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THE CAPE COD NATIONAL SEASHORE: A CASE STUDY OF FEDERAL ADMINISTRATIVE CONTROL OVER TRADITIONALLY LOCAL LAND USE DECISIONS

Charlotte E. Thomas*

From its surface we overlooked the greater part of the Cape. In short, we were traversing a desert, with the view of an autumnal landscape of extraordinary brillancy, a sort of Promised Land, on the one hand, and the ocean on the other. Yet, though the prospect was so extensive, and the country for the most part destitute of trees, a house was rarely visible,—we never saw one from the beach,—and the solitude was that of the ocean and the desert combined. A thousand men could not have seriously interrupted it, but would have been lost in the vastness of the scenery as their footsteps in the sand.

Henry David Thoreau,
Cape Cod, 1864

I. INTRODUCTION

In 1864, one thousand men could not have interrupted the vast beauty of Thoreau's Cape Cod. But in 1984, the estimated 5,348,900* yearly visitors of the Cape Cod National Seashore alone threaten the Cape's natural and scenic resources. The demands of

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1 Robinson, Planning Considerations for Preservation and Use of National Seashores, 5 COASTAL ZONE MGMT. J. 7 (1979). Problems associated with commercial and residential development plague Cape Cod. Barnstable County, which is the governing unit for Cape Cod, is the fastest growing county in Cape Cod. For a description of some of Cape Cod's development problems, see N. Y. Times, July 29, 1984, at A122, col. 4.
This map is provided through the courtesy of the National Park Service.
our mobile society seeking vacation real estate near urban areas have created pressure to transform Cape Cod’s natural landscape into seasonal homes and commercial ventures. Yet, at least portions of Cape Cod remain sparsely or wholly undeveloped, due in large part to the efforts of Congress to contain this threat by establishing a national seashore at Cape Cod.

The structure of the Act\textsuperscript{2} which established the Cape Cod National Seashore represents an innovative method of “site specific”\textsuperscript{3} federal land use control. The “Cape Cod formula,”\textsuperscript{4} as it has been termed, empowers the Secretary of the Interior to condemn private property located within the boundaries of the Seashore.\textsuperscript{5} The Secretary’s power to condemn residential properties improved prior to 1959 is suspended in those towns within the Seashore that have enacted local zoning ordinances which have been approved by the Secretary. The Secretary regains the power to condemn if a property owner violates a zoning ordinance or if a town improperly grants a zoning variance. Through threat of condemnation, the Cape Cod formula allows the federal government to control the content of local zoning ordinances as well as the local enforcement of land use decisions.

This article evaluates the Cape Cod formula, the administration of the Seashore by the National Park Service, and suggests some ways in which the legislative approach could be improved to better preserve the scenic coastline and natural resources of Cape Cod. The first sections of the article describe the purposes for and the statutory framework of the Cape Cod formula. The administration of the Cape Cod National Seashore is then evaluated, along with the resulting growth patterns of the six towns which retain concurrent jurisdiction over private property within the Seashore. A final section provides suggestions for improvements to the Cape Cod formula.


\textsuperscript{3}W. SHANDS & R. HEALY, THE LANDS NOBODY WANTED 181 (1977). The authors explain that the legislative approach for the Cape Cod National Seashore involved a “set of controls ... developed as a site-specific response to a particular geographic and land ownership situation [which was] designed to accommodate the capabilities of local government unit....” Id.

\textsuperscript{4}Id. at 191.

\textsuperscript{5}A precise description of the boundaries of the Seashore is set forth at 16 U.S.C. § 459b (1982).
II. THE CAPE COD NATIONAL SEASHORE

The geological formation of Cape Cod began 50,000 to 70,000 years ago during the last ice age when the glacial sheet stalled in the region. When the climate later warmed, approximately 15,000 years ago, the glacial lobes deposited material which eventually created the land form of Cape Cod. Today, the scenic coastline of the Cape reflects its glacial beginnings, replete with high cliffs and dunes, bogs and hollows, fresh water ponds and salt marshes. The land mass of the Cape remains dynamic through constant erosion; the sands continually moving "toward ... ultimate deposition in the sea and incorporation into the Atlantic coastal plain and continental shelf system."

The National Seashore at Cape Cod extends from the Town of Chatham northward to Provincetown. Most of the Seashore is located on the eastern coast of Cape Cod, bordering the Atlantic Ocean. The Seashore also meets Cape Cod Bay in the west in portions of Wellfleet, Truro, and Provincetown. The boundaries of the Seashore reach into the lands of six Cape Cod towns: Chatham, Eastham, Orleans, Provincetown, Truro, and Wellfleet.

The Seashore Park includes thirty-nine miles of beach facing the Atlantic Ocean, and fourteen miles along Cape Cod Bay and Nantucket Sound. Its total land area comprises approximately 43,534 acres of dry and submerged lands. The federal government has now acquired approximately sixty percent of the private property located within the Seashore.

The legislative interest in establishing the Cape Cod National Seashore was prompted by two studies conducted by the National Park Service in 1936 and 1955. These studies emphasized Cape

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7 Id.
8 Chamberlain, Cape Cod, NATURAL HISTORY 27 (1976).
9 Giese, supra note 6, at 10. See also Packard, Peninsula in Evolution, 13 OCEAN 36, 40 (1980).
10 See supra note 5.
12 Robinson, supra note 1, at 7.
13 H.R. REP. NO. 97-536, 97th Cong., 2d Sess. 3 (1983). Of the 43,524 acres of land within Cape Cod National Seashore, 26,810 acres have been acquired by the federal government (including pending condemnations). See infra Table III.
14 The 1935 study is apparently unavailable, but a description of the survey of sixteen seashore recreation areas is set forth in J. ISE, OUR NATIONAL PARK POLICY 425-26
Cod's unique scenic, historical, and scientific characteristics, and identified the Cape as a primary location for preservation. Consequently, on August 7, 1961, President John F. Kennedy signed into law the Act creating Cape Cod National Seashore.\textsuperscript{15}

Congress established the Cape Cod National Seashore largely as a response to an emerging theory favoring the development of national recreation areas accessible to urban areas.\textsuperscript{16} This purpose was discussed on the floor of the House of Representatives during the debates of the Act authorizing the Cape Cod National Seashore. Representative Rutherford of Texas noted:

[Cape Cod] is an important addition to the national park system in the East. All of us have had complaints that our national parks are mostly where the population is not—that is, in the West. I think the complaint is entirely justified that we are badly in need of additional national park areas near the centers of population in the East. Cape Cod is a step in this direction, since it lies within an easy day's drive for a population of at least 25 million.\textsuperscript{17}

The Cape Cod National Seashore ushered in a new wave of national parks, being the first to be located in close proximity to urban populations.\textsuperscript{18}

Perhaps the foremost reason for Congress' decision to protect Cape Cod was the Cape's unusual scenic qualities. As noted by Representative Keith, co-sponsor of the Act in the House of Representatives:

The historic and scenic beauties of Cape Cod—its old villages with their links to the days of the Pilgrim, the raw beauty of

\textsuperscript{15} 16 U.S.C. § 459(b) (1982).

\textsuperscript{16} U.S. DEP'T OF THE INTERIOR, A STUDY OF THE PARK AND RECREATION PROBLEM OF THE UNITED STATES (1941). That study found that “[t]he great need is for public open space in and near urban centers.” Id. at 20.


\textsuperscript{18} Strong, Durning, Foster, Towntree, Schulman, & Stoddard, The National Park Service: Ways and Means, in NATIONAL PARKS FOR THE FUTURE (1972). The essay notes:

In 1962 ... Congress took a significant pioneering step for the National Park System when it authorized a major unit of the System within a day's drive of one-third of the people of the country. The breakthrough was Cape Cod National Seashore, which also became the first major unit of the System to be acquired with appropriated public funds. ... Since 1962, several other areas proximate to metropolitan America have been added. . . .

Id. at 76.
the unmolested sand dunes, fresh water lakes, marshes and heaths in which numerous varieties of plants and animals dwell—as well as the proximity of the cape to the urban areas of the northeast, make Cape Cod one of the most desirable areas for preservation.\textsuperscript{19}

Establishing a National Park at Cape Cod through environmental protective legislation was a means to prevent unbridled development which would scar the Cape's natural landscape and destroy its uninterrupted coastline.\textsuperscript{20}

The legislative history of the Act indicates that protection of the Cape's scenic natural resources was the primary purpose for authorizing the Cape Cod National Seashore.\textsuperscript{21} The Senate Report identified seven natural resources of Cape Cod deemed worthy of preservation: 1) the Great Beach; 2) the sand dunes at Provincetown and Truro; 3) the high cliffs; 4) the sand barriers and marshes; 5) the lakes and ancient river valleys; 6) the Bay side region; and 7) the Monomoy and Morris Islands.\textsuperscript{22}

\textsuperscript{20} S. REP., supra note 11, at 2235.
\textsuperscript{21} In a study performed by Economic Development Associates, Inc., under contract with the National Park Service, the objectives of the Cape Cod National Seashore were outlined as follows:
   1.) Halt impairment of natural and historic features. 2.) Protect and preserve the natural features and retain the life and atmosphere of the seafaring era and historic Cape Cod. 3.) Rehabilitate or restore features already impaired. 4.) Keep to a minimum the disruption of life of each town during and after the transitional period from existing land-uses to park-uses. 5.) Cooperate closely with the adjacent towns in the planning of approaches on adjacent land area to assure that town and park relationship will be harmonious. 6.) Provide for the use and enjoyment of the area through properly located facilities, interpretive and other visitor services . . .

A Bill to provide for the Establishment of Cape Cod National Seashore Park: Hearings Before the Sub. Comm. on Public Lands of the Senate Committee on Interior and Insular Affairs, 86th Cong., 2d Sess. 272, 266 (1960). It should be noted, however, that the above objectives were those of the National Park Service, not of Congress.

\textsuperscript{22} S. REP., supra note 11, at 2213-15. The Senate Report noted the scenic qualities of "the Great Beach," a beach facing the Atlantic Ocean, with but one break in its 30 mile sweep. The Report also acknowledged the beauty of the sand dunes at Provincetown and Truro which back the Great Beach on the Atlantic. Both stable and moving dunes can be found in this region, some reaching heights of 90 feet. The third scenic feature Congress sought to protect was the 15 mile stretch of high cliffs from Highland Light to Coast Guard Beach. The cliffs were created by the original glacial deposits, and range from 50 to 175 feet in height. The Senate Report also pointed out the scenic quality of the 15 mile extension of the Great Beach, including its picturesque marshes and the sand pit. The attractive river valleys of the Pamet and Little Pamet Rivers and the 20 freshwater ponds were also considered worthy of preservation. The Monomoy Island was noted as an important national wildlife refuge and the beauty of Morris Island was found to be significant due to its forest cover, animal life and rare coast white-cedar bog.
Other reasons for authorizing the Seashore included preserving the geological and biological features of the Cape, as well as honoring the Cape's historical importance as the landing site of the Pilgrims at Provincetown. The clear thrust of the legislation, however, is aimed at preserving the scenic and natural features of the Cape while extending its recreational facilities to a broad range of the population.

### III. Structure of Federal Land Use Control at the Cape Cod National Seashore—The Cape Cod Formula

Federal legislative and administrative presence in the field of environmental law expanded significantly during the decade of the 1970's. Experimental legislation, such as the Act establishing the Cape Cod National Seashore, may well have provided the impetus for the expansion in federal environmental regulation. By its very creation, the Act suggested dissatisfaction in some camps with the ability of local government to preserve natural resources. The consequence was a federal scheme for preserving portions of Cape Cod which was to be enforced locally by a federal administrative agency.

Traditional land use regulation through local zoning ordinances has long been subjected to criticism. It is commonplace in

Finally, Congress intended to protect the serene Bayside region, including six and one-half miles of beach north of Jeremy Point. Id. See also National Park Service, U.S. Dep't Interior, No. NPS 733, Master Plan—Cape Cod National Seashore, Massachusetts 16 (1974) [hereinafter cited as Master Plan].

23 S. Rep., supra note 11, at 2215. The Senate Report noted that Cape Cod's glacial and post-glacial history is of significant academic interest. Apparently, the region still provides geologists with an expance for unresolved geological questions. Id. See supra text and notes at notes 5-9.

24 S. Rep., supra note 11, at 2215-16. Cape Cod's distinct animal and plant life were considered to be two of the biological features worthy of preservation. See also Packard, supra note 9, at 36.


26 S. Rep., supra note 11, at 2216-17. See Robinson, supra note 1. The author suggests that "[a]s a matter of policy all national seashores have been considered in [the] recreational area category." Id. at 9. A national recreation area is one in which outdoor recreation is recognized as "the dominant or primary resource management purpose." Id. Indeed, the administration of the Cape Cod National Seashore has catered to recreational needs in several ways, ranging from constructing beach facilities and bike trails to regulating the use of beach buggies. Master Plan, supra note 22, at 41-46.


28 See, e.g., Krasnowiecki, Abolish Zoning, 31 Syracuse L. Rev. 719 (1980); Ellickson,
smaller localities for zoning ordinances to become obsolete through age, or to be amended into disarray and confusion. The very concept of land use regulation may be destroyed by a town whose zoning administration or enforcement is lax.

When Congress approved the designation of parts of Cape Cod as a national seashore, it responded to this criticism with an innovative, site-specific approach to land use planning. At that time, the land on Cape Cod was owned primarily by private landowners, many of whom had no interest in losing their property for the sake of establishing a national park. The towns were also concerned that restrictions on land development and conversion to federal ownership would result in a loss of tax revenue. In the debate of the Act on the floor of the House of Representatives, Co-Sponsor Representative Keith explained the challenge involved in designing legislation which would adequately address the problems of establishing a national park at Cape Cod:

The area proposed as a national seashore in this bill is not wilderness. It is a new concept in national park sites, for it encompassed [sic] parts of highly developed and self-sufficient communities. For this reason, Senator Saltonstall, former Senator, now President, Kennedy and I devoted many months of deliberation and work in the drafting of a unique bill to fit the unique challenges of the proposed seashore. Our responsibility was twofold—to preserve the area for enjoyment of future generations on the one hand, and to protect the rights of the many residents within the Seashore area


29 McClendon, Simplifying and Streamlining Zoning, 1982 INST. ON PLAN., ZONING & EMINENT DOMAIN 45, 46.

30 Wexler, A Zoning Ordinance is No Better than its Administration, 1 J. MAR. J. PRAC. & PROC. 74 (1967). The author notes: "A zoning ordinance . . . can be destroyed by laxity or indifference at any one of three levels: (1) by the zoning enforcement officer in executing his responsibilities; (2) on the part of the administrative appeal body in granting variances; and (3) on the part of the city council in amending the ordinance at the behest of individual property owners." Id. at 75.

31 A Bill to Provide for the Establishment of Cape Cod National Seashore Park: Hearings on S. 2636 Before the Subcomm. on Public Lands of the Senate Committee on Interior and Insular Affairs, 86th Cong., 1st Sess. 59 (1960) (Letter of William L. Payson cited in Brief for Orleans, Mass.). That letter read in part: "if the towns won't or can't make parks out of their beaches I hope that the Federal Government will step in. However, it does not seem right that so much upland, including so many houses, should be taken from their owners." Id. at 59-60.

and assure the maintenance of a sound tax base in the six towns involved. 33

The legislation which emerged to accommodate these site-specific problems was the "Cape Cod formula." 34 This "formula" was a statutory scheme that created, in effect, federal zoning in the form of indirect federal control over local land use decisions. 35

The Act establishing the Cape Cod National Seashore was a departure from the past federal policy governing the creation of national parks. It was the first time a national park was located in close proximity to a major metropolitan area. Moreover, the Seashore at Cape Cod represented the first attempt by the federal government to buy national park land, the necessary monies being appropriated through the Land and Water Conservation Fund. 36 The statutory framework setting forth the federal authority to administer this site-specific innovative concept is outlined below.

A. Statutory Framework

Federal control over land use activity in the Cape Cod National Seashore is maintained by empowering the Secretary of the Interior to condemn all privately owned lands until the towns within the Seashore have enacted zoning bylaws which conform to federal standards. 37 The Act specifically authorizes the Secre-
tary to acquire by condemnation, or by other means,38 private property located within the boundaries of the Seashore. The power of the Secretary to condemn "improved properties,"39 defined as properties consisting of one family dwellings erected prior to September 1, 1959, is suspended within a town once the town's zoning ordinance is approved by the Secretary.40

The Act also gives the National Park Service control over land uses that are incompatible with the purpose of the Seashore by allowing condemnation of "improved property" when a zoning variance has been improperly granted by a town. The suspension of the Secretary's power to condemn "improved property" is lifted if the zoning variance was not previously approved by the Secretary.41 Condemnation is also authorized if an owner of an "improved property" violates a town zoning ordinance.42 Through these statutory provisions, the Act gives the Secretary the power and the discretion to enforce town zoning ordinances. The substance of the ordinances are therefore guided, if not written, by the Secretary of the Interior.

The Secretary's power to condemn commercial and industrial properties within the Seashore is somewhat different from his power to take "improved property." The Secretary's power to condemn commercial and industrial properties is suspended during the periods for which those property uses are allowed by the Secretary, as well as during the application period for obtaining

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38 16 U.S.C. § 459b-1 (a) (1982). "Other means" may include acquisition by purchase, gift, transfer from any federal agency, exchange, or otherwise. Id. "Improved properties" are defined by the Act as:

[A] detached one-family dwelling the construction of which was begun before September 1, 1959 ... together with so much of the land on which the dwelling is situated, the said land being in the same ownership as the dwelling, as the Secretary shall designate to be reasonably necessary for the enjoyment of the dwelling for the sole purpose of noncommercial residential use, together with any structures accessory to the dwelling which are on the land so designated. The amount of land so designated shall in every case be at least three acres in area, or all of such lesser amount as may be held in the same ownership as the dwelling, and in making such designation as the Secretary shall take into account the manner of noncommercial residential use in which the dwelling and land have customarily been enjoyed: Provided, however, that the Secretary may exclude from the land so designated any beach or waters together with so much of the land adjoining such beaches or waters as the Secretary may deem necessary for public access thereto.


40 Id. at § 459b-3(b).

41 Id. at § 459b-4(d) (1).

42 Id. at § 459b-4(d) (2).
permission to continue such uses.\textsuperscript{43} Thus, commercial and industrial uses within the Seashore continue to exist essentially at the Secretary's discretion.

The Secretary's power of condemnation remains in effect if a Seashore town fails to enact zoning bylaws, or if the zoning laws do not meet the Secretary's standards for approval. Congress directed that the contents of these standards be essentially a matter for the Secretary's discretion.\textsuperscript{44} The Act, however, does state that the standards shall:

\begin{quote}
[C]ontribute to the effect of (1) prohibiting the commercial and industrial use, other than commercial or industrial use which is permitted by the Secretary, of all property within the boundaries of the seashore ... and (2) promoting the preservation and development, in accordance with the purposes of this Act, of the area comprising the seashore, by means of acreage, frontage, and setback requirements and other provisions which may be required by such regulations to be included in a zoning bylaw consistent with the laws of Massachusetts.\textsuperscript{45}
\end{quote}

The combination of the Secretary's power to condemn and his authority to set standards allows federal administrative control over the content and enforcement of local zoning laws.

In the event that the Secretary chooses to condemn "improved property," the Act presents a variety of options to allow an owner to retain the use of his land. For example, the owner of an "improved property" subjected to condemnation may elect to retain the use of the land for up to twenty-five years,\textsuperscript{46} or for a term ending at the death of the owner.\textsuperscript{47} The owner of a life estate in an "improved property" may similarly retain the use of his land, provided the election is exercised with the agreement of the remainderman.\textsuperscript{48} The rights of use for owners of condemned "improved properties" are freely alienable and transferable.\textsuperscript{49}

This statutory scheme allows monitoring of the activities of in-park land holders. It theoretically authorizes condemnation for

\begin{footnotes}
\item[43] Id. at § 459b-3(c).
\item[44] Id. at § 459b-4(a). Specifically, the Act provides "As soon as possible after the enactment of this Act as may be practical, the Secretary shall issue regulations specifying standards for approval by him of zoning bylaws for the purposes ... of this Act." Id.
\item[45] Id. at § 459b-4(b).
\item[46] Id. at § 459b-3(a)(1).
\item[47] Id. at § 459b-3(a)(2).
\item[48] Id. at § 459b-3(a)(3).
\item[49] Id. at § 459b-3(a)(6).
\end{footnotes}
violations of those national park policies set forth in the federal regulations and ultimately embodied in the local zoning ordinances. At other national park sites, the Secretary of the Interior has authority to condemn private property uses which conflict with park policies, but condemnation may be exercised only under the rubric of the general power to acquire property for park holdings. By authorizing condemnation for violations of park policies, the Cape Cod formula puts landowners on notice that incompatible uses may result in a loss of the owner's land. Thus in theory, if not in practice, this statutory scheme discourages development schemes which would subvert the congressional intent to preserve the Seashore region of Cape Cod.

B. Federal Zoning Regulations—Indirect Federal Control Of Local Land Use Decisions

The Act of Congress establishing the Cape Cod National Seashore specified that the Secretary of the Interior shall issue agency regulations that prescribe standards for the approval of local zoning bylaws. The Secretary was directed to set standards which discouraged industrial and commercial uses, while encouraging preservation through minimum acreage, frontage, and set-back requirements. The Act accorded the Secretary considerable discretion in the approval of zoning bylaws and in the condemnation of nonconforming properties or properties for which a variance had been improperly granted.

The regulations for the Cape Cod National Seashore were adopted by the Secretary of the Interior in July of 1962. Three underlying purposes emerge from the language of the regulations: 1) preserving the natural and scenic features of the Cape Cod coastline; 2) affording a recreational facility to Seashore visitors; and 3) protecting the interests of property owners who lived

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50 The same statutory framework employed to establish the Cape Cod National Seashore was authorized for the Fire Island National Seashore in New York. See 16 U.S.C. § 459e (1982). Its administration at Fire Island, however, is apparently less successful than at Cape Cod. SHANDS & HEALY, supra note 3, at 181.
51 See, e.g., Point Reyes National Seashore, 16 U.S.C. § 459c (1982); Assateague Island National Seashore, 16 U.S.C. § 459f (1982). Congress granted only a general power to acquire property for both these Seashore areas.
53 Id. at § 459b-4(b)(1),(2). See supra text and notes at notes 44-45.
54 Id. at § 459b-4(c).
in the Seashore region prior to the authorization of the park by Congress.

Preservation of the natural and scenic features of Cape Cod is a predominant theme of the regulations. The regulations prescribe that local zoning ordinances should protect scenic, scientific and cultural values, while preserving undeveloped areas in their natural condition. The regulatory framework prohibits the existence of the commercial and industrial districts in the local zoning bylaws and mandates preservation "by means of acreage, frontage, and setback requirements which may be required to be included in zoning bylaws." Restrictions are also placed on burning of cover, cutting of timber, land filling, removal of soil, and dumping, storage or piling of refuse.

The regulations also allude to recreational uses of the Seashore. The statement of general objectives appearing in the regulations expressly requires that "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." Moreover, the regulations authorize traditional fishing activities and boathouses as accessory structures.

The interests of existing property owners are also protected by the regulations which authorize the continuation of residential and some commercial uses of "improved properties." The permissible commercial uses encompass mostly home occupations, including professional offices, artist studios, and guest houses. Traditional agricultural uses and accessory structures are also

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56 Id. at § 27.3(b).
57 Id. at § 27.2.
58 Id. at § 27.1(b)(2).
59 Id. at § 27.3(d).
60 Id. at § 27.1(a). The regulations for the Cape Cod National Seashore emphasize recreational uses to a lesser extent than the Fire Island National Seashore standards. 36 C.F.R. § 28 (1983). Those regulations state that the widest possible public use "contemplates a broad range of outdoor recreational activities, including, but not limited to hiking, boating, swimming, fishing, picnicking, nature study, and any such activities." Id. at § 28.1(a).
62 Id. at § 27.3(e)(2).
63 Id. at § 27.3(e).
64 Id. at § 27.3(e)(1). The regulations evidently envision the acquiescence in these limited commercial uses. For example, they authorized "the rental of rooms and serving of meals by residents of the premises to overnight guests." Id.
65 Id. at § 27.3(e)(4).
66 Id. at § 27.3(e)(2).
allowed. The regulations permit the use of signs which do not exceed two square feet in area and which are not directly illuminated.\textsuperscript{67} The regulations also suggest favorable treatment for landowners who fall victim to a natural phenomenon, such as erosion, which causes him to move, reconstruct or alter his "improved property."\textsuperscript{68}

Finally, the regulations authorize local zoning bylaws to provide for variances from the zoning ordinance.\textsuperscript{69} The Secretary must receive notice of each variance granted by a town.\textsuperscript{70} If notice of the variance is not received, or if the nature of the variance is inconsistent with the preservation and development of the Seashore, the Secretary may acquire the land in question through his power of condemnation.\textsuperscript{71}

\textbf{C. The Zoning Bylaws—Federal Control At The Local Level}

The zoning bylaws of the towns located within the Seashore vary in their methods of compliance with the federal standards. The zoning bylaws of Chatham, Eastham, and Truro describe permitted uses in a paragraph format.\textsuperscript{72} The zoning bylaws of Wellfleet and Provincetown regulate by means of a land use schedule or matrix.\textsuperscript{73} The schedule or matrix indicates whether a particular use is permitted, not permitted, or requires a special

\textsuperscript{67} \textit{Id.} at § 27.3(c)(3). The use of signs is limited to those which refer to the occupancy, sale or rental of the property.

\textsuperscript{68} \textit{Id.} at § 27.3(c)(2). The regulations provide that "[i]f 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 zoning authorities may ... determine whether a proposed move, reconstruction, alteration, or (sic) enlargement of an existing residential dwelling or accessory structure would subject the property to acquisition by condemnation." \textit{Id.}

\textsuperscript{69} \textit{Id.} at § 27.4.

\textsuperscript{70} \textit{Id.} at § 27.4(c).

\textsuperscript{71} \textit{Id.} at § 27.4(b).

\textsuperscript{72} See United States v. Certain Lands in Truro, 476 F. Supp. 1031, 1034 (D. Mass. 1979). The decision contains a short review of the events that took place regarding the suggested zoning requirements for the towns within the Seashore.

\textsuperscript{73} The land use schedule matrix simply lists a large number of conceivable uses and cross sections those uses with each land use district in the town. At the intersection between the use and the district, the bylaws note whether the use is permitted, permitted only by special permit, or not permitted. This system is to be compared with describing in paragraph form the permitted and nonpermitted uses in each district. Because many more land uses are included in the matrix, the paragraph format used by Chatham, Eastham, and Truro gives less notice on the permissibility of particular uses. The paragraph approach does, however, outline the permissible and impermissible uses in greater detail.
TABLE I
FEDERAL STANDARDS ADOPTED BY LOCAL ZONING BYLAWS

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<th>Provincetown</th>
<th>Truro</th>
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<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>Public Utilities</td>
</tr>
<tr>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>Municipal, Religious, and Educational Uses</td>
</tr>
<tr>
<td>SP</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>One Family Detached Dwellings and Accessory Structures</td>
</tr>
<tr>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>Burning Cover</td>
</tr>
<tr>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>Landfilling, Dumping, or Removal of Soil</td>
</tr>
<tr>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>Timber Cutting by Other than Owner</td>
</tr>
<tr>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>Buildings or Structures</td>
</tr>
<tr>
<td>N</td>
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<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>Commercial or Industrial Ventures</td>
</tr>
<tr>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>Draining, Damming or Relocation of a Stream</td>
</tr>
<tr>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>Storage of Materials</td>
</tr>
<tr>
<td>P</td>
<td>P</td>
<td>P</td>
<td></td>
<td></td>
<td></td>
<td>Agriculture</td>
</tr>
</tbody>
</table>

P = Permitted Use
N = Non-permitted Use
SP = Special Permit Required
X = Provision Included in Bylaws.
Blank spaces denote that the bylaw is silent regarding the particular requirement.
permit by crossing a number of land uses against each zoning district. The zoning bylaws of Orleans combine the two approaches. The paragraph format is advantageous in that it allows greater specificity in defining permissible conduct. On the other hand, the land use matrix has the capacity to list a greater number of uses, and thus regulates, albeit in less detail, a broader range of land uses.

Table I provides a comparison of the various zoning ordinances with the minimum federal standards set forth in the regulations. The bylaws of each town, with the exception of Wellfleet and Provincetown, contain essentially the same prohibitions and use similar statutory language. Each set of bylaws, except for Provincetown, includes a general purpose section which relates the objectives of the zoning bylaws to the Congressional intent in enacting the Act authorizing the Seashore. Using essentially similar language, each town's bylaws permit: 1) the conservation of natural resources; 2) federal facilities for the public use and administration of the Seashore; 3) recreational uses; 4) traditional fishing activities; 5) moving, alteration, enlargement, maintenance and repair of existing buildings which comply with

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74 ORLEANS, MASS., ZONING BYLAW § 3:5 (amended 1983). See supra note 73. See infra text and note at note 92.

75 Table I is derived from the zoning bylaws of each of the Seashore towns. CHATHAM, MASS. PROTECTIVE BYLAW § 3.5 (amended 1982); EASTHAM, MASS., ZONING BYLAWS, RULES & REGULATIONS § V-B (1980); ORLEANS, MASS., ZONING BYLAW § 3:5 (amended 1983); PROVINCETOWN, MASS., ZONING BYLAWS, art. 1, § 1110 (1979); TRURO, MASS., ZONING BYLAWS § VII (1978); WELLFLEET, MASS., ZONING BYLAWS § 3.1 (1980). Blank spaces in the Table signify that the particular ordinance is silent on that requirement.

76 See, e.g., ORLEANS, MASS., ZONING BYLAWS § 3:5-1 (amended 1983). That section reads:

The Seashore Conservancy District is intended to further preservation of the Cape Cod National Seashore in accordance with the purposes of the Act of Congress of August 7, 1961 ... to prohibit commercial and industrial uses therein; to preserve and increase the amenities of the Town; and to conserve natural conditions, wildlife and open spaces for the education, recreation and general welfare of the public.

Id.

77 See, e.g., CHATHAM, MASS., PROTECTIVE BYLAW § 3.5 (amended 1982).

78 See, e.g., EASTHAM, MASS., ZONING BYLAWS, RULES & REGULATIONS § V-B(2) (1980).

That section provides:

Facilities deemed by the Secretary of the Interior to be necessary for the administration and public use and enjoyment of the Cape Cod National Seashore or deemed to be necessary by the Town of Eastham.

Id.


80 See, e.g., id. at § VII(1)(e).
setback requirements;⁸¹ 6) public utilities;⁸² 7) religious, municipal and educational uses;⁸³ and 8) one family detached buildings and accessory structures.⁸⁴ The bylaws of Wellfleet and Provincetown do not employ the same statutory language to describe these permitted uses within their town boundaries. The difference stems from the use by these towns of the land use matrix to govern land uses.

The bylaws of the Seashore towns also enumerate similar non-permitted uses of land; although Wellfleet and Provincetown again diverge from the boilerplate statutory language employed by the other four towns. As reflected in Table I, the following uses are generally not permitted: 1) burning of cover;⁸⁵ 2) landfilling, removal of soil, and dumping;⁸⁶ 3) cutting of timber;⁸⁷ 4) building

⁸¹ See, e.g., EASTHAM, MASS., ZONING BYLAWS, RULES & REGULATIONS § V-B(8) (1980). That section reads as follows:
Moving, alteration, enlargement, maintenance, or repairs of existing one-family residential dwellings or the erection of customary structures which will be accessory to the existing principal residential use provided that such improvements to existing dwellings and the erection of accessory structures will afford not less than a fifty-foot setback from all streets and a twenty-five foot distance from abutter's property lines, and do not alter the essential character of the dwelling as a residence. In appropriate cases, the Board of Appeals may approve lesser setback or side yard requirements for improvements to existing dwellings or for the erection of accessory structures, provided they do not alter the residential character of the premises.

⁸² See, e.g., id. at § V-B(10).

⁸³ See, e.g., ORLEANS, MASS., ZONING BYLAW § 3:5-1-7 (amended 1983).

⁸⁴ See, e.g., TRURO, MASS., ZONING BYLAW § VII(1)(f) (1978). That section provides:
Uses of existing dwellings as residences and accessory uses customarily incidental to the principal residential use on the same premises, providing such uses are not detrimental to a residential neighborhood and do not alter the essential character of the dwelling as a residence. Residential uses of dwellings may include the renting of rooms and furnishing of board of residents of the premises to overnight guests, if such uses to not alter the essential character of the dwelling as a residence.

⁸⁵ See, e.g., CHATHAM, MASS., PROTECTIVE BYLAW § 3.52 (amended 1982).

⁸⁶ See, e.g., PROVINCETOWN, MASS., ZONING BYLAW § 1410 (1978).

⁸⁷ See, e.g., WELLFLEET, MASS., ZONING BYLAW § 6.9 (1980). That section provides:
Within the National Seashore Park District there shall be no cutting of timber except for the following reasons:
(a) by an owner for the purpose of reasonably controlling brush or trees
(b) maintenance in cutting pastures
(c) cutting for clearance or maintenance on right-of-way including those pertaining to public utilities or public highways
and structures;88 5) commercial or industrial ventures;89 6) drain­
ing, damming, or relocating a stream,90 and 7) storage of mater­
ials.91 Wellfleet's zoning bylaw is silent regarding the prohibi­
tions on landfilling and the damming or relocation of streams. Provincetown's bylaws make no mention of disallowing buildings or structures.

Some of the town bylaws place restrictions on uses that go beyond those suggested in the federal regulations. Prohibitions in the zoning bylaws of Orleans are illustrative. Orleans' bylaws prohibit hospitals, boys and girls camps, kennels and a mass of other uses not contemplated by the federal regulations.92 The towns of Orleans, Wellfleet and Provincetown, which use the land use matrix to regulate zoning, provide many more use restric­
tions than do the other towns. The matrix includes many uses which were not contemplated by the Secretary in promulgating the regulations.93

The federal regulations require no specific lot size dimensions for the local zoning ordinances. They call only generally for “pres­
ervation and development ... by means of acreage, frontage and setback requirements.”94 The regulations do, however, prohibit moving, alteration or enlargement of existing structures “if such [moving, alteration, or enlargement] would afford less than a 50 foot setback from all streets ... and a 25 foot distance from the abutters' property.”95 It appears that the latter regulation formed the basis for the minimum lot size dimensions for the zoning bylaws of the Seashore towns.

The lot dimension requirements of the six Seashore towns are provided in Table II.96

Lot sizes in each town are required to be at least three acres, except for those in Provincetown which must meet the minimum

89 See, e.g., ORLEANS, MASS., ZONING BYLAW § 3:5-2-5 (amended 1983).
90 See, e.g., CHATHAM, MASS., PROTECTIVE BYLAW § 3.52(6) (amended 1982).
91 See, e.g., PROVINCETOWN, MASS., ZONING BYLAW § 1410 (1978).
93 See supra text and note at note 73.
94 36 C.F.R. § 27.1(b) (1983).
95 Id. at § 27.3(e)(1).
96 The information in Table II was derived from the zoning bylaws of the seashore towns. See supra note 75. Blank spaces in Table II signify that the particular ordinance is silent in that lot size requirement.
<table>
<thead>
<tr>
<th>Town</th>
<th>Lot Size</th>
<th>Frontage</th>
<th>Side Yard Setback</th>
<th>Front Yard Setback</th>
<th>Back Yard Setback</th>
<th>Stories</th>
<th>Height</th>
<th>Minimum Amount Above Mean High Water Mark</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chatham</td>
<td>3 Acres</td>
<td>150 ft.</td>
<td>50 ft.</td>
<td>50 ft.</td>
<td>50 ft.</td>
<td></td>
<td></td>
<td>20 ft.</td>
</tr>
<tr>
<td>Orleans</td>
<td>3 Acres</td>
<td>150 ft.</td>
<td>50 ft.</td>
<td>50 ft.</td>
<td>50 ft.</td>
<td></td>
<td></td>
<td>20 ft.</td>
</tr>
<tr>
<td>Eastham</td>
<td>3 Acres</td>
<td>150 ft.</td>
<td>25 ft.</td>
<td>50 ft.</td>
<td>25 ft.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wellfleet</td>
<td>3 Acres</td>
<td>200 ft.</td>
<td>35 ft.</td>
<td>50 ft.</td>
<td>35 ft.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Truro</td>
<td>3 Acres</td>
<td>150 ft.</td>
<td>25 ft.</td>
<td>50 ft.</td>
<td>25 ft.</td>
<td>3</td>
<td>35 ft.</td>
<td></td>
</tr>
<tr>
<td>Provincetown</td>
<td>120,000 sq. ft.</td>
<td>25 ft.</td>
<td>50 ft.</td>
<td>25 ft.</td>
<td>3</td>
<td>35 ft.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Blank spaces denote that the bylaw is silent regarding the particular requirement.
lot size of 120,000 square feet. Four towns have frontage requirements of 150 feet, and Wellfleet requires at least 200 feet of frontage. Side yard setbacks range from fifty feet to twenty-five feet. Each of the six towns require a fifty foot front yard setback. In addition, Orleans and Chatham require that buildings be situated at least twenty feet above the mean high water mark.

IV. CONSTITUTIONAL VALIDITY OF THE CAPE COD FORMULA

The validity of the Act establishing the Cape Cod National Seashore and its federal regulation of local land use decisions has not yet been challenged.\(^97\) The constitutionality of the similar statutory scheme at the Fire Island National Seashore has been attacked, and an evaluation of the constitutional claims of that case may be instructive.

In *United States v. 16 of an Acre of Land*,\(^98\) a defendant landowner asserted three constitutional arguments against the Fire Island National Seashore Act. First, the defendant asserted that the summary taking of his land through a filing of a declaration of taking\(^99\) constituted a taking of his property without due process of law.\(^100\) Second, the defendant claimed that the Fire Island National Seashore Act granted the Secretary excessive discretion in the determination of which homes were "improved properties," subject to the Secretary's power of condemnation.\(^101\) Finally, the defendant argued that the Secretary's use of condemnation to override a town's decision to grant a zoning variance entrenched upon an integral state governmental function, thus violating the Tenth Amendment to the United States Constitution.\(^102\)

The Court in *16 Acres* quickly disposed of defendant's first contention that a declaration of taking violates the due process clause of the Fifth Amendment to the United States Constitu-

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\(^97\) The constitutionality of a National Park Service regulation banning nude bathing withstood a challenge from bathers at the Cape Cod National Seashore in Truro. Williams v. Kleppe, 539 F.2d 803 (1st Cir. 1976). The constitutionality of the statutory scheme for the Cape Cod National Seashore, however, was not at issue in Kleppe.


\(^99\) A declaration of taking is a process through which title in property automatically vests in the United States once the declaration is filed and monies are deposited with the court. 40 U.S.C. § 258a (1982). See infra text and notes at notes 177-80. The declaration of taking has been used at the Cape Cod National Seashore when an urgent threat to the environment mandates immediate possession by the government.

\(^100\) 517 F. Supp. at 1121.

\(^101\) Id. at 1122.

\(^102\) Id.
tion. The Act governing declarations of taking expressly provides that title to property shall pass to the government upon filing the declaration and payment of compensation to the court. An advance determination of the propriety of the taking is not required. The validity of declarations of taking has long been established. The basis of the Act’s validity is that property has not been deprived without due process because the Act provides for the payment of just compensation. Undoubtedly, an argument against this method of summary disposition of property would similarly fail if made in the context of a challenge to the Act establishing the Cape Cod National Seashore.

The second constitutional challenge in the .16 Acres case concerned the delegation of duties by Congress to the Secretary of the Interior. Defendant argued, in effect, that Congress delegated too much discretion to the Secretary of the Interior regarding which property the Secretary could condemn. Since the United States Supreme Court’s decision in United States v. Shreveport Grain & Elevator Co., the Court has repeatedly recognized as valid the delegation of Congressional powers to administrative agencies when that delegation is accompanied by clear, meaningful standards for agency decisions. However, the delegation of legislative authority without standards is common, and has been nonetheless upheld under judicial attack.

The weakness of defendant’s argument in the .16 Acres case is

103 The Fifth Amendment to the United States Constitution in part provides “No person shall ... be deprived of life, liberty or property without due process of law....” U.S. CONST. amend. V.
106 Travis, 287 F.2d at 919.
107 287 U.S. 77 (1932). The Court stated:
That the legislative power of Congress cannot be delegated is, of course, clear. But Congress may declare its will, and after fixing a primary standard, devolve upon administrative officers the “power to fill up the details” by prescribing administrative rules and regulations.

Id. at 85.
108 Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381 (1940); Cf Panama Refining Co. v. Ryan, 293 U.S. 388 (1935).
that Congress defined the term "improved property" in the Act establishing the Fire Island National Seashore, as it has done for the Cape Cod National Seashore. The only real discretion left to the Secretary at Fire Island was the amount of land under two acres that could be deemed a part of the property for "improved property" status. Considering that Congress intended to devise legislation which would take into account the specific land use needs of the region, the discretion involved is not only consistent with the purpose of the Act, it is also desirable for planning purposes. As the *16 Acres* court noted, legislative delegation to agencies with broader discretionary powers has been repeatedly upheld.

Finally, the defendant in *16 Acres* asserted that the Act establishing the Fire Island National Seashore violates the Tenth Amendment to the United States Constitution. Defendant argued specifically that the Secretary's use of the condemnation power to override a zoning board's decision to grant a variance

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111 The Act defines "improved property" as:

Any building, the construction of which was begun before July 1, 1963, and such amount of land, not in excess of two acres in the case of a commercial or industrial use, on which the building is situated on which as the Secretary considers reasonably necessary to the use of the building: Provided, That the Secretary may exclude from improved properties any beach or waters, together with so much of the land adjoining such beach or waters as he deems necessary for public access thereto.


112 *See supra* note 38.

113 The court in *16 Acres* stated:

In light of the statutory standards, the vesting of discretion in the Secretary does not constitute an unconstitutional delegation of Congressional authority. Even "very broad" congressional delegation of discretionary authority have been sustained. *Citizens Committee for the Hudson Valley v. Volpe*, 425 F.2d 97, 106-07 (2d Cir.), *cert. denied*, 400 U.S. 949, 91 S.Ct. 237, 27 L.E.2d 256 (1970).

*16 Acres*, 517 F. Supp. at 1122.

114 The issue presented is not whether Congress exceeded its constitutional powers by enacting the legislation establishing the Seashore. Congress would very likely have that power under the commerce clause. *See National League of Cities v. Usery*, 426 U.S. 833, 840-41 (1976); *Hodel v. Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. 264, 283 (1981); *Federal Energy Regulatory Comm'n v. Mississippi*, 456 U.S. 742, 753-54 (1982). In the alternative, Congress would have the power to establish the statutory scheme under the property clause. *See Kleepe v. New Mexico*, 426 U.S. 529 (1976). Rather, the question is whether the Act conflicts with the Tenth Amendment to the United States Constitution. The tenth amendment provides:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

U.S. CONST. AMEND. X.
violated the tenth amendment. The defendant could also have claimed that the Act violated the tenth amendment by delegating to a federal administrator the power to set standards for local zoning ordinances; thereby essentially dictating the content of the ordinances.

Under the decision of the United States Supreme Court in National League of Cities v. Usery, the constitutional argument is persuasive. Usery involved a challenge to the 1974 amendments to the Fair Labor Standards Act, which extended the minimum wage and maximum hour workplace requirements to state and local governments. The Court found those amendments to be within the power of Congress under the commerce clause, but to nonetheless violate the tenth amendment by regulating, not private citizens but the states as states. In reaching this conclusion, the Court reasoned that the money involved in paying state and local workers would affect the allocation of funds for police and fire protection, accepted employment practices, sanitation, public health, and parks and recreation.

It concluded:

If Congress may withdraw from the States the authority to make those fundamental employment decisions upon which their systems for performance of these functions must rest, we think there would be little left of the States' "separate and independent existence."

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115 517 F. Supp. at 1122.
116 426 U.S. 833 (1976). The reader should be aware that the Supreme Court has indicated its willingness to review entirely the interpretation of the tenth amendment in Usery. Following initial oral arguments in Donovan v. San Antonio Metropolitan Transit Authority, the court ordered the parties to make new arguments, indicating that Usery and its progeny may be abandoned in favor of a new approach which defines the parameters of state sovereignty under the Constitution. See Donovan v. San Antonio Metropolitan Transit Authority, Lab Cas. (CCH) (W.D. Tex. Nov. 17, 1981), cert. granted, 52 U.S.L.W. 3937 (U.S. July 5, 1984) (No. 82-1951).
117 The Acres court did not find the argument under Usery persuasive. The court suggested that Usery "said that federal legislation and regulation must not tread upon certain integral governmental functions of the individual states." The court then cited Justice Blackmun's concurrence that Usery "does not outlaw federal power in areas such as environmental protection, where the federal interest is demonstrably greater and where state facility compliance with imposed federal standards would be essential." 517 F. Supp. at 1122. (citations omitted)
118 426 U.S. at 845.
119 Id.
120 Id. at 850.
121 Id.
122 Id. at 851.
123 Id.
124 Id.
125 Id. at 851.
To take the language of the Usery Court at face value, a Congressional enactment that regulates such a traditionally local government function as land use regulation,126 may well be invalid under Usery. Thus, if Usery stood alone in tenth amendment jurisprudence, the Cape Cod National Seashore might not survive a constitutional challenge pursuant to Usery.

The Supreme Court modified the effect of Usery in Hodel v. Virginia Surface Mining and Reclamation Association.127 In Hodel, appellees had been successful below in a tenth amendment challenge to the Surface Mining Act based on the Court’s ruling in Usery. The Hodel Court distinguished the Surface Mining Act from the Fair Labor Standards Act amendments in Usery in that the former governed only the activities of private individuals and businesses,128 while the latter regulated the “States as States.” In reaching the conclusion that the Act did not violate the tenth amendment,129 the Court set forth the following standard to determine whether legislation amounted to a tenth amendment violation:

First, there must be a showing that the challenged legislation regulates the “States as States.” . . . Second, the federal regulation must address matters that are indisputably “attributes of state sovereignty.” . . . And third, it must be apparent that the States’ compliance with federal law would directly impair their ability “to structure integral operations in areas of traditional governmental functions.”130

Defendant’s argument in .16 Acres that the Secretary’s use of condemnation to override a town’s decision to grant a zoning variance may not, strictly speaking, violate the tenth amendment under Hodel. The power to condemn is not a power against a State; rather, it is initiated against an individual or property. Thus, defendant’s assertion would fail under the first prong of the test enunciated in Hodel. The power to set standards to which towns must comply in enacting zoning regulations would also survive the requirements of Usery and Hodel. While the Act gives the Secretary of the Interior the authority to govern the contents of the local zoning bylaws, the only enforcement mechanism is the Secretary’s power of condemnation, which is not invoked against the state.

128 Id. at 293.
129 Id. at 286.
130 Id. at 287-88 (citations omitted).
The decision which is most persuasive is *Federal Energy Commission v. Mississippi*.\(^{131}\) In *F.E.R.C.*, the issue presented before the Court was the extent to which the federal government may use state regulatory machinery to advance federal goals. The challenge was directed against the Public Regulatory Policies Act of 1978 (PURPA), which according to the Court, contained three basic requirements:

1. § 210 has the States enforce standards promulgated by FERC; 
2. Titles I and III direct the States to consider specified rate making standards; and 
3. Those Titles impose certain procedures on state commissions.\(^{132}\)

The Act establishing the Cape Cod National Seashore most closely parallels this type of statutory scheme. The Cape Cod formula, like PURPA, anticipates that the towns will enforce zoning violations. The Cape Cod formula also resembles PURPA in that it does not require towns to comply with federal standards for zoning. Of course, if the towns do not comply with the federal standards, the Secretary has the power to condemn private land holdings.

The *F.E.R.C.* Court upheld PURPA under the tenth amendment challenge. Its reasoning applies to the constitutional issues of the Cape Cod formula:

*We recognize, of course, that the choice put to the States—that of either abandoning regulation of the field altogether or considering the federal standards—may be a difficult one . . .* Yet in other contexts the Court has recognized that valid federal enactments may have an effect on state policy—and may, indeed, be designed to induce state action in areas that otherwise would be beyond Congress' authority.\(^{133}\)

Indeed, it may be a difficult choice for a town whether to enact complying zoning bylaws or having its residential lands condemned. Yet, the Cape Cod formula is probably the type of legislation to which the Court intended to refer, which is valid although designed to induce state action in an area otherwise beyond congressional authority.\(^{134}\)

It could be argued that the Act establishing the Cape Cod National Seashore allows the Secretary to dictate the contents of

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\(^{131}\) 456 U.S. 742 (1982).  
\(^{132}\) *Id.* at 759.  
\(^{133}\) *Id.* at 766 (citations omitted).  
\(^{134}\) The Act circumvents the power of the state to enact zoning ordinances. See *supra* note 35.
local zoning bylaws and override variance decisions, thus regulating the "States as States" in such a way as to violate the Tenth Amendment to the United States Constitution. From a purely practical perspective, however, a court would be hard pressed to invalidate the Cape Cod statutory scheme, as it has been in effect for nearly twenty-five years.

V. LAND USE POLICY: THE PAST AND CURRENT STATUS OF CAPE COD'S LAND ACQUISITION AND LAND PROTECTION POLICIES

The land use policy anticipated by Congress when it enacted the Act establishing the Cape Cod National Seashore was a simple one: federal control over the use and development of privately owned land through threat of condemnation. This policy has been modified by the budget cuts and policy changes of the present administration. As a result of these policy changes, the administration of the Cape Cod National Seashore is considering a land protection plan as an alternative to outright condemnation of property. Some lands under the land protection plan will nonetheless remain subject to acquisition in fee.

When Congress enacted the legislation authorizing the Cape Cod National Seashore, it appropriated $16,000,000 to cover the costs of acquiring property interests. That ceiling was raised by Congress in May of 1979 to $33,500,000. A bill was recently passed in October of 1983 to again raise the acquisition level to $42,917,575.

Congress never intended for the National Park Service to acquire title in fee to all lands within the Seashore. Indeed, the 1970 Master Plan for the Cape Cod National Seashore anticipated acquiring no more than 28,910 acres of the total 43,524 acres of Seashore land. Inholdings, privately owned land within the Seashore, were an expected and desired element of the legislative design of the park. The intention was to preserve the status quo of the percentage of improved lands as of September 1, 1959. There-

135 See supra text and notes at notes 27-51.
139 MASTER PLAN, supra note 22, at 51.
fore, all land on which construction had commenced after September 1, 1959 was to be condemned. Homes on which construction had commenced before that date could be maintained as long as owners did not later threaten the natural resources of the Seashore through the further development of their land.140

At the time the Seashore was proposed, the State of Massachusetts owned approximately 16,000 acres of surface and submerged lands within the Seashore region.141 The Department of Defense owned some 2,737 acres of property in the Seashore.142 The remaining 28,747 acres were primarily privately held, although some of that acreage was owned by towns as beach and landing areas.

The State of Massachusetts donated approximately 4,070 acres of land to the Cape Cod National Seashore in 1963, and Massachusetts now owns approximately 11,930 acres of tidal or submerged lands within the Seashore.143 Federal agencies other than the National Park Service own approximately 16,052 acres of Seashore property.144 The towns now own about 2,128 acres of land located within the Seashore, not including land held as rights-of-ways for public roads.145 Private land accounts for only 1,828 acres, and 456 acres of that private land remain subject to final condemnation actions.146

Table III displays the amount of money spent and the amount of acreage acquired and disposed of for each method of acquisition of interests in fee as of December 31, 1983.147

Table IV denotes the amount of money spent and acreage involved for the acquisitions of scenic easements and rights-of-way as of December 31, 1983.148

The National Park Service has acquired 26,810.38 acres of the original 28,910 acres which it anticipated acquiring in the 1970 Master Plans. When combined with the 328.92 acres of acquired

140 SUPERINTENDENT CAPE CODE NATIONAL SEASHORE, LAND ACQUISITION PLAN (Mar. 27, 1980) at 9-11 (available from Cape Cod National Seashore Administrative Offices).
141 Telephone Interview with Jim Killian, Land Acquisition Supervisor, at Cape Cod National Seashore (Apr. 30, 1984).
142 S. REP., supra note 11, at 2221.
143 See Table VI.
144 These figures were obtained from the Land Acquisition Division of the National Park Service Regional Office in Boston, Mass.
145 See supra note 140.
146 Id.
147 See supra note 144.
148 Id.
TABLE III

INTERESTS IN FEE: AMOUNT SPENT AND ACREAGE

<table>
<thead>
<tr>
<th>Method of Acquisition</th>
<th>Amount</th>
<th>Acreage</th>
<th>Disposed Acreage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchase</td>
<td>21,071,737.00</td>
<td>10,948.31</td>
<td></td>
</tr>
<tr>
<td>Condemnation</td>
<td>9,962,914.25</td>
<td>2,315.53</td>
<td></td>
</tr>
<tr>
<td>Taking</td>
<td>2,894,614.00</td>
<td>2,695.36</td>
<td></td>
</tr>
<tr>
<td>Donation</td>
<td>10,645.36</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exchange</td>
<td>27,750.00</td>
<td>111.83</td>
<td></td>
</tr>
<tr>
<td>Transfer</td>
<td>22.93</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Federal Agencies</td>
<td>$146.93</td>
<td>146.93</td>
<td></td>
</tr>
<tr>
<td>Disposal/Exchange</td>
<td>400.0</td>
<td></td>
<td>76.26</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$33,957,420.75</strong></td>
<td><strong>26,886.38</strong></td>
<td><strong>76.26</strong></td>
</tr>
</tbody>
</table>

Total Acreage Acquired 26,810.12

TABLE IV

EASEMENTS: AMOUNT SPENT AND ACREAGE

<table>
<thead>
<tr>
<th>Method of Acquisition</th>
<th>Amount</th>
<th>Acquired</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchase</td>
<td>$1,110.00</td>
<td>.10</td>
</tr>
<tr>
<td>Donation</td>
<td>323.16</td>
<td></td>
</tr>
<tr>
<td>Transfer</td>
<td>5.66</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$1,110.00</td>
<td>328.92</td>
</tr>
</tbody>
</table>

...the National Park Service has obtained a total of 27,139.04 acres at the Cape Cod National Seashore.

Most of the land acquisition for the Cape Cod National Seashore was completed by 1974,\(^{149}\) at which time the small number of remaining acquisitions was to be handled by the Regional National Park Service Office in Boston. In 1980, the Administration at Cape Cod prepared a Land Acquisition Plan\(^{150}\) for obtaining the remaining properties subject to acquisition as park property. The ownership or use and corresponding acreage of those lands appears in Table V.\(^{151}\)

Lands subject to acquisition were to be obtained in the following order: 1) pending civil actions; 2) post-1959 construction; 3) changes in use and zoning violations; 4) unimproved land in private ownership; 5) reduction of acreage on an opportunity basis; 6) tracts offered for sale; and 7) the lands owned by federal agen-

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\(^{149}\) Telephone Interview with Jim Killian, Land Acquisition Supervisor, National Park Service, at Cape Cod (Nov. 4, 1983).

\(^{150}\) See supra note 140.

\(^{151}\) Id. at 8.
TABLE V

<table>
<thead>
<tr>
<th>Ownership or Use</th>
<th>Acreage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial Uses</td>
<td>140.9</td>
</tr>
<tr>
<td>Federally owned land (agencies)</td>
<td>160.5</td>
</tr>
<tr>
<td>State owned land (tidal and submerged lands)</td>
<td>12,000.0</td>
</tr>
<tr>
<td>Local Government owned land</td>
<td></td>
</tr>
<tr>
<td>unimproved</td>
<td>2,121.0</td>
</tr>
<tr>
<td>roads</td>
<td>140.0</td>
</tr>
<tr>
<td>Undeveloped Lands</td>
<td>10.0</td>
</tr>
<tr>
<td>Parcels in excess of three acres</td>
<td>247.0</td>
</tr>
<tr>
<td>Post 1959 improved properties</td>
<td>13.0</td>
</tr>
<tr>
<td>Use changes and zoning violations</td>
<td>6.0</td>
</tr>
<tr>
<td></td>
<td>14,838.4</td>
</tr>
</tbody>
</table>

cies, state, and local governments. These priorities are basically sound. The Park Service should first acquire pending condemnations, although it seems more logical that properties involving zoning and use changes should be acquired before post-1959 improved properties. From a preservation standpoint, it follows that unimproved land and the reduction of acreage offers should be obtained prior to tracts offered for sale. But unless there is an immediate threat of injury to the environment, it seems more equitable to land holders to first purchase tracts offered for sale by owners. In this regard, the National Park Service should not forget that Congress intended to afford consideration to land owners within the Seashore boundaries.

Federal land use regulation through threat of condemnation was the innovative genius of Congress in creating the Cape Cod National Seashore in 1961. Yet according to the current administration, the creative genius of the 1960's may well have become the albatross of the 1980's. The cost of condemnation as a means of land use control may well exceed the value of the Seashore to some groups.

As a result of this cost-effective view of public lands, changes have occurred within the Department of the Interior with regard to the acquisition of lands for national parks. In fact, the Secretary of the Interior established a policy to cut back on land acquisition for programs funded through the Land and Water Conservation Fund—such as the Cape Cod National Seashore.

152 Id.
153 See supra text and notes at notes 31-36. See also note 21, point 4.
The policy directs the use of land use techniques other than acquisition in fee for areas previously authorized by Congress.

The policy statement, which was effective on May 5, 1982, provides:

[E]ach agency affected by the Policy is expected to make revisions in its policies and procedures as necessary and appropriate to reflect the direction of the general policy. This direction includes emphasis on responsiveness to Congressional mandates; cost effective alternatives to Federal fee simple purchase of private lands; improved cooperation with landowners, other federal agencies and State and local governments, and the private sector; and development of plans considering sociocultural impacts.154

As a result of this statement, and previous policy statements issued during the Reagan Administration, the Cape Cod National Seashore Administration is now designing a land protection plan.155 An integral part of the land protection plan will be guidelines which indicate to owners of improved properties the kinds of activities which constitute environmental threats sufficient to allow the Secretary to condemn an improved property. Early drafts of these guidelines prohibit reconstruction, alteration, or enlargement of an improved property which would violate either a fifty foot street setback or a twenty-five foot sideyard setback as required by the local zoning ordinances.156 The guidelines also preclude reconstruction, alteration or enlargement of over fifty percent of the existing enclosed floor space.157 Finally, the guidelines suggest condemnation for properties converting, reconstructing, altering, or enlarging an accessory structure for residential purposes.158 While the land protection plan may have been devised in response to the policy statement of the Secretary of the Interior, it appears that the acquisition of property through condemnation will remain the primary manner of land regulation.

VI. THE EFFECTS OF THE CAPE COD FORMULA

The consequences of establishing a Cape Cod National Seashore are many and varied. In terms of scenic protection, the Cape Cod

155 This land protection plan is an adaptation of the 1980 Land Acquisition Plan for the Cape Cod National Seashore. See supra note 140.
156 See supra note 140.
157 Id. at 16.
158 Id.
formula has been by and large successful. Portions of the coastline of Cape Cod remains uninterrupted by the commercial development that dominates the Atlantic east coast. Yet, the Cape Cod formula is not flawless. Serious questions remain as to its ability to protect the Seashore against residential and commercial development pressures.

A. The Cape Cod Formula—A Paper Tiger

The act authorizing the Cape Cod National Seashore attempted to use the federal power of condemnation as a means to regulate local land use activity. Oddly enough, it was the deficiencies in this statutory mechanism that allowed private landowners to selfishly create threats to the environment. While the Act gives the National Park Service sufficient muscle to control the use of land on which improvements were constructed after 1959, gaps in the statutory scheme exist for the control of uses of improved property. Moreover, the statutory mechanism gives the Secretary of the Interior only the power to condemn. With the exception of condemnation, the National Park Service is powerless to contain environmental threats to the natural resources of Cape Cod.

The Seashore has no power short of condemnation to control the activities of owners of land which are not classified as "improved properties." A case which addresses this point at the Fire Island National Seashore is Biderman v. Morton. In Biderman, fourteen Fire Island property owner sued the Secretary of the Interior, the National Park Service and the local government officials in Islip, Brookhaven, Ocean Beach and Saltaire to enjoin the issuance of, inter alia, building permits, zoning variances, and permits for construction within 100 feet of the dune line. The Court of Appeals for the Second Circuit noted that the only power of the federal defendants was that of condemnation. The court opined:

[As we have attempted to make clear, the federal government does not have what we characterize as “go ahead” power over the zoning decisions of the Seashore municipalities. The validity—the operative effect—of the local zoning ordinances, variances and amendments does not depend on the prior approval of the Secretary of Interior. He is

159 See supra text and notes at notes 37-51.
160 497 F.2d 1141 (2d Cir. 1974).
authorized merely to acquire by condemnation "improved property" not zoned in an appropriate manner.\textsuperscript{161}

The statutory power to condemn, both at Fire Island as well as Cape Cod, is, as a practical matter, conditioned upon the level of acquisition funds available to the respective administrations. The result of disarming the implementation of the Cape Cod Formula at Fire Island through a lack of funding was acknowledged by the Biderman court:

[i]ndeed with congressional funding essentially exhausted, it would appear rather meaningless to enjoin the federal defendants from exercising their limited, post-enactment approval authority for in no event could condemnation now result from that decision.\textsuperscript{162}

Moreover, the National Park Service has limited power to control the land use activities of owners of land classified as improved property. Improved property may be condemned by the Secretary of the Interior only upon two conditions: 1) if the property has been granted a variance or exception from the local zoning ordinance and the use fails to meet federal standards;\textsuperscript{163} or 2) if it fails to conform to or is inconsistent with the federal standards.\textsuperscript{164} In practice, land is often not condemned if those conditions have been met.\textsuperscript{165} The statutory provision which diminishes most of the Secretary's power reads that: "no use which is in conformity with the provisions of [the local zoning] bylaw shall be held to fail to conform or be opposed to or inconsistent with any such standard."\textsuperscript{166} Thus, if a local zoning board grants a building permit to an owner within the Seashore, and the permit complies with the zoning bylaws, there is nothing that either the Secretary of the Interior or the National Park Service can do to prevent construction.

The loophole in the statutory scheme has led to gross abuses by owners of such "improved properties." For example, in February of 1973, the building inspector for the Town of Truro issued a building permit for the renovation of an existing twenty by twenty-

\textsuperscript{161} Id. at 1147-48.
\textsuperscript{162} Id. at 1146.
\textsuperscript{164} Id. at § 459b-4(d)(2).
\textsuperscript{165} See O'Brien, Taxpayers are Coughing up Millions for Recent Construction in the Park, The Cape Codder, Sept. 30, 1976, at 3, col. 1. The article notes that the Advisory Commission was alerted to the possible need to revoke improved property status in some cases. "Not even an eyebrow was raised."
four foot cottage. That renovation turned a seasonal cottage into a two story year round home with a full basement, even though the Seashore Administration believed that the original dwelling was to be retained.

Similarly, another property owner rebuilt a twenty foot by thirty foot shack in Wellfleet into a four-bedroom structure, complete with a master bedroom, bathrooms (one with a Japanese soak tub), a thirty foot by eighteen foot dining room, and a separate twenty foot by twenty-four foot studio. The dining room alone is nearly as large as was the original cottage. The Town of Truro also granted a building permit which allowed the transformation of a studio into a two and one-half story year-round home.

At least eighty three building permits were recorded with the Seashore Administration between the years of 1973 and 1976. Some of these changes were not minimal, such as the construction of a horse stable, a garage, or a two story addition. A few of the "alterations" go as far as demolishing the structure which established the property's status as an improved property, and constructing an entirely new vacation home. While these types of changes could, in theory, result in a revocation of improved property status, the Advisory Committee has rarely invoked a change in classification because the alterations do not per se violate the loosely-worded federal standards or local zoning ordinances.

The Seashore Administration can do little to prevent construction and the inappropriate enlargement of existing structures. The Administration has attempted to informally remedy this situation by adopting a posture of coordination with the six towns

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168 Id.
169 See O'Brien, supra note 165. See also Land Acquisition, supra note 167, at A-8.
170 See O'Brien, supra note 165. See also Land Acquisition, supra note 167, at A-6.
171 Land Acquisition, supra note 167, at App. (Record of Building Permits Submitted for Seashore Review).
172 Interview with Jim Killian, Land Acquisition Supervisor Cape Cod National Seashore, in Wellfleet, Mass. (Apr. 16, 1984). One building permit was received to raze a building and relocate it on the same property. The building was demolished and an entirely new structure was built which incorporated little of the original structure. See O'Brien, New Construction Within Park Fires Up Local Resident Group, Cape Codder, Sept. 23, 1976, at 5, col. 1.
173 O'Brien, supra note 172.
with regard to building permits and variances. The National Park Service asks that the towns notify it of any application for building permits and that sketches of proposals be sent to them for comment and review.

The Seashore Administration's stance on variances is held with more authority, since the Secretary's suspension of the power to condemn may be lifted if an improper variance is issued by a town. Applicants must request a determination of the effect of the variance on the Seashore from the Seashore Administration, and within sixty days, the Administration will advise the applicant whether issuance of the variance would subject the property to condemnation. The authority of the Seashore Administration regarding the issuance of building permits, however, is purely advisory. This is unfortunate since the most flagrant violations of the intent of Congress have occurred when towns have issued building permits for owners to raze and rebuild their "improved property."

There is evidence that the Cape Cod formula has been effective in preserving the natural state of the Cape Cod coastline. As presented in Table III, 2,695.44 acres of Seashore land were acquired through declarations of taking as of December 31, 1983. A declaration of taking differs from a condemnation proceeding in that once the declaration is filed and monies are deposited with the court, title vests in the United States. In a condemnation action, no funds are deposited and title does not pass until the amount of just compensation owed to the property owner is determined and paid. Declarations of taking are used only when possession of a certain parcel of land is deemed to be urgent, such as when a property owner is damaging the environment. While it was impossible to determine from the acquisition records the specific reason for filing the declaration of taking in each instance, it is likely that the 2,695.44 acres of land acquired through a

174 CAPE COD NATIONAL SEASHORE, ADMINISTRATION, COORDINATION WITH CAPE COD NATIONAL SEASHORE ON ZONING MATTER (available from Cape Cod National Seashore Administration Office).
175 Id.
176 Id.
177 See supra note 104.
179 Condemnation proceedings, by contrast, are instituted by complaint and title does not vest until the court determines the amount of just compensation. See United States v. 341.45 Acres of Land, 542 F. Supp. 482, 483 n.1 (D. Minn. 1982).
declaration of taking were obtained to protect Cape Cod from environmental threats. This indicates that the Cape Cod formula has effectuated some preservationist objectives.

On the other hand, a glance at Table III reveals that total expenditures for land acquisition at Cape Cod have reached $33,957,420.57, which, until recently,\textsuperscript{181} exceeded the $33,500,000 appropriations ceiling established by Congress in 1970. Threat of condemnation as a means of preservation is a laudable objective of the Cape Cod formula, but if funds are unavailable to support that threat, the system becomes a “paper tiger.”\textsuperscript{182} The National Park Service assures, however, that if an extreme environmental threat or incompatible use were to emerge at the Seashore, and the Administration lacked funding, the money to obtain the property could be transferred from funds marked for other national park areas.\textsuperscript{183}

\textbf{B. The Effect of the Cape Cod National Seashore on the Six Seashore Towns}

The establishment of the Cape Cod National Seashore appears to have had its greatest impact on slowing the development of Provincetown, Truro, and Wellfleet. Overall growth in these three towns has been slower than in Chatham, Orleans, and Eastham. This is probably due to the fact that the former three towns have less land area within the Seashore than the latter three towns. Another factor that may influence the inner Seashore towns is their closer proximity to the City of Boston and other areas of development.\textsuperscript{184} This section analyzes the growth patterns of the six Seashore towns. These patterns demonstrate the ways in which the Cape Cod formula has preserved areas of Cape Cod.

1. Chatham

The Cape Cod formula has had minimal effect on the Town of Chatham. Chatham is the furthest inland of the six Seashore

\textsuperscript{181} The total appropriations ceiling was recently raised. See \textit{supra} text and note at note 138.

\textsuperscript{182} Interview with Paul Cotter, Acting Chief, Land Resources Division, National Park Service Northatlantic Regional Office, in Boston, Mass. (Feb. 23, 1984).

\textsuperscript{183} Id.

\textsuperscript{184} See C. TUNNARD & B. PUSHKAREV, MAN-MADE AMERICA: CHAOS OR CONTROL (1963). The authors note in describing the urban fringe: “[R]esidences tend to cluster toward the node of any urban area, and are spread farther and farther apart as one moves away from the center.”
towns. Only 22.1 percent or 3,455 acres of Chatham's total 15.88 square miles of land area in its North Beach region fall within the Seashore. Most of that area is habitable only during the summer months due to harsh winds and erosion in the winter.

The Town of Chatham has witnessed substantial growth since the time the Seashore was established. Chatham has evolved from a small fishing village into a summer resort and retirement community. There is some light industry in the town, and a thriving retail trade caters to tourism.

In the categories of forest land, agricultural land, and open spaces, Chatham has experienced the greatest depletion of resources among the six Seashore towns. Chatham's growth in the categories of population and housing units was the third highest among the towns. Therefore, it may be concluded that Chatham has one of the highest overall growth rates of the Seashore towns.

2. Orleans

The Town of Orleans is located directly to the north of Chatham. Orleans has traditionally served as the commercial center for the outer Cape Cod towns. The land area of Orleans covers 13.94 square miles. The Town occupies the least amount of land of the six towns within the Seashore, amounting to only 1,600 acres or 11.8 percent of the total acreage of Orleans. Thus, the establishment of the Seashore has had as minimal an effect on limiting the growth of the town as it has had for Chatham.

The total number of housing units increased in Orleans at the highest rate of the Seashore towns. Its growth in the area of population was the second highest of the six towns. Thus, the
TABLE VI
GROWTH TRENDS OF THE SIX SEASHORE TOWNS

<table>
<thead>
<tr>
<th>Town</th>
<th>Provincetown</th>
<th>Truro</th>
<th>Wellfleet</th>
<th>Eastham</th>
<th>Orleans</th>
<th>Chatham</th>
<th>Growth Trend</th>
</tr>
</thead>
<tbody>
<tr>
<td>1970</td>
<td>75.3%</td>
<td>68.1%</td>
<td>57.7%</td>
<td>29.5%</td>
<td>11.8%</td>
<td>22.1%</td>
<td>Percentage of Total Land within CCNS</td>
</tr>
<tr>
<td>1970</td>
<td>3,389</td>
<td>1,002</td>
<td>1,404</td>
<td>1,200</td>
<td>2,342</td>
<td>3,273</td>
<td>1960 Population</td>
</tr>
<tr>
<td>1971</td>
<td>2,911</td>
<td>1,234</td>
<td>1,743</td>
<td>2,043</td>
<td>3,055</td>
<td>4,554</td>
<td>1970</td>
</tr>
<tr>
<td>1971</td>
<td>3,536</td>
<td>1,486</td>
<td>2,209</td>
<td>3,472</td>
<td>5,306</td>
<td>6,069</td>
<td>1980</td>
</tr>
<tr>
<td>1971</td>
<td>4.3%</td>
<td>48.3%</td>
<td>57.3%</td>
<td>189.3%</td>
<td>126.6%</td>
<td>85.4%</td>
<td>% Change</td>
</tr>
<tr>
<td>1971</td>
<td>2,320</td>
<td>9,052</td>
<td>8,094</td>
<td>4,796</td>
<td>5,276</td>
<td>4,108</td>
<td>1951 Acreage in</td>
</tr>
<tr>
<td>1971</td>
<td>2,664</td>
<td>8,742</td>
<td>8,341</td>
<td>5,001</td>
<td>4,837</td>
<td>3,718</td>
<td>1971 Forest Land</td>
</tr>
<tr>
<td>1971</td>
<td>2,621</td>
<td>8,531</td>
<td>8,080</td>
<td>4,620</td>
<td>4,488</td>
<td>3,295</td>
<td>1980</td>
</tr>
<tr>
<td>1971</td>
<td>13.0%</td>
<td>-5.8%</td>
<td>-17%</td>
<td>-3.7%</td>
<td>-14.9%</td>
<td>-19.8%</td>
<td>% Change</td>
</tr>
<tr>
<td>1971</td>
<td>2,930</td>
<td>3,177</td>
<td>2,404</td>
<td>2,623</td>
<td>2,065</td>
<td>3,973</td>
<td>1951 Acreage in</td>
</tr>
<tr>
<td>1971</td>
<td>1,968</td>
<td>2,014</td>
<td>1,507</td>
<td>778</td>
<td>1,080</td>
<td>1,532</td>
<td>1971 Agricultural</td>
</tr>
<tr>
<td>1971</td>
<td>1,927</td>
<td>1,950</td>
<td>1,474</td>
<td>627</td>
<td>928</td>
<td>1,516</td>
<td>1980 or Forest Land</td>
</tr>
<tr>
<td>1971</td>
<td>-34.2%</td>
<td>-38.6%</td>
<td>-38.7%</td>
<td>-76.1%</td>
<td>-55.1%</td>
<td>-61.8%</td>
<td>% Change</td>
</tr>
<tr>
<td>1971</td>
<td>900</td>
<td>1,548</td>
<td>2,688</td>
<td>2,384</td>
<td>5,403</td>
<td>6,143</td>
<td>1951 Acreage in</td>
</tr>
<tr>
<td>1971</td>
<td>1,098</td>
<td>1,548</td>
<td>1,950</td>
<td>2,375</td>
<td>5,363</td>
<td>6,930</td>
<td>1971 Wetlands</td>
</tr>
<tr>
<td>1971</td>
<td>1,098</td>
<td>1,548</td>
<td>1,950</td>
<td>2,375</td>
<td>5,363</td>
<td>6,930</td>
<td>1980</td>
</tr>
<tr>
<td>1971</td>
<td>22%</td>
<td>0</td>
<td>-27.5%</td>
<td>-.38%</td>
<td>-.74%</td>
<td>12.8%</td>
<td>% Change</td>
</tr>
<tr>
<td>1971</td>
<td>11</td>
<td>66</td>
<td>31</td>
<td>30</td>
<td>27</td>
<td>46</td>
<td>1971 Mining or</td>
</tr>
<tr>
<td>1971</td>
<td>17</td>
<td>66</td>
<td>37</td>
<td>33</td>
<td>40</td>
<td>46</td>
<td>1980 Waste Disposal</td>
</tr>
<tr>
<td>1971</td>
<td>54.5%</td>
<td>0</td>
<td>18.4%</td>
<td>10%</td>
<td>48.1%</td>
<td>0</td>
<td>% Change</td>
</tr>
<tr>
<td>1971</td>
<td>426</td>
<td>236</td>
<td>398</td>
<td>337</td>
<td>839</td>
<td>1,436</td>
<td>1951 Acreage in</td>
</tr>
<tr>
<td>1971</td>
<td>542</td>
<td>1,227</td>
<td>1,518</td>
<td>1,778</td>
<td>2,124</td>
<td>2,723</td>
<td>1971 Urban Land</td>
</tr>
<tr>
<td>1971</td>
<td>617</td>
<td>1,502</td>
<td>1,801</td>
<td>2,307</td>
<td>2,612</td>
<td>3,162</td>
<td>1980</td>
</tr>
<tr>
<td>1971</td>
<td>44.8%</td>
<td>536.4%</td>
<td>352.5%</td>
<td>584.6%</td>
<td>211.3%</td>
<td>120.2%</td>
<td>% Change</td>
</tr>
<tr>
<td>1971</td>
<td>293</td>
<td>380</td>
<td>237</td>
<td>178</td>
<td>152</td>
<td>711</td>
<td>1971 Outdoor</td>
</tr>
<tr>
<td>1971</td>
<td>296</td>
<td>380</td>
<td>242</td>
<td>178</td>
<td>152</td>
<td>711</td>
<td>1980 Recreation</td>
</tr>
<tr>
<td>1971</td>
<td>1%</td>
<td>0</td>
<td>2.1%</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>% Change</td>
</tr>
<tr>
<td>1971</td>
<td>2,700</td>
<td>930</td>
<td>1,600</td>
<td>2,000</td>
<td>1,500</td>
<td>2,800</td>
<td>1960 Total Housing</td>
</tr>
<tr>
<td>1971</td>
<td>2,800</td>
<td>1,132</td>
<td>1,933</td>
<td>2,687</td>
<td>2,229</td>
<td>3,943</td>
<td>1970 Units</td>
</tr>
<tr>
<td>1971</td>
<td>2,900</td>
<td>1,300</td>
<td>2,300</td>
<td>3,300</td>
<td>2,900</td>
<td>4,600</td>
<td>1975</td>
</tr>
<tr>
<td>1971</td>
<td>7.4%</td>
<td>39.8%</td>
<td>43.8%</td>
<td>65%</td>
<td>93.3%</td>
<td>64.3%</td>
<td>% Change</td>
</tr>
</tbody>
</table>

rate of development in Orleans, as for that of Chatham, has been quite high.

3. Eastham

To the north of Orleans lies the Town of Eastham. Eastham was once a hub of political influence, on equal footing with the
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<tr>
<td>Chatham</td>
<td>26.2%</td>
<td>21.0%</td>
<td>25.4%</td>
<td>9.7%</td>
<td>39.2%</td>
<td>44.3%</td>
<td>9.2%</td>
<td>20.2%</td>
<td>.29%</td>
<td>.29%</td>
<td>.33%</td>
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<tr>
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<td>33.0%</td>
<td>15.2%</td>
<td>6.8%</td>
<td>39.8%</td>
<td>39.5%</td>
<td>6.2%</td>
<td>19.2%</td>
<td>.29%</td>
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<tr>
<td>Eastham</td>
<td>47.3%</td>
<td>45.8%</td>
<td>25.9%</td>
<td>6.2%</td>
<td>23.5%</td>
<td>23.4%</td>
<td>3.3%</td>
<td>22.8%</td>
<td>.27%</td>
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<tr>
<td>Wellfleet</td>
<td>59.6%</td>
<td>59.5%</td>
<td>17.7%</td>
<td>10.9%</td>
<td>19.8%</td>
<td>14.4%</td>
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<tr>
<td>Truro</td>
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<td>60.9%</td>
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<td>13.9%</td>
<td>11.0%</td>
<td>11.3%</td>
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<td>.47%</td>
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<tr>
<td>Provincetown</td>
<td>35.3%</td>
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<td>44.6%</td>
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<td>13.7%</td>
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Town of Plymouth, Massachusetts.\textsuperscript{192} It is now a quiet but thriving Seashore town. Eastham has been described as the point "where the outer Cape begins, the gateway to the National Seashore."\textsuperscript{193} One third of Eastham's land lies within the Cape Cod National Seashore.

The population of Eastham has grown at the fastest rate of all the Seashore towns, and its total number of housing units has increased at the second highest rate.\textsuperscript{194} Eastham has also experienced the largest increase in acreage devoted to urban uses, which consists of mostly low and medium density residential uses.\textsuperscript{195} Thus, it appears that Eastham has experienced one of the highest, if not the highest, rate of overall growth among the Seashore towns between 1951 and 1980. The establishment of the Cape Cod National Seashore seems to have had little deterrent effect on the growth of Eastham.

4. Wellfleet

The Town of Wellfleet is situated to the north of Eastham and to the south of Truro. Wellfleet has a self-sufficient town center which is reminiscent of an 1870's seacoast village.\textsuperscript{196} Its residents "cover a broad spectrum: fisherman and millionaires, retired couples and artists."\textsuperscript{197} The land area of Wellfleet covers 20.47 square miles.\textsuperscript{198} When the Seashore was established, 7,899 acres or 57.7 percent of Wellfleet terrain was incorporated into the Seashore's borders.

Wellfleet is one of the three outer Cape towns upon which the establishment of the Cape Cod National Seashore seems to have had a substantial effect in slowing growth patterns. Wellfleet is composed mostly of forest land, a composition that has not changed dramatically since the Seashore was established.\textsuperscript{199} In the categories of total housing units and population, Wellfleet grew at the third lowest rate of the Seashore towns.\textsuperscript{200} The overall rate of Wellfleet’s growth is much slower than that of Chatham,
Eastham and Orleans. Since so much of Wellfleet's land falls within the Seashore's boundaries, and cannot be developed, the Seashore has had a substantial effect on diminishing the rate of growth in Wellfleet.

5. Truro

Truro lies to the north of Wellfleet. Its total land area is 20.70 square miles, and 9,545 acres or 68.1 percent of the total acreage in Truro is within the Cape Cod National Seashore. Truro has been described as: “a town you have to search out; its modest homes are tucked into the nooks and crannies of its rolling landscape or perched like sentinels on its barren moors...[it is] the least densely populated of all Cape towns...”

Truro's increase in population has been less rapid than in the other Seashore towns. Total housing units in Truro have increased at the second slowest rate, and Truro has witnessed only a slight decrease in such undeveloped land as forest, agricultural lands and open space. Thus, as in Wellfleet, the effect of the Cape Cod National Seashore has been significant in abating Truro's growth rate. By freezing development in 68.1 percent of Truro's land, the Seashore has been responsible for preserving a great deal of Truro's natural resources.

6. Provincetown

Provincetown is situated to the northwest of Truro at the tip or hood of Cape Cod. Of the total 8.35 square miles of land in Provincetown, 4,949 acres or 75.3 percent of that land is located within the Cape Cod National Seashore.

Provincetown has experienced the slowest rate of overall growth among the Seashore towns. The total acreage of forest land has actually increased since 1951, although this change may be due at least partially to the accretion of sands at the tip of Provincetown. The population of Provincetown actually de-

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201 PERSPECTIVES, supra note 188, at 121.
202 See Table VI.
203 WOOD, supra note 192, at 211.
204 See Table VI.
205 Id.
206 Id.
207 PERSPECTIVES, supra note 188, at 121.
208 See Table VI.
209 Id.
creased between 1960 and 1970. Although Provincetown exhibited an increase in population in the decade of the 1970's, that increase was by only 4.1 percent—by far the lowest rate of the six seashore towns. Provincetown's overall rate of growth is probably the slowest of the six Seashore towns, as well the slowest of all the towns on Cape Cod.

The towns on the outer region of Cape Cod, including Wellfleet, Truro, and Provincetown, have been affected to a greater degree by the establishment of the Seashore than the inner three towns. This trend is probably a result of the larger proportions of land in Wellfleet, Truro, and Provincetown which fall within the Seashore. The rates of growth may, to a lesser degree, result from the proximity of the six towns to larger urban areas and regions of development.

VI. IMPROVING THE CAPE COD FORMULA: SOME SUGGESTIONS FOR FUTURE PRESERVATION

The Cape Cod formula for federal control over local land use decisions has proved to be largely successful in preserving the natural and scenic resources of portions of Cape Cod. There is, nonetheless, room for improvement in the existing system to more effectively combat threats to the preservation of the Seashore in the future. Four aspects of the existing system should be addressed in the future: 1) the need for revisions in the existing local zoning bylaws; 2) park administration approval of building permits; 3) inconsistent uses adjacent to the Seashore boundaries; and 4) budgetary cutbacks.

A. Revisions of Local Zoning Bylaws

No statutory mechanism presently exists that mandates either revision or updates in the local zoning bylaws which control land use in the Cape Cod National Seashore. According to one government study:

The planners for the [National Park Service] note several drawbacks in relying upon local zoning. First, the enabling legislation did not provide for mandatory updating and review of the zoning laws to reflect new trends in land use such

\[\text{\textsuperscript{210}} \text{Id.}\]
as condominiums. Another weakness is the inability of... planners to review town-issued building permits.\textsuperscript{211} The lack of a mechanism for federal review of local zoning bylaws is a problem. Many of the town ordinances, particularly those which pertain to the respective seashore districts, have not been updated in substance since the creation of the Seashore.\textsuperscript{212} Moreover, the zoning bylaws are ambiguous and vague with regard to what constitutes permissible construction.

For example, the zoning bylaws of Truro expressly allow residential and accessory uses of dwellings that existed within the Seashore at the time of their proposal.\textsuperscript{213} The bylaws also permit enlargement and alteration of these dwellings.\textsuperscript{214} In a separate section enumerating permitted uses, the Truro Bylaws expressly permit detached one-family dwellings that comply with setback provisions.\textsuperscript{215} Thus, a literal reading of the ordinance suggests that construction of a new detached one family dwelling is permitted within the Seashore District in Truro.\textsuperscript{216} Provisions which allow the construction of new structures or substantial enlargement of existing structures within a national park should be revised.\textsuperscript{217} Yet Congress did not delegate to the Secretary of the Interior the power to mandate such a revision. On the one hand, the Act allows the revision of federal standards in accordance with changes in state-of-the-art land use regulation. It reads, “[t]he Secretary may issue amended regulations specifying standards for approval by him whenever he shall consider such amended regulations to be desirable due to changed or unforeseen conditions.”\textsuperscript{218} Yet, Congress clearly stated that local zoning ordinances cannot be revoked to accommodate the amended federal standards. The statute provides, “approval [of the local zoning bylaws] shall not be withdrawn or revoked, nor shall its effect

\textsuperscript{211} U.S. DEP’T OF THE INTERIOR, NEW TOOLS FOR LAND PROTECTION: AN INTRODUCTORY HANDBOOK 68 (1982).
\textsuperscript{212} See, e.g., CHATHAM, MASS., PROTECTIVE BYLAW (amended 1982).
\textsuperscript{213} TRURO, MASS., ZONING BYLAW § VII(1)(f) (1978).
\textsuperscript{214} Id. at § VII(1)(h).
\textsuperscript{215} Id. at § VII(1)(k).
\textsuperscript{216} The Truro Bylaws do prohibit buildings and structures in the Seashore District. TRURO, MASS., ZONING BYLAW § VII(3)(d) (1978). But that prohibition remains subject to the permitted uses described in the text for detached one family dwellings. Id. at § VII(3).
\textsuperscript{217} The Zoning Bylaws of Chatham, Orleans, Wellfleet and Eastham similarly permit new construction of detached one family dwellings. Only the zoning bylaws of Provincetown prohibit single family residential uses in their seashore district. PROVINCETOWN, MASS., ZONING BYLAWS § 1240(A) (1978).
be altered for purposes of [acquisition by condemnation] by issuance of such amended regulations after the date of such approval, so long as such bylaw or such amendment remains in effect as approved. 219

Congress probably limited the federal power of revocation of local zoning bylaws to make the Cape Cod National Seashore politically palatable to the towns at the time the legislation was enacted. It was self-defeating, however, for Congress to expressly authorize the Secretary of the Interior to amend the federal regulations without also giving him the power to require the town bylaws to conform with the amended regulations. In addition, the statute prohibits condemnation where a use conflicts with the federal standards, but complies with local zoning provisions. 220 These provisions discourage updating the current statutory scheme with innovative land use techniques, and may actually allow the construction of new buildings in a region devoted to the preservation of natural resources.

One possible method of resolving this problem is through legislative amendment of the statute to permit federal revocation of local zoning ordinances which fail to conform with amended federal regulations. The National Park Service is wary of this approach because of the potential addition of antipreservation amendments to the statute in a political scuffle. 221 Nevertheless, this option should be exercised if no alternative methods of change prove practical.

Rather than altering the statute through legislative amendment, the National Park Service suggests implementing guidelines to govern the potential development of privately-owned property. In effect, the Secretary of the Interior would issue a regulation defining or interpreting the meaning of the statutory phase “preservation and development as contemplated by the Act of August 7, 1961.” 222 Each local zoning bylaw, except the bylaw of

219 Id.
220 Id. at § 459b-4(d)(2). The statute grants discretion for the Secretary to terminate the suspension of condemnation powers for:

property upon or with respect to which there occurs any use, commencing after the date of the publication by the Secretary of such regulations, which fails to conform or is in any manner opposed to or inconsistent with any applicable standard contained in such regulations (but no use is in conformity with the provisions of such bylaw shall be held to fail to conform or be opposed to or inconsistent with any such standard).

Id. (emphasis added).
221 See supra note 149.
222 See supra text and note at note 140. See also supra text and note at note 76.
Provincetown, contains a provision of purpose, which states that its seashore district should comply with the “preservation and development” mandate.\textsuperscript{223} Thus, any land uses which fail to comply with the interpretative regulation would also be inconsistent with local zoning ordinances, and thus be subject to the Secretary’s power of condemnation. Issuing an interpretative regulation would appear to resolve the dilemma created by the lack of a mandatory zoning revision scheme.

\textbf{B. Approval of Building Permits}

The issuance of local building permits to owners of improved property within the Seashore presents a significant problem in the administration of the preservation ethic at the Cape Cod National Seashore.\textsuperscript{224} The towns grant the building permits because either the proposals do not amount to per se violations of their local zoning bylaws or simply because the town officials are lax in their enforcement of the bylaws. In either instance, greater federal control over the issuance of building permits is warranted.

Federal control over building permits could be effectuated in the same manner as the review process for variances.\textsuperscript{225} Regulations could be promulgated, or the Act amended, to require notification of the Seashore Administration when an application is made for a building permit. If, after a sixty day review period, the Administration decided that issuance of the permit would violate the spirit or purpose of the Seashore Act, approval of the building permit would be denied. Any attempt to build without administration approval of the building permit would result in a loss of “improved property” status and possibly condemnation.

This type of agency power is no more objectionable than its power to condemn land for variances which have not received federal approval. However, an amendment to the Seashore enabling act would probably be necessary in order to effectuate this change since the courts seem unwilling to imply such agency power.\textsuperscript{226} An amendment of this type would be preferable to the current non-binding arrangement existing between the Seashore Administration and the towns regarding building permits.

\textsuperscript{223} See supra text and note at note 76.
\textsuperscript{224} See supra text and notes at notes 167-75.
\textsuperscript{226} See Biderman v. Morton, 497 F.2d 1141 (2d Cir. 1974). See also text and notes at notes 160-62.
Alternatively, Congress could enact legislation directly regulating the development activities of private property owners under the guise of the Property Clause of the United States Constitution.\textsuperscript{227} The Supreme Court has suggested that the power of Congress to regulate under the property clause is to be interpreted broadly.\textsuperscript{228} Courts have construed that power to extend to conduct on private property which affects public land.\textsuperscript{229} Congress could, therefore, amend the Act to authorize condemnation whenever the activities of landowners threaten the preservation of the Seashore, regardless of the presence or absence of a zoning ordinance violation.

\textbf{C. Inconsistent Uses Adjacent to the Seashore Boundaries}

The attraction of large numbers of people to the Cape Cod National Seashore has had the natural consequence of promoting the development of commercial uses immediately outside the Seashore boundaries where such uses are not subject to federal control. Strips of commercial development are particularly evident along U.S. Route Six; the development apparently catering to the tourist trade.

The regulation of land use beyond the borders of national parks is a topic of considerable controversy.\textsuperscript{230} The development of commercial uses adjacent to the Seashore may not seem pressing to some factions at present, but unless some action is taken, the growth of the Cape Cod region as a vacation resort will undoubtedly lead to a fence of commercial ventures bordering the Seashore. Such tourist-based industry is inconsistent with the preservation mandate of the National Park Service to protect natural and scenic resources.

\textsuperscript{227} See Sax, \textit{Helpless Giants}, supra note 37, at 239. The Tenth Amendment to the United States Constitution would preclude congressional regulation of state or local government, but not the regulation of private landowners. See \textit{supra} text and notes at notes 114-34.

\textsuperscript{228} Kleppe v. New Mexico, 426 U.S. 529 (1976).


\textsuperscript{230} See \textit{generally} Sax, \textit{supra} note 37; Jarvis, \textit{Adjacent Lands and Intermingled Ownership Problems}, in \textit{NATIONAL PARKS IN CRISIS} 91 (1982).
The problem may be dealt with in a number of ways. Voluntary agreements between the federal government and private property owners could probably be arranged without specific enabling legislation through negative scenic easements, conservation easements, or the acquisition of a less than fee interest. The National Park Service, however, would not have the power to condemn property outside the park absent specific enabling legislation.

Joseph Sax, in a recent article, suggested that Congress enact direct enabling legislation for control of adjacent uses under the guise of either the commerce or property clauses. He proposed enabling legislation to authorize Park Service acquisition and regulation of private adjacent lands, but limiting regulation to nuisance-like activities. In Cape Cod, however, that limitation would be insufficient because the commercial uses are not necessarily nuisances, but are merely inconsistent with preservation attempts within the Seashore.

The Act establishing the Cape Cod National Seashore gives the Secretary of the Interior no express authority to govern the problem of inconsistent adjacent uses. Without specific enabling legislation, there is no way for the National Park Service to control adjacent uses short of voluntary cooperation from local officials to review land use plans. A bill is currently pending in the Senate regarding uses adjacent to National Park lands, but it gives no authority to regulate. The purpose of the bill is confined to research and development of solutions to the adjacent uses problem.

Legislation authorizing the Park Service to acquire, at least, less-than-fee interests in land on the borders of National Park should be enacted. Assuming that it will take a considerable amount of time before Congress enacts enabling legislation, the Cape Cod National Seashore administration should embark on informal negotiations with town officials encouraging them to

232 See New Tools, supra note 211, at 31-34.
233 Id.
234 Id.
235 Jarvis, supra note 230, at 97.
236 Sax, Helpless Giants, supra note 37, at 250-58. Sax is a noted legal authority in the area of national parks.
237 Id. at 266.
238 H.R. 2379. The bill passed in the House of Representatives, but no action was taken on it by the Senate. The bill should be reintroduced in January 1984.
stiffen zoning classifications and regulations adjacent to the park. Until Congress enacts legislation, there appears to be little else the Seashore Administration can do about the continuing development of properties adjacent to the Seashore.

D. The Cape Cod Formula and Budgetary Cutbacks

The budgetary cutbacks of the Reagan administration have created quite a stir in the Department of the Interior. In 1981, Secretary James Watt announced a moratorium on acquisitions by the National Park Service. The budgetary cutbacks of the Reagan administration have created quite a stir in the Department of the Interior. In 1981, Secretary James Watt announced a moratorium on acquisitions by the National Park Service.239 Watt proposed a Land Protection Policy which would permit fee acquisitions in the new national parks, but only after a full explanation of why lesser interests in land were unsuitable.240 The Land Protection Policy, described earlier,241 applies to the Cape Cod National Seashore as well as other programs funded by the Land and Water Conservation Fund.

This type of modified acquisition policy is inconsistent with the structure of the Cape Cod formula. Considering its “sword of Damocles” approach,242 the Cape Cod formula would be left powerless to control the development of Seashore inholdings without its ability to condemn full fee interests in land. A property owner who knows that his land violates a local zoning ordinance would probably not fear the acquisition of a conservation easement on his land from the National Park Service.

Congress recently increased the acquisition ceiling for the Cape Cod National Seashore to $42,917,575.243 Yet, increasing acquisition levels merely forestalls the inevitable problem. The power of the Secretary of the Interior is based on the availability of funds. If Congress reduces the acquisition ceiling or if money obtained from the Land and Water Conservation Fund is cut-off, then the Cape Cod formula truly will become a paper tiger.

If Congress reduces the budget of the Park Service, additional funds should be sought from other sources. Examples of such

240 Id. at 38-39.
241 See supra text and notes at notes 54-58.
242 Sax, Helpless Giants, supra note 37, at 242.
243 See supra text and note at note 138.
sources include: user fees, the expansion of concession revenues, and increasing financial support from the private sector.  

VIII. CONCLUSION

The Cape Cod National Seashore exemplifies an innovative approach to federal control over local land use decisions. An analysis of the Cape Cod formula suggests that a site-specific approach to land use controls should be adopted for other federally-owned lands, rather than encouraging the use of the Cape Cod formula for all new national parks.

On the whole, the Cape Cod system has been successful in preserving the natural and scenic resources of the Cape Cod region. But there is still room for improvement. Improvements to the Cape Cod formula should include mechanisms permitting federal revisions of local zoning bylaws and authorizing the approval of building permits. These mechanisms could be enacted through amendments to the Act establishing the Cape Cod National Seashore or in the form of regulations defining the meaning of "preservation and development" to allow local bylaws to control development. Moreover, Congress should formally legislate a policy that would give to the Secretary of the Interior the power to regulate commercial properties adjacent to the Seashore which are inconsistent with the preservationist goals of the Seashore. Finally, Congress should guarantee that funds will be available to the Department of Interior for the purpose of acquiring improved properties within the Cape Cod National Seashore. If these suggestions are adopted, we can continue to enjoy the natural resources and beauty of Cape Cod for years to come.