

(Pub. L. 87-712, §8, Sept. 28, 1962, 76 Stat. 652; Pub. L. 94-578, title I, §101(13), Oct. 21, 1976, 90 Stat. 2733.)

#### CODIFICATION

Section 101(13) of Pub. L. 94-578, cited as a credit to this section, as amended by Pub. L. 96-199, title I, §111, Mar. 5, 1980, 94 Stat. 70, is also set out in part as a note under section 459d-1 of this title.

#### AMENDMENTS

1976—Pub. L. 94-578 substituted “\$5,350,000” for “\$5,000,000”.

### § 459e. Fire Island National Seashore

#### (a) Purposes; authorization for establishment

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) Boundaries

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, Hollins Island, Ridge Island, Pelican Island, Pattersquash 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.

(Pub. L. 88-587, §1, Sept. 11, 1964, 78 Stat. 928; Pub. L. 95-625, title III, §322(a), Nov. 10, 1978, 92 Stat. 3488.)

#### AMENDMENTS

1978—Subsec. (b). Pub. L. 95-625 inserted “the main unit of” before “Robert Moses State Park”, included in the boundaries the mainland terminal and headquarters sites, not to exceed a total of twelve acres, on the Patchogue River within Suffolk County, New York, and substituted map numbered OGP-0004, dated May 1978 for OGP-0002, dated June 1964 and requirement of publishing the map in the Federal Register for prior provision for filing the map with the Federal Register.

#### SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-482, §1, Oct. 17, 1984, 98 Stat. 2255, provided: “That this Act [amending sections 459e-1 and 459e-2 of

this title] may be cited as the ‘Fire Island National Seashore Amendments Act of 1984.’”

### § 459e-1. Acquisition of property

#### (a) Authority of Secretary; manner and place; concurrence of State owner; transfer from Federal agency to administrative jurisdiction of Secretary; liability of United States under contracts contingent on appropriations

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 459e of this title. 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 sections 459e to 459e-9 of this title. 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 sections 459e to 459e-9 of this title, 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) Establishment; notice in Federal Register

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.

#### (c) Fair market value

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) Exchange of property; cash equalization payments

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) Limitation of condemnation power during existence of zoning ordinance; Davis Park-Smith Point County Park area exception; beneficial owner's election of alternatives as condition for acquisition

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 459e of this title, 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 sections 459e to 459e-9 of this title 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) "Improved property" defined**

The term "improved property" as used in sections 459e to 459e-9 of this title 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.

**(g) Undeveloped tracts and property; suspension of condemnation authority; natural state**

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.

**(h) Sale of property acquired by condemnation; excepted properties; proceeds available for acquisition of property**

(1)(A) The Secretary shall sell any property described in subparagraph (B) of this paragraph acquired by condemnation under sections 459e to 459e-9 of this title to the highest bidder; except that—

(i) no property shall be sold at less than its fair market value; and

(ii) no property shall be sold unless it is sold subject to covenants or other restrictions that will ensure that the use of such property conforms—

(I) to the standards specified in regulations issued under section 459e-2(a) of this title which are in effect at the time of such sale, and

(II) to any approved zoning ordinance or amendment thereof to which such property is subject.

(B) The property referred to in subparagraph (A) of this paragraph is any property within the boundaries of the national seashore as delineated on the map mentioned in section 459e of this title except—

(i) property within the Dune district referred to in subsection (g) of this section;

(ii) beach or waters and adjoining land within the exempt communities referred to in the first sentence of subsection (e) of this section; and<sup>1</sup>

(iii) property within the eight-mile area described in the second sentence of subsection (e) of this section; and

(iv) any property acquired prior to October 1, 1982, that the Secretary determines should be retained to further the purpose of sections 459e to 459e-9 of this title.

(2) Notwithstanding any other provision of law, all moneys received from sales under paragraph (1) of this subsection may be retained and shall be available to the Secretary, without further appropriation, only for purposes of acquiring property under sections 459e to 459e-9 of this title.

**(i) Injunctive relief; termination**

(1) Upon or after the commencement of any action for condemnation with respect to any property under sections 459e to 459e-9 of this title, the Secretary, through the Attorney General of the United States, may apply to the United States District Court for the Eastern District of New York for a temporary restrain-

<sup>1</sup> So in original. The word "and" probably should not appear.

ing order or injunction to prevent any use of, or construction upon, such property that—

(A) fails, or would result in a failure of such property, to conform to the standards specified in regulations issued under section 459e-2(a) of this title in effect at the time such use or construction began; or

(B) in the case of undeveloped tracts in the Dune district referred to in subsection (g) of this section, would result in such undeveloped property not being maintained in its natural state.

(2) Any temporary restraining order or injunction issued pursuant to such an application shall terminate in accordance with the provisions of section 459e-2(g) of this title.

(Pub. L. 88-587, §2, Sept. 11, 1964, 78 Stat. 929; Pub. L. 95-625, title III, §322(b), Nov. 10, 1978, 92 Stat. 3489; Pub. L. 98-482, §2, Oct. 17, 1984, 98 Stat. 2255.)

#### AMENDMENTS

1984—Subsecs. (h), (i). Pub. L. 98-482 added subsecs. (h) and (i).

1978—Subsec. (g). Pub. L. 95-625 added subsec. (g).

### § 459e-2. Zoning regulations

#### (a) Amendment; standards for approval of ordinances

In order to carry out the provisions of section 459e-1 of this title the Secretary shall issue regulations, which may be amended from time to time, specifying standards that are consistent with the purposes of sections 459e to 459e-9 of this title for zoning ordinances which must meet his approval.

#### (b) Commercial or industrial use prohibition; size, location or use restrictions for commercial, residential, and other structures; reconciliation of population density with protection of natural resources

The standards specified in such regulations shall have the object of (1) prohibiting new commercial or industrial uses, other than commercial or industrial uses which the Secretary considers are consistent with the purposes of sections 459e to 459e-9 of this title, of all property within the national seashore, and (2) promoting the protection and development for purposes of sections 459e to 459e-9 of this title of the land within the national seashore by means of limitations or restrictions on the size, location or use of any commercial, residential, and other structures. In accomplishing these objectives, such standards shall seek to reconcile the population density of the seashore on October 17, 1984, with the protection of the natural resources of the Seashore<sup>1</sup> consistent with the purposes for which it has been established as provided by sections 459e to 459e-9 of this title.

#### (c) Approval of ordinances

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) Adverse provisions and absence of notice for variance as requiring disapproval of ordinances

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 sections 459e to 459e-9 of this title, 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) Termination of suspension of authority for acquisition by condemnation because of non-conforming variances and uses

In the case of any property, including improved property but excluding undeveloped property in the Dune district referred to in section 459e-1(g) of this title, with respect to which the Secretary's authority to acquire by condemnation has been suspended under sections 459e to 459e-9 of this title if—

(1) such property is, after October 17, 1984, made the subject of a variance under, or becomes for any reason an exception to, any applicable zoning ordinance approved under this section; and

(2) such variance or exception results, or will result, in such property being used in a manner 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 such variance or exception took effect;

then the suspension of the Secretary's authority to acquire such property by condemnation shall automatically cease.

#### (f) Certificate of suspension of authority for acquisition by condemnation

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.

#### (g) Injunctive relief; termination

Notwithstanding any other provision of sections 459e to 459e-9 of this title, the Secretary of the Interior, acting through the Attorney General of the United States, may apply to the United States District Court for the Eastern District of New York for a temporary restraining order or injunction to prohibit the use of, including construction upon, any property within the seashore in a manner that—

(1) will cause or is likely to cause significant harm to the natural resources of the seashore, or

(2) is inconsistent with the purposes for which the seashore was established.

Except to the extent the Court may deem necessary in extraordinary circumstances, no such

<sup>1</sup> So in original. Probably should not be capitalized.