

Title 36—Parks, Forests, and Public Property

(This book contains parts 1 to 199)

	<i>Part</i>
CHAPTER I—National Park Service, Department of the Interior	1

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to the Director of the National Park Service for approval.

§ 25.5 Badges and uniforms.

Licensed guides will be furnished with official badges as evidence of their authority, which shall remain the property of the Government and be returned to the superintendent upon relinquishment or revocation of the license as a guide. Where conditions warrant it and its purchase would not prove a hardship on the guides, they may be required to adopt a standard uniform, to be procured at their own expense.

PART 27—CAPE COD NATIONAL SEASHORE; ZONING STANDARDS

Sec.

- 27.1 General objectives.
- 27.2 Commercial and industrial activities.
- 27.3 Seashore District.
- 27.4 Variances and exceptions.

AUTHORITY: Secs. 1, 5, 75 Stat. 284, 290; 16 U.S.C. 459b, 459b-4.

SOURCE: 27 FR 6714, July 14, 1962, unless otherwise noted.

§ 27.1 General objectives.

(a) Consistent with the objectives set out in section 5 of the Act of August 7, 1961 (75 Stat. 284), development and management of the Cape Cod National Seashore will be conducted in a manner which will assure the widest possible public use, understanding and enjoyment of its natural, cultural and scientific features. The regulations in this part are designed and promulgated to establish minimum standards which local zoning bylaws must meet in furtherance of those purposes.

(b) The standards hereby established for approval of zoning bylaws or amendments of zoning bylaws—are intended: (1) To contribute to the effect of prohibiting the commercial and industrial use, other than existing commercial or industrial use not inconsistent with the purposes of the Act of August 7, 1961 (75 Stat. 284, 291), of all property within the boundaries of the Cape Cod National Seashore and situated in the towns of Provincetown, Truro, Wellfleet, Eastham, Orleans and Chatham; and (2) to promote preservation and development, in accordance

with the purposes of the said Act, of the area comprising the seashore, by means of acreage, frontage and setback requirements and other provisions which may be required to be included in zoning bylaws consistent with the laws of Massachusetts. Zoning bylaws or amendments of zoning bylaws applicable to the area within Cape Cod National Seashore, in order that they may be approved, shall conform to the standards herein set forth relating to preservation and development of the seashore in accordance with the purposes of the said Act. The Secretary shall be given notice of any amendments to approved zoning bylaws that affect the Seashore District. Nothing in these standards or in the zoning bylaws adopted pursuant thereto for the area within Cape Cod National Seashore shall preclude the Secretary of the Interior from fulfilling the responsibilities vested in him by the Act of August 7, 1961, or by the Act of August 25, 1916 (39 Stat. 535), as amended and supplemented.

(c) Wherever the term “improved property” is used in this part it shall mean a detached, one-family dwelling, the land on which it is situated, and accessory structures, and as further defined in section 4(d) of the Act of August 7, 1961 (75 Stat. 284).

§ 27.2 Commercial and industrial activities.

No commercial or industrial districts may be established within the Cape Cod National Seashore.

§ 27.3 Seashore District.

(a) *Description.* The Seashore District shall include all those portions of the towns of Provincetown, Truro, Wellfleet, Eastham, Orleans and Chatham lying within the exterior boundaries of the Cape Cod National Seashore.

(b) Zoning bylaws for the Seashore District shall be consistent with the objectives and purposes of the Act of August 7, 1961, so that—to the extent possible under Massachusetts law—the scenic, scientific and cultural values of the area will be protected, undeveloped areas will be preserved in a natural condition, and the distinctive Cape Cod

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character of existing residential structures will be maintained.

(c)(1) No moving, alteration, or enlargement of existing one-family residential dwellings or structures accessory thereto situated within this District shall be permitted if such would afford less than a 50-foot setback from all streets measured at a right angle with the street line, and a 25-foot distance from the abutters' property lines (or less than such lesser setback or distance requirements already in existence for such dwellings or accessory structures).

(2) If through natural phenomena or causes a lot or lots are so diminished in size that an owner would be unable to comply with the setback or sideline requirements herein prescribed, such owner or the zoning authorities may, as provided in § 27.4(b), request the Secretary of the Interior to determine whether a proposed move, reconstruction, alteration or enlargement of an existing residential dwelling or accessory structure would subject the property to acquisition by condemnation.

(d) Zoning bylaws adopted pursuant to this regulation shall contain provisions designed to preserve the seashore character of the area by appropriate restrictions or prohibitions upon the burning of cover, cutting of timber, filling of land, removal of soil, loam, sand or gravel and dumping, storage, or piling of refuse and other unsightly objects or other uses which would detract from the natural or traditional seashore scene.

(e) Zoning bylaws for the Seashore District may permit residential uses of "improved property" and other uses of such dwellings and their accessory structures: *Provided*, Such other uses are traditional to these seashore communities, are customarily incidental to the principal residential use and do not alter the essential character of the dwelling and premises as a private residence. Subject to those conditions such uses may include, but are not limited to: (1) Partial use of dwellings by residents for a professional office (as for the practice of theology, law or medicine), as an artists' studio, for appropriate small scale home occupations as the making and selling of traditional Cape Cod products produced on the

premises, and for the rental of rooms and serving of meals by residents of the premises to overnight guests; (2) the existence of structures, such as a garage, barn or boathouse accessory to the dwelling; (3) display of a sign which may be indirectly but not directly illuminated and not to exceed two square feet in area, referring to the occupancy, sale, or rental of the premises; (4) traditional agricultural uses of cleared land, but not including such objectionable uses as a piggery or the raising of livestock, poultry or fur-bearing animals for commercial purposes; and (5) the opening of shellfish, the storage and use of fishing equipment, and other traditional fishing activities. No commercial or industrial ventures (other than of the types described above), may be established within the Seashore District.

§ 27.4 Variances and exceptions.

(a) Zoning bylaws may provide for variances and exceptions.

(b) Bylaws adopted pursuant to these standards shall contain provisions which constitute notice to applicants for variances and exceptions that, under section 5(d) of the Act of August 7, 1961, the Secretary of the Interior is authorized to withdraw the suspension of his authority to acquire, by condemnation, "improved property" that is made the subject of a variance or exception which, in his opinion, fails to conform or is in any manner opposed to or inconsistent with preservation and development of the seashore as contemplated in the said Act. The Secretary may be consulted at any time by zoning authorities or by the owner of "improved property" regarding the effect of a proposed variance or exception upon the status of the affected property with regard to the suspension of the Secretary's authority to condemn. The Secretary, within 60 days of the receipt of a request for such determination, or as soon thereafter as is reasonably possible, shall advise the owner or zoning authorities whether or not the intended use will subject the property to acquisition by condemnation.

(c) The Secretary shall be promptly notified of the granting of any variance or exception.

PART 28—FIRE ISLAND NATIONAL SEASHORE: ZONING STANDARDS

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AUTHORITY: 16 U.S.C. 1,3,459e-2.

SOURCE: 56 FR 42790, Aug. 29, 1991, unless otherwise noted.

Subpart A—General Provisions

§ 28.1 Purpose.

(a) The enabling legislation for Fire Island National Seashore (the Seashore) mandated the Secretary of the Interior (the Secretary) to issue regulations which provide standards for local zoning in order to protect and conserve Fire Island. The regulations in this part set forth Federal standards to which local ordinances for Fire Island must conform to enable certain private property within the Seashore to be exempt from Federal condemnation. The standards also apply to use and development of public property. From time to time these standards may be reviewed and revised. These standards are intended:

(1) To promote the protection and development of the land within the Seashore, for the purposes of the Fire Is-

land National Seashore Act (the Act), by means of size, location, or use limitations or restrictions on commercial, residential, or other structures with the objective of controlling population density and protecting the island's natural resources;

(2) To limit development and use of land to single-family homes, to prohibit development and use of multiple family homes, and to prohibit the conversion of structures to multiple family homes;

(3) To prohibit commercial or industrial uses initiated after September 11, 1964 or the expansion of existing commercial or industrial uses on any property within the Seashore which is inconsistent with the Federal standards and approved local ordinances or the purposes of the Act, is likely to cause a significant harm to the resources of the Seashore or will not provide a service to Fire Island;

(4) To recognize that the zoning authorities have the primary responsibility for zoning enforcement within the Seashore;

(5) To provide that private property within the Community Development District may be retained by its owner as long as it is maintained in accordance with approved local ordinances and the Federal standards;

(6) 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 ordinances, and the Federal standards;

(7) To provide that, in the Dune District, private undeveloped property, if otherwise subject to condemnation, may be retained by its owner as long as it is maintained in its natural state; and

(8) To provide a mechanism for the Superintendent to inform landowners and the zoning authority if a use or development will be inconsistent with the Federal standards or the purposes of the Act and may subject the property to condemnation, subject to available funds.

(b) The Secretary may utilize any other statutory authority available to the Secretary for the conservation and development of natural resources to the extent the Secretary finds that

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such authority will further the purpose of the Act.

§ 28.2 Definitions.

(a) *Accessory structure* means any development which is located on the same lot as the principal building or use and is customarily incidental and subordinate to the principal building or use. Accessory structure may include a storage shed, dock, deck, patio, swimming pool, or tennis court but does not include a garbage or bicycle rack and the single primary access walk. Accessory structure includes a guest house without cooking facilities used for overnight habitation.

(b) *Act* means the Fire Island National Seashore Act of September 11, 1964, (16 U.S.C. 459e), as amended.

(c) *Building* means an enclosed structure having a roof supported by columns, walls, or cantilevers. (If a structure is separated by a party wall without openings, it is considered two separate "buildings.")

(d) *Developed property* means 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 a building, deck, swimming pool, storage shed, patio, dock, tennis court, septic system or leaching field, walkway, groin, fence or sign (except dune protection fences and signs), road, retaining wall, grading, artificial fill, or other structure or material excluding live vegetation.

(e) *Development* means any activity, action, alteration, structure or use which changes undeveloped property into developed property.

(f) *Exception to a zoning ordinance* means any development or change in use of developed property which is not authorized by the zoning ordinance or the variance procedures of the zoning authority or, if authorized by the zoning authority, fails to conform to the ordinance approved by the Secretary or to the Federal standards.

(g) *Guest house* means an accessory structure on the same lot as the principal building that does not contain cooking facilities and is used for the temporary accommodation of guests of

a resident living in the principal building.

(h) *Improved property* is developed property 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 and 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 the Secretary deems necessary for public access thereto.

(i) *Local ordinance* means a State, town, or village law applicable to the development or use of real property.

(j) *Lot* means a parcel of land which meets the minimum acreage and frontage requirements of the 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 does a lot include lands below the toe of the natural foredune line.

(k) *Non-conforming use* means any use or development that, if commenced after the effective date of these standards, fails to conform to these standards; or, if commenced prior to October 17, 1984, failed to conform to Federal standards in effect at the time of construction or fails to conform to these standards, whether or not the use or development was first commenced in compliance with the local ordinance.

(l) *Single-family home* means a building which contains no more than one kitchen or cooking facility. An exterior barbecue does not constitute a cooking facility for the purposes of this regulation.

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

(n) *Zoning authority* means the Town of Brookhaven, the Town of Islip, the

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Village of Saltaire, the Village of Ocean Beach and/or any other legally incorporated village or political subdivision hereafter created and the officials authorized by local ordinance to make rulings and determinations on zoning in said towns and villages.

[56 FR 42790, Aug. 29, 1991, as amended at 62 FR 30235, June 3, 1997]

§ 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.* (1) The seventeen communities which comprise the Community Development District are set out below with their respective west/east boundaries.

(i) Lighthouse Shores—Kismet Park

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

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: 185 feet west of the west line of West Walk.
East Boundary: 85 feet east of the east line of East Walk.

(iv) Fair Harbor

West Boundary: 333 feet west of the west line of Cedar Walk.
East Boundary: The east line of Spruce Walk.

(v) Dunewood

West Boundary: The east line of Spruce Walk.

East Boundary: 85 feet east of the east line of East Walk.

(vi) Lonelyville

West Boundary: 85 feet east of the east line of East Walk.
East Boundary: 100 feet east of the east line of Raven 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 Rest

West Boundary: The west line of Compass Walk.
East Boundary: 113 feet east of the east line of Sextant Walk.

(ix) Fire Island Summer Club—
Corneille Estates

West Boundary: 100 feet west of west line of Schooner Walk.
East Boundary: 100 feet east of east line of Frigate Roadway.

(x) Ocean Beach

West Boundary: 7 feet west of the west line of Surf Road.
East Boundary: 2 feet east of the east line of Surf View Walk.

(xi) Seaview

West Boundary: East line of Surf View Walk.
East Boundary: 200 feet east of Laurel Avenue.

(xii) Ocean Bay Park

West Boundary: 90 feet west of the west line of Superior Street.
East Boundary: 100 feet East of the east line of Cayuga Street.

(xiii) Point O'Woods

West Boundary: 100 feet east of the east line of Cayuga Street.
East Boundary: Western boundary of Sunken Forest Preserve.

(xiv) Cherry Grove

West Boundary: The west line of West Walk.
East Boundary: Approximately 100 feet east of the east line of Ivy Walk.

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(xv) Fire Island Pines

West Boundary: Approximately 150 feet west of the west line of Sandy Walk.

East Boundary: Approximately 120 feet east of Sail Walk.

(xvi) Water Island

West Boundary: The west line of Charach Walk.

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

(xvii) Davis Park

West Boundary: 90 feet west of the west line of Eider Duck Walk.

East Boundary: 90 feet east of east line of Whalebone Walk.

(2) The northern boundary of the communities listed in paragraph (b)(1) of this section is the mean high water line on the south shore of the Great South Bay.

(3) The southern boundary of the communities listed in paragraph (b)(1) of this section is the mean high water line on the south shore of Fire Island.

(c) *The Seashore District.* The Seashore District is comprised of 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 and the William Floyd Estate at Mastic.

(d) *The Dune District.* The Dune District extends from the mean high water line to 40 feet landward of the primary natural high dune crest, as defined on Fire Island National Seashore Map #OGP-0004 and on Suffolk County Property Maps, section numbers 491-498 (Islip), 002 (Ocean Beach), 002-004 (Saltaire), and 985.70-987 (Brookhaven), as mapped in November 1976 or as subsequently remapped. Map overlays of the Dune District are available for inspection in the Office of the Superintendent of the Seashore. The Dune District overlaps portions of the Community Development District and the Seashore District.

§ 28.4 Severability.

The invalidation of any provision of this part 28 by any court of competent

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jurisdiction shall not invalidate any other provision thereof.

Subpart B—Federal Standards and Approval of Local Ordinances

§ 28.10 Permitted and prohibited uses.

(a) *The Community Development District—(1) Permitted uses.* (i) The construction, alteration, expansion, movement, reconstruction, and maintenance of a detached building which is used principally as a single-family home, church, school, or community facility; as an accessory structure; or as an office for a professional occupation, as defined in approved local ordinances is permitted. Reconstruction of non-conforming uses is permitted in accordance with § 28.11. A professional office may be maintained only incidental to a residential use and shall be utilized by a person residing on the premises.

(ii) A commercial or industrial use in continuous and unchanged operation since September 11, 1964 is permitted. Any change in use of a commercial or industrial use since September 11, 1964 including construction, expansion, or conversion of an existing structure or a change in type, mode or manner of operation constitutes a new commercial or industrial use and may be permitted subject to the approval of the local zoning authority and review by the Superintendent.

(iii) A commercial or industrial use initiated after September 11, 1964 constitutes a new commercial or industrial use and may be permitted with the approval of the local zoning authority and review by the Superintendent. Any change in use of a commercial or industrial use approved by a local zoning authority after September 11, 1964, including construction, expansion, or conversion of an existing structure, or a change in type, location, mode or manner of operation, shall constitute a new commercial or industrial use and may be permitted with approval of the local zoning authority and review by the Superintendent.

(2) *Prohibited uses.* (i) The construction or expansion of an apartment building or other building with multiple dwelling units or conversion of an existing building into a multiple family home is prohibited.

(ii) The construction or expansion of a guest house with cooking facilities, or conversion of an existing structure to a guest house with cooking facilities is prohibited.

(iii) The subdivision of land into lots which are less than 4000 feet, or that do not meet the requirements of the applicable approved zoning ordinance is prohibited.

(iv) The rezoning of an area zoned residential to commercial or industrial without review by the Secretary is prohibited.

(b) *The Seashore District—(1) Permitted uses.* (i) The alteration, expansion, movement, and maintenance of privately-held “improved property” used as a single-family home or as an accessory structure is permitted. Reconstruction is permitted in accordance with § 28.11.

(ii) Any use consistent with the purposes of this Act, which is not likely to cause significant harm to the natural resources of the Seashore, on any lands, whether publicly or privately-held, which lie below mean high water in either the Atlantic Ocean or the Great South Bay is allowable.

(2) *Prohibited uses.* Construction, development or expansion of any property other than “improved property” is prohibited. The provisions of paragraph (a)(2) of this section apply to all privately-held property in the Seashore District.

(c) *The Dune District—(1) Permitted uses.* (i) A community vehicular and private or community pedestrian dune crossing approved by the zoning authority and reviewed by the Superintendent as necessary for access to areas behind the dune. Such dune protection measures as snow fencing, poles, beach nourishment, dune grass planting, or other scientifically sanctioned biological or ecological sand enhancing or stabilization methods are allowable.

(ii) Residential use and maintenance of an existing structure or reconstruction in accordance with § 28.11 is allowable.

(2) *Prohibited uses.* (i) Any development subsequent to November 10, 1978 including construction of a new structure or expansion of an existing structure, such as a building, bulkhead, pile,

septic system, revetment, deck, swimming pool, or other structure or man-made dune stabilization device except as allowed under paragraph (c)(i) of this section.

(ii) Any use of the dune, other than those outlined in paragraph (c)(1)(i) of this section, including recreational use.

(3) *Conflict with other provisions.* If a development or lot lies partially within the Dune District and partially in the Community Development District, or partially within the Dune District and partially within the Seashore District, and the standards applicable to the development, lot, or use are in conflict, the standards for the Dune District prevail for the portion of the development, lot, or use which lies within the Dune District. (d) General recreation, environmental and historic preservation and education, and natural resource 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 are permitted on publicly-held property.

§ 28.11 Nonconforming uses.

(a) Any use or structure lawfully existing under local law as of October 17, 1984 and rendered nonconforming by adoption of the federal standards may continue, 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 may be altered, intensified, enlarged, extended, or moved except to bring the use or structure into conformity with the approved local zoning ordinance.

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

(3) A nonconforming use in the Dune District may be moved to bring it into conformity with the approved local zoning ordinance.

(c) *Reconstruction of nonconforming uses.* If a nonconforming use or structure is severely damaged (as determined by fair professional insurance

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practices), destroyed or rendered a hazard, whether by fire, natural disaster, abandonment or neglect, no alteration, intensification, enlargement, reconstruction, extension, or movement is allowable without compliance with the following conditions:

(1) No use or structure within the Seashore built in violation of a local ordinance when constructed may be reconstructed except in compliance with the approved local zoning ordinance.

(2) Local building permit applications for reconstruction shall be filed with the appropriate zoning authority within one (1) year of the damage, destruction, or abandonment.

(3) A commercial or industrial use may not be reconstructed without the approval of the local zoning authority and review by the Superintendent.

(4) A nonconforming use in the Community Development District or in the Seashore District (i.e. "improved property") may be reconstructed to previous dimensions. It may not be altered, enlarged, intensified, extended, or moved except to bring the use or structure into conformity with the approved local zoning ordinance.

(5) A nonconforming use in the Dune District may be reconstructed if it can conform to the approved local zoning ordinance and lie north of the crest of the dune at the time of reconstruction.

§ 28.12 Development standards.

No use allowable under § 28.10 may be developed, constructed, altered, or conducted unless it complies with the following:

(a) A single-family home is the only type of development permitted in a residential district defined by a local zoning authority.

(b) Commercial or industrial development is limited to commercial or business districts defined by a zoning authority within the Community Development District. Such development must provide a service to Fire Island and will not be likely to cause significant harm to the natural resources of the Seashore.

(c) Minimum lot size is 4,000 square feet. A subdivision must comply with the subdivision requirements of the applicable zoning authority and may not

result in development of any lot which is less than 4,000 feet.

(d) Maximum lot occupancy for all development may not exceed 35 percent of the lot. Lot occupancy is calculated to include all buildings and accessory structures on the property and any extension of the upper floors beyond the developed area on the ground level.

(e) Lot occupancy of all privately-held improved property in the Seashore District is limited to 35 percent of the square footage of a lot that is less than 7,500 square feet, and to 2,625 square feet for a lot 7,500 square feet or greater. Lot occupancy is calculated to include all buildings and accessory structures on the property and any extension of the upper floors beyond the developed area of the ground.

(f) No building or accessory structure may be erected to a height in excess of 28 feet as measured from the average existing ground elevation or the minimum elevation necessary to meet the prerequisites for Federal flood insurance as determined by the National Flood Insurance Program/FEMA shown on Flood Insurance Rate Maps for Fire Island communities.

(g) A swimming pool is an allowable accessory structure and is calculated in measuring lot occupancy.

(h) No sign may be self-illuminated.

(i) A zoning authority shall have in effect limitations, requirements, or restrictions on the burning of cover and trash, excavation, displacement or removal of sand or vegetation, and the dumping, storing, or piling of refuse materials, equipment or other unsightly objects which would pose safety hazards and/or detract from the natural or cultural scene.

(j) A zoning authority shall have in place ordinances 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.

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§ 28.13 Variance, commercial and industrial application procedures.

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

(b) The zoning authority shall send the Superintendent a copy of the written notice of the dates and times of any public hearing to be held concerning an application no less than 10 days prior to the date of the hearing.

(c) The zoning authority shall send the Superintendent a copy of the written notice within fifteen calendar days of the approval or disapproval of any application for a variance, exception, special permit, or permit and copies of any variance, exception, special permit, or certificate which has been granted.

(d) The zoning authority shall send copies of all correspondence referred to in this section to:

The Superintendent, Special Attention: Zoning, Fire Island National Seashore, 120 Laurel St., Patchogue, New York 11772.

§ 28.14 Emergency action.

If allowable by local law and if immediate action 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, an agency or person may commence a temporary use without a permit from the zoning authority. In all cases, the agency or person shall inform the Superintendent and send an application for a permit to the zoning authority within 10 days after the commencement of the use and the applicant shall proceed in full compliance with the provisions of the approved local zoning ordinance. When the reasons for undertaking the emergency action no longer exist, the agency or person shall cease an emergency action taken under this section.

§ 28.15 Approval of local zoning ordinances.

(a) The Secretary shall approve local ordinances or amendments to approved

ordinances which conform to these regulations. The Secretary may not, however, approve an ordinance or amendment thereto which:

(1) Contains a provision that the Secretary considers adverse to the protection and development of the Seashore;

(2) Does not comply with the federal standards set out in §§ 28.10, 28.11, and 28.12; or

(3) Fails to provide for the variance procedures of § 28.13.

(b) A zoning authority from time to time may amend its ordinance. At such time the Secretary may revoke the approval of any ordinance or portion of an ordinance which fails to conform to these regulations. Upon resubmission by the zoning authority of an amended ordinance, the Secretary shall approve the ordinance, if it conforms with the requirements of paragraph (a) of this section.

(c) Secretarial approval of a local ordinance will be withdrawn if the Secretary finds that a zoning authority is not enforcing its ordinance.

Subpart C—Federal Review and Condemnation

§ 28.20 Review by the Superintendent.

(a) The Superintendent, within 15 working days of the receipt of a copy of an application for a variance, exception, permits for commercial or industrial use, or special permit submitted to the zoning authority for any development, use or change in use shall provide the applicant/landowner and the appropriate zoning authority written comments on the application. The purpose of the Superintendent's review is to determine if the proposed use or development does not conform to the federal standards and the purposes of the Act or is likely to cause significant harm to the natural resources of the Seashore. If the Superintendent's review determines the proposal does not conform, the Superintendent shall inform the applicant/landowner and appropriate zoning authority that should the proposed use or development proceed, the National Park Service may seek to enjoin the development and acquire the property by condemnation.

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(b) The Superintendent may also appeal the decision of the zoning authority pursuant to procedures of local law.

§ 28.21 Suspension of condemnation authority in the communities.

The Secretary has the authority to acquire land by condemnation. Upon Secretarial approval of local ordinances, Secretarial authority to acquire by condemnation private property within the communities and “improved property” in the Seashore District that conforms to the federal standards and the provisions of the Act or is not likely to cause significant harm to the natural resources of the Seashore is suspended, except as provided for in § 28.22.

§ 28.22 Condemnation authority of the Secretary.

(a) The Secretary has the authority to exercise powers of condemnation with respect to:

(1) Private property within the 8-mile area between the eastern boundary of Davis Park and the western boundary of the Smith Point County Park;

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

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

(4) Any property, if the approval of the ordinance of the zoning authority has been revoked; partially revoked, or an exception was made to the Secretarial approval and such property fails to conform to these standards, or any property where the appropriate local zoning authority does not have an ordinance approved by the Secretary;

(5) Any property built or altered after October 17, 1984 that does not conform to the regulations in this part 28;

(6) Any property which becomes an exception to or has been granted a variance, exception, or special use permit after October 17, 1984 that fails or will fail to conform to the regulations in this part 28;

(7) Any new commercial or industrial use that the Superintendent has determined does not conform with § 28.20(a). A new commercial or industrial use is

defined as any commercial or industrial use commenced after September 11, 1964. Any change in use of a commercial or industrial use including construction, expansion, or conversion of an existing structure, or change in type, location, mode, or manner of operation, constitutes a new commercial or industrial use;

(8) Any property with respect to which the Secretary’s authority to condemn was not suspended and the property failed to conform to the federal standards existing at the time of construction, modification, or commencement of a use, unless such construction, modification or use conforms to the current federal standards; and

(9) Any property in violation of a local ordinance required by § 28.12 (i) and (j).

(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 Secretarial authority to condemn any property in the Seashore is suspended for any structure or use constructed, modified, or commenced prior to October 17, 1984 if:

(1) It was built or conducted in conformity with local zoning ordinances and procedures in effect at the time of such construction or commencement or had been issued a variance under local law;

(2) It was built or conducted in conformity to the federal standards existing at the time of such construction or commencement or to these standards; and

(3) The local zoning ordinance is approved by the Secretary without exceptions, or if approved by the Secretary with exceptions, such exceptions are not pertinent or applicable to the property.

(d) 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.

§ 28.23 Certificates of suspension of authority for acquisition by condemnation.

Upon approval of a local zoning ordinance, a private property owner may apply to the Superintendent for a Certificate of Suspension of Authority for Acquisition by Condemnation. Procedures for obtaining a certificate are as follows:

(a) A property owner shall submit an application for a certificate to:

Superintendent,
Fire Island National Seashore,
120 Laurel Street,
Patchogue, New York 11772.

(b) An application for a certificate shall contain:

(1) A current survey of the lot showing the dimension of all buildings, accessory structures, garbage and bicycle racks, all access walks, and any extensions of the upper floors beyond the developed area on the ground level;

(2) On the survey, the line of mean high water, the toe of the dune, and the crest of the dune shall be identified if they traverse the lot;

(3) A floor plan of each floor of each building showing the configuration of all rooms and cooking facilities;

(4) A vertical drawing of the structure showing actual ground level and building height; and

(5) Copies of the original and all subsequent building permit applications and permits, certificates of occupancy, certified-as-completed surveys, variances, special use permits, certificates of pre-existing use, or other documents relating to local authorization to develop or use the property. The burden rests on the applicant to show that the structure conformed to local law at the time of construction and at the time of each subsequent alteration and that the structure conforms to current federal standards.

(6) For commercial or industrial uses, the owner of the property shall submit further information describing the type, mode, and manner of operation. All local, county, state, or federal licenses and permits required for construction, occupancy, operation of the commercial activity shall be submitted. Any change in use as described in § 28.10(a)(1)(iii) will require application for a new certificate.

(c) Upon receipt of the application, the Superintendent shall conduct a site inspection of both the interior and exterior of the property.

(d) After review of the materials submitted by the applicant and other pertinent information, and completion of the site inspection, the Superintendent shall determine whether the Secretary's authority to acquire by condemnation is suspended, and if so, shall furnish to any eligible party in interest a Certificate of Suspension of Authority for Acquisition by Condemnation.

(e) A Certificate of Suspension of Authority for Acquisition by Condemnation may be revoked at any time that the Secretary's authority to condemn is reinstated or that it becomes evident to the Superintendent that the Certificate was initially issued by mistake or on misinformation.

§ 28.24 Information collection.

The collection of information contained in §§ 28.13, and 28.23 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024-0050. The information will be used to determine if private property conforms to the federal regulations. Response is required to obtain a benefit in accordance with 16 U.S.C. Section 459e *et seq.*

PART 30—WHISKEYTOWN-SHASTA-TRINITY NATIONAL RECREATION AREA: ZONING STANDARDS FOR WHISKEYTOWN UNIT

- Sec.
- 30.1 Introduction.
- 30.2 General provisions.
- 30.3 Recreation District I.
- 30.4 Recreation District II.
- 30.5 Variances, exceptions, and use permits.

AUTHORITY: Subsection 2(e), 79 Stat. 1295, 1297; sec. 3, 39 Stat. 535; 16 U.S.C. 460q-1(e); 16 U.S.C. 3.

SOURCE: 32 FR 13189, Sept. 16, 1967, unless otherwise noted.

§ 30.1 Introduction.

(a) Administration of the Whiskeytown Unit is required to be coordinated with the other purposes of the Central Valley project and with the purposes of the recreation area as a whole so as to provide for: (1) Public

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outdoor recreation benefits; (2) conservation of scenic, scientific, historic, and other values contributing to public enjoyment; and (3) such management, utilization and disposal of renewable natural resources as in the judgment of the Secretary of the Interior will promote or is compatible with, and does not significantly impair, public recreation and conservation of scenic, scientific, historic, or other values contributing to public enjoyment.

(b) The Secretary may not acquire without consent of the owner any privately owned "improved property" or interests therein within the boundaries of the unit, so long as the appropriate local zoning agency (Shasta County), shall have in force and applicable to such property a duly adopted, valid, zoning ordinance that is approved by the Secretary. This suspension of the Secretary's authority to acquire "improved property" without the owner's consent would automatically cease: (1) If the property is made the subject to a variance or exception to any applicable zoning ordinance that does not conform to the applicable standards contained in the regulations in this part; or (2) if such property is put to any use which does not conform to any applicable zoning ordinance approved by the Secretary.

(c) "Improved property" as used in this section, means any building or group of related buildings, the actual construction of which was begun before February 7, 1963, together with not more than 3 acres of land in the same ownership on which the building or group of buildings is situated, but the Secretary may exclude from such "improved property" any shore or waters, together with so much of the land adjoining such shore or waters, as he deems necessary for public access thereto.

(d) The regulations in this part specify the standards with which local zoning ordinances for the Whiskeytown Unit must conform if the "improved property" within the boundaries of that unit is to be exempt from acquisition by condemnation. The objectives of the regulations in this part are to: (1) Prohibit new commercial or industrial uses other than those which the Secretary considers to be consistent

with the purposes of the act establishing the national recreation area; (2) promote the protection and development of properties in keeping with the purposes of that act by means of use, acreage, frontage, setback, density, height, or other requirements; and (3) provide that the Secretary receive notice of any variance granted under, or any exception made to, the application of the zoning ordinance approved by him.

(e) Following promulgation of the regulations in this part in final form, the Secretary is required to approve any zoning ordinance or any amendment to an approved zoning ordinance submitted to him which conforms to the standards contained in the regulations in this part in effect at the time of adoption of the ordinance or amendment. Within 60 days following submission, the county will be notified of the Secretary's approval or disapproval of the zoning ordinances or amendments thereto. If more than 60 days is required the county will be notified of the expected delay and of the additional time deemed necessary to reach a decision. The Secretary's approval shall remain effective so long as the zoning ordinances or amendments thereto remain in effect as approved.

(f) Nothing contained in the regulations in this part or in the zoning ordinances or amendments adopted for the Whiskeytown Unit to implement the regulations in this part shall preclude the Secretary from exercising his power of condemnation at any time with respect to property other than "improved property" as defined herein. Nor shall the regulations in this part preclude the Secretary from otherwise fulfilling the responsibilities vested in him by the act authorizing establishment of the Whiskeytown-Shasta-Trinity National Recreation Area, by the Act of August 25, 1916 (39 Stat. 535, 16 U.S.C. 3), as amended and supplemented, and such other statutory authorities relating to the National Park System.

§ 30.2 General provisions.

(a) Following issuance of the regulations in this part, Shasta County shall submit to the Secretary for his approval, all zoning ordinances and

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amendments thereto duly adopted by the county which are in force and applicable to property within the Whiskeytown Unit and which demonstrate conformity with the standards contained in the regulations in this part. This shall include any ordinances and amendments in effect prior to the issuance of the regulations in this part which demonstrate such conformity and any that have been adopted specifically to implement the regulations in this part.

(b) Any new uses, and the location, design and scope of any new developments, permitted under the regulations in this part shall be harmonized with adjacent uses, developments and the natural features and shall be consistent with the current Master Plan proposed or adopted by the National Park Service for the Whiskeytown Unit, so as to minimize disruption of the natural scene and to further the public recreational purposes of the aforesaid establishment act for this unit.

(c) Zoning ordinances for the districts hereinafter prescribed shall conform to the general and specific standards contained in the regulations in this part to assure that use and development of the lands within the Whiskeytown Unit are consistent with the objectives of the Congress to protect and preserve the values of the lands in such unit for public use and enjoyment, as set out in the Act of November 8, 1965 (79 Stat. 1295). Except as otherwise provided herein, no additional or increased commercial or industrial uses are permitted within these districts. Any existing nonconforming commercial or industrial uses shall be discontinued within 10 years from the date of this section: *Provided, however,* That with the approval of the Secretary such 10-year period may be extended by the county for an additional period of time sufficient to allow the owner a reasonable opportunity to amortize investments made in the property before November 8, 1965.

§ 30.3 Recreation District I.

(a) Definition. This district shall comprise all those portions of the Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National

Recreation Area delineated as "Recreation District I" on a map bearing the identification NRA-WHI1000, and dated August 1966.

(b) The following uses are permitted in Recreation District I provided the Shasta County Planning Commission has issued a use permit in each case:

(1) Single-family dwellings, not including tents and trailers, but including servants' quarters in the same structure or in an accessory dwelling, and one noncommercial guest house. Such residential uses shall meet the following requirements:

(i) Minimum building site area—3 acres; but a lesser acreage may be utilized for this purpose if, on or before February 7, 1963, the site was in separate ownership and within a recorded subdivision.

(ii) Maximum building height—35 feet.

(iii) Minimum frontage—150 feet.

(iv) Minimum front yard setback—75 feet.

(v) Minimum side yard setback—50 feet.

(vi) Minimum rear yard setback—25 feet.

(vii) Maximum percentage of lot coverage permitted—10 percent.

(2) Moving, alteration, or improvement of existing residences or accessory structures provided there is compliance with the acreage, frontage, setback, density, height, and other requirements prescribed for residential uses under paragraph (b)(1) of this section. *And provided, further,* That such moving, alteration, or improvement does not alter the residential character of the premises. Any moving, alteration or improvement of such structures that would result in a deviation from these prescribed limitations and requirements would subject the property to acquisition without consent of the owner, unless the Secretary has waived such limitations or requirements.

(3) Tree farming under a timber management plan that conforms to the California Forest Practices Act.

(4) Riding stables.

(5) Campgrounds, organizational camps and picnic areas.

(6) Limited agricultural uses such as truck gardening, provided these uses do

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not require the extensive cutting or clearing of wooded areas and are not otherwise destructive of natural or recreational values.

(7) Clearing and removal of trees, shrubbery, and other vegetation to the extent necessary in order to permit the exercise of a use otherwise allowed within this district.

(8) Recreational pursuits such as horseshoe pitching, archery, croquet, tennis, softball, volley ball, and similar outdoor game-type activities compatible with the recreational purposes of the area.

(9) Religious and educational uses.

(10) Removal of gravel, sand, and rock or other alteration of the landscape to the minimum extent necessary for the construction of an access road to the property on which a use is permitted. In all other circumstances, such removal or alteration shall be permitted only to the minimum extent necessary to make possible the exercise of a use otherwise permitted in this district.

(11) Signs that are appurtenant to any permitted use and which (i) do not exceed 1 square foot in area for any residential use; (ii) do not exceed 4 square feet in area for any other use, including advertisement of the sale or rental of property; and (iii) which are not illuminated by any neon or flashing device. Such signs may be placed only on the property on which the advertised use occurs, or on the property which is advertised for sale or rental. Signs shall be subdued in appearance, harmonizing in design and color with the surroundings and shall not be attached to any tree or shrub. Nonconforming signs may continue such nonconformity until they are destroyed, moved, structurally altered or redesigned, but the period of such nonconformity may not exceed 2 years from the date a zoning ordinance containing this limitation is adopted by Shasta County.

(12) Accessory uses and temporary removable structures appurtenant to any permitted use.

(c) Any use not included above as a permitted use shall be deemed a prohibited use. Moreover, all land within the boundaries of the Whiskeytown Unit, except certain "improved property" as defined herein, will be ac-

quired by the United States as rapidly as appropriated funds are made available therefor and before any development occurs thereon. Any property that is developed before such acquisition takes place will be subject to acquisition by the Secretary without consent of the owner.

§ 30.4 Recreation District II.

(a) Definition: This district shall comprise all those portions of the Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area delineated as "Recreation District II" on a map bearing the identification NRA-WHI-1000 and dated August 1966.

(b) The following uses are permitted in Recreation District II:

(1) All uses permitted in Recreation District I, subject to all the limitations, conditions and requirements prescribed for such uses in that district.

(2) The following additional uses are permitted in Recreation District II, provided the Shasta County Planning Commission has issued a use permit in each case:

(i) Agricultural pursuits such as crop farming, grazing, animal husbandry, nurseries, and greenhouses.

(ii) Stands for retail sales of products produced on the premises.

(iii) Measures to promote conservation of soil, water, and vegetation, including reforestation and tree stand improvement, and measures to reduce fire hazards.

(iv) Public or privately operated parks and playgrounds.

(v) Trailer campgrounds.

(vi) Golf courses.

(vii) Heliports, provided they are located and screened so their operations will cause a minimum of interference with public recreational use and enjoyment of the area.

(viii) Accessory structures, facilities, and utilities as necessary to make possible the exercise of any use otherwise permitted.

(c) Structures developed for the exercise of the additional uses listed under paragraph (b)(2) of this section shall not exceed two stories in height (35 feet), shall have a minimum principal use area of 5 acres, and shall have a front yard setback of not less than 100

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feet from the nearest right-of-way line of a road or street. However, a lesser area than 5 acres may be utilized for such purposes if the property in question was in separate ownership on February 7, 1963.

(d) Any use not included above as a permitted use shall be deemed a prohibited use. Moreover, all land within the boundaries of the Whiskeytown Unit, except certain "improved property" as defined herein, will be acquired by the United States as rapidly as appropriated funds are made available therefor and before any development occurs thereon. Any property that is developed before such acquisition takes place will be subject to acquisition by the Secretary without consent of the owner.

§ 30.5 Variances, exceptions, and use permits.

(a) Zoning ordinances or amendments thereto, for the zoning districts comprising the Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area may provide for the granting of variances and exceptions.

(b) Zoning ordinances or amendments thereto for each of the districts established by the regulations in this part shall contain provisions advising applicants for variances and exceptions that, under section 2(f) of the Act of November 8, 1965, the authority of the Secretary to acquire "improved property" without the owner's consent would be reinstated (1) if such property is made the subject of a variance or exception to any applicable zoning ordinance that does not conform to any applicable standard contained in the regulations in this part; or (2) if such property is put to any use which does not conform to any applicable zoning ordinance approved by the Secretary.

(c) The Shasta County Planning Commission, or private owners of "improved property" may consult the Secretary as to whether the grant of any proposed variance or exception would terminate the suspension of his authority to acquire the affected property without consent of the owner, and may request the approval of a variance or exception by the Secretary: *Provided*, The Secretary is notified in writing at least 30 days in advance of the hearing

on the application for the variance or exception. The Secretary within 30 days after the receipt of a request for approval of a variance or exception, shall advise the owner or the Commission whether or not the intended use will subject the property to acquisition by condemnation. If more than 30 days is required by the Secretary for such determination, he shall so notify the owner or Commission, stating the additional time required and the reasons therefor.

(d) The Secretary shall be given written notice of any variance granted under, or exception made to the application of, a zoning ordinance or amendment thereof approved by him. The Secretary shall be provided a copy of every use permit granted by the Shasta County Planning Commission authorizing any use or development of lands within the boundaries of the Whiskeytown Unit of the recreation area.

PART 34—EL PORTAL ADMINISTRATIVE SITE REGULATIONS

Sec.

- 34.1 Purpose.
- 34.2 Applicability and scope.
- 34.3 Penalties.
- 34.4 Definitions.
- 34.5 Applicable regulations.
- 34.6 Fires.
- 34.7 Cultivation of controlled substances.
- 34.8 Preservation of natural, cultural and archeological resources.
- 34.9 Protective custody.
- 34.10 Saddle and pack animals.
- 34.11 Boating operations.
- 34.12 Information collection.

AUTHORITY: 16 U.S.C. 1, 3, 47-1, 4601-6a(e).

SOURCE: 51 FR 29103, Aug. 14, 1986, unless otherwise noted.

§ 34.1 Purpose.

These regulations provide for the protection of persons, property and natural and cultural resources within the El Portal Administrative Site.

§ 34.2 Applicability and scope.

(a) The regulations in this part apply to all persons entering, using, visiting, residing on or otherwise within the boundaries of the El Portal Administrative Site. All regulations apply

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throughout the site, with certain specific exceptions provided for leased lands.

(b) The regulations in this part may be enforced only by persons authorized to enforce the other provisions of this chapter.

§ 34.3 Penalties.

(a) A person convicted of violating a provision of the regulations contained in this part shall be punished by a fine not exceeding \$500 or by imprisonment not exceeding 6 months, or both, and shall be adjudged to pay all costs of the proceedings.

(b) Notwithstanding the provision of paragraph (a) of this section, a person convicted of violating §34.5(b)(15) of this chapter shall be punished by a fine of not more than \$100.

§ 34.4 Definitions.

When used in regulations in this part:

Administrative site means all of the federally owned or controlled lands and waters administered by the National Park Service pursuant to 16 U.S.C. 47-1 (72 Stat. 1772), in the vicinity of El Portal, California.

Leased lands means all lands within the administrative site in which there is a lawful possessory interest in addition to that of the National Park Service, which have been leased, permitted or otherwise assigned by the Superintendent. All other lands within the administrative site are nonleased lands.

§ 34.5 Applicable regulations.

The following sections and paragraphs of this chapter, as amended from time to time, apply to the administrative site and are hereby incorporated and made a part of this part except as modified by the regulations in this part:

(a) *General provisions.* (1) 1.2(d) Applicability and scope; exception for administrative activities.

(2) 1.4 Definitions.

(3) 1.5 Closures and public use limits.

(4) 1.6 Permits.

(5) 1.7 Public notice.

(b) *Resource Protection, Public Use and Recreation.* (1) 2.1 Preservation of nat-

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ural, cultural and archeological resources.

(2) 2.2 Wildlife protection.

(3) 2.3 (a), (c) and (f) Fishing.

(4) 2.4 Weapons, traps and nets.

(5) 2.5 Research specimens.

(6) 2.10 Camping and food storage.

(7) 2.11 Picnicking.

(8) 2.12 Audio disturbances.

(9) 2.13 Fires.

(10) 2.14 Sanitation.

(11) 2.15 (a) (1), (3), (4) and (5); (c); (d); (e) and (f) Pets.

(12) 2.17 Aircraft and air delivery.

(13) 2.21 Smoking.

(14) 2.22 Property.

(15) 2.23 Recreation fees.

(16) 2.30 Misappropriation of property and services.

(17) 2.31 Trespassing, tampering and vandalism.

(18) 2.32 Interfering with agency function.

(19) 2.33 Report of injury or damage.

(20) 2.34 Disorderly conduct.

(21) 2.35 Alcoholic beverages and controlled substances.

(22) 2.36 (a) Gambling.

(23) 2.37 Noncommercial soliciting.

(24) 2.38 Explosives.

(25) 2.50 Special events.

(26) 2.51 Public assemblies, meetings.

(27) 2.52 Sale or distribution of printed matter.

(28) 2.61 Residing on Federal lands.

(29) 2.62 Memorialization.

(c) *Boating and Water Use Activities.*

(1) 3.1 Applicable regulations.

(2) 3.3 Permits.

(3) 3.4 Accidents.

(4) 3.5 Inspections.

(5) 3.6 (a) and (b) Prohibited operations.

(6) 3.21 (a) (1), (2) and (b) Swimming and bathing.

(d) *Vehicles and traffic safety.* (1) 4.2 State law applicable.

(2) 4.4 Report of motor vehicle accident.

(3) 4.10(a), (c)(1) and (c)(2) Travel on park roads and designated routes.

(4) 4.11 Load, weight and size limits.

(5) 4.12 Traffic control devices.

(6) 4.14 Open container of alcoholic beverage.

(7) 4.21 Speed limits.

(8) 4.22 Unsafe operation.

(9) 4.23 Operating under the influence of alcohol or drugs.

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(e) *Commercial and Private Operations.*

(1) 5.1 Advertisements.

(2) 5.2 Alcoholic beverages; sale of intoxicants.

(3) 5.3 Business operations.

(4) 5.5 Commercial photography.

(5) 5.7 Construction of buildings or other facilities.

(6) 5.8 Discrimination in employment practices.

(7) 5.9 Discrimination in furnishing public accommodations and transportation services.

(8) 5.13 Nuisances.

(9) 5.14 Prospecting, mining, and mineral leasing.

[51 FR 29103, Aug. 14, 1986, as amended at 52 FR 10686, Apr. 2, 1987]

§ 34.6 Fires.

(a) All wildland, vehicular or structural fires shall be reported to the Superintendent immediately.

(b) Nonconflicting provisions of the California State Forest and Fire Laws and Regulations are adopted as a part of this part. Violation of any of these regulations is prohibited.

(c) The kindling of any open fire, including the burning of debris, is prohibited without a permit from the Superintendent.

(d) On undeveloped, untended or otherwise open land, operating any equipment powered by an internal combustion engine without a spark arrestor maintained in effective working order is prohibited. Such spark arrestor shall also meet either the USDA Forest Service Standard 5100-1a or the Society of Automotive Engineers Recommended Practice J335 or J350.

(e) The Superintendent may, during periods of high fire danger or diminished water supply, temporarily limit use and consumption of domestic water. These limitations shall be published. Violation of a limitation established by the Superintendent is prohibited.

(f) An owner or operator of a commercial establishment located within the administrative site shall comply with applicable standards prescribed by the National Fire Codes, Federal OSHA, CAL OSHA and other applicable laws, regulations and standards.

§ 34.7 Cultivation of controlled substances.

In addition to the provisions of § 2.35 of this chapter, the planting, cultivating, harvesting, drying or processing of a controlled substance, or any part thereof, is prohibited.

§ 34.8 Preservation of natural, cultural and archeological resources.

In addition to the provisions of § 2.1 of this chapter, the following are in effect:

(a) Upon nonleased lands, the cutting or removal of any tree, plant, or shrub or part thereof is prohibited without a permit from the Superintendent.

(b) Upon leased lands, the cutting or removal of any tree, plant, or shrub or part thereof that is six inches or less in diameter, for the purpose of maintaining its proper health and appearance or for reasons of public safety, is allowed. Cutting or removing any vegetation exceeding six inches in diameter without a permit from the Superintendent is prohibited.

(c) Upon leased lands, the planting of personal gardens or domestic trees is allowed subject to all applicable Federal, State, and County agricultural regulations. *Provided, however:* the Superintendent may temporarily suspend this general privilege in the event of a water shortage or agricultural pest or disease emergency.

(d) Wood gathering is prohibited except in accordance with conditions and within areas designated by the Superintendent. Violation of such conditions or gathering wood outside of designated areas is prohibited.

§ 34.9 Protective custody.

(a) An authorized person, with reasonable cause to believe that a juvenile found within the administrative site has been unlawfully abused or neglected by any person living in the juvenile's place of residence, may take such juvenile into protective custody. An authorized person taking protective custody action pursuant to this paragraph shall deliver the juvenile to the care and custody of the appropriate State or local authorities.

(b) An authorized person, with reasonable cause to believe that a person found within the administrative site is

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either temporarily or permanently psychologically or mentally impaired to a degree that the person is gravely disabled or that presents a clear danger to that person or another, may take such person into protective custody. An authorized person taking protective custody action pursuant to this paragraph shall deliver the person to the care of the Mariposa County Mental Health Authorities for an initial 72-hour evaluation in accordance with applicable provisions of the California Welfare and Institutions Code.

(c) An authorized person may take into protective custody any juvenile found within the administrative site who is deemed to be a runaway according to applicable provisions of the California Welfare and Institutions Code. An authorized person taking protective custody action pursuant to this paragraph shall deliver the juvenile to the care and custody of the Mariposa County Sheriff's Office.

§ 34.10 Saddle and pack animals.

The use of saddle and pack animals is prohibited without a permit from the Superintendent.

§ 34.11 Boating operations.

The launching or operation of a motor boat is prohibited.

§ 34.12 Information collection.

The information collection requirements contained in §§ 34.6, 34.8 and 34.10 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1024-0026. This information is being collected to solicit information necessary for the Superintendent to issue permits and other benefits, and to gather information. This information will be used to grant administrative benefits. The obligation to respond is required to obtain a benefit.

PART 51—CONCESSION CONTRACTS

Subpart A—Authority and Purpose

Sec.

51.1 What does this part cover?

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51.2 What is the policy underlying concessions contracts?

Subpart B—General Definitions

51.3 How are terms defined in this part?

Subpart C—Solicitation, Selection and Award Procedures

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51.5 What information will the prospectus include?

51.6 Will a concession contract be developed for a particular potential offeror?

51.7 How will information be provided to a potential offeror after the prospectus is issued?

51.8 Where will the Director publish the notice of availability of the prospectus?

51.9 How do I get a copy of the prospectus?

51.10 How long will I have to submit my proposal?

51.11 May the Director amend, extend, or cancel a prospectus or solicitation?

51.12 Are there any other additional procedures that I must follow to apply for a concession contract?

51.13 When will the Director determine if proposals are responsive?

51.14 What happens if no responsive proposals are submitted?

51.15 May I clarify, amend or supplement my proposal after it is submitted?

51.16 How will the Director evaluate proposals and select the best one?

51.17 What are the selection factors?

51.18 When must the Director reject a proposal?

51.19 Must the Director award the concession contract that is set forth in the prospectus?

51.20 Does this part limit the authority of the Director?

51.21 When must the selected offeror execute the concession contract?

51.22 When may the Director award the concession contract?

Subpart D—Non-Competitive Award of Concession Contracts

51.23 May the Director extend an existing concession contract without a public solicitation?

51.24 May the Director award a temporary concession contract without a public solicitation?

51.25 Are there any other circumstances in which the Director may award a concession contract without public solicitation?