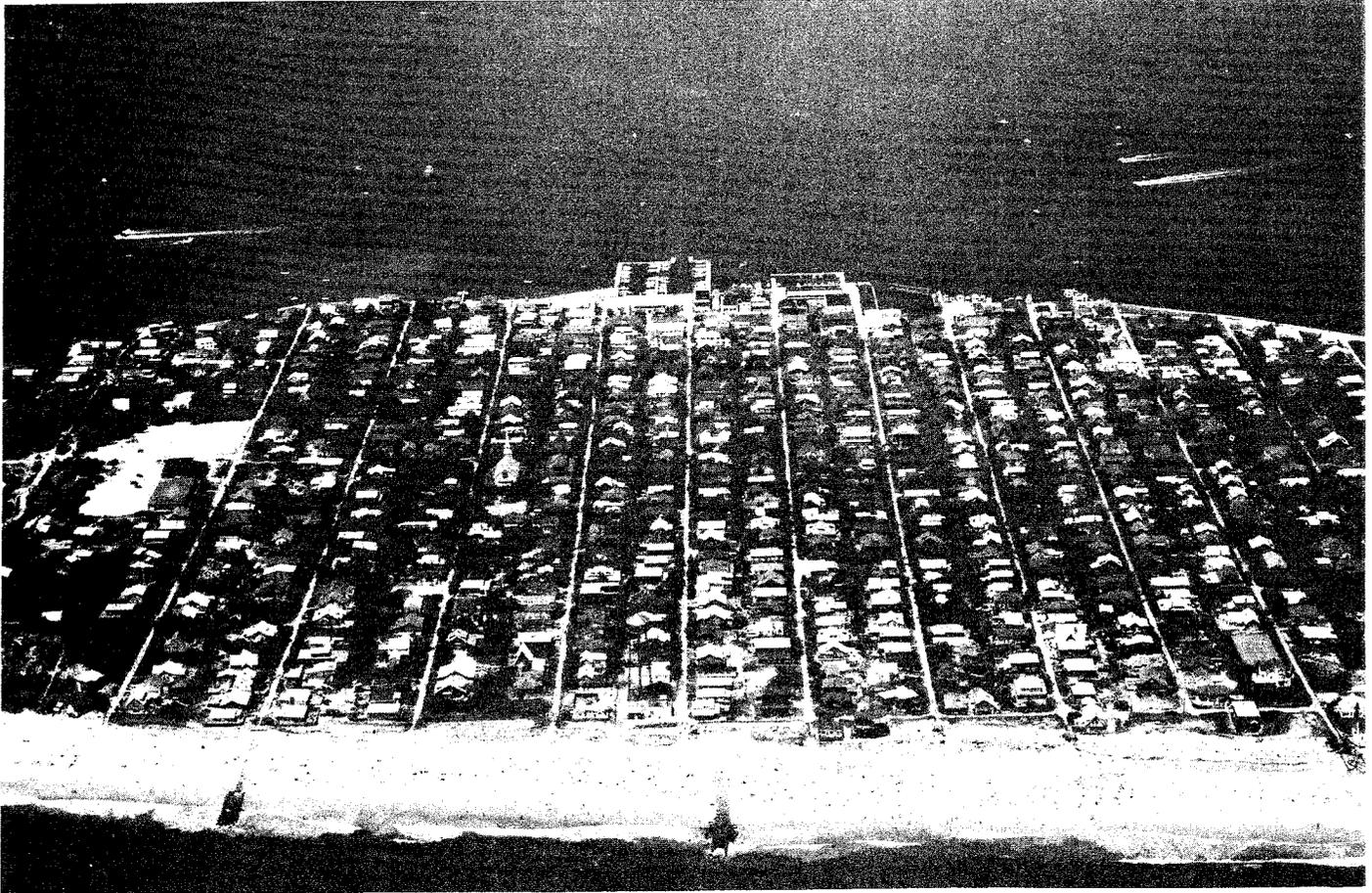


LAND-USE CONTROLS WITHIN FIRE ISLAND COMMUNITIES

The 17 private residential communities within Fire Island National Seashore boundaries are located within the development district, where additional development or property improvements are permitted. Future development in the communities, according to the 1964 Fire Island National Seashore Act, was to conform with local zoning ordinances as approved by the Secretary of the Interior. The prohibition of additional land development on Fire Island was not intended. Private community development consistent with the conservation and preservation of the island is permissible. Development is to conform with the traditional low-density residential character of the communities prior to the establishment of the national seashore. Since 1964, widespread disagreement has arisen concerning the control of private land and the role of the federal government.

Only two of the four local governmental jurisdictions – the town of Islip and the village of Saltaire – have submitted zoning ordinances for the Secretary's approval (the Saltaire ordinance has not been acted upon). Over 300 variances have been granted, many of which have resulted in a definite change in the physical character and life-styles of the communities. The Secretary was given no legal power to compel local zoning authorities to submit zoning ordinances for approval; however, the National Park Service has made repeated requests. The Park Service does have authority to condemn private property in those communities where local zoning ordinances have not been submitted to the Secretary and approved.



Aerial view of Ocean Beach in July 1974, looking across Fire Island toward Great South Bay. Ocean Beach is the most commercially developed community within the authorized boundary of Fire Island National Seashore, and little vacant land remains.

Although this system of indirect federal control of private property has been relatively effective in certain National Park Service areas, such as Cape Cod National Seashore, federal control at Fire Island has been ineffective largely because the political situation is dramatically different. The island is separated from the mainland by Great South Bay with few island landowners voting in Islip and Brookhaven town elections. The remaining several thousand property owners maintain their residency elsewhere (mostly in New York City and Nassau County).

The towns of Brookhaven and Islip have regarded Fire Island land-use problems low in priority and think the basic responsibility for control was given to the federal government following the establishment of the national seashore. National Park Service control has been made difficult because of the Park Service's undetermined legal authority to enjoin local governments from granting variances, because of the unavailability of acquisition funds, and because of the reluctance of the U.S. Department of the Interior to become directly involved.

The results of the existing system have been the granting of over 300 variances, establishment of several additional commercial uses and high-density residential uses, and an increase of groupers (large non-family related groups using single-family residences). Population densities and related support facilities have increased annually and could threaten the conservation and preservation mandate of the national seashore.

A major land-use control problem has been that New York law provides property owners the right to build single-family residences on substandard lots that were held in single and separate ownership prior to the enactment of local zoning ordinances. Legal decisions indicate that enforcement of zoning on such substandard lots would be an unconstitutional taking of private property rights without just compensation. Local zoning authorities can grant building permits without a variance procedure in such cases.

Condemnation by the National Park Service as the only sanction against illegal or improper uses has not been utilized. Continuation of the present land-use control system will probably result in development of nearly all lots, including substandard ones, dune properties, and wetlands. (See appendix D for past development patterns.) A greater danger with the present system is that no effective method will exist to resist pressures that would permit higher densities on already developed lots, including multiple-family dwellings and additional commercialization. Illegal conversion of single-family dwellings to multiple-family dwellings would continue. High-density uses and additional commercialization would be in contradiction to the conservation and preservation mandate of the Fire Island National Seashore Act.

PROPOSED LAND-USE CONTROL SYSTEM — A MODEL ZONING ORDINANCE

The National Park Service, in close cooperation with local governmental jurisdictions, will develop standards and criteria to be used in formulating a "model zoning ordinance" to be applied within the 17 private communities of the national seashore. The model ordinance will comprise the basis of a special Fire Island district to be included in the zoning ordinances of the towns of Islip and Brookhaven. Zoning regulations for the two small incorporated communities of Saltaire and Ocean Beach will essentially be composed of the standards as listed in the model ordinance. Certain unusual differences that exist in some communities may require special considerations.

The model ordinance will contain specific details regarding permitted land uses within the communities. The basic community land use will be single-family residential. Among the standards that will be included in the ordinance will be

controls on grading of sites and clearing of vegetation, sign limitations, maximum lot coverage, height restrictions, population density controls (such as floor-area ratios), permitted exotic vegetation, and numbers of bathrooms per structure. Certain secondary standards may be developed in cooperation with each community that could include such criteria as the size of yards, and the design and appearance of structures.

High-density residential uses such as townhouse apartments and multiple-family dwellings will not be permitted. Also, conversion of single-family residences to multiple-family dwellings will be prohibited. Any new subdivisions will be limited to large lots (half acre or larger).

An analysis of existing commercial and industrial uses will be undertaken to determine future needs for such activity. If the study reveals an excess of commercially and industrially zoned property, surplus areas will be "down-zoned" to permit residential uses only.

Wetlands District

Private and town-owned lands that are located within the fragile wetlands on the bayside of the island will be zoned as critical environmental areas to prevent further damage. These wetlands will be included in a wetlands district. Widespread encroachment has occurred within the wetlands of the communities since the passage of the Fire Island National Seashore Act, with resulting damage to valuable ecological areas.

Bay-shore tidal wetlands and inland wetlands are extremely important components of the Fire Island ecological system. Tidal wetlands also are important to the shellfish and finfish economy of the region. New construction, development, filling, or building of erosion-control devices (such as bulkheads) in these areas will be severely limited or in many cases prohibited. A definition of the wetlands district and buffer zone will be established during the formulation of model zoning ordinance standards.

The wetlands district will be formulated with the cooperation of local zoning authorities and the Suffolk County Planning Department. Site surveys to ensure the accuracy of existing tidal and inland wetlands maps will be necessary prior to the establishment of a wetlands district. Coastal zone management regulations currently being developed by the Nassau-Suffolk Planning Board and existing state laws will be used to provide additional protection for Fire Island wetlands.

Dune District

The model ordinance will contain a special dune district similar in concept to floodplain ordinances widely used in contemporary land-use planning. Extensive

damage has occurred along some segments of the dune system because of uncontrolled walking on the fragile dune vegetation, construction of buildings, destruction of vegetation because of vehicle use, and in some cases, insensitivity to the important protective function of the dunes.

The primary dune of Fire Island provides the basic line of defense against storms and floods. If the dune is to provide any protection from storms, it must be maintained in a natural condition with native vegetation. Recreational activity, development, and even walking on the dune should not be permitted. Pedestrian access across the dune will be restricted to boardwalks (see McHarg 1971).

A dune district on Fire Island will be established for the following purposes:

Assistance in maintaining a vital resource area of the island, which is fundamental to achieving the purposes for which the national seashore was established.

Prohibition of certain uses and activities that endanger the dune system and thereby jeopardize life and property of all island residents by increasing potential damage during severe storm activity.

Minimization of hazards to public health and safety within the communities of the national seashore by helping to maintain storm protection provided by the dune and by minimizing opportunities for breaching of the island at locations where major developments exist.

Eventual elimination of uses such as residential structures that create a continual demand for public expenditures for relief and protection.

The dune district will extend landward for a distance of 40 feet from a line representing the primary natural high dune crest, as determined from an aerial mapping survey in November 1976. Where breaches exist in the dune form, a line has been established that represents the general trend in the dune crest. The seaward limit of the district will be the mean high water mark. This dune district is included in an area that has been identified by the Federal Insurance Administration as being subject to "special flood hazards with velocity."

Where public land acquisition in the dune district is necessary, it will be done by direct federal acquisition. The National Park Service in this planning effort has explored alternatives to federal acquisition. These include complete deletion of all federal lands and communities west of Point O'Woods from the national seashore and a formula that would have resulted in local ownership of the dune properties over a period of time. The deletion alternative was overwhelmingly rejected by

the public. Local communities were also not interested in acquisition and management of dune properties. The National Park Service still feels that a high degree of local control is desirable in these communities but recognizes that the only land acquisition alternative that appears feasible at this time is direct federal acquisition, hence the proposal made in this plan.

This land acquisition is justified because of the important role played by the dune system in the geomorphology of the barrier island. Resource management efforts undertaken by the National Park Service will complement the natural dynamics of the system. Once this acquisition is completed, measures devised exclusively to protect private property values will not be undertaken. This limitation will be incorporated into the amendatory legislation to the seashore act.

Future use of lands within the dune district will be severely limited. Presently the district includes 257 structures, of which 48 are situated on the dune crest or seaward of it. Dune district regulations will prohibit additional structural development and stabilization devices other than snow fences. Essential vehicular dune crossings and elevated pedestrian dune crossings will be allowed. Some limited construction may be permitted along the landward edge of the dune district. Any construction would be required to meet certain performance standards, such as pilings for stability and coverage requirements. 

The National Park Service will analyze 48 properties that have been identified as located on or seaward of the primary natural high dune crest for the following impacts: damage to the physical integrity of the dune system and endangerment of public safety. Based on the results of this analysis, structures and real property interests in up to 48 improved properties will be acquired by the National Park Service. There are approximately 250 unimproved dune properties included within the dune district boundary that will also be acquired to prevent additional development. Purchase of a property will not be undertaken if removal of a structure will result in long-term damage to the dune which cannot be remedied. 

The other 209 properties in the dune district, and any of the 48 properties that are not acquired, will be permitted to remain indefinitely unless they are damaged by storms in excess of 50 percent of their fair market value. Major improvements on these structures will not be permitted (that is, no actions other than routine maintenance will be allowed). In the event of major damage to structures by a storm, the structures will be evaluated on a case by case basis for acquisition by the National Park Service. Property owners who have insurance on structures and 

contents under the National Flood Insurance Program, as established under the Flood Disaster Protection Act of 1973, will be compensated for storm damage up to \$70,000, the maximum coverage obtainable. The Park Service will expend federal funds only for acquisition of real property interests in storm damaged properties within the dune district.

Implementation

Once the zoning standards are developed cooperatively with the towns, implementation can be accomplished in a variety of ways. Local enforcement is the most desirable alternative. This approach assumes that local municipalities adopt and enforce a zoning ordinance that conforms to the standards. If these initial steps fail, other options and alternatives will be explored. Injunctive relief based on damage to the federal interest may be sought. Direct federal regulation will also be considered. Condemnation remains the final alternative, if these methods fail, to protect the interests of the seashore.

TRANSFER OF LAND FROM THE SEASHORE DISTRICT TO THE DEVELOPMENT DISTRICT

Lands within the seashore boundary are listed in either the seashore district or the development district, as defined by the Fire Island National Seashore Zoning Standards, *Code of Federal Regulations*, Title 36, Part 28. The seashore district includes all those lands of the seashore within the towns of Brookhaven and Islip that lie outside the delineated communities of the seashore (all federal lands and Suffolk County properties are within the seashore district). The development district is comprised of all those lands that belong to the towns of Brookhaven and Islip and the villages of Saltaire and Ocean Beach and that are located within the delineated communities of the national seashore. Development district properties are subject to federally approved zoning ordinances, but are otherwise under the control of local governmental jurisdictions.

It was the clear intention of the Fire Island National Seashore Act that all lands within the seashore district, except certain improved properties as of July 1, 1963, be acquired as appropriations are made available to the National Park Service. Accordingly, unimproved properties of the seashore district are subject to condemnation and acquisition as are improved properties built upon after July 1963.

The National Park Service proposes the transfer of 41 acres of land at Davis Park, which includes the Ocean Ridge development, from the seashore district to the development district. The 41 acres include 115 improved properties and 3 unimproved properties. These lands are not essential to the management of the seashore district and should be managed according to the Park Service policy regarding exempted communities within the national seashore. Following adoption of the general management plan, Park Service managers will initiate legislative action to transfer the previously excluded parts of the community, as was intended during the new area study and by subsequent establishment of Fire Island National Seashore.

The plan proposes a modification in the western boundary of Water Island to conform with the community boundary as mapped in figure 4, segment 4. This proposal will transfer four parcels bounded on the west by Charach Walk from the seashore district to the development district. These four parcels were not listed by the Water Island Association as being included in the official Water Island platting when the seashore was established. Prior to legislative action on the boundary, the Water Island Association will have to change the official platting as listed with the town of Brookhaven.

ACQUISITION OF PROPERTY WITHIN EXEMPTED COMMUNITIES FOLLOWING MAJOR STORM DAMAGE

Frequency of great hurricane damage in the Fire Island region is estimated to be three times per century. Although the National Park Service believes that the establishment of a dune district and possible sand nourishment within this district will assist in protecting communities from future storm damage, severe damage may yet occur. In some island locations, particularly within communities, little of the primary dune remains because of human disturbance. This plan proposes a legislative amendment to permit the Park Service to acquire private lands within exempted communities of the national seashore if major storm activity destroys 90 percent or more of all structures within a community, and damage to each structure is in excess of 50 percent or more of its fair market value. Lands where structures were destroyed would be acquired in fee by the Park Service.

Structures that were not destroyed would remain in private ownership as inholdings exempt from condemnation. These properties would not be acquired unless they too were destroyed by a storm at some future time. Properties acquired by the Park Service would be managed similarly to other lands presently in the seashore district. Rebuilding on lands that are in fact unsuitable for community development would therefore be limited.