

USE GUIDELINES
FOR
PRIVATE PROPERTY

In administering, preserving, and developing the Cape Cod National Seashore (hereinafter referred to as Seashore), the Secretary of the Interior (hereinafter referred to as the Secretary), is required to be guided by the provisions of the Act of August 7, 1961, 16 USC §2459 b. et seq., (75 Stat.284), and applicable provisions of the laws relating to the National Park System. The Secretary, further, may utilize other statutory authority available to him for the conservation and management of natural resources as he deems appropriate to carry out purposes of the said Act.

The Secretary may not acquire without the consent of the owner any “improved property” or interests therein within the boundaries of the Seashore so long as the towns comprising the Seashore shall have in force and applicable to such property a duly adopted, valid zoning ordinance that is approved by the Secretary. The Secretary is authorized to withdraw the suspension of his authority to acquire by Condemnation, “improved property” that is made the subject of a variance or exception which, in his opinion fails to conform or is in any manner opposed to or inconsistent with preservation and development of the Seashore as contemplated in the said Act. Regulations adopted by the Secretary are consistent with the objectives and purposes of the Act so that the scenic, scientific, and cultural values of the area will be protected, undeveloped areas will be preserved in a natural condition, and the distinctive Cape Cod character of the existing residential structures will be maintained. (Title 36, Code of Federal Regulations, Chapter 1, Part 27 – Cape Cod National Seashore; Zoning Standards.)

Whenever used in these guidelines, the following terms shall have the following meanings ascribed to them:

Accessory Building or use – A building or use customarily incidental to and located on the same lot with the principal building or use, except that it shall no longer be considered accessory when it is contained within the primary structure and represents more than 30% of the floor area; or 50% of the floor area, where the accessory use is contained in a detached structure. Detached accessory structures will include shelters, garages, boathouses, well houses, sheds, barns and outhouses. A structure used as a studio, office, or for appropriate small-scale home occupations, may be considered an accessory structure.

Cottage Colony – A group of detached structures traditionally used as guest houses and rented to visitors forming a part of a colony centered around an improved property in existence prior to September 1, 1959.

Detached, one – family dwelling – A structure, ordinarily thought of as a house, usually consisting of a central living, dining and single cooking area with adjacent sleeping quarters so that the occupants live as a single housekeeping unit.

Expansion Limitation – Expansion is limited to 50 percent increase of the livable area as it existed on September 1, 1959.

Floor area, Livable – The sum of the gross horizontal area of the floors of a dwelling used or intended to be used for living, sleeping, cooking, or eating purposes excluding roofed porches, roofed terraces, cellar and basement areas as it existed on September 1, 1959.

“Improved Property” – A detached, one-family dwelling, the construction of which was begun before September 1, 1959, 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 non-commercial residential use, together with any structure accessory to the dwellings which are situated on the land so designated.

The eligibility for a Certificate of Suspension of Condemnation of Improved Property may be jeopardized if existing properties are used in such a manner as determined to be inconsistent with the purposes of the Act.

The following are examples of compatible activities:

Normal maintenance and upkeep of private property with similar materials; repairs and reconstruction to comply with safety, building, or sanitation codes; minor modifications to existing structures and outbuildings; replacement of roofing or siding; shoring up structures threatened by subsidence of soil; repair or replacement of utility lines.

The following are examples of incompatible activities:

1. Subdivision, including splits in ownership or sell off of portions of the land; timbering, initiation of new uses affecting park resources, or intensification of current uses which may be detrimental to the Seashore purposes.
2. Alterations to existing structures or new construction having on or more of these characteristics:

New separate residences or new residences physically linked to the existing structure.

Replacement of a major structure with one that is larger than its predecessor by more than 50%.

Impairment of historical integrity of an identified historic structure.

3. Expansion of existing uses to a point where they cause damage to the scenic, cultural, or natural resources of the area.
4. Conversion of non-commercial property to commercial uses.
5. Damage to natural, scientific, or cultural resources including topographic changes or disruptions of natural drainage patterns, or disturbance of natural vegetation or wildlife.
6. Creation of hazards that endanger the safety of park visitors.
7. Major increase in commercial use or traffic at access or crossing points on interior park roads which could result in hazardous conditions that may endanger the safety of park visitors.

Conditions that may affect the eligibility of a developed property for a Certificate of Suspension of Condemnation follow:

Alteration of Existing Structure(s)

1. Any reconstruction, alteration, or enlargement of an existing detached, one-family dwelling that would result in less than a 50-foot setback from all streets measured at right angle with the street line or a 25-foot distance from the abutter's property lines (or less than such lesser setback or distance requirements already in existence for such dwelling) or that would result in an increase of more than 50 percent of the existing livable area of the dwelling shall be the basis for termination the status of the property as improved property unless substantial hardship can be proven by the owner.
2. Any conversion, reconstruction, alteration, or enlargement of an existing accessory structure that would result I the use of such structure for residential purposes will create an additional one-family and shall be the basis for terminating the status of the entire property as improved property. However, guesthouses included in a cottage colony which were constructed prior to September 1, 1959, are consistent with the definition of improved property.

Moving of Existing Structure(s)

1. If an existing detached, one-family dwelling is moved to another site on the same tract and its new location results in less than 50-foot setback from all streets measured at a right angle with the street line or a 25-foot distance from the abutter's property lines, such action shall be the basis for termination the status of the property as improved property unless substantial hardship can be proven by the owner.
2. If, in the process of moving an existing residential building to another site on the same tract, any reconstruction, alteration, or enlargement is undertaken that would result in less than a 50-foot setback from all streets measured at a right angle with the street line or a 25-foot distance from the abutter's property lines or that would result in an increase of more than 50 percent of the existing livable area of the dwelling, such action shall be the basis for terminating the status of the property as improved property unless substantial hardship can be proven by the owner.

Destruction of Structure(s) and Construction of New Structure(s)

1. If a detached, one-family dwelling is deliberately razed, destroyed, or abandoned (other than causes beyond the control of the owner such as a fire, windstorm, or ocean overwash) and a replacement dwelling is constructed, either on the same site or on the same tract, such action shall be the basis for terminating the status of the property as improved property.
2. If a detached one-family dwelling is destroyed by causes beyond the control of the owner, such as windstorms or ocean overwash, and replacement dwelling is constructed, either on the same site or another site on the same tract that would result in less than a 50-foot setback from all streets measured at a right angle with the street line or a 25-foot distance from the abutter's property lines or that would result in an increase of more than 50 percent of the previously enclosed livable area of the former dwelling, such action shall be the basis for terminating the status of the property as improved property unless substantial hardship can be proven by the owner.
3. If a detached single-family residence is determined to be in sound structural condition and is rebuilt, such action shall be the basis for terminating the status of the property as improved property unless substantial hardship can be proven by the owner.

Expansion Determination

The base for determining the limits for allowable expansion to existing dwellings is the livable area of the single-family residence that existed as of September 1, 1959. Any increase in livable area constructed since September 1, 1959 will be deducted from the apportioned livable are to determine the remaining area for expansion.

Construction of Accessory Structure(s)

The construction of any new accessory structure that would result in the use of such structure for residential purposes will create an additional one-family residential dwelling and shall be the basis for terminating the status of the entire property as improved property. The total floor area for all accessory structures attached or detached, shall not exceed 50 percent of the enclosed livable area of the single-family residence.

Commercial and Industrial Property

The Act requires that no permits for commercial or industrial uses be issued without the advice of the Cape Cod National Seashore Advisory Commission. Part III (1), Commercial Properties, outlines the guidelines relating to the acquisition or continuation of these properties within the Seashore. The Certificate of Suspension of Condemnation for commercial and industrial property is valid for a prescribed term, which is usually five years. Longer terms up to 10 years may be established to provide for the return of capital on large investments which are recommended by the Seashore Advisory Commission as an expansion of nonconforming use within the Seashore.

Hardship

All of the three following conditions must be met to establish substantial hardship:

1. Literal enforcement of the guidelines would involve substantial financial or other loss to the owner.
2. The circumstance is caused by peculiar soil conditions, shape of topography of such land, or structural deterioration.
3. Desirable relief may be granted without either
 - a. substantial detriment to the general public.
 - b. nullifying or substantially derogating the purposes and intent for which Cape Cod National Seashore was established.

IV. Agencies and Individuals Consulted

A notice of intent to prepare a Land Protection Plan for Cape Cod National Seashore was released on November 2, 1983. More than 800 notices were mailed to all known landowners in the Seashore, local and regional news media, and other interested individuals. Open meeting to discuss land protection concerns, alternatives for land protection, and priorities for implementation was held on November 18, 1983. A follow-up meeting was held on June 8, 1985 to discuss the Draft Land Protection Plan. Public comment period from May 10 through June 24, 1985 was announced in the Federal Register Vol. 50, No. 91, Friday, May 10, 1985.

Conclusion: This action will have no significant effect on the quality of the human environment and does not involve unresolved conflicts of alternative resources. It, therefore, is considered a categorical exclusion from the NEPA process, 516 DM 6, Appendix 7, 7.4B(11); Plans, studies, and reports.

A notice of no direct effect to the coastal zone was filed with the Massachusetts CZM on May 20, 1985. CZM agreed to the determination of no direct effect on July 15, 1985.