

**4. JOHNSON DEBAY'S SLOUGH GAME RESERVE BOUNDARY –
RULE ACTION**

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“GREEN SHEET”

Meeting: December 4-5, 2009
Agenda Item 4: Johnson Debay’s Slough Game Reserve Boundary – **Rule Action**
Prepared By: Steve Pozzanghera
Presented By: Steve Pozzanghera, Deputy Assistant Director, Wildlife Program

Background:

RCW 77.12.047 provides the legal authority for the Washington Department of Fish and Wildlife to establish game reserves, and RCW 77.08.010(14) defines a game reserve as “a closed area where hunting for all wild animals and wild birds is prohibited.” While there is no requirement either by rule or by statute that the Commission seek landowner permission prior to establishing a game reserve, the Department makes every effort to work cooperatively with landowners when designating such areas.

Located approximately 3 miles northeast of Mount Vernon, the 331 acre Johnson/Debay’s Slough game reserve was established in 1997 as an area where wintering Trumpeter and Tundra swans can rest, feed, and roost. The area is an extremely popular viewing site within the Skagit Wildlife Area and draws thousands of visitors per year.

In 2008, during a review of game reserve boundary descriptions, it was determined that the boundary description for the Johnson/Debay’s Slough game reserve was incomplete, leaving a portion of the area’s northern boundary “open” (See Map - Red Line). After a year and a half of work with stakeholders and meetings with the private landowner, the Department is prepared to return to its original boundary proposal to close the reserve (that will include private property) by extending the northern boundary along the river to the original point of origin (See Map – Green Line). This action is based on information obtained at the September 11-12, 2009 Commission meeting, whereby the Department and the Commission were advised that private land contained in the reserve was no longer available for Department purchase. However, following that meeting, the potential new owner of the private property has signed a letter of intent to trade the land contained within the reserve to the Department for WDFW owned land of comparable appraised value elsewhere in the state. The potential success of this trade is based on an appraised value for the private property contained within the reserve that is comparable to the land that is being traded between the two private parties. At the time of this writing the appraisal has been ordered by WDFW but not yet completed. The appraisal will be completed and the status of the land trade will be known by the December 4-5, 2009 Commission meeting. At that time, staff will recommend that the Commission take action to establish the reserve boundary.

Policy Issue(s) you are bringing to the Commission for consideration:

Retention and continuation of a functioning game reserve.

Public involvement process used and what you learned:

Since the August, 2008 Commission meeting, Department staff has met several times with landowners and stakeholders regarding the reserve boundary. Staff has updated the Commission on activities associated with this issue in October 2008 and in May 2009 and met during an onsite field trip in July 2009 with the Chair of the Commission and a representative of the Trumpeter Swan Society. Lastly, the Wildlife Program Deputy met with the landowner in August to discuss the long term interests of both the Agency and the landowner and presented a recommendation to the Commission in September. This recommendation was subsequently modified when it was determined at the September 11-12, 2009 Commission meeting that the private land was no longer available for potential purchase by WDFW. However, following that meeting, the potential new owner of the private property has signed a letter of intent to trade the land contained within the reserve to the Department for WDFW owned land of comparable appraised value elsewhere in the state. At the December Commission meeting the appraisal and the status of the land exchange will be known.

Since the September 2009 Commission meeting public input has been received from Skagit Audubon, the Trumpeter Swan Society, and several members of the public. All comments have supported the establishment/retention of the reserve boundary as it was intended by original rule action in 1997. These comments support the Department's recommendation.

Action requested (identify the specific Commission decisions you are seeking):

Rule action on WAC 232-16-800.

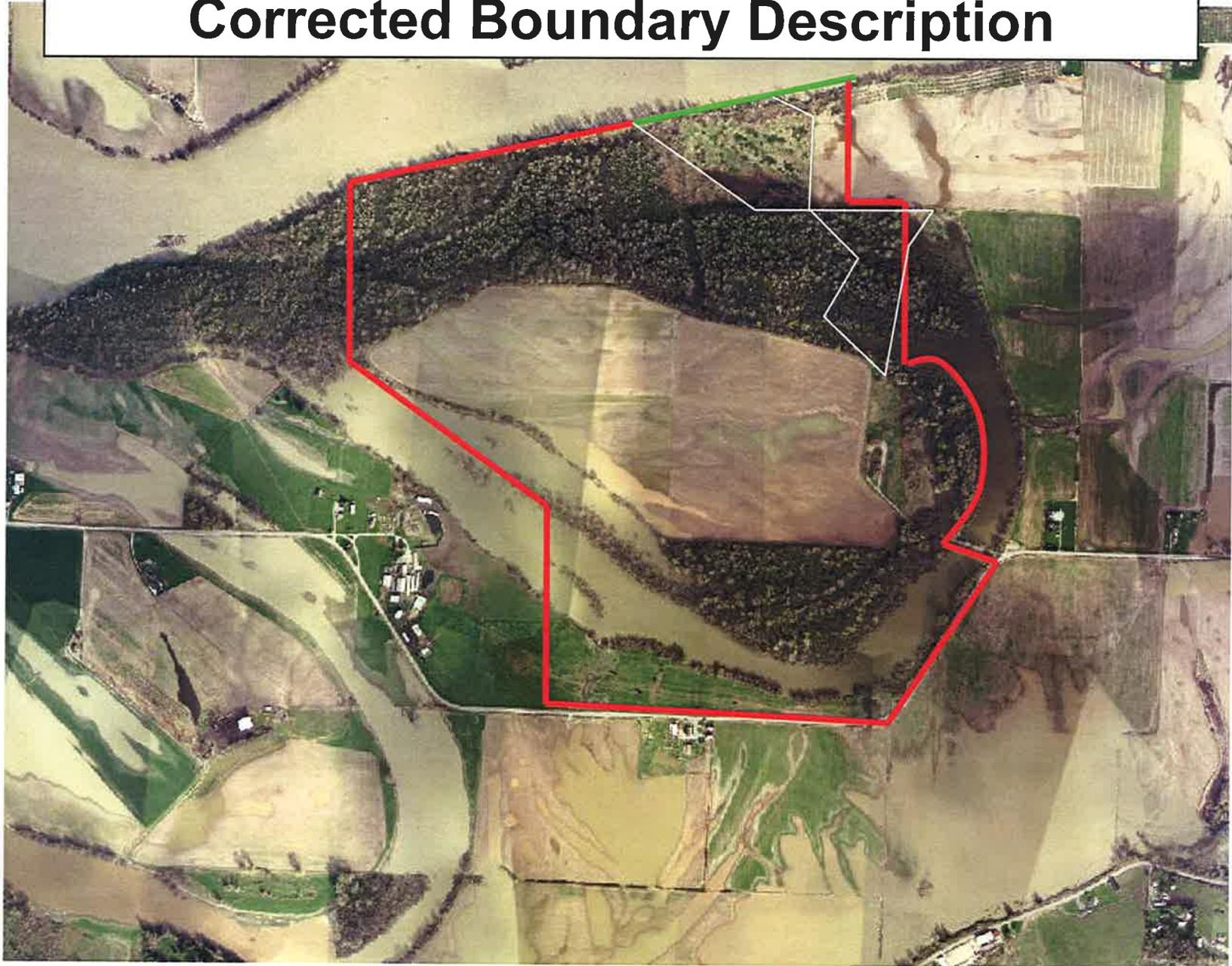
Draft motion language:

I move to amend WAC 232-16-800 Johnson/Debay's Slough Game Reserve, as presented.

Justification for Commission action:

Establishment of the Johnson/Debay's Slough Game Reserve boundary and the continued functioning of the area as a swan sanctuary and wildlife viewing site.

Johnson DeBay's Slough Game Reserve Corrected Boundary Description



AMENDATORY SECTION (Amending Order 08-197, filed 8/13/08, effective 9/13/08)

WAC 232-16-800 Johnson/Debay's Slough Game Reserve. In Skagit County, beginning at the intersection of Francis Road and Debay's (~~Slough~~) Isle Road; then south and west along Francis Road (3090 feet) to white corner marker; then north (1265 feet) to the middle of Debay's Slough (white corner marker); then westerly (2087 feet) along the channel of Debay's Slough to the western tip of the farmed portion of Debay's Island; then northerly (1485 feet) to the south bank of the Skagit River (white corner marker); then easterly (~~((2200))~~) 3750 feet) along the south bank of the Skagit River to fence line (white corner marker); then south along fence line (~~((150))~~) 855 feet) to corner post; then (~~southeast 1050 feet to fence line, then~~) east (~~((1090 feet))~~) along fence line (435 feet) to fence intersection; then south (300 feet) along fence line to existing tree line (white corner marker); then continue south (835 feet) to south shoreline of Debay's Slough (white corner marker); then easterly and southerly along the west shoreline of Debay's Slough (1770 feet) to the south side of Debay's (~~Slough~~) Isle Road (white corner marker); then east along the south side of Debay's (~~Slough~~) Isle Road to the intersection of Francis Road and the point of beginning.

[Statutory Authority: RCW 77.12.047, 77.12.040, 77.12.020, 77.12.570, 77.12.210. 08-17-034 (Order 08-197), § 232-16-800, filed 8/13/08, effective 9/13/08. Statutory Authority: RCW

77.12.040. 98-17-041 (Order 98-155), § 232-16-800, filed
8/13/98, effective 9/13/98; 97-18-025 (Order 97-162), § 232-16-
800, filed 8/25/97, effective 9/25/97.]

SUMMARY OF WRITTEN PUBLIC INPUT

WAC 232-16-800, Johnson/Debay Slough Game Reserve

COMMENTS	AGENCY RESPONSE
Wants the Department to establish the boundary of the reserve as was originally intended in 1997. This is the best opportunity to support continued swan use of the area as well as use by a variety of other wildlife species. Also supports the development of additional watchable wildlife opportunities at the site.	Thank you for the comment. This is consistent with the Department's recommendation.

SUMMARY OF ORAL PUBLIC INPUT

Taken at the Fish and Wildlife Commission Meeting

September 11-12, 2009

And November 6-7, 2009

WAC 232-16-800, Johnson/Debay Slough Game Reserve

COMMENTS	AGENCY RESPONSE
Private landowner supports the continued use of the Department's "interim" boundary and has entered into an agreement to sell the land that would otherwise be contained within the reserve to a private party. Land will not be available for WDFW to purchase.	The Department believes that the best long term solution is to return the boundary to the originally boundary that was to have been delineated in 1997. The Department is disappointed that the land may not be available for WDFW purchase.
Wants the Department to establish the boundary of the reserve as was originally intended in 1997. Also supports the development of additional watchable wildlife opportunities at the site.	Thank you for the comment. This is consistent with the Department's recommendation.
Private landowner that is currently in the process of acquiring private land that is to be included in the reserve. Disagrees that the private land is necessary for the integrity of the swan reserve, however has signed a letter of intent to exchange that private property to WDFW pending a favorable appraisal.	The Department believes that it is in the best long-term interest of the reserve that the 27 acres of currently owned private land be included in the reserve for both swans and additional wildlife benefits (habitat and viewing). The Department appreciates the willingness of the landowner to enter into an exchange agreement with WDFW.



PROPOSED RULE MAKING

CR-102 (June 2004)
(Implements RCW 34.05.320)
Do NOT use for expedited rule making

Agency: Washington Department of Fish and Wildlife

- Preproposal Statement of Inquiry was filed as WSR 09-10-069; or
- Expedited Rule Making--Proposed notice was filed as WSR _____; or
- Proposal is exempt under RCW 34.05.310(4).

- Original Notice
- Supplemental Notice to WSR 09-16-145
- Continuance of WSR

Title of rule and other identifying information: WAC 232-16-800 Johnson/Debay's Slough Game Reserve

Hearing location(s):
Natural Resources Building, Room 172
1111 Washington St, SE
Olympia WA 98504

Submit written comments to:
Name: Wildlife Program, Commission Meeting Public Comments
Address: 600 Capitol Way North, Olympia WA 98501-1091

e-mail wildthing@dfw.wa.gov
fax (360) 902-2162 by **October 12, 2009**

Date: November 6-7, 2009 Time: 8:30 a.m.

Assistance for persons with disabilities:

Contact Susan Yeager by **November 2, 2009**

TTY (800) 833-6388 or (360) 902-2267

Date of intended adoption: November 6-7, 2009
(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:
The amendment is intended to establish the reserve boundary as it was originally intended to be established in 1997.

Reasons supporting proposal:

The current reserve boundary proposal would exclude a private parcel from being incorporated into the reserve. The modified proposal will incorporate that private land into reserve status, as was intended in 1997.

Statutory authority for adoption: RCW 77.12.047; 77.12.020; 77.12.570; 77.12.210; 77.12.040; 77.12.010

Statute being implemented: RCW 77.12.047; 77.12.020; 77.12.570; 77.12.210; 77.12.040; 77.12.010

Is rule necessary because of a:

- Federal Law? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION:

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: **September 23, 2009**

TIME: **10:06 AM**

WSR 09-19-147

DATE
September 23, 2009

NAME (type or print)
Lori Preuss

SIGNATURE
Lori Preuss

TITLE
Rules Coordinator

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: The original CR-102 filing and rule proposal was based on the exclusion of a land parcel that the Washington Department of Fish and Wildlife thought would be available for sale to the State and therefore would not need to be included in the Reserve boundaries. Since this initial filing, the private landowner entered into a sales agreement with another private individual, and the parcel is no longer available for State purchase. Therefore, it is recommended that the parcel be included within the Reserve boundaries in order to keep the Reserve intact as was initially intended in 1997.

Name of proponent: (person or organization) Washington Department of Fish and Wildlife

- Private
 Public
 Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Dave Brittell	1111 Washington St., SE Olympia, WA 98504	(360) 902-2504
Implementation....Dave Brittell	1111 Washington St., SE Olympia, WA 98504	(360) 902-2504
Enforcement.....Bruce Bjork	1111 Washington St., SE Olympia, WA 98504	(360) 902-2373

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

No. Explain why no statement was prepared.

This proposal does not affect small business or commercial operators.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

No: Please explain: These proposals do not affect hydraulics.