

MEMORANDUM

TO : George Bald, Commissioner
Ted Austin, Director

FROM : Gail Wolek, Deputy Director

DATE : September 2, 2010

SUBJECT : Land/Deed Acquisitions/Restrictions at Odiorne Point State Park

February 7, 1961 State of New Hampshire purchased Ft. Dearborn in Rye from the federal government for \$91,000.00 (50% discount under Program of Utilization covenants). Deed (copy attached) restrictions include the following:

“For a period of 20 years” from the date of conveyance...

- The premises shall be continuously used and maintained as and for public park purposes and for a public recreational area, for incidental purposes relating thereto, and for no other purposes.
- Biennial reports shall be filed with the Secretary of Interior setting forth the use of the property establishing its continuous use of the premises for the purposes set forth.
- The state will not sell, lease or otherwise dispose of any of the premises without first obtaining written authorization from the Secretary of Interior.
- These restrictions may be abrogated by payment of the 50% “public benefit allowance” based on current market value plus 5% annual amortization and approval of the Secretary of Interior.

February 20, 1968 USDOl, Bureau of Outdoor Recreation, Regional Director George W. Davis confirms above restrictions in letter (copy attached) to Mary Louise Hancock, NH State (DRED) Planning Director.

September 7, 1971 USDOl “for and in consideration of the perpetual use of the hereinafter described premises as and for public park and public recreation area purposes” grants a perpetual easement (copy attached) to the State of NH of a .31-acre parcel of land, located within the boundary of the original Fort Dearborn/Odiorne Point State Park boundary, under Federal Lands to Parks program, “together with a perpetual easement reserved in Deed dated February 7, 1961” as right-of-way for ingress and egress to the property for the installation and maintenance of all necessary utilities for grantor’s purposes subject to the following restrictions:

- Property shall be used and maintained for the public purposes for which it was conveyed in perpetuity as set forth in the program and utilization and plan contained in grantee’s application.
- Grantee shall erect and maintain a permanent sign or marker near the point of principal access to the conveyed area indicating that the park or recreation area has been acquired from the federal government for use by the general public.
- The property shall not be sold, leased, assigned, or otherwise disposed of except to another eligible governmental agency as approved by the Secretary of Interior assuring that continued use and maintenance of the property for public park or public recreational purposes is conveyed in perpetuity with the conveyance.

- Grantee will submit biennial reports to the Secretary of Interior certifying that this parcel is still used for public park and public recreation purposes. This stipulation was changed to every 5 years, next due 05/05/2014, in letter (copy attached) from George Robinson, USDOI Federal Lands to Parks Program.

January 6, 1989

State of New Hampshire, using LCIP (Land Conservation Investment Program, see guidance information attached) funds, purchased from Ralph L. Brown, 64 acres of land located across Route 1A from Odiorne Point State Park. This land surrounds 2.0-acre parcel later purchased with LWCF funds (see below, #33-00581) and is conveyed via warranty deed (copy attached) with the following restrictions:

- Construction or placing of structures or buildings shall be prohibited except those used for on-site land-based agricultural, forestry or recreational purposes.
- Excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance in such a manner as to adversely affect the property's future agricultural, forestry, or wildlife potential shall be prohibited.
- Other acts or uses detrimental to the conservation value of the property including but not limited to allowing soil erosion shall be prohibited.
- Agriculture and forestry on the property shall be performed to the extent possible in accordance with a coordinated management plan (see Executive Summary, 1999 Odiorne Point State Park and White Island Master Plan attached) for the sites and soils of the property. Management activities shall not materially impair the scenic quality of the property as viewed from public waterways, great ponds, public roads, or public trails.
- Citizens of the state shall have access to the property under the auspices of the state.
- The sale, transfer, conveyance or release of this property from public trust is prohibited, in accordance with RSA 221-A (LCIP—copy attached).

LWCF at Odiorne:

June 30, 1970

LWCF Project #33-00038: Includes funding for 1) master development plan (referred to as Fort Dearborn State Park); 2) additional land acquisition as recommended by the master plan; and 3) development of park to included engineering plans, site preparation, roads and parking areas, picnic sites, boat ramp and dock, eligible buildings and structures, utilities, and necessary supporting facilities.

June 30, 1974

LWCF Project #33-00153: Funding to remove two existing buildings, fill and landscaping of the building sites, and construction of shoreline walks and paths.

July 6, 1976

LWCF Project #33-00243: Funding for exterior improvements and interior alterations to convert existing former park manager resident to a visitor-interpretive center.

May 15, 1981

LWCF Project #33-00406: Funding to acquire 146.76 acres of undeveloped woodland and marsh adjacent to Wallis Sands and Odiorne Point State Parks.

May 24, 1993

LWCF Project #33-00581: Funding to acquire 2.0 acre and 6.1 acre parcels as critical in-holdings in Odiorne State Park, plus .41 acre (Snuffbox Island) island in Little Harbor, Town of New Castle. The 2-acre parcel includes the Brown house and barn buildings.

March 20, 2003

LWCF Project #33-00628: Funding for removal and replacement of old playground structures.

(Copies of project agreements attached.)

Conversion-related guidance from 10/01/2008 LWCF manual:

- 1) Responsibility for compliance and enforcement of provisions related to conversions of use of LWCF-funded property rests with the State for both state and locally sponsored projects.
- 2) A critical first step is for the State and NPS to agree on the size of the Section 6(f) park land impacted by any non-recreation, non-public use, especially prior to any appraisal activity.
- 3) If the NPS is alerted or otherwise becomes aware of an ongoing conversion activity that has not been approved, NPS shall request the State Liaison Officer (SLO) to advise the project sponsor of the necessary prerequisites for approval of a conversion and to discontinue the unauthorized conversion activities.
- 4) States shall consult with NPS when conversions are proposed or discovered and prior to making the formal request to NPS.
- 5) States shall use the Proposal Description and Environmental Screening Form (PD/ESF, copy attached) to prepare the conversion proposal.
- 6) The following prerequisites must be met before NPS will consider a conversion request:
 - All practical alternatives to the conversion have been evaluated and rejected on a sound basis.
 - The fair market value of the property to be converted has been established and the property proposed for substitution is of at least equal fair market value as established by a state approved appraisal.
 - The property proposed for replacement is of reasonable equivalent usefulness and location as that being converted.
 - The property proposed for replacement meets the eligibility requirement for LWCF assisted acquisition.
 - The impact of the converted portion on the remaining 6(f)(3) protected area shall be considered.
 - All necessary coordination with other federal and state intergovernmental review agencies has been satisfactorily accomplished.
 - The guidelines for environmental review under NEPA have been satisfactorily completed and considered by NPS during its review of the proposed 6(f)(3) action.
- 7) To avoid any unnecessary delays, duplication of effort, and mid-course corrections, the state shall consult with NPS early when conversions are proposed to ensure a) the extent of impact from the conversion activity on Section 6(f)(3) protected areas is mutually agreed upon, and b) the acceptability of proposed replacement parkland has been explored prior to state/local sponsor expenditure of resources on appraisals and the required environmental review process to be undertaken in accordance with NEPA.
- 8) Small conversions: small conversions are composed of small portions of Section 6(f)(3) protected areas that amount to no more than 10% of the 6(f) protected area or 5 acres, whichever is less. Proposals to NPS for small conversion status must include the following:
 - Minor or no environmental impacts would occur on resources being removed from Section 6(f)(3) protection, on the remaining Section 6(f)(3) area, and on the contiguous new replacement parkland per the environmental screening form.
 - Minor or no impacts to historic resources per the Section 106 process of the National Historic Preservation Act.
 - The entire conversion proposal can be categorically excluded from further environmental review under NEPA.
 - The proposed conversion is not controversial.

- The replacement property is contiguous to the original 6(f)(3) protected area.
- 9) Delayed parkland replacement: Exceptions to the immediate replacement requirements will be allowed only when it is not possible for replacement property to be identified prior to the State's request for the conversion. An express commitment must be received from the state to satisfy Section 6(f)(3) substitution requirements within a specified period normally not to exceed one year following conversion approval.

Recommendations:

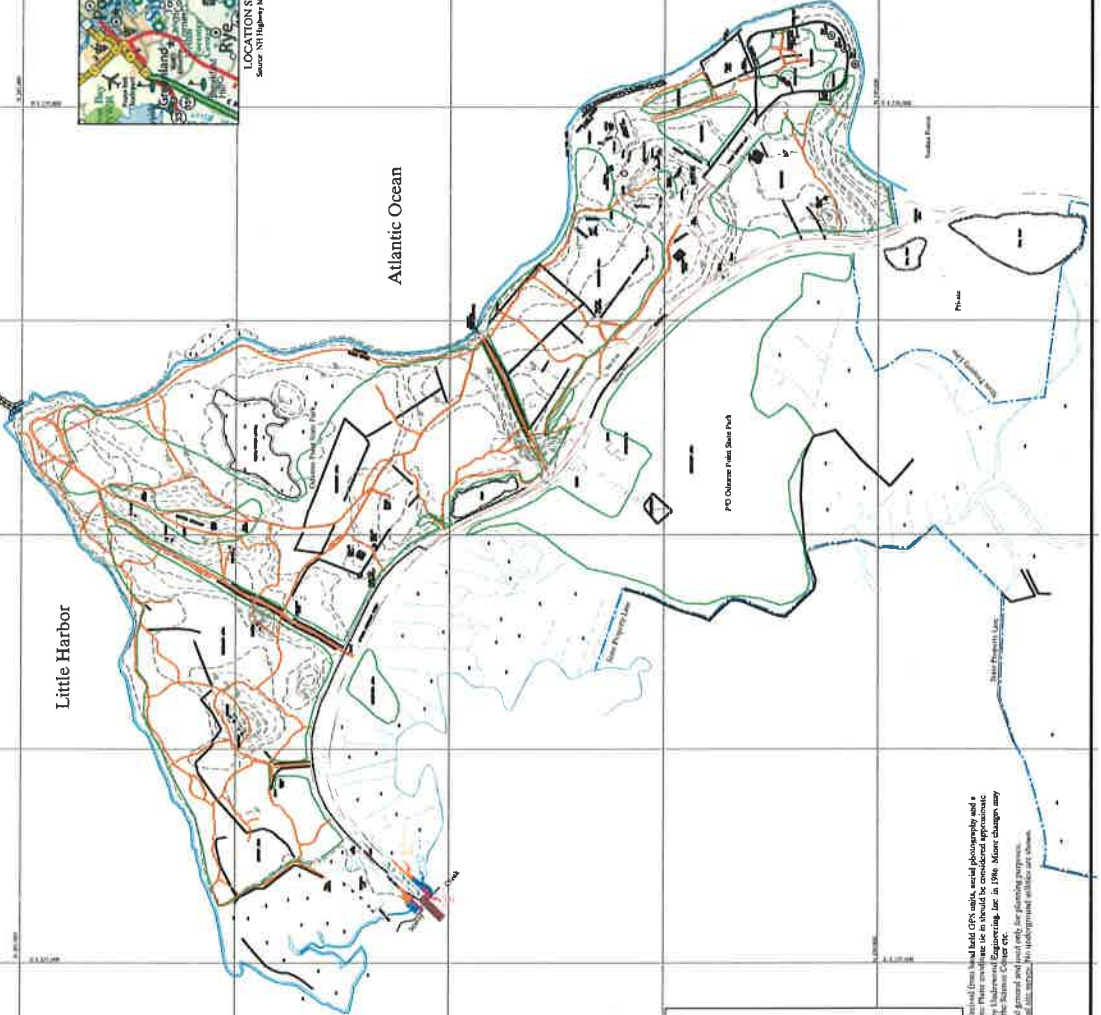
- 1) Given both the program restrictions in the funding sources used to acquire the Odiorne Point State Park properties on both sides of Route 1A, as well as the deed restrictions that accompanied those acquisitions, it would be extremely difficult for the state to defend the existing proposal for a cell tower location at the park.
- 2) The estate representatives and descendants of those who turned over or sold their family properties which eventually became consolidated into Odiorne State Park have adamantly opposed previous project proposals which in their view negatively impact the promised and deeded recreational uses and/or conservation protections they felt were guaranteed by the government in acquiring these properties.
- 3) All ongoing cell tower location activities at the park should cease immediately until the following steps have been completed:
 - All possible alternative locations for the cell tower must be explored and rejected for reasons that are sound and can be successfully defended. This process must be fully documented.
 - A fully validated and AG-reviewed deed search should be conducted as a prerequisite to the proposed cell-tower project to assure that the state has a legal footing from which to pursue any further investigation into this proposal.
 - Presuming the state has the legal status to proceed and decides to pursue the location of the proposed 105' cell tower at Odiorne Point State Park, Commissioner Bald (SLO), Director Austin (ASLO), and/or Deputy Director Wolek (ASLO) should have a preliminary discussion with National Park Service regional director, Jack Howard (Philadelphia NPS office) about the proposal and plans for continuing either a conversion, or conversion-exception process.
 - There must be a clearly defined public process to allow for an open discussion of the impact of this proposal on local residents, recreation activities, deed/program restrictions, future development concerns, etc.
 - Once the decision is made to proceed with or abandon the current proposal to locate a 105' cell tower at Odiorne Point State Park, Commissioner Bald will want to let Governor Lynch know of that decision and its implications.

Base Map Odiome State Park Rye, New Hampshire

Scale: 1=200'
Dec., 1998



LOCATION SKETCH
Source: NH Highway Map/RT DTD



Legend

- Boundary
- Water
- General Tree Line
- Approach, Power Line
- Trails
- Chain Link Fence
- Contours
- Cemetery
- Building
- Cedar Hole
- Amphitheater
- Pond
- Ledge
- Marker

This map was prepared from the data provided by the New Hampshire Department of Resources & Economic Development. The State of New Hampshire is not responsible for the accuracy or completeness of the information shown on this map. The State of New Hampshire is not responsible for the accuracy or completeness of the information shown on this map. The State of New Hampshire is not responsible for the accuracy or completeness of the information shown on this map.