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# Land Protection Plan

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FIRE ISLAND  
NATIONAL SEASHORE

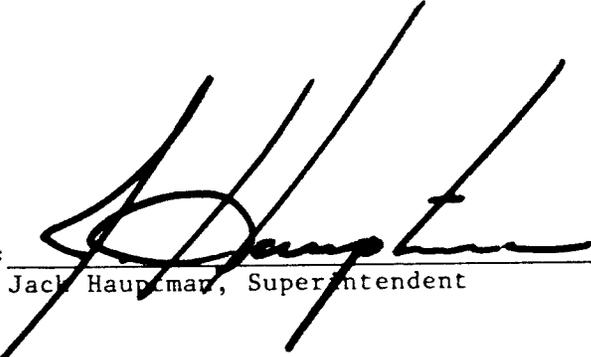
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FIRE ISLAND NATIONAL SEASHORE

LAND PROTECTION PLAN

August 1984

Recommended by:



Jack Hauptman, Superintendent

August 7, 1984

Date

Approved by:

Herbert S. Cables, Regional Director  
North Atlantic Region

September 21, 1984

Date

Fire Island National Seashore  
National Park Service  
U. S. Department of the Interior  
120 Laurel St.  
Patchogue, New York 11772  
(516) 289-4810

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NATIONAL SEASHORE  
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U.S. DEPARTMENT OF THE INTERIOR  
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**PLAN SUMMARY**

1.	<u>Current Ownership</u>	<u>Acres</u>
	Federal - NPS	6,093
	State or local	12,499
	Private	987
	Private within exempt communities	960
	Private outside exempt communities	27
	Total	<u>19,579</u>
2.	<u>Number of Tracts Remaining to be Protected</u>	
	Private holdings outside exempt communities	58 tracts 22 parcels
3.	<u>Methods of Protection Proposed</u>	<u>Acres</u>
	Regulation - federal, state, and local regulations control development	27
	Acquisition - a last resort only where regulation is not effective and in a willing seller/willing buyer situation of all private holdings outside the exempt communities	
4.	<u>Statutory Acreage Ceiling</u>	<u>19,579</u>
	The statutory ceiling is not listed in acres in any legislation but is defined as an area "delineated on a map identified as "Fire Island National Seashore, numbered OGP-0004, dated May 1978."	
5.	<u>Funding Status</u>	
	Authorized acquisition ceiling 6/30/84	\$23,000,000
	Appropriated to date 6/30/84	20,263,959
	Obligated to date 6/30/84	17,057,186
	Unobligated balance 6/30/84	3,216,773
6.	<u>Top Priorities</u>	
	Revision of Federal Standards as found in 36 CFR 28	See Sec. 3 PL 88-587
	Approve local zoning codes	See Sec. 3 PL 88-587
	GMP amendments	
7.	<u>Special Considerations</u>	
	Legislative requirement exempting communities within boundaries of Seashore from federal condemnation	See Sec. 2(c) PL 88-587

## INTRODUCTION

The Land Protection Plan for Fire Island National Seashore is prepared in response to Department of the Interior policies requiring National Park Service units to examine how best to manage and protect lands within their authorized boundaries. This effort recognizes that the past approach to land protection -- most often focusing on direct federal purchase of property --- needs to be rethought in light of Congressional intent, cost effective management and emerging federal budget limitations. The task at hand is to develop and institute a range of land protection techniques with the goal of achieving the park's legislative mandate in the most cost effective manner.

Major federal land acquisition within the boundaries of the Seashore is about complete. One large tract of land is in the process of being transferred to the National Park Service from the State of New York. Protection of the land not in federal ownership is the major issue on Fire Island. Because Fire Island's authorizing legislation envisioned and called for the continuation of private ownership within the Seashore's boundary, direct federal purchase at Fire Island is one element in a package of land protection techniques, and will be used only where other methods of protecting land are found insufficient to accomplish the Seashore's mandate. In sum, the purpose of this plan is to identify the best combination of means of "conserving and preserving for the use of future generations" the Fire Island barrier resource. It will also serve to meet a particular need to reach an understanding between the Seashore and its many and varied constituencies on a number of land acquisition and regulation issues.

The document that describes the National Park Service management approach to Fire Island is the General Management Plan (GMP), approved for implementation in 1978. This document stands as the framework within which the Land Protection Plan will be developed. The resource management and visitor-use concepts identified in the GMP remain valid and will guide land protection efforts. Land protection policies identified in this plan will complement the pertinent policies described in the GMP. Amendments to the GMP may be required in the near future to help enforce the land protection policies outlined within. Changes in the Federal Standards for local zoning will also be required

to implement the plan. These changes will not reflect a change in National Park Service resource management objectives for the island, but rather a change in the techniques used to accomplish these objectives. The text of the Department of Interior's land protection policy statement is found in Appendix A.

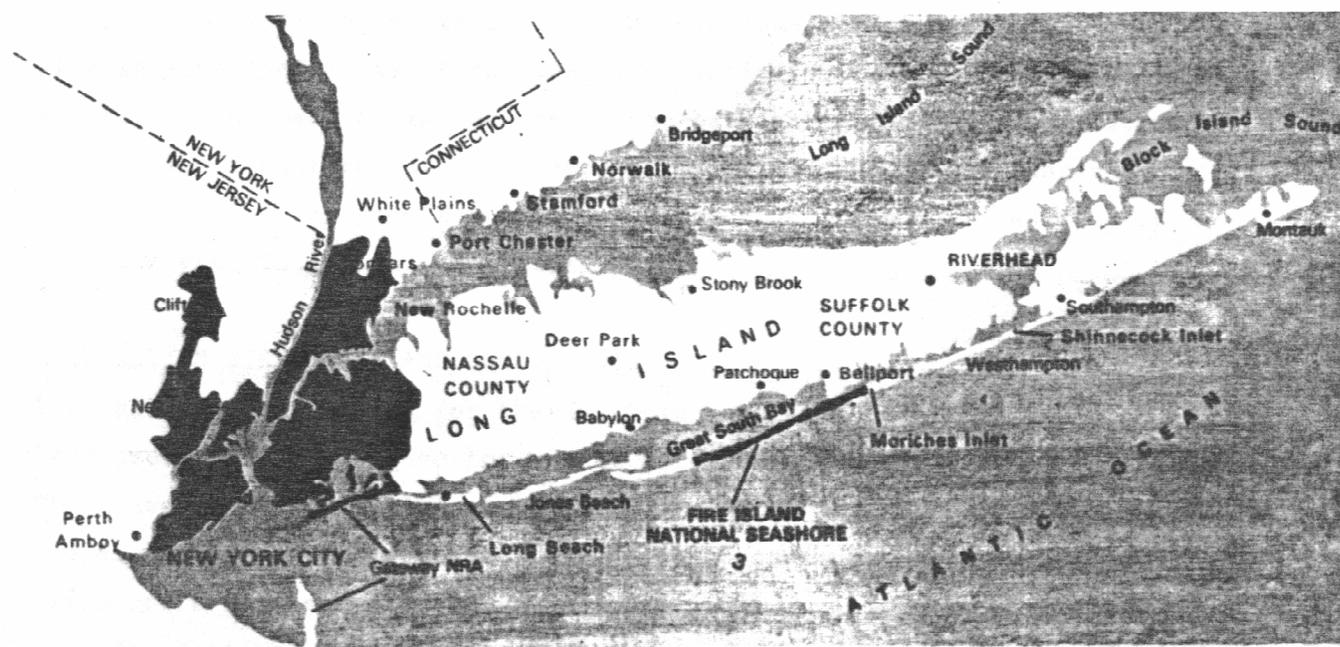
An important factor to consider in developing a land protection policy for Fire Island is recognition of the dynamic nature of a coastal barrier island. With a dune line undergoing constant change and coastal storms creating the potential for dramatic alteration in the configuration of the island, a policy must be structured which squarely confronts this issue. It is, therefore, important that the Land Protection Plan for the Seashore be one that respects changing physical conditions as well as changing social, political, and economic conditions.

The primary mechanisms available to protect land include acquisition, regulation, tax policy, and cooperation. These techniques will be evaluated as to their utility in a wide variety of land protection issues and site specific circumstances within the Seashore. The major issues dealt with in the plan include:

- the potential for further direct federal purchase of property
- the use of federal condemnation authority
- the "Dune District"
- reconstruction and additions to improved property
- reliance on local, state, and federal regulatory controls
- public tax policy
- cooperative land management initiatives

The plan will also review lands currently in federal ownership to determine if continued federal ownership is required for resource protection and public use. The only place transfer of federal property interests would even be considered is on lands owned within the developed communities and some bay to ocean tracts within and between the western communities. It should be made clear that no change in the ownership or management of these properties will be considered that would compromise the resource values for which they were acquired.

While the aforementioned issues have been the subject of extensive discussion since the Seashore's establishment in 1964, there nonetheless remains considerable public debate as to the appropriate means by which the National Park Service should implement the Seashore's legislative mandate. Within this context, the Land Protection Plan identifies the significant issues and recommends means whereby the island's natural and cultural values can be preserved and nurtured as intended by Congress. It should be understood that this plan does not constitute an offer to purchase, or sell, land or interest in land nor does it diminish the rights of non-federal landowners. It is intended to serve as a guide to National Park Service land protection policies for the Seashore, subject to the availability of funds and other constraints.



Regional Map

## PURPOSE OF THE PARK

### SEASHORE PURPOSE AND OBJECTIVES

Fire Island is a 32-mile long barrier island off the south shore of Long Island which has long served as an important recreational resource for the residents of the New York metropolitan area. In response to controversy over proposals to build a highway extending the length of the island, Congress in 1964 designated approximately 26 miles of the island as the Fire Island National Seashore. The stated purpose of the enabling legislation was that of "conserving and preserving for the use of future generations certain relatively unspoiled and undeveloped beaches, dunes, and other natural features . . . which possess high values to the Nation as examples of unspoiled areas of great natural beauty in close proximity to large concentrations of urban population . . ." In addition to its basic directive to preserve the resource, the legislation calls for provision of opportunities for public access to the island and for continuation of established residential uses in specified areas of the Seashore, including 17 developed communities. A detailed approach to management of the barrier island and identification of its significant resources is accomplished in the General Management Plan. The planning premises and management objectives outlined therein are excerpted in Appendix B of this plan.

### ACQUISITION DIRECTIVES AND CONSTRAINTS

The enabling legislation for the Seashore outlines the parameters of two land protection techniques for use at Fire Island -- acquisition and regulation. These are discussed at length in the GMP and the Seashore's enabling legislation and amendments may be reviewed in full in Appendix D. A summary of the key aspects of these directives follows:

- The National Park Service is authorized to accept property by donation, transfer, and exchange.
- The National Park Service is directed to acquire undeveloped lands within the "Seashore District."
- The National Park Service is directed to prepare standards by which the adequacy of local zoning ordinances will be evaluated. Upon implementation of a satisfactory zoning ordinance by a town or village,

National Park Service condemnation is suspended in applicable areas, as long as individual properties are not the subject of unacceptable variances or exceptions.

- Except in a specified eight-mile area in the Town of Brookhaven, the National Park Service is directed not to acquire "improved properties" as long as properties are maintained in accordance with zoning ordinances approved by the Secretary of the Interior. "Improved Property" is defined as property under construction prior to July 1, 1963.
- The National Park Service is authorized to acquire improved property within a specified eight-mile area in the Town of Brookhaven, subject to certain terms of acquisition identified in the legislation.
- The National Park Service is directed not to acquire any property in the "Developed Communities District" as long as properties are maintained in accordance with zoning ordinances approved by the Secretary of the Interior.

The third item above, the preparation of standards, is the primary regulation the National Park Service has to control the development on the privately-held land on Fire Island. The Standards, found in full in Appendix C and most recently amended in April 1980, set standards for local zoning authorities to use in developing local codes that conform to the federal regulations. The authorizing legislation for the Seashore spells out how the Federal Standards are to be developed and permits their being amended from time to time. The existing standards provide guidance on the intensity of development, type of development, and the ability of property owners to rebuild in case of destruction.

#### ADMINISTRATIVE HISTORY

The National Seashore was authorized in 1964 with a land acquisition appropriation ceiling of \$16 million. A 1965 legislative amendment authorized the Secretary to accept donations of lands and structures at the William Floyd Estate for inclusion as a detached unit of the Seashore. By 1977, the Federal Government had acquired in fee, or easement, 5,943 acres of land within the Seashore's boundaries. The dollar ceiling was increased by Congress in

1976 to \$18 million and increased again to \$23 million in 1978. In 1978, Congress enlarged the Seashore's boundary to include state and Coast Guard owned land in the vicinity of the Fire Island Lighthouse and 12 acres of land on the Patchogue River in Patchogue. This same legislation also authorized federal condemnation of properties within a "Dune District" under specified conditions. Legislation enacted by Congress in 1980 designated an approximately six-and-one-half-mile length of the barrier island as wilderness, to be managed consistent with National Wilderness System policies. To date, the National Park Service has acquired over 2,900 acres in fee and 3,100 acres in easements. With the exception of 12.51 acres of land acquired within the communities, fee lands acquired represent property needed for public use and environmental protection. The easement lands represent beach face and underwater properties.

## LAND OWNERSHIP AND USE

A distinguishing factor of Fire Island National Seashore is the guarantee of federal protection afforded the exempt communities within the Seashore's boundaries. Housing an estimated 20,000 persons in the summer months, Fire Island's communities are home to fewer than 400 year-round residents. The communities are a cultural resource important to the identity and appearance of Fire Island. The lack of roads within or between the island's 17 communities makes Fire Island the only developed coastal barrier island where the automobile is not a part of the landscape. In summer months even general access by four-wheel drive beach vehicle is prohibited. As a result, each Fire Island community has developed its own distinct character and lifestyle. Whether separated by a boundary line, a few hundred feet, or a mile of beach, the inherent difficulty of travel on the barrier island contributes to retention of community individuality. The lack of roads and the singular and individual natures of the communities add to the Seashore's unique character.

Fire Island's summer residents for the most part hail from Long Island or New York City. Some communities attract unmarried individuals while other communities are family oriented. Many residents are influential in the arts, communications, media, or the business world. Some communities attract wealthier residents than others, but living on the island is an expensive proposition in any event. Many residents tend to be politically active with close ties to government at community, town, county, state and national levels. Although lifestyles vary greatly from community to community, there is one issue on which all island residents seem to agree -- their determination to retain individual community lifestyles.

The National Park Service's overall resource management approach to the Seashore is identified in the General Management Plan and is excerpted in Appendix B. For the purpose of this plan, lands within the Seashore boundaries are considered in two major categories, the Developed Communities District and the Seashore District. Following are brief descriptions of use and ownership in these areas and of conditions affecting their management.

## DEVELOPED COMMUNITIES DISTRICT

This district comprises the so-called 17 "exempt communities" identified in the Seashore's enabling legislation, as shown on the attached map of the Seashore. These communities are intended to remain in private ownership, with continued residential and appropriate commercial uses permitted. As a rule, the communities are very heavily developed from bay to ocean, with relatively few lots still available for development. In total, there are over 3,700 residences located on less than 1,000 acres, with average lot size ranging from 4,000 to 7,500 square feet. Development within the communities consists predominantly of summer residences and commercial establishments. With no roads linking them to the mainland, the communities largely rely on commercial ferry service for transportation, with limited access by private boats, seaplanes, and beach vehicles. Administratively, the communities function as semi-autonomous units within the Seashore. While the developed communities clearly have impacts on the island's environmental resources, these impacts are mitigated by numerous environmental controls. The primary means of land use control is zoning, administered in their respective areas by the Towns of Islip and Brookhaven and the Villages of Ocean Beach and Saltaire. The full scope of other municipal, state, and federal regulatory controls is also in effect in the communities, including air and water pollution control standards, wetlands protection regulations, beach vehicle regulations, etc.

## SEASHORE DISTRICT

The Seashore District includes all lands within the boundaries of the Seashore that lie outside the boundaries of the exempt communities. All federal land and Suffolk County properties are in this district. The intention of the Fire Island National Seashore Act was that all private lands within the Seashore District, except certain "improved properties" built as of July 1, 1963, would be acquired. Continuation of these residential property uses and ownership is guaranteed as long as they conform to the local zoning authority. Like the property in the community development district, private property in the Seashore District is subject to local, state, and federal environmental regulatory controls. For ease of organization, lands within this district are considered in appropriate

groupings running from west to east, as identified on the attached map of the Seashore.

#### East Island, West Island, Sexton Island

These islands, comprising 314 acres, are intended to be managed to preserve their natural environmental values, with portion of Sexton Island and all of East Island classified as an environmental protection/primitive zone. Appropriate uses on the islands include bay fishing, shell fishing, and waterfowl hunting where permitted. Continuation of private residential use and ownership of "improved property" on West Island (10 residences) is assured by the enabling legislation and is considered compatible with Seashore resource management objectives, as long as these uses conform to the requirements of the local zoning authority. East Island is federally owned and no change in ownership or use is intended. Sexton Island is owned and currently managed by the Town of Islip to protect its environmental values. Lease of 22 residential units by the Town to private individuals is compatible with Seashore management objectives. Should the situation change, such as a sale of the land by the town, the Seashore would seek arrangements to protect the island's environmental values. Under any arrangement, the current leaseholds would be honored.

#### Lighthouse Tract

This 200 acre area extends from the east boundary of Robert Moses State Park to the Kismet community boundary and includes Tract 1. The area will be managed to preserve and interpret its natural and historic resources as identified in the General Management Plan. Present uses include low density beach recreation, a vehicle access control station, and Seashore staff housing. Proposed uses are natural history interpretation and environmental education. With the rehabilitation and relighting of the Fire Island Lighthouse, this area will be developed as an important center for the interpretation of the area's maritime history. Currently, daily visitation is estimated at 700 persons. After completion of all proposed facilities, a maximum daily visitation of 1,000 persons is anticipated. With the exception of

the Robert Moses State Park eastern unit which lies between the Lighthouse and Kismet, all land in the area is currently in National Park Service ownership, and will remain so. Recognizing the Seashore's objectives for this area, the New York State Office of Parks is currently in the process of exchanging the eastern unit of the State Park to the National Park Service for a parcel of federal land at Montauk Point on Long Island. Acquisition of this land by the National Park Service will complete federal acquisition in the Fire Island National Seashore.

#### Tracts 2203, 2, 3, 4,

These bay-to-ocean strips (8, 14, 20, and 17 acres, respectively) are intended to be managed as environmental preserves. Each is undeveloped from bay to ocean and lies between heavily developed residential communities. There is no formal public use of these areas; however, there has been continuous environmental degradation due to uncontrolled vehicular and pedestrian use. Currently in federal ownership, they may be better managed under several optional arrangements which will be explored in consultation with adjacent communities.

#### Municipal Beaches

Four publicly owned beaches, Atlantique Beach, Barrett Beach, Leja Beach, and Bellport Beach (23, 7, 12, and 17 acres, respectively) provide for public access and beach-oriented recreational opportunities for residents of Islip and Brookhaven Towns and the Village of Bellport. Continuance of use of these areas as municipal beaches is provided for in the enabling legislation. Should the situation change, the Seashore would seek alternative arrangements for their use and management. These alternatives could be federal acquisition either through donation, transfer or fee-purchase, and/or the possible federal management of the areas. Should these areas be transferred to the Seashore, consideration would be given to decreasing the uses at some of them.

#### Sunken Forest

This 183 acre area extends from Point O'Woods on the west to Cherry Grove

on the east. Management of this area is focused on preservation of the outstanding maritime holly forest, provision of environmental education, and beach recreation. This area, which includes public ferry service, a lifeguarded beach, a 36-slip marina, and an interpretive center, currently serves 2,500 visitors a day. All land within this area is in National Park Service ownership with the exception of 10 private residential uses and ownership of "improved property" existing as of July 1, 1963. Continuation of the private use is assured by the enabling legislation and is considered compatible with Seashore resource management objectives for this area, as long as these uses conform to the requirements of the local zoning authority.

#### Tract 5

This 40 acre area extends from Cherry Grove on the west to Fire Island Pines on the east, and is intended to be managed for preservation of its natural values and beach-oriented recreation. This area is federally owned and managed, and will remain so.

#### Talisman

This 103 acre area extends from the Fire Island Pines on the west to Water Island on the east. Preservation of the natural environment and provision of environmental education and recreational opportunities for the public are the management objectives for this area. This area currently serves 700 visitors a day. All land within this area is in federal ownership with the exceptions of Barrett Beach and 10 privately owned residences to the west of Water Island. Continuation of these private residential uses and ownership of "improved property" existing as of July 1, 1963, is assured by the enabling legislation and is considered compatible with Seashore resource management objectives for this area, as long as these uses conform to the requirements of the local zoning authority.

#### Tract 6

This 95 acre area extends from Water Island on the west to Davis Park on the east and is intended to be managed for preservation of the natural environment and provision of low density beach recreation. All land within this area

is federally owned with the exception of 15 private residences to the east of Water Island. Continuation of these private residential uses and ownership of "improved property" existing as of July 1, 1963, is assured by the enabling legislation and is considered compatible with Seashore resource management objectives for this area, as long as these uses conform to the requirements of the local zoning authority.

#### Watch Hill

This 100 acre area extends from Ocean Ridge on the west to the Congressionally designated Wilderness Zone on the east. This area is managed for the dual purpose of preservation of the natural environment and provision of the Seashore's most extensive public recreational facilities. This area, which includes public ferry service, a lifeguarded beach, a 150-slip marina, a small camp site, and an interpretive center, currently serves 2,000 visitors a day. All land within this area is in National Park Service ownership, and will remain so.

#### Wilderness Area

This area extends six-and-one-half miles from Watch Hill on the west to Smith Point West on the east, and will be managed in accordance with the Wilderness Plan for this area. All land within this area, with the exception of Bellport Beach, is in National Park Service ownership, and will remain so. Residential use of 20 federally owned residences under terms of reserved use and occupancy will continue through 1992, at which time all such rights will have expired and the land will be allowed to return to its natural condition.

#### Smith Point West

This area is a parcel of land lying between the Wilderness Area to the west and Smith Point County Park to the east. It is managed to provide beach recreation, including operation of a boardwalk trail accessible to the handicapped, and for provision of vehicular access to the beach. This area is federally owned, and will remain so.

### Smith Point County Park

This area extends six miles from Smith Point West to Moriches Inlet. It is managed for public recreation and resource preservation purposes in a manner consistent with Seashore management objectives. This area is completely owned by Suffolk County, and will remain so.

### Bay Islands

Numerous small islands owned by Suffolk County and Brookhaven Town in the Great South Bay lie within the boundary of the Seashore. These islands are managed for deposition of dredge spoil and/or resource preservation purposes consistent with Seashore management objectives. Should the situation change, the Seashore would seek alternative arrangements for their use and management.

### William Floyd Estate

This 613 acre property located on Long Island is a detached administrative unit of the Seashore and is managed to preserve the historic structures and site features of the estate. This property is in federal ownership, and will remain so. A reserved right of use to the previous owners for use of the grounds will expire in 1990.

### Patchogue River Terminal Site and Headquarters

This area comprises about 12 acres of land located on the Patchogue River and is managed for a dual purpose. It serves as the administrative and maintenance facility for the Seashore and it provides public parking and ferry access to the Watch Hill unit of the Seashore. With the exception of the bowling alley site (2.19) acres, this property is in National Park Service ownership and will remain so. The bowling alley site is currently privately owned and may be required in the future for parking purposes. Should the need arise, the Seashore would seek use of the property through agreement or acquisition.

**LAND ACQUISITION SUMMARY**

Following is a brief summary of the Seashore's land acquisition program. Figures current as of the date indicated.

Land Acquisition Authorization, Appropriations, Expenditures

<u>Year</u>	<u>Authorized Ceiling</u>
1964	\$16,000,000
1972	+ 2,000,000
1978	+ 5,000,000
Current authorized ceiling (9/30/82)	23,000,000
Current appropriation total (9/30/82)	20,263,959
Current acquisition expenditure total (11/30/82)	16,709,772
Unexpended appropriations (11/30/82)	3,554,187

Method and Amount of Federal Acquisition

	<u>Acreage</u>	<u>Number of Tracts</u>
Purchase	2136.88	139 acquired by declaration of taking 37 acquired by complaint in condemnation 423 acquired by opportunity purchase
Donation	690.42	16
Transfer	118.30	2
Divestiture	-8.50	1
	2937.10	

Acreage

Acreage acquired in fee title	2937.10
Acreage acquired by easement	3151.51
Total Federal acreage acquired (11/30/82)	6088.61

Number and Type of Improvements Acquired

Residential	146
Miscellaneous Commercial	6

Summary of Retained Uses on Federally Acquired Lands (11/30/82)

<u>Type of Retained use</u>	<u>Number</u>	<u>Term</u>
Reserved occupancy	22	20 expire in 1994 1 expires in 2007 1 life tenancy
Utilities	11	Indefinite
Roads	2	Indefinite
Lease	2	1990
Other	10	7 indefinite 3 expire in 1990

**LAND STATUS SUMMARY**

Following is a brief summary of land ownership to date:

Developed Community District (excluding dune district)

Privately owned tracts	Approx. 3,340*
NPS owned tracts	11

NPS Owned Tracts by Developed Community District

Atlantique	2
Davis Park	1
Fire Island Pines	5
Ocean Beach	2
Saltaire	1

<u>Developed Community Dune District</u>	<u>Undeveloped</u>	<u>Developed</u>
Developed tracts	87	245
NPS owned tracts	25	4

NPS Owned Tracts by Developed Community Dune District

Developed tracts	Ocean Bay Park	4
Undeveloped tracts	Atlantique	5
	Davis Park	1
	Fair Harbor	2
	Fire Island Pines	4
	Kismet	4
	Lonelyville	1
	Ocean Bay Park	2
	Ocean Beach	1
	Saltaire	2
	Seaview	1
	Water Island	2

<u>Seashore District</u>	<u>Undeveloped</u>	<u>Developed</u>
Privately owned tracts outside dune district	3	25
Privately owned tracts inside dune district	0	9
Privately owned tracts on West Island	1	10
Privately leased parcels on Sexton Island	0	22

\*Minimum legal lot size varies from 4,000 to 7,500 square feet depending upon the jurisdiction.

## PROTECTION ALTERNATIVES

### SUMMARY OF LAND PROTECTION TECHNIQUES

The enabling legislation, Department of the Interior, and National Park Service policies and the General Management Plan have set the parameters within which this Land Protection Plan is developed. The mechanisms available to protect the resource and provide for public use and enjoyment fall into the four general categories of acquisition, regulation, tax policy, and cooperation. The success of this Land Protection Plan will be in the crafting of a strategy that uses the mechanism best suited to Fire Island's particular environmental, social, cultural, and economic conditions. The enabling legislation identifies acquisition and regulation as the primary mechanisms of resource protection. In addition, tax policy can encourage compliance, and cooperative agreements may provide resource management efficiencies.

#### Acquisition

Lands within the Seashore have been acquired by purchase, donation, and transfer. In most cases, fee simple title has been acquired, and in a number of cases, where land was not immediately needed for Seashore purposes, owners have retained life and term tenancies. Based on the acquisition program to date, sufficient lands have been acquired to meet basic Seashore recreation use and environmental conservation objectives. Other than in extreme situations identified in this plan, federal condemnation will not be used to acquire lands within the Seashore boundaries. However, the National Park Service will consider opportunity purchase of the limited numbers of tracts still in private ownership within the Seashore District, at the request of landowners.

In order to assemble adequate acreage to meet the Seashore's legislative mandate, it was necessary to acquire a substantial number of properties, including 176 acquisitions by condemnation or declaration of taking. This past activity understandably created tension and apprehension on the part of property owners on the island. With no further federal acquisition of property planned in the Developed Communities and reliance on opportunity purchase to acquire remaining Seashore District lands,

it is expected that concern and uncertainty regarding federal intentions will be alleviated.

### Regulation

The issuance of regulations by the Secretary of the Interior that specify standards guiding local zoning ordinances, and the development and implementation of the ordinances, are the basis for natural and cultural resource protection and the continuation of the lifestyle within the Developed Communities District. In nine cases, declarations of taking and condemnation procedures have been used to support local zoning ordinances. Since there is no need for the National Park Service to own land within the communities, alternatives to acquisition will be used to encourage compliance with the zoning ordinances. As a land protection tool, regulation (primarily through zoning) is generally perceived by the island community as being a legitimate function of government. While individual landowners may object to the limitations imposed by the local zoning authority, there is general acceptance of the Seashore's mandated role in helping to shape local zoning ordinances. The proposal to focus Seashore efforts on encouraging compliance with local zoning ordinances is generally preferred by property owners to the alternative of direct federal acquisition of property as an enforcement mechanism.

### Tax Policy

Property tax policy can be effective in encouraging compliance with local zoning. When land is taxed at a rate that recognizes the use allowed by local zoning ordinances, it will encourage compliance. More importantly, when land is taxed at a rate higher than the use allowed by zoning, it will be difficult to enforce ordinances. If an area has special values that benefit the community at large, the community should be encouraged to structure tax policy to recognize these values.

Tax policy also affects the attractiveness of donations of private

land and structures for cultural and conservation purposes. These policies change periodically, and the tax position of individuals often changes annually. The best way to encourage donations is to keep the public continually aware of opportunities and to encourage potential donors to periodically review their individual tax situations to determine when donation would best suit their personal financial needs.

Tax policy, especially with local property appraisal values rising dramatically in some communities, is of intense interest to property owners on the island. It is anticipated that the tax proposal outlined in this plan, if implemented, would be very well received by affected island property owners. It would provide some tax relief for these persons, and benefit the community at large by encouraging retention of open space on the island.

#### Cooperation

Of all land protection mechanisms, implementation of cooperative agreements is the most readily available to the Seashore since the Superintendent has the authority to enter into a number of types of agreements that affect management and land use within the Seashore. They may take the form of informal understandings which are made almost daily between the Seashore and its varied constituents. Others are more formal arrangements including contracts, concession agreements, use permits, leases, and licenses. Cooperative arrangements can be arranged for maintenance, law enforcement, health and safety, program development, anything within the constraints of Departmental policy and law, as long as the public interest is served. Because they are voluntary, cooperative arrangements are by their very nature palatable to private property owners as a means of federal involvement in land use control. Where these arrangements can be implemented, the Seashore establishes good will and a sense of community commitment to its land protection responsibilities.

#### DEVELOPED COMMUNITIES DISTRICT

Within the developed communities, the primary objective is to allow continued prosperity while seeking a balance between inevitable change

and retention of an historic lifestyle. The purpose of the Federal Standards and the local zoning ordinances is to meet these community objectives while protecting national and municipal interests. It is in the best interest of the community, local, and Federal governments to develop regulations targeted to community and Seashore objectives so that their very reasonableness encourages compliance. Other ways to encourage compliance are through public awareness of the economic, social, cultural, and environmental benefits of the regulations and, if possible, through provision of direct economic incentives to individual property owners. Obviously a program encouraging compliance is preferred over the negative aspects of enforcement by federal acquisition. The Seashore has no need to own any land within the communities, so there is no advantage to the Federal Government in using acquisition to enforce zoning ordinances. In fact, the people who can conceivably benefit most when federal acquisition is used as an enforcement device are those property owners who defy the ordinances and who then profit from federal acquisition. When a property owner is attempting to defy the ordinances, the preferred strategy is to use the appropriate court system to prohibit such violations, enforcing the law and keeping the property in private ownership.

The dynamics of the barrier beach itself constitute another reason why acquisition is an inappropriate enforcement mechanism. The most significant tests in the near future are likely to be in enforcing the dune setback requirements of the local zoning ordinances. Because of the migrating dune line, the situations most likely to arise will be requests for building or rebuilding on properties that no longer can be developed in compliance with local dune setback requirements. The purchase of a potentially never-ending succession of properties exposed by a migrating dune line represents a potentially staggering cost to the taxpayer.

Since the enabling legislation relies heavily on zoning as a means of protection, the Federal Government has an affirmative responsibility to assist the municipalities when their ordinances are challenged. To this end, it will be the policy of the Seashore to work cooperatively with the the municipalities to develop joint strategies to best utilize

the resources of the Department of the Interior and the municipalities to ensure compliance with local zoning ordinances.

With an aggressive local zoning implementation program in effect, the Seashore's acquisition and condemnation authorities would be used only when all other proper legal remedies have been exhausted and the proposed action threatens Seashore resources and federal acquisition is the only recourse.

#### SEASHORE DISTRICT

Within the Seashore District, environmental protection and public use and enjoyment are the primary objectives, and acquisition is the primary protection mechanism. The Seashore District, however, is a varied entity. The objectives of the General Management Plan for each area have been examined to determine the amount of proprietary interest necessary to meet those objectives. Where intensive public use is an objective, fee simple title is required. With the acquisition of state land in the Lighthouse Tract, the Seashore will have acquired the last remaining land it needs for public recreation purposes. In bay-to-ocean strips in the western communities, environmental conservation is the objective, and there are now no other uses proposed. To counterbalance the current continued environmental degradation of these areas, it may be better to have the areas developed and managed for community park, recreation, open space, or safety uses as long as the rights necessary to protect the national interest are retained. In some instances, these areas are already being used by communities, such as the area east of Kismet where there is a fire house. Most areas have trails through them connecting the communities and are used regularly by residents.

It has been determined that continued private ownership of improved property in the Seashore District does not significantly conflict with the objectives of the General Management Plan. Therefore, the Seashore will not seek to acquire the 45 residences which fall into this category. The GMP does not call for development to occur in the areas where there are private residences outside the exempt communities, nor are these

private tracts located in the Seashore's Wilderness Area. Because they are not in visitor service areas nor in areas where there are development plans, the continuation of private ownership does not conflict with the management of the Seashore. Acquisition of these Seashore properties would be considered a long-range priority, leaving the initiation of any sale with the landowners. Until these properties are acquired by the Federal Government, the owners who maintain their properties in conformance with the requirements of the local zoning authority should be able to use and enjoy them in a manner similar to property owners within the developed communities and be eligible for "Certificates of Exemption."

#### FEDERAL DUNE DISTRICT

The General Management Plan discusses a land-use control system which includes a dune district. This district is similar to the concept of a flood plain ordinance. The primary dune of Fire Island provides the basic line of defense against storms and flooding tide. If the dune is to provide any protection from storms, it must be maintained in a natural condition with native vegetation.

The Dune District is an overlay district on the Seashore and community development districts. Photographed and measured in 1976, the district runs the entire east to west length of the island and is measured from the mean high water line to a line 40 feet north of the crest of the primary dune. The district is to be measured every ten years.

The purpose of the district is to:

- Assist in maintaining a vital resource to the island.
- Prohibit certain uses and activities that endanger the dune system
- Minimize public health and safety hazards within the communities by maintaining the dunes and providing protection.

The development of the dune district and the regulation developed to limit and control development in the district are the primary sources

of environmental protection for the barrier island. In 1978, an amendment to the enabling legislation suspended condemnation authority for all undeveloped land in the dune district that was kept undeveloped. Federal condemnation will only be used in this district in extraordinary conditions. Measurements reveal that the dune line has changed significantly -- 20 feet southward at Water Island and as much as 60 feet northward in other areas. However, no attempt will be made at this time to seek redefinition of the Federal "Dune District." The earliest time that a change would be made is in 1986, when the overall rate and direction of dune migration will be more fully documented. For the foreseeable future, the Seashore will rely on and support local zoning ordinances, which recognize the dynamic nature of the dunes to protect dune ecology.

## RECOMMENDATIONS

### DEVELOPED COMMUNITIES DISTRICT

Following are six action recommendations applying to lands within the 17 developed private communities identified in the Seashore enabling legislation.

#### Encourage Zoning Compliance

1. The zoning ordinances for Ocean Beach, Saltaire, Islip, and Brookhaven are under review. If, for any reason, they cannot be approved in their entirety, it is recommended that they be approved with exceptions. Once the ordinances are approved, "Certificates of Exemption" from condemnation will be issued upon application by homeowners where there is no question about their compliance with the ordinances. The Seashore, the communities, and the municipalities can then begin to reach an accommodation on the exceptions. The issuance of the certificates removing the threat of condemnation has the effect of clearing title of properties that are in conformance with the local zoning ordinances.
2. The National Park Service will seek to amend the Federal Standards so that the standards are performance standards. The regulations will be clarified on what can and cannot be built or rebuilt and will allow the rebuilding of structures damaged or destroyed by fire, storm, or other catastrophe. Rebuilding of affected structures would be subject to the requirements of the local zoning authority.

#### Support Municipal Enforcement of Zoning

3. Whenever zoning ordinances for the island are challenged, the National Park Service will seek to provide the municipality substantive and strategic support services.
4. The National Park Service will provide municipalities technical assistance in the form of the most up-to-date environmental

data available concerning barrier island ecology in support of municipal ordinances.

#### Establish Open Space Tax Program

5. While municipalities should continue to encourage the donation of fee title or development rights to undeveloped and unbuildable properties, it is recommended that the Towns of Brookhaven and Islip enact a Fire Island open space protection tax program. The enactment of such a program by the towns while specific to Fire Island, would have town-wide benefits in that any program that encourages maintaining the island in open space protects the shellfish industry, heightens the quality of life, increases land values, and protects mainland areas from coastal storm damage. The purpose of the tax program would be to decrease the amount of tax a property owner would be required to pay on land kept undeveloped. Since the undeveloped private land on Fire Island represents an insignificant portion of the township's tax base, the amount of tax revenues lost would be insignificant compared to the economic and environmental benefits.

This would be a voluntary tax reduction available to any landowner who owns a taxable vacant lot on Fire Island. It could also apply to owners of large, legally subdividable lots on which a structure already exists. In such cases, potentially buildable land in excess of minimum lot size required by the municipality for the existing residence would be eligible for inclusion in the protection tax program.

The program can be set up in a number of ways:

- Pure preferential assessment, which is simply an assessment of eligible undeveloped land on the basis of its current use value as opposed to its market value.
- Deferred taxation is similar to pure preferential assessment except that, if the undeveloped land is developed, a sanction is imposed on the landowner, consisting of the taxes he was

excused from paying for a specific number of years plus an interest penalty. This payment or "rollback" of taxes acts both as a deterrent to withdrawal from the program and as a means by which the taxing jurisdiction can recoup some of its tax expenditures incurred by introduction of the differential assessment program.

- Restrictive agreements require the participant to sign a contract with a public agency that restricts him to keep the undeveloped land in an eligible use during the duration of the contract (typically ten years). In return for this, the participant receives a current use value assessment. Usually, sanctions similar to those of deferred taxation are also imposed.

#### Encourage Private Donations

6. Private donations of land to the National Seashore are encouraged and will continue to be. Donations of land are tax deductible and, at the same time, preserve open spaces. Technical assistance is available from the National Park Service to private property owners interested in donating land to the Seashore.

#### Exchange Federal Lands

7. Within the communities, 6 federally-owned parcels of land (page 15) of sufficient size to be developed consistent with local zoning ordinances will be considered available for exchange with Seashore District land outside of the communities. The 34 federal parcels of land that cannot be developed consistent with local zoning ordinances will be retained undeveloped. However, should community organizations or municipalities wish to manage these lands for community use or environmental purposes, consideration would be given to transferring appropriate rights to them. In all cases, before any exchange or transfer of federal lands is made, the effected communities would be consulted and all appropriate environmental evaluations and procedures would be followed.

## SEASHORE DISTRICT

Following are five action recommendations applying to lands within the prelominantly federally-owned Seashore District.

Clarify Status of Improved Property

1. The National Park Service will seek to amend the Federal Standards so that properties built, or under construction as of July 1, 1963 (improved property) can be maintained in conformance with the local zoning ordinances. That is, owners will be able (upon the Secretary's approval of local ordinances) to make additions to or rebuild their homes as long as they conform to the requirements of the local zoning authority.
2. The National Park Service will request the municipalities to amend the local zoning ordinances to set maximum lot coverage on large lots no greater than that allowed in the respective local ordinance for minimum buildable lots. For example, in Brookhaven where the minimum lot size is 7,500 square feet, maximum lot coverage of any improved property would be 2,625 square feet.
3. The Seashore would encourage owners to consider a number of land protection arrangements that may be economically or personally advantageous to them and the Seashore now or in the future including:
  - Entering into a right of first refusal agreement with the Seashore.
  - Donating development rights to undeveloped portions of their property to the Seashore, the towns, or a private conservation organization.
  - Utilizing the proposed open space protection tax program.
  - Donating or selling title to all or portions of their property to the Seashore with option for retaining a term occupancy.

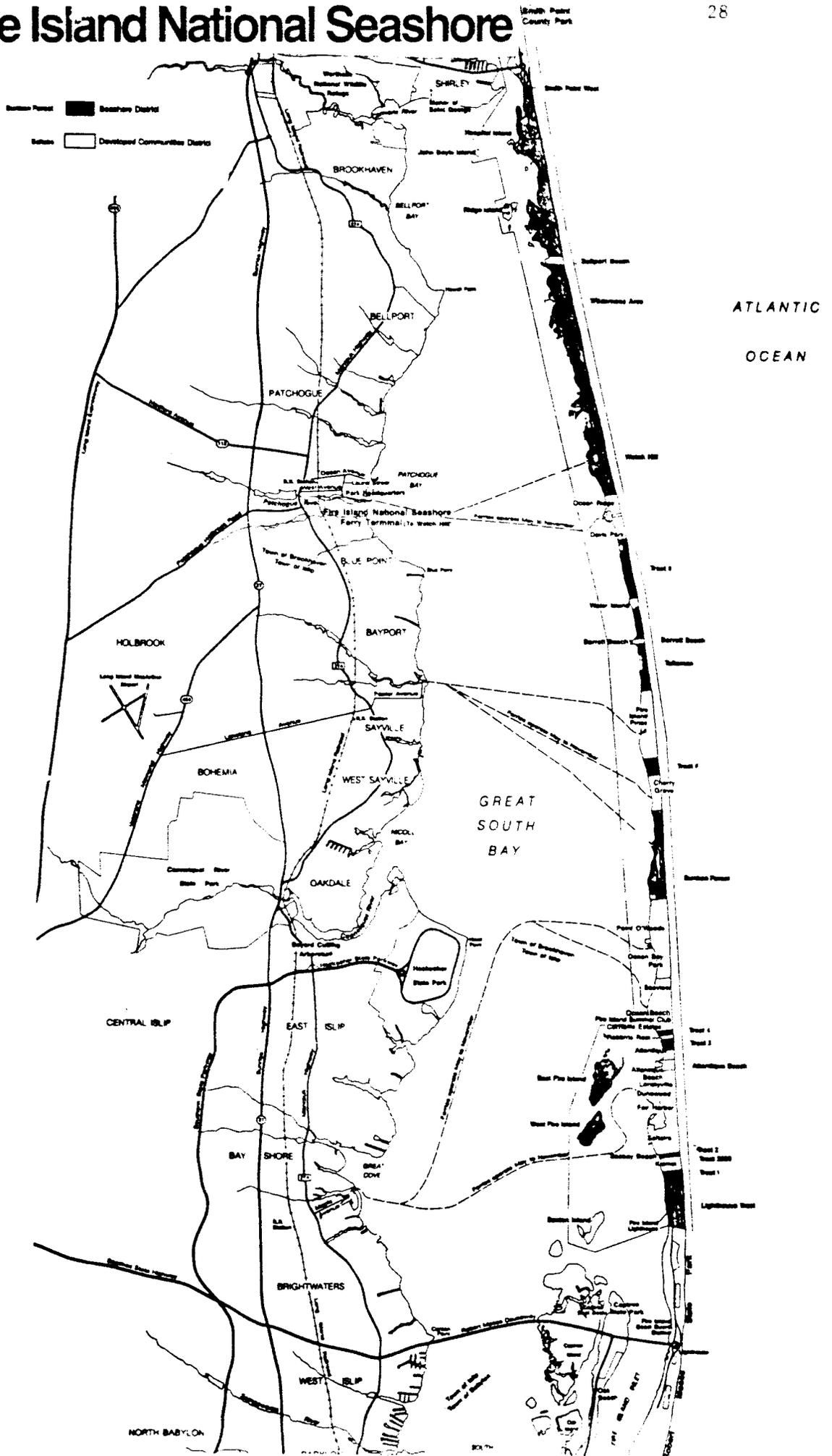
Prohibit Development of Unimproved Property

4. The policy, as stated in the Seashore enabling legislation, of prohibiting development of unimproved property will be continued. Should a landowner initiate construction on "unimproved property," the Federal Government will acquire the property, by condemnation, if necessary, when no other land protection mechanism suffices to achieve the legislative mandate to retain the property in an undeveloped state. The Seashore will encourage landowners to consider the economic advantages of transferring development rights or fee title to the government or participating in the proposed tax program as a means of lessening the tax burden on these properties.

Encourage Cooperative Management of Tracts 2203, 2, 3, 4

5. The National Park Service will seek arrangements with the municipalities or community organizations to manage these bay-to-ocean strip properties for community uses consistent with environmental conservation purposes. This would be accomplished by entering into agreements with the effected communities. Any such agreement would meet the standards of full environmental compliance to ensure that the resource values for which the property was acquired would not be compromised. Approval of this plan will have the effect of amending the General Management Plan to allow for community use of these lands consistent with the resource management objectives identified in the General Management Plan. Such arrangements would include:
- Transfer of title to the communities with the National Park Service retaining all, or certain, development rights.
  - Transfer of some development or use rights to the communities with National Park Service retaining title.
  - Granting a license, lease, or permit for community management of the area for specified uses.

# Fire Island National Seashore



## APPENDIX

## APPENDIX A

## DEPARTMENT OF INTERIOR LAND PROTECTION POLICY STATEMENT

**DEPARTMENT OF THE INTERIOR****Policy for Use of the Federal Portion of the Land and Water Conservation Fund****AGENCY:** Office of the Secretary, Interior.**ACTION:** Notice of final policy statement.

**SUMMARY:** The Assistant Secretary for Fish and Wildlife and Parks has adopted a policy statement concerning use of the Federal portion of the Land and Water Conservation Fund (LWCF). This policy statement provides broad guidance to four Federal agencies in use of the LWCF to achieve natural, cultural, wildlife, and recreation management objectives in accordance with Congressional mandates and statutory authorities.

The policy applies to the National Park Service, Fish and Wildlife Service, and the Bureau of Land Management, in the Department of the Interior and the Forest Service in the Department of Agriculture. The statement was developed by the LWCF Policy Group which is composed of the Directors of these three Interior agencies, Chief of the Forest Service, and a chairman who is designated by the Assistant Secretary for Fish and Wildlife and Parks. The LWCF Policy Group (LPG) was originally established in 1974 to review, comment on and coordinate proposals that may affect the Federal portion of the Land and Water Conservation Fund.

**EFFECTIVE DATE:** May 15, 1982.**FOR FURTHER INFORMATION CONTACT:**  
Ric Davids, Chairman, LWCF Policy

Group, Room 3156, Department of the Interior, Washington, D.C. 20240.

**SUPPLEMENTARY INFORMATION:** The public was invited to comment on the proposed policy statement which appeared in the *Federal Register* March 18, 1982, (Vol. 47, No. 53, pages 11777-8).

There were several comments received via phone expressing support for the policy statement and an interest in the rapid implementation of the policy. Seventy-five written comments were received. Seventy fully supported the policy and its immediate implementation by all of the Federal agencies using the Land and Water Conservation Fund. Five comments expressed concerns that the new policy was too general to be evaluated, eliminated the use of full fee title acquisition, was contrary to the 1980 policy for potential additions to the Federal estate, and that a fair analysis could not be made without analysis of the case studies that are not as yet available.

The new policy is by design general. Its purpose is to encourage the use of cost effective tools to protect the essential resource values in authorized areas. Full fee title acquisition is anticipated in areas where this method of acquisition is required by the land protection plan. Each individual area land protection plan must comply with all environmental protection requirements and it is at this specific point where the application of the policy should be evaluated. This policy is an extension of the 1980 policy for potential

additions to the Federal estate in that it encourages the same alternative protection and acquisition methods but for authorized rather than proposed areas. Review and comment on the subject policy should not have been dependent upon a review of the case studies that were to be made available by the National Park Service after April 12, 1982, as reported in the March 18, 1982, *Federal Register*. These case studies were undertaken to provide the National Park Service with an initial sample of how land protection plans could be recrafted and were not a test of the policy *per se*. It is anticipated that these case studies will be available on or about June 22, 1982.

The policy was developed in response to the decreasing availability of Land and Water Conservation Fund monies annually appropriated by Congress, concerns voiced by a number of sources including hearings by the Senate Subcommittee on Public Lands and Reserved Waters on July 9 and 10 of 1981; and reports by the General Accounting Office concerning Federal land acquisition practices. The recently adopted policy generally refines and expands the basic concepts included in the policy statement which appeared in the *Federal Register* of May 7, 1980 (45 FR 30306). The previous policy statement only addressed studies and recommendations for new areas to be funded under the Land and Water Conservation Fund program. The recent drop in the level of the annual Land and Water Conservation Fund appropriation created a need to apply the various

alternatives to fee title land acquisition to all currently authorized areas in an effort to stretch available LWCF monies. The recently adopted policy supplements the 1980 statement to include existing units of the National Park, Wildlife Refuge, Forest, and recreation or conservation area systems where acquisition of private land is planned using LWCF monies.

The policy provides general guidance and does not replace the more detailed policies and procedures governing the land acquisition and management programs of each agency. However, each agency affected by the Policy is expected to make revisions in its policies and procedures as necessary and appropriate to reflect the direction of the general policy. This direction includes emphasis on responsiveness to Congressional mandates; cost effective

alternatives to Federal fee simple purchase of private lands; improved cooperation with landowners, other Federal agencies, and State and local governments, and the private sector; and development of plans considering socio-cultural impacts.

**ADOPTED POLICY:** The following statement has been adopted after consideration of public comments: Policy for Use of the Federal Portion of the Land and Water Conservation Fund.

The Federal portion of the Land and Water Conservation Fund will be used to acquire lands, waters, and interests therein necessary to achieve the natural, cultural, wildlife, and recreation management objectives of the National Park Service, Fish and Wildlife Service, Bureau of Land Management, and Forest Service. The fund will be used in accord with management objectives for each currently authorized area based on agency missions and Congressional mandates. The agencies using the Federal portion of the Land and Water Conservation Fund will, to the extent consistent with statutory authorities:

—Identify what land or interests in land need to be in Federal ownership to achieve management unit purposes consistent with public objectives in the unit.

—Use to the maximum extent practical cost-effective alternatives to direct Federal purchase of private lands and, when acquisition is necessary, acquire or retain only the minimum interests necessary to meet management objections.

—Cooperate with landowners, other Federal agencies, State and local governments, and the private sector to manage land for public use or protect it for resource conservation

—Formulate, or revise as necessary, plans for land acquisition and resource use or protection to assure the socio-cultural impacts are considered and that the most outstanding areas are adequately managed.

Dated: April 29, 1982.

G. Ray Arnett,  
Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 82-12283 Filed 5-6-82; 8:46 am]

BILLING CODE 4310-10-01

**APPENDIX B****PLANNING PREMISES, GENERAL MANAGEMENT PLAN****PLANNING PREMISES**

This general management plan is based on the following planning premises:

The primary management concern is preservation and enhancement of the serenity and natural beauty of the island, which includes protection of the beaches, dunes, and other natural features fundamental to the concept of Fire Island National Seashore.

Planning for management, use, and recreational facilities at Fire Island is based on the knowledge that the island is a dynamic, changing resource and today's configuration and environment may not be tomorrow's. Design of facilities should be guided by the uncertainty of natural events on barrier islands.

Increased use of federal recreational areas will be minimal, with emphasis placed on the quality of facilities and visitor experiences and not on quantitative increases.

The plan recognizes that certain resource management actions are necessary to fulfill the legislated mandate for the national seashore. Fire Island is a culturally manipulated barrier-island system, and it cannot be managed as if natural geomorphic processes had been totally unimpeded.

Fire Island National Seashore does not exist as an isolated entity, rather it is located within the nation's largest urbanized area, and cooperative planning between local publics and governmental authorities is required to ensure that mutually compatible goals are achieved.

Proper land-use controls and related regulations within the communities of Fire Island are necessary for the long-term preservation of the resource, thereby requiring National Park Service involvement in community zoning activities, as intended by the 1964 Fire Island National Seashore Act.

The plan is intended to serve the long-term management needs of the national seashore; however, implementation of planning proposals is based on a 10-year time frame.

Certain land acquisitions and cooperative management agreements are desirable for improved management of the national seashore.

This general management plan recognizes that Fire Island National Seashore serves a definable population of known and potential visitors. Basically, Fire Island provides for, and will continue to serve, the recreational needs of Suffolk and Nassau Counties and to a lesser degree the needs of New York City.

## MANAGEMENT OBJECTIVES

The National Park Service will manage Fire Island National Seashore in accordance with the legislated mandate to preserve the island's natural resources while providing diverse recreational opportunities. The following objectives will be used to guide management and operation of the national seashore:

To provide for the preservation of unspoiled beaches, dunes, and natural features for the use of future generations.

To protect and preserve natural plant and animal communities.

To manage Fire Island in ways that will enhance natural processes and mitigate the impacts of human interference with these processes.

To control visitor use in areas of prime wildlife habitat as required to maintain wildlife populations.

To maintain and/or restore all areas not required for public or administrative use to a natural condition using aesthetically appealing and environmentally compatible methods.

To identify and preserve cultural resources.

To maintain acceptable water quality in marinas and adjacent waters through management of visitor use.

To advise and consult with appropriate agencies concerning offshore oil drilling and production and to ensure National Environmental Policy Act compliance for any related activities that may occur within national seashore jurisdiction.

To continue to work with the U.S. Coast Guard and other involved agencies in the detection, monitoring, and cleanup of any sludge or other pollutants brought ashore by wind and wave action.

To foster public understanding and appreciation of Fire Island's natural and cultural resources.

To provide for the continued reduction of vehicle use until such use is at an absolute minimum.

To maintain and provide only those dune crossings (vehicular and pedestrian) required for the proper use and preservation of the area.

To allow for vector control activities within federally managed properties of the national seashore in times of established public health emergencies.

To provide a wide-range of quality interpretive activities that emphasize the natural features and processes of the seashore's lands and waters, man's relationship with his environment, and the historical and other cultural values of the area.

To coordinate a full program in environmental education with local schools so that the area can be used to its fullest advantage as a place where children from all walks of life can experience, enjoy, and learn from a natural setting the relationships between man and the barrier beach, and his impacts on it.

To place underground all aerial utility lines.

To utilize Fire Island's resources in providing recreational facilities and opportunities that are generally unavailable elsewhere in the region while maintaining the serenity and beauty of the barrier island.

To provide for the continuation of traditional low-density recreational activities.

To make the national seashore accessible to a cross section of the national and regional population.

To encourage cooperation in the management of adjacent recreational lands to prevent unnecessary duplication of facilities and to provide the greatest diversity of recreational opportunities on Fire Island.

To promote and enhance a harmonious relationship between the exempted seashore communities and the National Park Service.

To integrate planning and management for Fire Island National Seashore into regional planning and economic considerations.

Fire Island National Seashore has been divided into management units to facilitate management and to improve operations immediately. Each unit will have specific management objectives as discussed below.

#### FIRE ISLAND LIGHTHOUSE MANAGEMENT UNIT

This unit includes the 90-acre lighthouse tract, bay-to-ocean strips, Sexton Island, West Island, and East Island. Management objectives for this unit are as follows:

To preserve and interpret the historic resources of the lighthouse complex.

To manage natural resources within the lighthouse tract and the adjacent bay islands for interpretation, environmental education, research, and preservation.

To rehabilitate and preserve bay-to-ocean strips.

#### SUNKEN FOREST MANAGEMENT UNIT

This unit extends from the eastern boundary of Point O'Woods to the western boundary of Davis Park. The following objectives have been defined for the Sunken Forest unit:

To continue special protection for the old maritime holly forests of the Sunken Forest.

To manage the Sunken Forest developed area as a center for natural history interpretation and recreation, and to de-emphasize overnight use by boaters.

To assist with the preservation of the outstanding maritime forests in the community of Point O'Woods through the implementation of an agreement with the Point O'Woods Association.

To establish an environmental educational center with limited overnight accommodations at the Talisman site.

To determine the desirability of artificial tidal marsh construction within federally managed lands by building an experimental marsh adjacent to Barrett Beach.

#### WATCH HILL MANAGEMENT UNIT

The Watch Hill unit encompasses the lands from the eastern boundary of Ocean Ridge to the eastern end of the Watch Hill campground. The primary objectives for its management are:

To manage the Watch Hill developed area as a national seashore center for day-use recreation and camping.

To protect and enhance the natural environment of undeveloped lands east of the Watch Hill developed area.

To eliminate those dune crossings that can be closed without increasing behind-the-dune travel and related impacts.

To remove unnecessary dwellings and other structures upon the expiration of existing use and occupancy agreements at Bayberry Dunes.

To maintain adequate water depth for ferry and boat access to marinas.

To provide a level of camping and associated facilities (water and sanitation) that will not adversely impact the environment.

#### HIGH DUNE MANAGEMENT UNIT

This unit extends from the eastern boundary of the Watch Hill management unit to the western boundary of Smith Point County Park. Its objectives are:

To protect the natural qualities of the high dune management unit and to provide for traditional low-density recreational uses.

To provide minimal facilities and programs for interpreting the outstanding natural resources of this area.

To maintain primitive qualities of this unit so as not to preclude potential wilderness classification.

To remove man-made structures within the management unit and to restore these sites.

To manage the unit as a primitive area.

#### MORICHES AREA

This section of the barrier island, which extends from the eastern end of Smith Point County Park to Moriches Inlet, is the property of Suffolk County and is managed by the Suffolk County Parks Department. The National Park Service has the following objectives:

To share ideas and philosophies with Suffolk County regarding the management of this section of the barrier island.

To manage these lands as a unit of the national seashore should Suffolk County decide in the future to donate these lands to the National Park Service.

#### WILLIAM FLOYD MANAGEMENT UNIT

This unit includes the 612 acre William Floyd Estate. The following objectives for its management have been established:

To interpret the history and to preserve the historical resources of the estate as a continuum of the William Floyd family.

To maintain the features of the existing landscape and current land-use practices, and to stabilize existing structures until use/occupancy agreements expire and future public uses are determined.

#### EXEMPTED COMMUNITIES

The following objective relates to the 17 exempted communities located within the boundary of the national seashore:

To establish direct federal involvement with local governmental jurisdictions in a cooperative effort to provide appropriate land uses within the exempted communities of the national seashore.

APPENDIX C

Chapter I—National Park Service, Dept. Interior

§ 28.1

**PART 28—FIRE ISLAND NATIONAL SEASHORE; ZONING STANDARDS**

**Subpart A—Zoning Standards**

- Sec. 28.1 Purpose.
- 28.2 Definitions.
- 28.3 Boundaries: The Community Development District; The Dune District; The Seashore District.
- 28.4 Permitted and prohibited uses.
- 28.5 Nonconforming uses.
- 28.6 Zoning standards.
- 28.7 Approval of local zoning ordinances.
- 28.8 Variance procedures.
- 28.9 Emergency action.

**Subpart B—Condemnation Authority**

- 28.21 Condemnation authority of the Secretary.
- 28.22 Certificates of suspension of authority for acquisition by condemnation.
- 28.23 Severability.

**AUTHORITY:** Sec. 3, Act of August 25, 1916, 39 Stat. 535, as amended (16 U.S.C. 3); sec. 3 of the Act of September 11, 1964, 78 Stat. 939 (16 U.S.C. 459e-2, 245 DM 1-44 FR 23984); Departmental and National Park Service Order No. 77-38 FR 7476) as amended.

**SOURCE:** 45 FR 59572, Sept. 10, 1990, unless otherwise noted.

**Subpart A—Zoning Standards**

**§ 28.1 Purpose.**

(a) To the extent consistent with the legislation creating the Fire Island National Seashore (the Seashore), the development and management of the Seashore will be conducted with the primary aim of conserving and preserving certain relatively unspoiled and undeveloped beaches, dunes and other natural resources while assuring the widest possible public use, understanding and enjoyment of its natural and scientific features. This contemplates a broad range of outdoor recre-

ational activities, including but not limited to, hiking, boating, swimming, fishing, picnicking, nature study, beachcombing, and any such activities that shall be compatible with wise resource management and the physical capabilities of the Seashore.

(b) The regulations in this part are designed to establish enforceable minimum standards to which local zoning ordinances within the Seashore must conform if certain properties within the Seashore are to be exempt from condemnation. These regulations do not establish minimum standards which are directly enforceable (other than through condemnation) against property within the Seashore as federal zoning, rather these standards provide the basis for determining what constitutes conforming local zoning ordinances. These standards are intended: (1) To prohibit new commercial or industrial uses of all property within the Seashore or the expansion of existing commercial or industrial uses, other than uses which the Secretary of the Interior (the Secretary) considers are consistent with the purposes of the Act;

(2) To promote the protection of the land within the Seashore in keeping with the purposes of the Act by means of minimum setback, frontage, and setback requirements, and other such environmental, aesthetic, protective, and development controls;

(3) To recognize that the zoning authorities have the initial interest and authority over the use of land within the Seashore and that respect for diversity and uniqueness of the character of Fire Island communities is in the public interest; and

(4) To provide that private property within the Community Development District, both "improved" and "unimproved", may be retained by its owner as long as it is maintained in accordance with approved local zoning requirements. To provide that within the Seashore District, private "improved property" may be retained by its owner as long as it is maintained in accordance with approved local zoning requirements. And to provide that in the Dune District, private undeveloped property, if otherwise subject to condemnation, may be retained by its

## § 28.2

## Title 36—Parks, Forests, and Public Property

owner as long as it is maintained in its natural state.

(c) The Secretary may utilize any other statutory authority available to him for the conservation and development of natural resources to the extent he finds that such authority will further the purposes of the Act.

## § 28.2 Definitions.

(1) "Accessory structure" shall mean any development which is located on the same lot as the principal building or use, is customarily incidental and subordinate to the principal building or use, and is not used for overnight habitation. Accessory structure may include storage sheds, docks, decks, patios, swimming pools or tennis courts, but shall not include bicycle racks and the single primary access walk. Accessory structure shall also include guest houses without cooking facilities used for overnight habitation.

(2) "Act" shall mean the Act of September 11, 1964, Pub. L. 88-587 (78 Stat. 928, 16 U.S.C. 459e), as amended, as further amended by Section 322 of the Act of November 10, 1978, Pub. L. 95-625 (92 Stat. 3488).

(3) "Building" shall mean an enclosed structure having a roof supported by columns, walls, or cantilevers and if separated by a party wall without openings, it shall be deemed a separate "building".

(4) "Developed property" shall mean any property which has been altered from its natural state by the construction or erection of materials located in, upon, or attached to something located in or upon the ground. Such alterations may include buildings, decks, swimming pools, storage sheds, patios, docks, tennis courts, septic systems or leaching fields, walkways, groins, fences and signs (except dune protection fences and signs), roads, retaining walls, grading, artificial fill, or other structures or materials excluding live vegetation.

(5) "Development" shall mean any activity, action, or alteration which changes undeveloped property into developed property.

(6) "Exception to a zoning ordinance" shall mean any development or change in use of developed property

which is not regulated by the zoning ordinance or the variance procedures of the zoning authority, or if regulated by the zoning ordinance fails to conform to the approved ordinance or the standards of the Secretary.

(7) "Guest house" shall mean an accessory structure on the same lot as the principal building for the temporary accommodation of guests of residents living in the principal building, without any cooking facilities.

(8) "Improved property" is a type of developed property which is defined by the Act to mean any building, the construction of which was begun prior to July 1, 1963, together with such amount of land on which said building is situated as the Secretary considers reasonably necessary to the use of said building not, however, to exceed 2 acres in the case of a residence or 10 acres in the case of a commercial use. The Secretary may exclude from such "improved property" any beach or waters, as well as land adjoining such beach or waters, which he deems necessary for public access thereto.

(9) "Local law" shall mean the state and town or village law applicable to the development, use or lot.

(10) "Lot" shall mean a parcel of land which meets the minimum acreage and frontage requirements of the local zoning authority and is occupied or capable of being legally occupied by one (1) principal building or main building, and the accessory structures or uses including such open spaces as are required by these standards, but in no case shall a lot include lands below the toe of the natural foredune line.

(11) "Undeveloped property" shall mean any property which has not been altered from its natural state with the exception of such dune protection measures as snow fencing, beach nourishment, dune grass planting, or other approved biological or ecological sand-enhancing or stabilization methods.

(12) "Unimproved property" shall mean either (1) undeveloped property, or (2) property which is developed property but not "improved property".

(13) "Zoning authority" shall mean the Town of Brookhaven, the Town of Islip, the Village of Saltaire, the Village of Ocean Beach and/or any other

## Chapter I—National Park Service, Dept. Interior

## § 28.3

legally incorporated village or political subdivision hereafter created.

§ 28.3 Boundaries: The Community Development District; The Dune District; The Seashore District.

(a) Generally: The boundaries of the Seashore are described in the Act, as amended, and are delineated on the official boundary maps OGP-0002, dated June 1964 and amended by OGP-0004, dated May 1978. The maps are available for inspection at the Seashore headquarters. There are three districts: the Community Development District, the Seashore District, and the Dune District.

(b) The Community Development District: (i) The seventeen communities which comprise the Community Development District are set out below with their respective boundaries: (i) Lighthouse Shores—Kistler Park Unit

West Boundary: 100 feet west of the west line of West Lighthouse Walk.

East Boundary: 80 feet east of the east line of Pine Street.

(ii) Seabay Beach Unit

West Boundary: Approximately 94 feet west of the west line of Seabay Walk.

East Boundary: Approximately 94 feet east of the east line of Seabay Walk.

(iii) Saltaire

West Boundary: By the east side of National Park Service Tract 2204.

East Boundary: 65 feet east of the east side of East Walk.

(iv) Fair Harbor

West Boundary: By the east side of Broadway Walk.

East Boundary: By the east side of Spruce Walk.

(v) Dunewood

West Boundary: By the east side of Spruce Walk.

East Boundary: Approximately 648 feet east of the east side of East Walk.

(vi) Lonelyville

West Boundary: Approximately 848 feet east of the east side of East Walk.

East Boundary: Approximately 100 feet east of the east side of Heaven Walk.

(vii) Atlantique

West Boundary: 80 feet west of the west line of Sea Breeze Walk.

East Boundary: 80 feet east of the east line of East End Walk.

(viii) Robbins West

West Boundary: The west side of Broadway Walk.

East Boundary: Approximately 112 feet east of the east side of Ocean Pathway.

(ix) Fire Island Summer Club--Cornelle Estates

See combined boundary at subdivision (xiii) of this subparagraph.

(x) Ocean Beach

See combined boundary at subdivision (xiii) of this subparagraph.

(xi) Seaview

See combined boundary at subdivision (xiii) of this subparagraph.

(xii) Ocean Bay Park

See combined boundary at subdivision (xiii) of this subparagraph.

(xiii) Point O'Words For (ix)-(xiii)

West Boundary: Approximately 320 feet west of the west side of First Walk.

East Boundary: Approximately 200 feet east of the east line of Division Street.

(xiv) Cherry Grove

West Boundary: The west line of West Walk.

East Boundary: Approximately 130 feet east of the east side of 1st Walk.

(xv) Fire Island Pines

West Boundary: Approximately 150 feet west of Sandy Walk or formerly known as the west line of Sammis lot No. 27.

East Boundary: Approximately 120 feet east of Sail Walk or formerly known as the east line of Sammis lot No. 27.

(xvi) Water Island

West Boundary: The west line of Charach Walk.

East Boundary: Approximately 100 feet east of the east side of East Walk.

(xvii) Davis Park

West Boundary: The line approximately 90 feet west of the west side of Elder Duck Walk.

East Boundary: The east line of Ocean Ridge, formerly known as Sammis Lot #41, Section 3.

(xviii) Northern boundary of communities.

## § 28.4

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(d)-(xviii) is the mean high water line on the south shore of the Great South Bay.

(xix) Southern boundary of the communities.

(i)-(xvii) is the toe of the natural foredune line parallel with the Atlantic Ocean.

(c) The Dune District: The Dune District shall extend from the mean high tide line to 40 feet landward of the primary natural high dune crest, as defined by Fire Island National Seashore on OGP 6004 and on Suffolk County Property Maps, section numbers 491-498 (Islip), 002 (Ocean Beach), 002 004 (Saltire), and 985.76-987 (Brookhaven), as mapped in November 1976. Map overlays of the Dune District are available for inspection in the Superintendent's office. The Dune District overlaps portions of the Community Development District and the Seashore District.

(d) The Seashore District: The Seashore District shall comprise all portions of the lands and waters within the boundary of the Seashore which are not included in the Community Development District with the exception of the headquarters facilities at Patchogue.

## § 28.4 Permitted and prohibited uses.

(a) The Community Development District: (1) Permitted Uses: (i) Principal, Accessory and Professional Uses: As principal uses, the construction and maintenance of detached buildings to be used as single family dwellings and churches, schools, or community buildings, and accessory uses. Offices for professional occupations (physician, dentist, etc.) incidental to a residential use must be utilized by the person residing on the premises and may not exceed more than 1/3 of the first floor area if part of the principal structure.

(ii) Existing commercial and industrial uses providing a service to the community in support of community living and authorized by a special use permit from the Secretary and a special permit from the zoning authority.

(2) Prohibited Uses: (i) The construction, or expansion of apartment or other multiple dwellings or conversion of existing buildings for multiple occupancy.

(ii) The construction or expansion of guest houses with cooking facilities, or conversion of existing structures for guest houses with cooking facilities.

(iii) The construction of inground swimming or diving pools.

(iv) The subdivision of land into lots which do not meet the requirements of approved zoning ordinances.

(v) New commercial or industrial uses without a special use permit from the Secretary and a special permit from the zoning authority. The zoning authority may further restrict commercial or industrial uses to commercial zones. Such uses must provide a service to the community in support of community living. Any change in use of existing commercial and industrial uses including construction, expansion or conversion of existing structures or changes in type, mode or manner of operation constitutes a new commercial or industrial use.

(b) The Dune District: (1) Permitted Uses: (i) Community vehicular and private or community pedestrian dune crossings permitted by the zoning authority and approved by the Secretary necessary for access to areas behind the dune and such dune protection measures as snow fencing, beach nourishment, dune grass planting, or other approved biological or ecological sand-enhancing or stabilization methods.

(ii) Residential use and maintenance of existing structures or reconstruction in accordance with § 28.5.

(2) Prohibited Uses: Any development subsequent to November 10, 1978 including construction of new structures and expansion of existing structures, such as buildings, bulkheads, piles, septic systems, revetments, decks, in-ground swimming or diving pools, and other structures or man-made dune stabilization devices (except those permitted in § 28.4(b)(1)) and all uses of the dune including recreational uses.

(3) Conflict with other provisions. If a development, or lot lies (i) partially within the Dune District and partially in the Community Development District, or (ii) partially within the Dune District and partially within the Seashore District, and the standards applicable to such development, lot or use are in conflict, the standards for

## Chapter I—National Park Service, Dept. Interior

## § 28.5

the Dune District shall prevail for the portion of the development, lot or use which lies within the Dune District.

(c) The Seashore District: (1) The Seashore District: (i) Permitted Uses of Privately-held Property: Residential use and maintenance of "improved property" may be continued. New development on "improved property" or the alteration or movement of "improved property" may be permitted if consistent with § 28.6 and does not increase lot coverage. "Unimproved property" which has been developed may be maintained but may not be altered or moved. General recreation, environmental and historic education, and natural resource protection uses and facilities are permitted if consistent with the uses and facilities appropriate with each zone as set forth in the General Management Plan and Final Environmental Impact Statement. Section 28.4(a)(2)(ii) shall apply in the Seashore District.

(ii) Prohibited Uses of Privately-held Property: Development or expansion of any property other than "improved property" is prohibited. The provisions of § 28.4(a)(2) shall apply in the Seashore District.

(iii) Permitted Uses of Publicly-held Property: General recreation, environmental and historic education and natural resources protection uses and facilities consistent with the uses and facilities appropriate for each zone as set forth in the General Management Plan and Final Environmental Impact Statement.

#### § 28.5 Nonconforming uses.

(a) Any development or use lawfully in existence under local law as of July 1, 1963 and rendered nonconforming by the Act or the original zoning standards published in 31 FR 5269 on April 2, 1966, or any development or use consistent with the original Act or standards but rendered nonconforming by subsequent amendments to the Act or standards, may continue (including routine repair and maintenance), subject to the provisions of this section, and will not lose its exemption from condemnation, if otherwise eligible.

(b) Change in Nonconforming Uses: (1) No nonconforming development or

use shall be altered, intensified, enlarged, or extended (excepting routine repair and maintenance), unless such alteration, enlargement, or extension conforms to these regulations.

(2) Any nonconforming use which has been abandoned for more than one (1) year shall not be resumed or replaced by another nonconforming use.

(3) A nonconforming structure may be moved to bring it into conformity with current standards or may be moved on the same lot, as long as such movement does not exceed lot density standards.

(c) Reconstruction of Nonconforming Uses: (1) General Rules. The following general rules shall apply to all nonconforming uses: (i) If a nonconforming development or use is severely damaged (as determined by fair professional insurance practices), destroyed or rendered a hazard, whether by fire, natural disaster, abandonment or neglect, no alteration, intensification, enlargement, reconstruction or extension shall be permitted without compliance with these regulations.

(ii) No property within the Seashore built in violation of local law when constructed may be reconstructed except in compliance with these regulations.

(iii) If the nonconforming building can be brought into conformity with current standards, then it shall be reconstructed as to conform to current standards. If the building can conform to all standards of this regulation, except for minimum lot sized or setback requirements, then it may be reconstructed, subject to the specific rules of § 28.5(c)(2).

(iv) The reconstruction shall be commenced within one (1) year of the damage, destruction or abandonment, and

(v) Commercial and industrial uses shall not be reconstructed without a special use permit from the Secretary and a special permit from the zoning authority.

(2) Specific Rules. No nonconforming use shall be reconstructed without compliance with the appropriate specific rule as follows: (i) "Improved property" in the Community Development District or in the Seashore Di-

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trict may be reconstructed to its previous dimensions provided the building conformed to minimum lot sizes and setback requirements or had a variance or exception issued by the zoning authority at the time of original construction;

(ii) "Improved property" in the Dune District portions of the Community Development District and the Seashore District may be reconstructed only if it can conform to all current zoning standards and provided the building conformed to minimum lot sizes and setback requirements or had a variance or exception issued by the zoning authority at the time of original construction.

(iii) "Unimproved property" in the Community Development District may be reconstructed to its previous dimensions provided the building conformed to minimum lot sizes and setback requirements at the time of original construction. "Unimproved property" in the Dune District portion of the Community Development District may be reconstructed if it can conform to all current zoning standards and provided the building conformed to minimum lot sizes and setback requirements at the time of original construction. If such "unimproved property" was built pursuant to a variance or exception issued by the zoning authority, the owner may apply to the zoning authority for a special permit to reconstruct to previous dimensions under local law. However, such structures are not eligible for a Certificate of Suspension of Authority to Acquire Property by Condemnation. The Secretary may object to the issuance of the special permit or take other measures as appropriate under these regulations or local law.

(iv) "Unimproved property" in the Seashore District and "unimproved property" in the Dune District portion of the Seashore District may not be rebuilt.

## § 28.6 Zoning standards.

(a) No use permitted under § 28.4 may be constructed, altered, or conducted unless it complies with the general and specific standards prescribed in these regulations and is consistent with the objectives and purposes of

the Act. From time to time these standards will be reviewed and, if necessary, revised through the issuance of amended regulations.

(1) Maximum plot occupancy shall not exceed 25 percent for principal structures and 10 percent for accessory structures. Plot occupancy shall be calculated to include any extensions of the upper floors beyond area of the ground floor.

(2) Maximum second floor area shall not exceed 25 percent of total plot occupancy;

(3) At no point of the building shall the roof be more than 28 feet above average ground level. The roof includes gables, dormers, stairwells, chimneys or other protrusions in excess of two square feet in base area but does not include vent stacks or such protrusions less than two square feet in base area. The ground is the surface of the sand or earth and does not include walkways, decks, vegetation, artificial fill, retaining walls or other man-made alterations from the natural state.

(4) There shall be a maximum of one kitchen and 2½ bathrooms per building lot;

(5) Those provisions relating to acreage, frontage, and setback requirements contained in zoning ordinances of the towns of Brookhaven and Islip and Villages of Ocean Beach and Saltaire which are in effect on Fire Island as of September 10, 1980, are hereby incorporated as the acreage, frontage, and setback standards for developments within the Seashore, provided the zoning authority provides the Secretary and the Superintendent of the Seashore (the Superintendent) within sixty (60) days of the effective date of these regulations a certified copy of the acreage, frontage and setback requirements in effect on the date of publication. Amendments to acreage, frontage, and setback requirements by the zoning authority will be incorporated as the Standards for the Seashore provided such amendments are approved by the Secretary pursuant to § 28.7.

(6) Signs. No sign shall be self-illuminated. In residential zones within the Community Development District and throughout the Seashore District,

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signs shall not exceed one square foot in area. If the zoning authority has established a commercial zone, signs for commercial or industrial uses in such zone shall be limited to four square feet in area. All signs are limited in number to one per premises and shall be located on premises where the use occurs. Nonconforming signs may continue such nonconformity until they are destroyed, structurally altered, reconstructed, changed, or moved. Non-commercial signs to be used for public information, orientation, or education purposes may be larger, by special permit of the zoning authority and the Superintendent.

#### § 28.7 Approval of local zoning ordinances.

(a) After promulgation of these regulations, a zoning authority may submit a certified copy of its ordinance for approval by the Secretary. If the zoning authority relies upon provisions of New York law or provisions of the town or village ordinance not contained within the zoning sections to meet some of the standards set forth in these regulations, the transmittal letter shall specify what other provisions are being relied upon and certified copies of such provisions shall also be submitted.

(b) The Secretary shall approve any zoning ordinances or amendments to approved zoning ordinances submitted to him which conform to these regulations. He may not however, approve an ordinance or amendment thereto which: (1) Contains any provision that he considers adverse to the protection and development of the Seashore;

(2) Does not provide appropriate limitations, requirements or restrictions upon the burning of cover and trash, the excavation, displacement, or removal of sand, or vegetation and the dumping, storing or piling of refuse materials, equipment, or other unsightly objects which would detract from the cultural and natural scene;

(3) Does not contain appropriate regulations to lessen the potential for flood and related erosion and property losses consistent with the Federal Insurance Administration's National Flood Insurance Program criteria for "Land Management and Use," as set

forth in 24 CFR Part 1910, subpart A, as it may from time to time be amended, and

(4) Fails to provide for the variance procedures of § 28.8.

(c) Revocation of Approval of Local Zoning Ordinances. The Secretary shall revoke the approval of any ordinance or of a portion of an ordinance which fails to conform to these regulations as they shall be amended from time to time. Upon resubmission of an amended ordinance, the Secretary shall approve such ordinance, if it conforms with § 28.7(b).

#### § 28.8 Variance procedures.

(a) For "improved property" if the owner of such structure cannot comply with the requirements of such ordinance, the owner may file an application for a variance with the zoning authority and send a copy of such application to the Superintendent. For "unimproved property", variances, exceptions or uses inconsistent with these standards will render the property subject to acquisition by condemnation.

(b) The zoning authority shall send the Superintendent a copy of all applications for variances, exceptions, special permits and a certified as completed survey submitted to the zoning authority within five calendar days of their submission by the applicant.

(c) The zoning authority shall send the Superintendent written notice of the dates and times of public hearings to be held concerning such applications no less than 10 days prior to such hearings.

(d) The zoning authority shall send the Superintendent written notice within fifteen calendar days of the approval or disapproval of all applications for a variance, exception, special permit or certified as completed survey and copies of any variances, exceptions, special permits or certificates which have been granted.

(e) The Superintendent, within 15 working days of the receipt of a copy of an application for a variance, exception or special permit submitted to the zoning authority, shall inform the applicant and the appropriate zoning authority whether or not it conforms to

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the standards of these regulations, and whether or not it will be subject to potential acquisition by condemnation. If the application does not conform to the standards, the Superintendent shall also inform the applicant that should the application be granted, the Park Service may seek to enjoin the development and acquire the property by condemnation, subject to available funds.

(f) The Park Service may also appeal the decision of the zoning authority pursuant to procedures of local law.

(g) The zoning authority shall send copies of all correspondence referred to above to:

The Superintendent,  
Special Attention: Zoning  
Fire Island National Seashore,  
129 Laurel Street,  
Patchogue, New York 11772.

## § 28.9 Emergency action.

In the rare situation where immediate action by an agency or person is essential to avoid or eliminate an immediate threat to the public health or safety, or a serious and immediate threat to private property or natural resources, a temporary use may for the purposes of these regulations, commence without a permit from the zoning authority, provided that the agency or person obtains the prior approval of the Superintendent. In all cases an application must be sent to the zoning authority and a copy to the Superintendent within 10 days of the commencement of the use and the applicant shall commence full compliance with the provisions of these regulations. Where the reasons for undertaking the emergency action no longer exist, any emergency action taken under this section shall cease until the provisions of these regulations have been complied with.

**Subpart B—Condemnation Authority**

## § 28.21 Condemnation authority of the Secretary.

(a) The Secretary has the authority to exercise his powers of condemnation with respect to: (1) Private property within the 8-mile area between the eastern boundary of Davis Park

and the westerly boundary of the Smith Point County Park;

(2) Any beach or water and such adjoining land as he determines is necessary for access to the beach or water;

(3) Any property in the Seashore if the appropriate zoning authority does not have in force and applicable to such property a zoning ordinance adopted by the zoning authority and approved by the Secretary;

(4) Any property not within the definition of "improved property" if located outside of the Community Development District;

(5) Any "improved property", if it is not maintained in accordance with the zoning ordinance approved by the Secretary, is made subject to a variance under, or becomes for any reason an exception to an approved ordinance, or is subject to any variance, exception or use that fails to conform to any applicable standard contained in these regulations;

(6) Any "unimproved property" within the Community Development District if it is made the subject of a variance, exception or use;

(7) Any property for which the Certificate of Suspension of Authority for Acquisition by Condemnation has been revoked;

(8) Any property which has been granted a variance, exception or special use permit and fails to conform to any applicable standard contained in these regulations and the Secretary did not receive and approve a copy of the application for such variance, exception or special use permit; or

(9) Any property, if the approval of the ordinance of the zoning authority has been revoked or partially revoked, and such property fails to conform to these standards, as amended.

(b) Undeveloped property which is otherwise subject to condemnation under the Act is not subject to condemnation if it is located in the Dune District and is maintained in its natural state.

(c) The above provisions shall not be interpreted to otherwise limit or circumscribe the authority of the Secretary to condemn property as provided by the Act, or other provisions of law.

**Chapter I—National Park Service, Dept. Interior****§ 28.22 Certificates of suspension of authority for acquisition by condemnation.**

The Secretary shall furnish to any eligible party in interest upon request a Certificate of Suspension of Authority for Acquisition by Condemnation for any property with respect to which the Secretary's authority to acquire by condemnation is suspended.

**§ 28.23 Severability.**

The invalidation of any provision of this Part 28 by any court of competent jurisdiction shall not invalidate any other provision hereof.

## APPENDIX D

## LEGISLATIVE HISTORY OF FIRE ISLAND NATIONAL SEASHORE

PUBLIC LAW 88-587  
88th Congress, S. 1365  
September 11, 1964

## AN ACT

TO ESTABLISH THE FIRE ISLAND NATIONAL SEASHORE,  
AND FOR OTHER PURPOSES

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That*

(a) for the purpose of conserving and preserving for the use of future generations certain relatively unspoiled and undeveloped beaches, dunes, and other natural features within Suffolk County, New York, which possess high values to the Nation as examples of unspoiled areas of great natural beauty in close proximity to large concentrations of urban population, the Secretary of the Interior is authorized to establish an area to be known as the "Fire Island National Seashore".

(b) The boundaries of the national seashore shall extend from the easterly boundary of Robert Moses State Park eastward to Moriches Inlet and shall include not only Fire Island proper, but also such islands and marshlands in the Great South Bay, Bellport Bay, and Moriches Bay adjacent to Fire Island as Sexton Island, West Island, Hollins Island, Ridge Island, Pelican Island, Pattersquash Island, and Reeves Island and such other small and adjacent islands, marshlands, and wet lands as would lend themselves to contiguity and reasonable administration within the national seashore and, in addition, the waters surrounding said area to distances of one thousand feet in the Atlantic Ocean and up to four thousand feet in Great South Bay and Moriches Bay, all as delineated on a map identified as "Fire Island National Seashore No. OGP-0002", dated June 1964. The Secretary shall file said map with the Federal Register, and it may also be examined in the offices of the Department of the Interior.

## SECTION 2

(a) The Secretary is authorized to acquire, and it is the intent of Congress that he shall acquire as appropriated funds become available for the purpose or as such acquisition can be accomplished by donation or with donated funds or by transfer, exchange, or otherwise, the lands, waters, and other property, and improvements thereon and any interest therein, within the boundaries of the seashore as established under Section 1 of this Act. Any property or interest therein owned by the State of New York, by Suffolk County, or by any other political subdivision of said State 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 this Act. In exercising his authority to acquire property in accordance with the provisions of this subsection, the Secretary may enter into contracts requiring the expenditure, when appropriated, of funds authorized by this Act, but the liability of the United States under any such contract shall be contingent on the appropriation of funds sufficient to fulfill the obligations thereby incurred.

(b) When the Secretary determines that lands and waters or interests therein have been acquired by the United States in sufficient quantity to provide an administrative unit, he shall declare the establishment of the Fire Island National Seashore by publication of notice in the Federal Register.

Fire Island  
National  
Seashore  
Establishment

Boundaries

Acquisition of  
land.  
78 Stat. 928  
78 Stat. 929

Publication in  
Federal Register

## SECTION 2 (continued)

(c) The Secretary shall pay not more than the fair market value, as determined by him, for any land or interest therein acquired by purchase.

(d) When acquiring land by exchange the Secretary may accept title to any nonfederally owned land located within the boundaries of the national seashore and convey to the grantor any federally owned land under the jurisdiction of the Secretary. The lands so exchanged shall be approximately equal in fair market value, but the Secretary may accept cash from or pay cash to the grantor in order to equalize the values of the lands exchanged.

(e) With one exception the Secretary shall not acquire any privately owned improved property or interests therein within the boundaries of the seashore or any property or interests therein within the communities delineated on the boundary map mentioned in Section 1, except beach or waters and adjoining land within such communities which the Secretary determines are needed for public access to the beach, without the consent of the owners so long as the appropriate local zoning agency shall have in force and applicable to such property a duly adopted, valid, zoning ordinance that is satisfactory to the Secretary. The sole exception to this limitation on the power of the Secretary to condemn improved property where appropriate zoning ordinances exist shall be in the approximately eight-mile area from the easterly boundary of the Brookhaven town park at Davis Park, in the town of Brookhaven, to the westerly boundary of the Smith Point County Park. In this area only, when the Secretary deems it advisable for carrying out the purposes of this Act or to improve the contiguity of the park land and ease its administration, the Secretary may acquire any land or improvements therein by condemnation. In every case in which the Secretary exercises this right of condemnation of improved property the beneficial owner or owners (not being a corporation) of any improved property so condemned, provided he, she, or they held the same or a greater estate in the property on July 1, 1963, may elect as a condition of such acquisition by the Secretary any one of the following three alternatives:

(1) that the Secretary shall take the said property in fee simple absolute and pay the fair market value thereof as of the date of such taking;

(2) that the owner or owners shall retain a life estate in said property, measured on the life of the sole owner or on the life of any one person among multiple owners (notice of the person so designated to be filed in writing with the Secretary within six months after the taking) or on the life of the survivor in title of any estate held on July 1, 1963, as a tenancy by the entirety. The price in such case shall be diminished by the actuarial fair market value of the life estate retained, determined on the basis of standard actuarial methods;

(3) that the owner or owners shall retain an estate for twenty-five years. The price in this case shall likewise be diminished by the value of the estate retained.

(f) The term "improved property" as used in this Act shall mean any building, the construction of which was begun before July 1, 1963, and such amount of land, not in excess of two acres in the case of a residence or ten acres in the case of a commercial or industrial use, on which the building is situated as the Secretary considers reasonably necessary to the use of the building: *Provided*, That the Secretary may exclude from improved properties any beach or waters, together with so much of the land adjoining such beach or waters, as he deems necessary for public access thereto.

## SECTION 3

(a) In order to carry out the provisions of section 2, the Secretary shall issue regulations, which may be amended from time to time, specifying standards that are consistent with the purposes of this Act for zoning ordinances which must meet his approval.

(b) The standards specified in such regulations shall have the object of (1) prohibiting new com-

78 Stat 929

78 Stat 930

"Improved  
property"

Regulations

## SECTION 3 (continued)

mercial or industrial uses, other than commercial or industrial use which the Secretary considers are consistent with the purposes of this Act, of all property within the national seashore, and (2) promoting the protection and development for purposes of this Act of the land within the national seashore by means of acreage, frontage, and setback requirements.

(c) Following issuance of such regulations the Secretary shall approve any zoning ordinance or any amendment to any approved zoning ordinance submitted to him that conforms to the standards contained in the regulations in effect at the time of adoption of the ordinance or amendment. Such approval shall remain effective for so long as such ordinance or amendment remains in effect as approved.

(d) No zoning ordinance or amendment thereof shall be approved by the Secretary which (1) contains any provisions that he considers adverse to the protection and development, in accordance with the purposes of this Act, of the area comprising the national seashore; or (2) fails to have the effect of providing that the Secretary shall receive notice of any variance granted under, or any exception made to, the application of such ordinance or amendment.

(e) If any improved property, with respect to which the Secretary's authority to acquire by condemnation has been suspended according to the provisions of this Act, is made the subject of a variance under, or becomes for any reason an exception to, such zoning ordinance, or is subject to any variance, exception, or use that fails to conform to any applicable standard contained in regulations of the Secretary issued pursuant to this section and in effect at the time of passage of such ordinance, the suspension of the Secretary's authority to acquire such improved property by condemnation shall automatically cease.

(f) The Secretary shall furnish to any party in interest upon request a certificate indicating the property with respect to which the Secretary's authority to acquire by condemnation is suspended.

## SECTION 4

(a) Owners of improved property acquired by the Secretary may reserve for themselves and their successors or assigns a right of use and occupancy of the improved property for noncommercial residential purposes for a term that is not more than twenty-five years. The value of the reserved right shall be deducted from the fair market value paid for the property.

(b) A right of use and occupancy reserved pursuant to this section shall be subject to termination by the Secretary upon his determination that the use and occupancy is not consistent with an applicable zoning ordinance approved by the Secretary in accordance with the provisions of Section 3 of this Act, and upon tender to the owner of the right an amount equal to the fair market value of that portion of the right which remains unexpired on the date of termination.

## SECTION 5

The Secretary shall permit hunting, fishing, and shell-fishing on lands and waters under his administrative jurisdiction within the Fire Island National Seashore in accordance with the laws of New York and the United States of America, except that the Secretary may designate zones where, and establish periods when, no hunting shall be permitted for reasons of public safety, administration, or public use and enjoyment. Any regulations of the Secretary under this Section shall be issued after consultation with the Conservation Department of the State of New York.

## SECTION 6

The Secretary may accept and use for purposes of this Act any real or personal property or moneys that may be donated for such purposes.

78 Stat. 930

78 Stat. 931

Owners Use  
of PropertyHunting and  
Fishing

Sunken  
Forest  
Preserve

#### SECTION 7.

(a) The Secretary shall administer and protect the Fire Island National Seashore with the primary aim of conserving the natural resources located there. The area known as the Sunken Forest Preserve shall be preserved from bay to ocean in as nearly its present state as possible, without developing roads therein, but continuing the present access by those trails already existing and limiting new access to similar trails limited in number to those necessary to allow visitors to explore and appreciate this section of the seashore.

(b) Access to that section of the seashore lying between the easterly boundary of the Brookhaven town park at Davis Park and the westerly boundary of the Smith Point County Park shall be provided by ferries and footpaths only, and no roads shall be constructed in this section except such minimum roads as may be necessary for park maintenance vehicles. No development or plan for the convenience of visitors shall be undertaken therein which would be incompatible with the preservation of the flora and fauna or the physiographic conditions now prevailing, and every effort shall be exerted to maintain and preserve this section of the seashore as well as that set forth in the preceding paragraph in as nearly their present state and condition as possible.

(c) In administering, protecting, and developing the entire Fire Island National Seashore, the Secretary shall be guided by the provisions of this Act and the applicable provisions of the laws relating to the national park system, and the Secretary may utilize any other statutory authority available to him for the conservation and development of natural resources to the extent he finds that such authority will further the purposes of this Act. Appropriate user fees may be collected notwithstanding any limitation on such authority by any provision of law.

Shore erosion  
control  
78 Stat. 931  
78 Stat. 932

#### SECTION 8

(a) The authority of the Chief of Engineers, Department of the Army, to undertake or contribute to shore erosion control or beach protection measures on lands within the Fire Island National Seashore shall be exercised in accordance with a plan that is mutually acceptable to the Secretary of the Interior and the Secretary of the Army and that is consistent with the purposes of this Act.

(b) The Secretary shall also contribute the necessary land which may be required at any future date for the construction of one new inlet across Fire Island in such location as may be feasible in accordance with plans for such an inlet which are mutually acceptable to the Secretary of the Interior and the Secretary of the Army and that is consistent with the purposes of this Act.

Fire Island  
National Ad-  
visory Com-  
mission  
Establishment

#### SECTION 9

(a) There is hereby established a Fire Island National Seashore Advisory Commission (hereinafter referred to as the Commission). The Commission shall terminate on the tenth anniversary of the date of this Act or on the declaration, pursuant to Section 2 (b) of this Act, of the establishment of the Fire Island National Seashore, whichever occurs first. The Commission shall consist of fifteen members, each appointed for a term of two years by the Secretary, as follows:

(1) Ten members to be appointed from recommendations made by each of the town boards of Suffolk County, New York, one member from the recommendations made by each such board;

(2) Two additional members to be appointed from recommendations of the town boards of the towns of Islip and Brookhaven, Suffolk County, New York;

(3) One member to be appointed from the recommendation of the Governor of the State of New York;

(4) One member to be appointed from the recommendation of the county executive of Suffolk County, New York;

(5) One member to be designated by the Secretary.

## SECTION 9 (continued)

- (b) The Secretary shall designate one member to be Chairman.
- (c) A member of the Commission shall serve without compensation.
- (d) The Commission established by this section shall act and advise by affirmative vote of a majority of the members thereof.
- (e) The Secretary or his designee shall, from time to time, consult with the members of the Commission with respect to matters relating to the development of Fire Island National Seashore and shall consult with the members with respect to carrying out the provisions of Sections 2, 3, and 4 of this Act.
- (f) (1) Any member of the Advisory Commission appointed under this Act shall be exempted, with respect to such appointment from the operation of Sections 281, 283, 284, and 1914 of title 18 of the United States Code and Section 190 of the Revised Statutes (5 U.S.C. 99) except as otherwise specified in paragraph (2) of this subsection.
- (2) The exemption granted by paragraph (1) of this subsection shall not extend--
- (i) to the receipt of payment of salary in connection with the appointee's Government service from any sources other than the private employer of the appointee at the time of his appointment; or
  - (ii) during the period of such appointment, and the further period of two years after the termination thereof, to the prosecution or participation in the prosecution, by any person so appointed, of any claim against the Government involving any matter concerning which the appointee had any responsibility arising out of his appointment during the period of such appointment.

Conflict of  
interest

76 Stat. 1126

78 Stat. 932  
78 Stat. 933

## SECTION 10

There is hereby authorized to be appropriated not more than \$16,000,000 for the acquisition of lands and interests in land pursuant to this Act.

Appropriation

*APPROVED SEPTEMBER 11, 1964.*



Public Law 89-244  
89th Congress, H. R. 8035  
October 9, 1965

## An Act

79 STAT. 957

To authorize the Secretary of the Interior to accept a donation of property in the county of Suffolk, State of New York, known as the William Floyd Estate, for addition to the Fire Island National Seashore, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Interior is authorized to accept the donation of approximately six hundred and eleven acres of lands, submerged lands, islands, and marshlands or interests therein, known as the William Floyd Estate, located in the town of Brookhaven, county of Suffolk, and State of New York, delineated on a certain map entitled "Map of the Fire Island National Seashore, Including the William Floyd Estate", numbered OGP-0003, dated May 1965, which map or a true copy thereof shall be filed with the Federal Register and may be examined in the offices of the Department of the Interior. Such donation may be accepted subject to such terms, covenants, and conditions as the Secretary finds will be in the public interest.

Sec. 2. The Secretary is also authorized to accept the donation of the main dwelling on said lands, which was the birthplace and residence of General William Floyd (a signer of the Declaration of Independence) and the furnishings therein and any outbuildings, subject to like terms, covenants, and conditions. The Secretary is authorized to lease said lands, dwellings, and outbuildings to the grantors thereof for a term of not more than twenty-five years, at \$1 per annum, and during the period of the leasehold the Secretary may provide protective custody for such property.

Sec. 3. Upon expiration or surrender of the aforesaid lease the property shall become a detached unit of the Fire Island National Seashore, and shall be administered, protected, and developed in accordance with the laws applicable thereto subject, with respect to said main dwelling and the furnishings therein, to such terms, covenants, and conditions which the Secretary shall have accepted and approved upon the donation thereof as in the public interest.

Approved October 9, 1965, 6:30 a.m.

### LEGISLATIVE HISTORY:

HOUSE REPORT No. 990 (Comm. on Interior & Insular Affairs).  
SENATE REPORT No. 763 (Comm. on Interior & Insular Affairs).  
CONGRESSIONAL RECORD, Vol. 111 (1965):  
Sept. 20: Passed House.  
Sept. 23: Considered and passed Senate.

## AN ACT

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## SHORT TITLE AND TABLE OF CONTENTS

Section 1. This Act may be cited as the "National Parks and Recreation Act of 1978".

## TITLE III - BOUNDARY CHANGES

## SEC. 322. Fire Island National Seashore

(a) Subsection 1 (b) of the Act of September 11, 1964 (78 Stat. 928), as amended, is further amended to read as follows:

"(b) The boundaries of the national seashore shall extend from the easterly boundary of the main unit of Robert Moses State Park eastward to Moriches Inlet and shall include not only Fire Island proper, but also such islands and marshlands in the Great South Bay, Bellport Bay, and Moriches Bay adjacent to Fire Island as Sexton Island, West Island, Hollis Island, Ridge Island, Pelican Island, Patersquash Island, and Reeves Island and such other small and adjacent islands, marshlands, and wetlands as would lend themselves to contiguity and reasonable administration within the national seashore and, in addition, the waters surrounding said area to distances of one thousand feet in the Atlantic Ocean and up to four thousand feet in Great South Bay and Moriches Bay and, in addition, mainland terminal and headquarters sites, not to exceed a total of twelve acres, on the Patchogue River within Suffolk County, New York, all as delineated on a map identified as 'Fire Island National Seashore', numbered OGP-0004, dated May 1978. The Secretary shall publish said map in the Federal Register, and it may also be examined in the offices of the Department of the Interior."

(b) Section 2 of such Act is amended by adding the following new subsection at the end thereof:

"(g) The authority of the Secretary to condemn undeveloped tracts within the Dune District as depicted on map entitled 'Fire Island National Seashore' numbered OGP-0004 dated May, 1978, is suspended so long as the owner or owners of the undeveloped property therein maintain the property in its natural state. Undeveloped property within the Dune District that is acquired by the Secretary shall remain in its natural state."

(c) Section 7 (b) of such Act is amended by striking the phrase "Brookhaven town park at" and inserting in lieu thereof: "Ocean Ridge portion of".

(d) Section 10 of such Act is amended by striking "\$18,000,000", and inserting in lieu thereof "\$23,000,000".

PUBLIC LAW 95 - 625  
95th Congress  
November 10, 1978

Boundaries  
16 USC 459e.

Map, publication in Federal Register

Undeveloped tracts and property.  
16 USC 459e-1

16 USC 459e-6

16 USC 459e-9

## AN ACT

To provide for increases in appropriation ceilings and boundary changes in certain units of the National Park System, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## TITLE I -- ACQUISITION CEILING INCREASES

SEC. 101. The limitations on appropriations for the acquisition of lands and interests therein within units of the National Park System contained in the following Acts are amended as follows:

(5) FIRE ISLAND NATIONAL SEASHORE, NEW YORK: Section 10 of the Act of September 11, 1964 (78 Stat. 928) is amended by changing "\$16,000,000" to "\$18,000,000".

Public Law 94 - 578  
October 21, 1976

PUBLIC LAW 96-585—DEC. 23, 1980

94 STAT. 3379

Public Law 96-585  
96th Congress

## An Act

To designate certain lands of the Fire Island National Seashore as the "Otis Pike Fire Island High Dune Wilderness", and for other purposes.

Dec. 23, 1980  
(H.R. 7814)

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That, in accordance with section 3(c) of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1132(c)), certain lands in the Fire Island National Seashore, New York, comprising approximately one thousand three hundred and sixty-three acres, and potential wilderness additions comprising approximately eighteen acres, as depicted on the map entitled "Wilderness Plan—Fire Island National Seashore", dated December 1980, are hereby designated as the "Fire Island Wilderness". The southern boundary of the wilderness shall be the toe of the primary dunes.

Otis Pike Fire  
Island High  
Dune  
Wilderness, N.Y.  
Designation.  
16 USC 1132  
note

(b) As soon as practicable after this Act takes effect, a map and a description of the boundaries of the wilderness area shall be filed with the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate, and such map and description shall have the same force and effect as if included in this Act: *Provided*, That correction of clerical and typographical errors in such map and description may be made. The map and description of boundaries shall be on file and available for public inspection in the offices of the Superintendent of the Fire Island National Seashore and the Director of the National Park Service.

Boundary  
description and  
map filing with  
congressional  
committees

(c) Lands which represent potential wilderness additions, upon publication in the Federal Register of a notice by the Secretary of the Interior that all uses prohibited thereon by the Wilderness Act have ceased, shall thereby be designated wilderness. Pending such designation, the Secretary shall administer such lands in such manner as to preserve, insofar as is possible, their wilderness or potential wilderness character.

Potential  
wilderness  
additions,  
administration

(d) Wilderness designation shall not preclude the repair of breaches that occur in the wilderness area, in order to prevent loss of life, flooding, and other severe economic and physical damage to the Great South Bay and surrounding areas.

(e) Section 10 of the Act of September 11, 1964 (78 Stat. 928) is amended by changing the period to a comma, and by adding the following: "and, after the date of enactment of this provision, not more than \$500,000 for development."

Appropriation  
authorization.  
16 USC 459e-9

PUBLIC LAW 96-585—DEC. 23, 1980

94 STAT. 3380

(f) Authorizations of moneys to be appropriated under this Act shall be effective on October 1, 1981. Notwithstanding any other provision of this Act, authority to enter into contracts, to incur obligations, or to make payments under this Act shall be effective only to the extent, and in such amounts as are provided in advance in appropriation Acts.

Approved December 23, 1980.

LEGISLATIVE HISTORY:CONGRESSIONAL RECORD, Vol. 126 (1980):  
Dec. 10, considered and passed House.  
Dec. 13, considered and passed Senate.

**APPENDIX E****SEASHORE RESOURCES MANAGEMENT PREMISES**

Fire Island's resources management plan is based on the following premises:

Fire Island will be managed to preserve the nationally significant natural resources while providing for environmentally compatible recreation.

Fire Island is not a uniformly natural barrier-island system; many island locations have been significantly altered by human activities, although the island environment remains relatively natural in several locations.

**Attempts will be made to repair human disturbances of natural geomorphic conditions within certain segments of the island with the idea of then allowing natural processes to maintain these conditions.**

Attempts will be made to restore and maintain the dune and beach system by environmentally compatible methods that acknowledge the inevitable erosional transformation of the island, a result of a rising sea level, great hurricanes, and severe northeasters.

Fire Island's resources management strategy must be integrated into a larger management strategy for the entire south shore of Long Island.

The needs of the seashore's exempted communities, as well as the economic interests on Long Island that are directly linked to Fire Island, Great South Bay, and adjacent lands and waters, will be considered in the resources management strategy for the national seashore.

The provisions and components of the resources management plan will be periodically evaluated, and the plan will be modified as necessary to continually reflect new information, changing conditions, and experience gained from management of other similar resources.

The National Park Service will continue to comment on actions outside the authorized boundary that may impact lands within the national seashore.

<sup>1</sup>Source: Seashore General Management Plan, page 30