

From: [BrownScott, Jennifer](#)
To: [Manabe, Thomas](#)
Subject: Re: ACTION - Please Review - Fwd: Dawley Tidelands Swap?
Date: Wednesday, November 14, 2018 4:56:57 PM
Attachments: [N Dungeness Bay Deed to US Fish and Wildlife.pdf](#)
[DNG 05-244-1 DNGLand Status Map 080714.pdf](#)

Sorry for the delay. I have been eyeballs deep in EPAPs. I have not discussed any possible exchange with the State. There are several potential options for swapping different portions of Dawley Unit. Here are some options that I would explore if it was legal to do so:

- The tidelands to DNR for tidelands in Dungeness Bay (this is the most time sensitive exchange as it may have bearing on an ACE permitting issue)
- The acreage on the north side of the highway to State Parks as an extension of Sequim Bay State Park
- The acreage on the south side of the highway to DNR or WDFW.

The Use Easement Deed (not really a deed) for the tidelands in Dungeness Bay is attached. The tidelands are the area in red on the attached land status map (obviously we would be looking to swap a small portion of those tidelands for the Dawley tidelands.

Give me a call if it would help to discuss.
Hope this all helps,
Jennifer

Jennifer Brown-Scott
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On Thu, Nov 8, 2018 at 8:29 AM Manabe, Thomas <thomas_manabe@fws.gov> wrote:
Jennifer:

I am looking into exchange issues with the Dawley Tract at Dungeness.

Might have to go to the Regional Solicitor to see about that language in their deed to the Service.

If you can also send me a map of the State properties that could be part of an exchange I could check those out too. I am thinking that State Parks and Dept of Natural Resources may be involved and they have different rules &

regs could affect an exchange.

Thanks!

Tom

(i am teleworking a bit these days, easiest way to contact me is via email)

From: "BrownScott, Jennifer" <jennifer_brownscoth@fws.gov>
Date: October 23, 2018 at 2:21:50 PM PDT
To: Charles Parrott <charles_parrott@fws.gov>
Cc: "Stenvall, Charlie" <charlie_stenvall@fws.gov>
Subject: Dawley Tidelands Swap?

I would like to investigate the possibility of swapping the Dawley tidelands with the State for tidelands adjacent to Dungeness NWR. I have not yet mentioned this possibility to DNR, because I want to make sure that we can follow through if they are interested. The Dungeness Bay tidelands are within the acquisition boundary of the refuge.

When you get a chance, could you let me know if such a swap would be possible, given the verbiage found in the deed (see below)? If so, would the transfer be burdened by any use limitations?

Dawley Deed Excerpt:

PROVIDING, However, that the use, occupation and operation of the reservations retained herein shall be subordinate to and subject to such rules and regulations as may be prescribed by the Secretary of the Interior governing the use, occupation, protection, and administration of units of the national wildlife refuge system under and in compliance with the provisions of Section 6 of the Act of February 18, 1929 (45 Stat. 1222), as amended by Section 301 of the Act of June 15, 1935 (49 Stat. 381).

GRANTOR gives the above described land to be administered as a contiguous unit, as a part of the national wildlife refuge system, and as a sanctuary for wildlife, subject to such rules and regulations as the Secretary of the Interior, through the U.S. Fish and Wildlife Service, may provide.

The above described lands are acquired for administration by the Secretary of the Interior through the United States Fish and Wildlife Service.

TO HAVE AND TO HOLD the above described property unto the United States of America and its assigns in fee simple forever.

The Grantor aforesaid does hereby covenant with the United States

of America that he will forever warrant and defend the title to the above described lands against all lawful claims whatsoever and that the same are free and clear of all liens and encumbrances, except as herein stated.

Thanks,
Jennifer

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On Thu, Aug 30, 2018 at 9:22 AM Parrott, Charles <charles_parrott@fws.gov> wrote:

Those considerations would usually go into the Service's decision to pursue the acquisition or not. In some cases, properties are dropped on us (FSA, Congressional Mandates, and such) and we simply don't have a choice. However, contaminant surveys are required before all acquisition (and NEPA) and those "tools" have been used in the past to prevent acceptance of property. But, historically, the Service seems to have very open to acquiring more land regardless of the liabilities.

A land exchange would be the best course of action in my opinion. There is a process for that and we would need to reach out to the owner of the property(ies) we want to float the idea. Third party deals are not unheard of but certainly uncommon and more complicated. I'd be happy to to chat more about the process.

I doubt there would be language that prohibits disposal but we would need to check the acquisition file. Typically, that type of reservation is only allowable if we don't plan to do anything in with the property. Again, it's not unheard of but certainly discouraged by our Solicitor's Office. I can inquire as to the tract and see if Tom can look into whether there is such a reservation.

- Charlie

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On Thu, Aug 30, 2018 at 9:03 AM, Charlie Stenvall

<charlie_stenvall@fws.gov> wrote:

Charlie- another question for you on WA maritime. Does, in the evaluation of a piece of property, the liabilities such as derelict building, contaminates etc get figured in the overall value? We have a tract called the Dolly / Dahli (not sure how it's spelled) that is approximately 140 acres. It's a valuable property due to its location on the water but it serves no purpose in terms of meeting refuge goals. We'd like to explore a land exchange for either the state ownership on protection island or property adjacent to Dungeness proper. It may take a third party to buy our tract and purchase a property that meets our needs. In addition as the landowner wanted the property to be in FWS ownership- I'm uncertain if there is language that prohibits us from disposing of it. Inquiring minds want to know

Charlie

Sent from my iPhone

On Aug 29, 2018, at 12:12 PM, Parrott, Charles

<charles_parrott@fws.gov> wrote:

You are more than welcome. I would note that this may all hinge on the discovery of that MOU with NPS. It's possible that we did something with NPS that would transfer jurisdiction. I've check with our cartography folks to see about the land status mapping and land record system discrepancy. For some reason, the comment field says that Destruction Island was excluded from the Refuge but, again, I did not see anything in the file at all and even found correspondence from 1996 that confirms our management. So, something could have happened between then and now.

Best,

Charlie Parrott

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On Wed, Aug 29, 2018 at 12:09 PM, BrownScott, Jennifer

<jennifer_brownscoth@fws.gov> wrote:

Thank you for your quick interpretation of Destruction Island jurisdiction - it is very helpful.

-jennifer

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On Wed, Aug 29, 2018 at 11:56 AM, Parrott, Charles
<charles_parrott@fws.gov> wrote:

Jennifer,

I'm going to give you my take on the situation that I just researched for only the last hour. It should be noted that Thomas Manabe and others are much more aware of the history and have made similar attempts to clarify the situation as far back as 1996.

So, here goes:

The Refuge was established in 1907 and seemed to include Destruction Island at the time. There was some discussion that Destruction Island may not have been included (the map was pretty bad) but subsequent correspondence and memoranda from BLM indicate that Destruction Island was part of the "Quillayute Needles Reservation," now National Wildlife Refuge. USFWS's interest is subject to a 1866 reservation to the US Lighthouse Service (now USCG) for the lighthouse and there is a 1992 MOU between USFWS and USCG for operation of the Destruction Island lighthouse, among other lighthouses.

So, now from stage left comes NPS on the scene. Correspondence on the issues involving NPS are as recent as August 6, 2018 relating to two Public Laws from 1986 and 1987, where NPS was first introduced as far as I can tell. The 1986 legislation modified/expanded the *boundary* of the Olympic National Park to include what seems to be Destruction Island. I've emphasized the term "boundary" because I think the term was importantly missed or not understood in recent analysis. The 1987 legislation confirmed the existence and management of the Refuge, as a Refuge.

On August 7, 2018, Rick Wagner, NPS, explained that the 1987 legislation intended for law enforcement actions to be available to NPS by MOU with USFWS but, I believe, Rick goes too far to say that the NPS is "*still* responsible for the law enforcement." By my assessment, nothing in the 1986 legislation supersedes the Refuge establishment or the USFWS management of Destruction Island. The 1987 legislation explicitly makes that clear as well (which probably came about because

of this very same confusion we're still talking about). Going back to the "boundary" distinction, the 1986 legislation expanded the NPS boundary which, I presume like our own boundaries, does not necessarily mean that management/jurisdiction is established over everything within those boundaries. These are "*acquisition* boundaries" and that is made clear from Sec 3 of the same legislation which authorized NPS to acquire interests within the new boundary. So, in this case, it just appears that USFWS and NPS have overlapping acquisition boundaries but that there was no transfer of federal jurisdiction. I don't imagine this is uncommon since we routinely own land next to other Federal partners' holdings. That being said, the 1987 legislation did require USFWS and NPS to enter into an MOU for "law enforcement assistance." I can hardly understand how that can be interpreted as NPS having full responsibility for law enforcement, although I have not seen the MOU.

So, from my perspective, USFWS owns and should be managing Destruction Island as part of the Refuge System, *subject to* the USCG lighthouse reservation pursuant to the MOU, which we have a copy of, and with law enforcement *assistance* from NPS pursuant to an MOU, which we should find a copy of.

Of course we may need solicitor input on this in light of the fact that this is an ongoing issue and we should reach a final resolution as definitively as possible. What complicates things even more is that the USFWS land status maps/land record system seems to have a really wacky concept of the Refuge lands. This will also need to be corrected or clarified.

Best,

Charlie Parrott

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On Wed, Aug 29, 2018 at 10:40 AM, BrownScott, Jennifer <jennifer_brownscoth@fws.gov> wrote:

Charlie Stenvall suggested that I contact you regarding our authority/jurisdiction on Destruction Island. Do we "own" the island, or does the Coast Guard (or NPS)? Do we have primary, secondary, or no jurisdiction on the island?

We have been asked by one of our partners to remove European Hare from the island and need to clarify our jurisdiction, so we know if we have a role in such a process.

Thank you,

Jennifer

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