the following:

At least 25%, by area, of the real property within a development district must meet at least one of the following conditions:

- (1) Must be a blighted area;
- (2) Must be in need of rehabilitation, redevelopment or conservation work; or
- (3) Must be suitable for commercial uses.

30-A M.R.S.A. § 5223(3)(A).

Conclusion

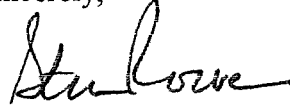
We cannot overemphasize the need for a detailed set of facts, like that available to the Supreme Court in *Kelo*, as a basis to conduct a meaningful analysis of the limits of eminent domain authority under the takings clauses of the Maine and U.S. Constitution. The unique factual circumstances of each case, together with the detail of the authorizing statute, will dictate the outcome. Therefore, it is not possible to predict the outcome of the next legal challenge to an exercise of eminent domain authority in the abstract. This is even more true in light of the fact the Maine’s Law Court has not had occasion in recent years to address the application of the takings clause of Maine’s Constitution to eminent domain in the context of economic development.

It is also important to emphasize, as the Supreme Court did in *Kelo*, that the Legislature is free to place additional restrictions on the use of eminent domain in Maine. The *Kelo* decision may be viewed as providing a floor, rather than a ceiling, for the exercise of the eminent domain

power upon which the Legislature is free to enact further conditions (provided that they are consistent with the other protections of the Maine and U.S. Constitutions). To the extent that you or other members of the Legislature are interested in proposed legislation, we are available to provide advice to you.

I hope this information is helpful.

Sincerely,

A handwritten signature in cursive script, appearing to read "G. Steven Rowe".

G. STEVEN ROWE
Attorney General

GRS/djp

Eminent Domain Provisions in Maine Statutes

The following statutes were identified by searching the on-line Maine Revised Statutes Annotated by LexisNexis. Although the search was designed to be comprehensive, it is possible that some statutes were not found.

United States

1 M.R.S.A. § 12. Governor may cede 10 acres or less to United States; compensation to owner

The Governor ... may cede to the United States for purposes named in its Constitution any territory not exceeding 10 acres, but not including any highway; nor any public or private burying ground, dwelling house or meetinghouse, without consent of the owner. If compensation for land is not agreed upon, the estate may be taken for the intended purpose by payment of a fair compensation, to be ascertained and determined in the same manner as and by proceedings similar to those provided for ascertaining damages in locating highways, in Title 23, chapters 201 to 207.

1 M.R.S.A. § 13. Land for fortifications or navigation aids; taking and ceding to United States; compensation

Whenever the public exigencies require it, the Governor may take in the name of the State, by purchase and deed, or in the manner denoted, any lands or rights-of-way, for the purpose of erecting, using or maintaining any fort, fortification, arsenal, military connection, way, railroad, lighthouse, beacon or other aid to navigation, with all necessary rights, powers and privileges incident to their use, and may deliver possession and cede the jurisdiction thereof to the United States, on such terms as are deemed expedient.

Capitol Area

1 M.R.S.A. § 814. Purchase of real estate

EXPANSION IN THE CAPITOL AREA. Whenever the Governor determines that public exigencies require the construction of additional buildings, structures, parking spaces or other facilities for the expansion of State Government in the Capitol Area, the Governor may purchase or take by eminent domain real estate in Augusta.

1 M.R.S.A. § 815. Abandonment of purpose; rights of condemnee

Notwithstanding any other provision of law, if an entity that has taken property by eminent domain fails to use the property for the project or purpose for which that property was taken, the condemnee or the condemnee's heirs have a right of first refusal to purchase the property as provided in this section.

Land for Maine's Future

5 M.R.S.A. § 6207-A. Use of eminent domain

The board may expend funds to acquire an interest in land obtained by the use of eminent domain only if the acquisition has been approved by the Legislature or is with the consent of the owner or owners of the land, as the identity and address of the owner or owners is shown on the tax maps or other tax records of the municipality in which the land is located. If the land is located within the unorganized territory, for purposes of this section the identity of the owner or owners must be as shown on the tax maps or other tax records of the State Tax Assessor.

Loring Development Authority of Maine

5 M.R.S.A. § 13080-B. Loring Development Authority of Maine; powers; membership; obligations

1. **POWERS.** The authority is a public municipal corporation and may:

.....
D. Exercise the power of eminent domain;...

Airports

6 M.R.S.A. § 122. Land and air rights

1. **LAND.** Private property needed by a city, town, county or authorized state agency for an airport or landing field or for the expansion of an airport or landing field may be acquired by gift, purchase, lease or other means. As a matter of public exigency, a city or town may take land for use as an airport or landing field whether such land is within or without its corporate limits and may alter, extend or discontinue such use....

Inland Fisheries and Wildlife

12 M.R.S.A. § 10109. Acquisition and disposal of land

1. **ACQUISITION OF LAND ; WILDLIFE MANAGEMENT AND PUBLIC ACCESS.**

.....
B. The commissioner may purchase, lease or take and hold, for and on behalf of the State as for public uses, land and all materials in and upon it or any rights necessary for the purpose of establishing, erecting and operating fish hatcheries or fish feeding stations or wildlife management areas or public access sites to inland or coastal waters.

Bureau of Parks and Lands

12 M.R.S.A. § 1812. Acquire interests in land; eminent domain; leases with the United States

With the consent of the Governor and the commissioner, the director may acquire on behalf of the State land or any interests in land within this State, with or without improvements, by purchase, gift or eminent domain for purposes of holding and managing the same as parks or historic sites.

12 M.R.S.A. § 1813. Acquisition of railroad rights-of-way for open space or recreation corridors

For the purpose of establishing, preserving or enhancing corridors for use for open space or recreation, the director may acquire with the consent of the Governor and the commissioner, by license, lease, purchase, gift or eminent domain, railroad rights-of-way upon which rail service is no longer operated.

12 M.R.S.A. § 1877. Authority to acquire property by eminent domain or otherwise [Allagash Waterway]

Within the restricted zone, the bureau may acquire by eminent domain on behalf of the State any land, improvements or any interest therein and water and power rights, specifically excluding Telos Dam Lot and Lock Dam Lot and water and power rights connected therewith

12 M.R.S.A. § 1892. Maine Trails System

The director shall establish trails on state-owned lands and encourage the establishment of trails on private lands by government agencies and private organizations. ... If all reasonable efforts to acquire lands or interests therein by negotiation have failed and public exigency requires it, the director, with the consent of the Governor and the commissioner, may utilize the power of eminent domain to acquire any land determined necessary to provide passage via the most direct or practicable connecting trail right-of-way across such lands; however, not more than 25 acres in any one mile may be acquired without consent of the owner

Cemeteries

13 M.R.S.A. § 1181. Restrictions and conditions

The municipal officers of any town may on petition of 10 voters enlarge any public cemetery or burying ground or incorporated cemetery or burying ground within their town by taking land of adjacent owners, to be paid for by the town or otherwise as the municipal officers may direct, when in their judgment public necessity requires it.

Education

20-A M.R.S.A § 16101. Authority for condemnation

1. **CONDITIONS.** A school administrative unit may condemn land for the construction or enlargement of school buildings and playgrounds when:...

20-A M.R.S.A. § 3305. Taking of land

The following provisions apply to taking land for school purposes in the unorganized territory.

1. **TAKING.** The commissioner may designate, lay out and take a schoolhouse lot not to exceed 3 acres, after 30 days written notice to the owner, ...

20-A M.R.S.A. § 16102. Procedures

1. **AUTHORITY TO CONDEMN.** When the location of a school lot has been legally determined by a school administrative unit, the land may be condemned:

- A. In a municipality by the municipal officer;
- B. In a school administrative district by a school board; and
- C. In a community school district by the district board of trustees.

Department of Transportation

23 M.R.S.A. § 153-B. Property for highways; acquisition

1. **ACQUISITION OF PROPERTY.** The Department of Transportation, on behalf of the State, may take over and hold for the State such property as it determines necessary to: ... [seven subsections describing types of projects]

23 M.R.S.A. § 302. Use

In connection with the laying out and establishment of a controlled access highway the department may take in fee or lesser estate, by purchase, gift, devise or by eminent domain under chapters 1 to 19, part or all of any part of land adjoining the highway location which, by reason of such laying out and establishment of a controlled access highway, has been severed from legal access to any public highway.

23 M.R.S.A § 303. Easements of access

Where an existing highway has been designated as, or included within, a controlled access highway by said department, existing easements of access may be so extinguished by purchase or by taking under eminent domain,...

Maine Turnpike Authority

23 M.R.S.A. §1965. Maine Turnpike Authority; powers; membership

F. Acquire in the name of the authority by purchase, eminent domain, lease or otherwise, real property and rights or easements therein deemed by it necessary or desirable for its purposes, and use that property;

G. Acquire any such real property by the exercise of the power of eminent domain in the manner provided by section 1967;

23 M.R.S.A. §1965. Property of the authority; eminent domain

USE OF EMINENT DOMAIN. Whenever a reasonable price cannot be agreed upon for the purchase or lease of real property found necessary for the purposes of the authority or whenever the owner is legally incapacitated or is absent or is unable to convey valid title or is unknown, the authority may acquire by eminent domain any such real property whether wholly or partly constructed or interest or interests therein and any land, rights, easements, franchises and other property deemed necessary or convenient for the construction or reconstruction or the efficient operation of the turnpike, its connecting tunnels, or bridges, overpasses, underpasses or interchanges, or both, ...

Highways – County

23 M.R.S.A. § 2051. Power of [county] commissioners

1. LAYOUT, MAINTENANCE AND DISCONTINUANCE OF ROADS IN UNORGANIZED AREAS. County commissioners may lay out, alter, close for maintenance or discontinue highways within the unorganized areas of their counties...

Public Landings and Parking Places

23 M.R.S.A. § 2801. Layout, alteration or discontinuance; public landings

Towns may lay out public or common landings and may alter or discontinue said landings whether laid out under chapters 301 to 315 or now or hereafter established by dedication or otherwise. All procedure shall be in substance the same as is provided by law in the case of town ways.

23 M.R.S.A. § 2802. [Layout, alteration or discontinuance]--parking places

Towns and cities may lay out land within their corporate limits for use as public

parking places for motor and other vehicles and may alter or discontinue such use. All procedure including assessment of damages and appeal therefrom shall be the same as is provided by general law for laying out, altering and discontinuing town and city ways.

Highways – Municipalities

23 M.R.S.A § 3022. Laying out of town ways and public easements

After a public easement has been laid out, it may be taken pursuant to section 3023.

23 M.R.S.A § 3023. Eminent domain

A municipality may take property or interests therein for highway purposes if the municipal officers determine that public exigency requires the immediate taking of such property interests, or if the municipality is unable to purchase it at what the municipal officers deem reasonable valuation, or if title is defective.

23 M.R.S.A § 3151. Bridle paths and trails; damages

Bridle paths and trails may be laid out, altered or discontinued by any town or city within such town or city on petition therefor in the same manner as is provided by law for the laying out, altering or discontinuing of town ways in a town or city streets in a city, except that no cultivated or improved land shall be taken without the consent of the owner and a 2/3 vote shall be required for the acceptance of such paths and trails by any town.

23 M.R.S.A § 3251. Ditches, drains and culverts; control; damages

The municipal officers of a town may at the expense of the town construct ditches, drains and culverts to carry water away from any highway or road therein, and over or through any lands of persons or corporations, when they deem it necessary for public convenience or for the proper care of such highway or road, ... Before land is so taken, notice shall be given and damages assessed and paid therefor as is provided for the location of town ways.

Railroads

23 M.R.S.A § 6001. Land bought or taken

A railroad corporation, for the location, construction, repair and convenient use of its road, may purchase or take and hold, as for public uses, land and all materials in and upon it. Through woodland and forest the land so taken shall not exceed 6 rods in width unless necessary for excavation, embankment or materials and through all land other than woodland and forest, the land so taken shall not exceed 4 rods in width unless necessary for excavation, embankment or materials.

23 M.R.S.A § 6002. Land for improvements; proceedings

Any railroad corporation may purchase or take and hold, as for public uses, additional land or rights in land, at any time required for improving the alignment or grades of its road, for double tracking its road, for protecting the tracks against erosion of adjoining or adjacent land or against the action of the elements, or reasonably necessary in the enhancement of public safety at dangerous curves or crossings; and land or rights therein,...

23 M.R.S.A § 6004. Land taken for change

Any railroad corporation may purchase, or take and hold as for public uses, land and materials necessary for making any changes authorized by section 6003, in the manner authorized by its charter or the general provisions of law and may cross highways and town ways in accordance with the law regulating those crossings.

Railroads – DOT

23 M.R.S.A. § 7154. Acquisition of railroads

ACQUISITION. Upon obtaining all necessary federal regulatory approvals or if approval of a federal regulatory agency is not required, the department may acquire the railroad line and associated property by purchase or the taking by eminent domain.

23 M.R.S.A. § 7206. Ways raised or lowered; course altered

Highways and other ways may be raised or lowered, or the course of the highways may be altered, to facilitate a crossing or to permit a railroad to pass over or under the highway or at the side of it, on application to the Department of Transportation, and proceedings as provided by section 7202, and for these purposes land may be taken and damages awarded as provided for laying out highways and other ways.

Northern New England Passenger Rail Authority

23 M.R.S.A. § 8003. Initiation and establishment of passenger rail service

2. ACQUISITION OF PROPERTIES; RIGHTS. The authority may acquire any of the properties or rights listed in subsection 1 through purchase, lease, lease-purchase, gift, devise or otherwise. In making these acquisitions the authority may exercise the power of eminent domain following the same procedure set forth in section 7154, subsection 5; ...

Lincoln and Sagadahoc Multicounty Jail Authority

23 M.R.S.A § 1902. Real and personal property; right of eminent domain

The jail authority formed under this chapter may acquire and hold real and personal property that the jail authority considers necessary for its purposes and is granted the right of eminent domain. The jail authority may take and hold, either by exercising its right of eminent domain ... for public uses any land, real estate, easements or interest in land, real estate or easements necessary for construction and operating the multicounty jail.

Municipalities

30-A M.R.S.A. § 3101. Eminent domain power

A municipality may acquire real estate or easements for any public use by using the condemnation procedure for town ways, as provided in Title 23, chapter 304, subject to the following provisions. The limitations set forth in this section do not apply to any taking authorized by any other law.

1. **OWNER RESIDES ON LAND.** The municipality may not take any land without the consent of the owner if, at the time of the taking, the owner or the owner's family resides in a dwelling house located on the land.

2. **LIMITATION ON USE.** Except as provided in paragraph A, land taken under this section may not be used for any purpose other than the purposes for which it was originally taken.

A. Land in any municipality which is taken for a public park may, by authority of a majority vote of the municipal legislative body, be conveyed to the Federal Government to become part of a national park.

30-A M.R.S.A. § 3102. Improvement of navigation and prevention of erosion

A municipality may acquire real estate or easements by the condemnation procedure for town ways, as provided in Title 23, chapter 304, and may contract with the State Government and Federal Government to comply with requirements imposed by the Federal Government in authorizing any project which has been approved by the Governor for improving harbor and river navigation or preventing property damage by erosion or flood.

30-A M.R.S.A § 3351. Acquisition

Any municipality may, by action of its legislative body, direct its municipal officers to take suitable lands for public dumping grounds. When so directed, the municipal officers shall follow the condemnation procedure for town ways, as provided in Title 23, chapter 304.

30-A M.R.S.A § 3252. Preservation of trees along public ways and water

1. **CREATION OF PRESERVED LANDS.** For the purpose of preserving and increasing the growth of trees on land abutting any public way or located on uplands adjoining any river or other body of water, municipalities and municipal officers, acting under section 3101, may set aside and define such land, not exceeding 5 rods in width. ...

...

30-A M.R.S.A § 3402. Construction of drains; expense and control; notice; damages

1. **CONSTRUCTION OF SEWERS AND DRAINS.** The municipal officers of a municipality, or a committee duly chosen by the municipality, may construct public drains or sewers, sewer systems or sewage disposal systems ... through or upon any lands of persons when they consider it necessary for public convenience or health. ...

2. **TAKING OF LAND.** Before the land is taken for the construction of any sewer, notice shall be given and damages assessed and paid for the land as is provided for the location of town ways under Title 23, chapter 304.

Transportation Districts

30-A M.R.S.A. § 3510. Eminent domain; appeal

A district may acquire for the public purposes of a district by purchase or by the exercise of the power of eminent domain any and all real property of any person, including the real and personal property and franchise of any person operating a local mass transportation service within any municipality comprising a district.

Housing Authorities

30-A M.R.S.A. § 4746. Eminent domain

An authority may acquire by the exercise of eminent domain any real property which it considers necessary for its purposes under this chapter. The authority must first adopt a resolution declaring that the acquisition of the real property described in the resolution is necessary for those purposes. An authority shall exercise the power of eminent domain in the manner provided in section 5108, but references in section 5108 to an urban renewal project and a renewal project area and the like do not apply.

Urban Renewal Authorities

30-A M.R.S.A. § 5108. Eminent domain

The authority may acquire all or any part of the real property within the renewal project area by the exercise of the power of eminent domain whenever the authority determines

that the acquisition of the real property is in the public interest or necessary for the public use.

Community Development

30-A M.R.S.A. § 5203. Municipal powers

3. **DEVELOPMENT POWERS.** Except as provided, the municipal officers of a municipality may exercise, pursuant to a duly approved and adopted community development program, all appropriate and necessary powers to implement and complete the program, including, but not limited to:

A. Acquisition by purchase or by eminent domain of any vacant or undeveloped land and of any developed land and structures, buildings and improvements existing on the land located in designated slum or blighted areas for the purposes of the demolition and removal or rehabilitation and repair or redevelopment of property so acquired;...

30-A M.R.S.A. § 5204. Eminent domain

The following provisions govern the exercise of eminent domain powers by the municipal officers. [spells out conditions and procedures including appeals]

Development Districts

30-A M.R.S.A. § 5223. Development districts

1. **CREATION.** A municipal legislative body may designate a development district within the boundaries of the municipality....

3. **POWERS OF MUNICIPALITY.** Within development districts and consistent with the development program, the municipality may acquire, construct, reconstruct, improve, preserve, alter, extend, operate or maintain property or promote development intended to meet the objectives of the development program. Pursuant to the development program, the municipality may acquire property, land or easements through negotiation or by using eminent domain powers in the manner authorized for community development programs under section 5204.....

30-A M.R.S.A. § 5247. Affordable housing development districts

1. **CREATION.** A municipal legislative body may designate an affordable housing development district within the boundaries of the municipality...

4. **POWERS OF MUNICIPALITY.** Within an affordable housing development district and consistent with an affordable housing development program, a municipality may acquire, construct, reconstruct, improve, preserve, alter, extend, operate or maintain

property or promote development intended to meet the objectives of the affordable housing development program. Pursuant to the affordable housing development program, the municipality may acquire property, land or easements through negotiation or by using eminent domain powers in the manner authorized for community development programs under section 5204.

30-A M.R.S.A. § 5264. Development districts; development programs and ordinances [Pulp and Paper Manufacturing Sector Stabilization Assistance]

1. **DISTRICT.** The municipal legislative body may designate development districts within the boundaries of the municipality. ...

A. At least 75% by area of the real property within a development district must be owned by a company engaged in the pulp and paper industry.

4. **POWERS.** Within development districts, and consistent with the development program, the municipality or the municipality's designee may acquire, construct, reconstruct, improve, preserve, alter, extend, operate, maintain or promote development intended to meet the objectives of the development program. Pursuant to the development program, the municipality may acquire property, land or easements through negotiation or by using eminent domain powers in the manner authorized for community development programs under section 5204.

30-A M.R.S.A. § 5403. General grant of powers

A municipality may:

1. **REVENUE-PRODUCING MUNICIPAL FACILITIES.** Acquire, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate any revenue-producing municipal facility;

....

6. **ACQUISITION OF LAND OR PERSONALTY.** Acquire in the municipality's name either by gift, purchase, lease, or the exercise of the right of eminent domain land, rights in land or water or air rights in connection with the construction, reconstruction, improvement, extension, enlargement or operation of revenue-producing municipal facilities; acquire any personal property, that it considers necessary in connection with those activities;

Plantations

30-A M.R.S.A. § 7061. Land taken for parks, squares, open areas, public libraries and playgrounds

A plantation may acquire real estate or easements by using the condemnation procedure for town ways, as provided in Title 23, chapter 304, subject to the following provisions.

The limitations set forth in this section do not apply to any taking authorized by any other law.

3. **CONSENT OF OWNER REQUIRED.** A plantation may not take any land without the consent of the owner if at the time of the taking the land is occupied by a dwelling house in which the owner or the owner's family resides.

Public Utilities

35-A M.R.S.A. § 2311. Lines along railroads; application to Public Utilities Commission when disagreement

A person maintaining or operating a telephone or electric line may construct a line across, upon or along any railroad with the written permit of the person owning or operating the railroad. If the person maintaining or operating a telephone or electric line and the person owning or operating the railroad can not agree.... The commission may ... authorize, subject to appropriate terms and conditions, the person to take by eminent domain an easement across the railroad.

35-A M.R.S.A. § 3136. Transmission and distribution utilities have eminent domain; approval

1. **LAND NECESSARY FOR LOCATION OF TRANSMISSION LINES CARRYING 5,000 VOLTS.** Any transmission and distribution utility may take and hold by right of eminent domain lands and easements necessary for the proper location of its transmission lines that are designed to carry voltages of 5,000 volts or more and of necessary appurtenances, located within the territory in which the utility is authorized to do public utility business, in the same manner and under the same conditions as set forth in chapter 65.

35-A M.R.S.A. § 3911. Eminent domain [Municipal electric districts]

A district may exercise the right of eminent domain under the same conditions and for the same purposes as other transmission and distribution utilities under section 3136. Title to property acquired must be taken in the name of the district.

35-A M.R.S.A. § 4134. Acquisition of property [Maine Municipal and Rural Electrification Cooperative Agency]

1. **EMINENT DOMAIN.** The agency may acquire by the exercise of the power of eminent domain any real property, or any interest in real property, which it determines necessary for its purposes under this chapter, after the adoption by it of a resolution declaring the acquisition of the real property or interest in it described in the resolution is necessary for those purposes.

2. **RESTRICTIONS.** The agency shall exercise the power of eminent domain in the

manner provided in Title 30-A, section 5108. References in Title 30-A, section 5108, to an urban renewal project and a renewal project area and the like are inapplicable.

35-A M.R.S.A. § 4710. Eminent domain [gas utilities]

Subject to the provisions of this section, a natural gas utility may take and hold by right of eminent domain lands or rights in lands necessary to the safe, economical and efficient operation of a pipeline and to the provision of adequate service to the public. For purposes of this section, the term "natural gas utility" means an intrastate natural gas pipeline utility or a gas utility other than a gas utility over which the commission's jurisdiction is limited pursuant to section 4702.

35-A M.R.S.A. § 6408. Standard districts; authority to acquire property; rights of eminent domain [Water]

2. EMINENT DOMAIN. For purposes of its incorporation, a standard district may exercise the right of eminent domain as provided in chapters 65 and 67 to acquire any interest in land or water rights:

35-A M.R.S.A. § 6501. Rights of parties as to procedure [Water]

2. WATER UTILITIES MAY EXERCISE RIGHT OF EMINENT DOMAIN. Water utilities may exercise the right of eminent domain for obtaining sources of supply and locations for storage and for the protection of them and locations for transmission and distribution of water to the public under this chapter and chapter 69.

35-A M.R.S.A. § 7904. Land for public use [Telephone]

Every telephone utility in the State may purchase, or take and hold as for public uses, land necessary for the construction and operation of its lines. Land may be taken and damages for it may be estimated, secured, determined and paid as provided for water utilities by sections 6502 to 6512.

Military Bureau

37-B M.R.S.A. § 301. Acquisition of property for construction of military facilities

3. EMINENT DOMAIN. The Adjutant General may acquire real property by right of eminent domain in the manner prescribed by law for the taking of land for highway purposes, and both real and personal property by purchase, gift or otherwise, for the purpose of construction or maintenance of armories, airports, shipyards and other military facilities, including the building or improvement and maintenance of railroads or roads necessary for the more efficient use of these facilities for military purposes and the procuring of equipment and supplies for military purposes.

37-B M.R.S.A. § 504. Maine Veterans' Memorial Cemetery System

1. LAND ACQUISITION. The director may acquire by eminent domain in accordance with Title 35-A, chapter 65 and with approval of the Governor, or by purchase, gift or otherwise, real estate in fee simple, or any interest therein, for use by the Maine Veterans' Memorial Cemetery System.

Maine Emergency Management

37-B M.R.S.A. § 821. Eminent domain

When the Governor has issued a proclamation in accordance with section 742 and, when in his judgment for the protection and welfare of the State and its inhabitants, the situation requires it as a matter of public necessity or convenience, he may take possession of any real or personal property located within the State for public uses in furtherance of this chapter.

Department of Environmental Protection

38 M.R.S.A. § 568. Cleanup and removal of prohibited discharges

The department may exercise the right of eminent domain in the manner described in Title 35-A, chapter 65, to take and hold real property to provide drinking water supplies to replace those contaminated by a discharge and to undertake soil and ground water remediation to protect water supplies that are at significant risk of contamination.

Water Storage Reservoirs

38 M.R.S.A. § 932. Eminent domain; assessment of damages

Any person, firm or corporation authorized and empowered to build, maintain and operate pipes, conduits, penstocks, tunnels and canals under section 931 is further authorized and empowered to exercise the right of eminent domain by taking and holding as for public uses in the manner and subject to the limitations prescribed in Title 35-A, section 6502, such lands and rights-of-way as such person, firm or corporation may require for such purposes when the water which will be stored, retained and discharged through the use of such pipes, conduits, penstocks, tunnels and canals will be devoted to public uses.

38 M.R.S.A. § 933. Authorization required

Any person, firm or corporation authorized and empowered to augment stored water by pumping or otherwise under section 931 and acquire by eminent domain for public uses, lands and rights-of-way for pipes, conduits, penstocks, tunnels and canals under section 932 is authorized and empowered to exercise the rights and benefits under this chapter but only when such person, firm or corporation shall have received the necessary authority by legislative Act.

Sanitary Districts

38 M.R.S.A. § 1152. Right of eminent domain

Each sanitary district formed under this chapter is authorized and empowered to acquire and hold real and personal property necessary or convenient for its purposes, and is granted the right of eminent domain, and for such purposes is authorized to take and hold, either by exercising its right of eminent domain or by purchase, lease or otherwise, as for public uses any land, real estate, easements or interest therein, and any sewers, drains or conduits and any sewer or drainage rights necessary for constructing, establishing, maintaining and operating sewers, drains, reservoirs, flush tanks, manholes, catch basins, treatment works, pumping stations and other appliances and property used or useful for collecting, holding, purifying, distributing and disposing of sewage matter and commercial and industrial waste and surface and waste waters.

Department of Environmental Protection - Uncontrolled Hazardous Substance Sites

38 M.R.S.A. § 1364. Powers and duties of the department

The department may exercise the right of eminent domain in the manner described in Title 35-A, chapter 65, to take and hold real property for any of the purposes described in this subsection. The commissioner shall report on the circumstances of any taking by eminent domain to the joint standing committee of the Legislature having jurisdiction over natural resource matters during the next regular session following the acquisition of any property by eminent domain. The department may transfer or convey to any person real property or any interest in real property once acquired.

Maine Refuse Disposal Districts

38 M.R.S.A. § 1732. Real and personal property and right of eminent domain

Each disposal district formed under this chapter may acquire and hold real and personal property which it deems necessary for its purposes, and is granted the right of eminent domain; and for those purposes may take and hold, either by exercising its right of eminent domain or by purchase, lease or otherwise, as for public uses any land, real estate, easements or interest therein, necessary for constructing, establishing, maintaining and operating refuse disposal, resource disposal, resource recovery and resource conservation facilities and may provide for the conversion of waste to energy and the transmission thereof.

State Planning Office - Solid Waste Disposal Facilities

38 M.R.S.A. § 2159. Real and personal property; right of eminent domain

The office may acquire and hold real and personal property that it considers necessary for its purposes, is granted the right of eminent domain and, for those purposes, may take and hold, either by exercising its right of eminent domain or by purchase, lease or otherwise, for public use, any land, real estate, easements or interest therein, necessary for constructing, establishing, maintaining, operating and the closure of solid waste disposal facilities.