

From: [Stenvall, Charlie](#)
To: [BrownScott, Jennifer](#)
Subject: Fwd: [EXTERNAL] Access to Jamestown S'Kallam Tribe's WADNR Leasehold
Date: Tuesday, October 4, 2022 1:17:24 PM
Attachments: [image001.png](#)
[19430529 Use Deed.pdf](#)
[Laws1927Ch255Sec152.pdf](#)
[Letter to USFWS RE Jamestown Tribe DNR leasehold 10.4.2022.pdf](#)

Sent from my iPhone

Begin forwarded message:

From: "Gorman, Thomas (DNR)" <Thomas.Gorman@dnr.wa.gov>
Date: October 4, 2022 at 1:04:47 PM PDT
To: hugh.morrison@fws.gov
Cc: "Stenvall, Charlie" <charlie_stenvall@fws.gov>, "Scott, Brady (DNR)" <Brady.Scott@dnr.wa.gov>, "Smith, Alex (DNR)" <Alex.Smith@dnr.wa.gov>, "Carlson, Sean (DNR)" <Sean.Carlson@dnr.wa.gov>
Subject: [EXTERNAL] Access to Jamestown S'Kallam Tribe's WADNR Leasehold

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Mr. Morrison,
Attached please find a letter and two enclosures in regards to access by the Jamestown S'Kallam Tribe to a leasehold managed by Washington State Department of Natural Resources.
Please do not hesitate to reach out if you would like to discuss this matter further.
Thank you,
Tom

Thomas Gorman, Ph.D.

Pronouns: he/him
Division Manager
Aquatic Resources Division
Department of Natural Resources
Mobile: 360-701-7692
thomas.gorman@dnr.wa.gov



State of Washington

IN CONSIDERATION of Section 152, Chapter 255, Laws of 1927 ~~Public~~
~~the receipt of which is hereby acknowledged~~, the STATE OF WASHINGTON does hereby grant, bargain, sell and convey unto
United States of America Fish and Wild Life Service, its successors
~~hereby~~ and assigns, the following described tide ~~on shore~~ lands of the second class, as defined by Chapter 255 of the Session Laws
of 1927, situate in Clallam County, Washington, to-wit:

All tide lands of the second class owned by the State of Washing-
ton, situate in front of, adjacent to or abutting upon the following des-
cribed uplands in township 31 north, range 4 west, W. M.
Lots 1, 2, 3 and 4, section 13, with a frontage of 156.35 lineal
chains, more or less; also
Lot 1, section 14, with a frontage of 30.18 lineal chains, more
or less; also
Lot 1, section 22, with a frontage of 54.21 lineal chains, more
or less; also
Lots 1, 2 and 3, section 23, with a frontage of 179.28 lineal
chains, more or less; also
Lots 1, 2, 3, 4 and 5, section 24, with a frontage of 258.35 lin-
eal chains, more or less; also
Lot 5, section 25, with a frontage of 40.93 lineal chains, more
or less; also
Lot 2, section 26, except the tide lands included in a deed from
the State of Washington to Don H. Palmer, issued February 26, 1930, under
application No. 7609 and except the tide lands included in a tract of
oyster land deeded by the State of Washington to San Juan Farm Associa-
tion, December 23, 1931, under application No. 9396, with a frontage of
47.53 lineal chains, more or less; also
Lot 3, section 26, with a frontage of 5.00 lineal chains, more or
less; also
The E $\frac{1}{2}$ in width of the John Thornton Donation Claim No. 38, in
section 26, with a frontage of 20.29 lineal chains, more or less; also
The C. M. Bradshaw Donation Claim No. 39, in sections 26 and 27,
except the west 330 feet of the east 1684.39 feet thereof, with a front-
age of 34.59 lineal chains, more or less; also
Lots 5, 6 and 7 and the northwesterly side of lot 4, section 27,
with a frontage of 174.63 lineal chains, more or less; also
Lots 1 and 2, section 18, township 31 north, range 3 west, W. M.,
with a frontage of 149.66 lineal chains, more or less.
The above described tide lands are conveyed under the provisions
of section 152 of Chapter 255 of the Session Laws of 1927.

NOTE:
The above described tide lands have a total frontage of 1151
lineal chains, more or less.

The above described lands are sold subject to all the provisions of Chapter 312 of the Session Laws of 1927, to which reference is hereby made, and
which shall be as binding upon the grantee and any successor in interest of said grantee as though set out at length herein.
"The grantor hereby expressly saves, excepts and reserves out of the grant hereby made, unto itself, its successors and assigns forever, all oils, gases,
coal, ores, minerals and fossils of every name, kind or description, and which may be in or upon said lands above described, or any part thereof, and the right
to explore the same for such oil, gases, coal, ores, minerals and fossils; and it also hereby expressly saves and reserves out of the grant hereby made, unto itself,
its successors and assigns forever the right to enter by itself, its agents, attorneys and servants upon said lands or any part or parts thereof, at any and all
times, for the purpose of opening, developing and working mines thereon, and taking out and removing therefrom all such oils, gases, coal, ores, minerals and
fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its successors and assigns forever, the right by its or their agents,
servants and attorneys at any and all times to erect, construct, maintain and use all such buildings, machinery, roads and railroads, sink such shafts, remove
such soil, and to remain on said lands or any part thereof for the business of mining and to occupy as much of said land as may be necessary or convenient for
the successful prosecution of such mining business hereby expressly reserving to itself, its successors and assigns, as aforesaid, generally all rights and powers
in, to and over said lands, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of
the property and rights hereby expressly reserved": Provided, That no rights shall be exercised under this reservation by the state, its successors or assigns,
until provision has been made by the state, its successors or assigns to pay to the owner of the land upon which the rights herein reserved to the state, its
successors or assigns are sought to be exercised, full payment for all damages sustained by said owner, by reason of entering upon said land.

TO HAVE AND TO HOLD the said premises, with their appurtenances, unto the said
United States of America Fish and Wild Life Service, its successors ~~hereby~~ and assigns, forever.

WITNESS, The Seal of the State, affixed this 29th
day of May, 1943

[SEAL]

(s) Arthur B. Langlie
Governor.

Attest:

(s) Belle Reeves
Secretary of State.

Deed No. 18251
~~XXXXXX~~
App. No. 10585

fishing does not interfere with the public use of them by the United States.

SEC. 151. Whenever application is made to the commissioner of public lands by any department of the United States government for the use of any tide or shore lands belonging to the state and adjoining and bordering on any upland held by the United States for any of the purposes mentioned in the preceding section, upon proof being made to said commissioner of public lands that such uplands are so held by the United States for such purposes, he shall cause such fact to be entered in the records of his office and shall certify such fact to the governor and who shall execute a deed, in the name of the state attested by the secretary of state, conveying the use of such lands, for said purposes, to the United States, so long as it shall continue to hold for said public purposes the uplands adjoining said tide and shore lands.

Application
by the U. S.
to the land
commis-
sioner.

Deed by the
Governor.

SEC. 152. Whenever application is made to the commissioner of public lands, by any department of the United States government, for the use of any tide or shore lands belonging to the state, for any public purpose, and said commissioner shall be satisfied that the United States requires or may require the use of such tide or shore lands for such public purpose, said commissioner may reserve such tide or shore lands from public sale and grant the use of them to the United States, so long as it may require the use of them for such public purposes; and the commissioner of public lands shall certify such fact to the governor, who shall thereupon execute an easement to the United States, which shall be attested by the secretary of state, granting the use of such tide or shore lands to the United States, so long as it shall require the use of them for said public purpose.

Grant of
easement to
the U. S. in
tide and
shore lands.



**DEPARTMENT OF
NATURAL RESOURCES**

AQUATIC RESOURCES DIVISION

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October 4, 2022

Hugh Morrison
Acting Regional Director, Pacific Region
United States Fish and Wildlife Service
911 NE 11th Ave
Portland, OR 97232

Subject: Access to DNR Lease 20-B13012 within Dungeness National Wildlife Refuge

Dear Mr. Morrison:

The Washington State Department of Natural Resources (DNR) has been informed by the Jamestown S’Kallam Tribe (Tribe) that the United States Fish and Wildlife Service (USFWS) may restrict access to the Tribe’s DNR leasehold located within the Dungeness National Wildlife Refuge.

From correspondence with the Tribe, DNR understands that the USFWS is specifically considering issuing a compatibility determination under Chapter 603 of the USFWS Service Manual that would deny the Tribe access to the DNR leasehold for the period from October 15 to May 15, annually.

While we appreciate USFWS’ desire to manage the refuge, DNR does not believe the USFWS has the jurisdiction to deny the Tribe access to its leasehold.

The portion of the Dungeness Wildlife Refuge that includes the DNR leasehold, as well as the access thereto, is part of an easement over State-owned aquatic lands (SOAL) granted from the State of Washington to the ‘*United States of America Fish and Wild Life Service, its successors*’ [sic] pursuant to Deed No. 18251, dated May 29, 1943. This easement was authorized by the Washington State Legislature pursuant to Section 152, Chapter 255, Session Laws of 1927, and notably did not convey fee title ownership to the USFWS, but instead conveyed only an easement for “any public purpose” (copies of the Deed and Session Law are enclosed herein). This means that the USFWS does not hold a property right broad enough to prohibit general access across SOAL or navigational access by the Tribe to the leasehold.

We note that your Service Manual contemplates this very circumstance. Section 2.10B(1), Chapter 603 of the Manual outlines circumstances where compatibility requirements may not apply, including where the necessary property rights are not vested in the Federal government. The Manual includes examples of when this occurs, such as areas of navigable waters and cases where primary jurisdiction of refuge lands fall to an agency other than the USFWS.

We also note that under Washington's public trust doctrine, the public generally maintains the right to go where the navigable waters go. *See Chelan Basin Conservancy v. GBI Holding Co.*, 190 Wn.2d 249, 259-262, 413 P.3d 549 (2018). The public trust doctrine is another reason we do not believe USFWS has the authority to prevent the Tribe from accessing the DNR leasehold.

Given this, DNR's position is that the Tribe rightfully may access the leasehold throughout the year without restriction. We appreciate your attention to this matter and hope that can be quickly and amicably resolved.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas Gorman', with a stylized flourish at the end.

Thomas Gorman
Aquatic Resources Division Manager

Enclosures: Deed and Session Law

cc: Charles Stenvall, USFWS
Jamestown S'Klallam Tribe
File 20-B13012