

**(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 Sec-

retary 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 order or injunction shall continue in effect for more than one hundred and eighty days. During the period of such order or injunction, the Secretary shall diligently and in good faith negotiate with the owner of the property to assure that following termination of the order or injunction, the inconsistent use is abated or the significant harm to the natural resources is mitigated.

(Pub. L. 88-587, §3, Sept. 11, 1964, 78 Stat. 930; Pub. L. 98-482, §§3-5, Oct. 17, 1984, 98 Stat. 2256.)

**Editorial Notes**

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-482, §4, substituted “by means of limitations or restrictions on the size, location or use of any commercial, residential, and other structures” for “by means of acreage, frontage, and setback requirements” and required that the standards seek to reconcile the population density of the seashore on Oct. 17, 1984, with the protection of the natural resources of the seashore.

Subsec. (e). Pub. L. 98-482, §3, designated part of existing provisions as pars. (1) and (2), made the provisions applicable to any property, and excluded undeveloped property in the Dune district.

Subsec. (g). Pub. L. 98-482, §5, added subsec. (g).

**§ 459e-3. Retention by owner of right of use and occupancy of improved property for residential purposes**

**(a) Time limit; value of reserved right**

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

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

reserved right shall be deducted from the fair market value paid for the property.

**(b) Termination of right; compensation**

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 459e-2 of this title, 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.

(Pub. L. 88-587, §4, Sept. 11, 1964, 78 Stat. 931.)

**§ 459e-4. Hunting and fishing regulations**

The Secretary shall permit hunting, fishing, and shellfishing 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.

(Pub. L. 88-587, §5, Sept. 11, 1964, 78 Stat. 931.)

**§ 459e-5. Acceptance of donations**

The Secretary may accept and use for purposes of sections 459e to 459e-9 of this title any real or personal property or moneys that may be donated for such purposes.

(Pub. L. 88-587, §6, Sept. 11, 1964, 78 Stat. 931.)

**§ 459e-6. Administration, protection, and development**

**(a) Conservation of natural resources of Seashore; preservation and access to Sunken Forest Preserve**

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 Davis Park-Smith Point County Park area**

Access to that section of the seashore lying between the easterly boundary of the Ocean Ridge portion of 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 un-

dertaken 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) Utilization of authority for conservation and development of natural resources; user fees**

In administering, protecting, and developing the entire Fire Island National Seashore, the Secretary shall be guided by the provisions of sections 459e to 459e-9 of this title 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 sections 459e to 459e-9 of this title. Appropriate user fees may be collected notwithstanding any limitation on such authority by any provision of law.

(Pub. L. 88-587, §7, Sept. 11, 1964, 78 Stat. 931; Pub. L. 95-625, title III, §322(c), Nov. 10, 1978, 92 Stat. 3489.)

**Editorial Notes**

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-625 substituted "Ocean Ridge portion of Davis Park" for "Brookhaven town park at".

**§ 459e-7. Shore erosion control or beach protection measures; Fire Island inlet**

**(a) Authority of Chief of Engineers**

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 sections 459e to 459e-9 of this title.

**(b) Land contribution**

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 sections 459e to 459e-9 of this title.

(Pub. L. 88-587, §8, Sept. 11, 1964, 78 Stat. 932.)

**§ 459e-8. Omitted**

**Editorial Notes**

CODIFICATION

Section, Pub. L. 88-587, §9, Sept. 11, 1964, 78 Stat. 932, which provided for the creation of a Fire Island National Seashore Advisory Commission, has been omitted as executed in view of a provision of subsec. (a) that the Commission terminate on Sept. 11, 1974, or on the