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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.

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(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.