

**§ 28.20**

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(c) Secretarial approval of a local ordinance will be withdrawn if the Secretary finds that a zoning authority is not enforcing its ordinance.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

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

**36 CFR Ch. I (7-1-03 Edition)**

**§ 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

**National Park Service, Interior**

**§ 28.23**

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 Cer-

tificate 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 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