

**Testimony of Tom Wooten, Chairman, Samish Indian Nation
House Natural Resources Subcommittee on Indigenous Peoples of the United States
Legislative Hearing on H.R. 2961, Samish Indian Nation Land Reaffirmation Act
June 5, 2019**

Introduction

Good afternoon, Chairman Gallego, Ranking Member Cook, and Members of the Subcommittee. My name is Tom Wooten, Chairman of the Samish Indian Nation (“Tribe” or “Nation”), a federally recognized Indian tribe headquartered in Anacortes, Washington, in the San Juan Islands. The Tribe is comprised of approximately 2,000 citizens. Thank you for this opportunity to testify on H.R. 2961, the Samish Indian Nation Land Reaffirmation Act of 2019. Accompanying me today is Council Member Jenna Burnett.

H.R. 2961 would reaffirm the decision of the Bureau of Indian Affairs (BIA) on November 9, 2018, to take approximately 6.7 acres of land at Campbell Lake South into trust for the Tribe that it currently owns in fee and end frivolous litigation that is wasting precious federal taxpayer funds.

In its decision approving the Tribe’s land-into-trust application for Campbell Lake South, the BIA stated, “Trust status of the property will enable the Nation to exercise its inherent governmental authority for the benefit of its members and facilitate tribal self-determination. The property is located within the Nation’s historical and aboriginal territory as set forth in anthropologist reports. The property will establish a land base for the Nation in an area that is central to the Nation’s cultural and governmental activities.”¹ The BIA found that the “Nation needs this additional land for self-government, self-sufficiency, [and] self-determination purposes, and to increase its land base to better sustain the Nation and its members.”² No environmental or jurisdictional issues exist with regard to the property.

The BIA reached this decision after an over nine-year process to complete a “*Carcieri* analysis,” determining that the Tribe fulfilled the criteria under the U.S. Supreme Court’s 2009 *Carcieri* decision and is eligible for the Secretary of the Interior to take land into trust for the Tribe under the Indian Reorganization Act (IRA), 25 U.S.C. §5108.³

On behalf of the Tribe, we extend our sincerest thanks to Congressman Rick Larsen for introducing H.R. 2961. Our struggle to secure a permanent land base for our people has been an extremely long and difficult road, and we greatly appreciate this long-standing commitment to assist us in rebuilding our community. This bill has strong bi-partisan support, including various members of this Subcommittee. The following Members of Congress are original co-sponsors of H.R. 2961: Rep. Ruben Gallego (D-AZ), Rep. Paul Cook (R-CA), Rep. Betty McCollum (D-MN), Rep. Tom Cole (R-OK), Rep. Tony Cardenas (D-CA), Rep. Doug LaMalfa (R-CA), Rep. Norma Torres (D-CA), Rep. Alex Mooney (R-WV), Rep. Gwen Moore (D-WI), Rep. Jimmy Gomez (D-CA), Rep. Raul Ruiz (D-CA), and Rep. Darren Soto (D-FL). We are grateful for your support.

¹ Decision of BIA Northwest Region dated Nov. 9, 2018, approving Samish Indian Nation’s Land-into-Trust Application for Campbell Lake South Property, page 5.

² *Id.*

³ *Id.* at p. 4-5, 7, and Attachment I (containing Department of the Interior’s (“Department”) 32-page *Carcieri* analysis).

Our Campbell Lake South property is located near Campbell Lake on Fidalgo Island in Skagit County contiguous to the Tribe's existing 79 acres of trust land. Skagit County, in which this property is located, has been supportive of Samish's efforts to take this land into trust. Samish already has a Memorandum of Understanding with Skagit County for mutual cooperation. The City of Anacortes has been supportive of the Tribe's efforts to take this land into trust as well.

The Tribe plans to use this 6.7 acres as a buffer and another point of ingress and egress to our existing trust land. Our original 79-acre trust parcel was taken into trust in 2009 after an almost 10-year process to provide housing for tribal members. Unfortunately, it has been cost prohibitive for the Tribe to utilize these 79 acres for tribal housing. The Tribe has been engaged in planning efforts to look at using this trust land for governmental offices, a cultural center, and non-gaming economic development.

History of the Samish Indian Nation

The Samish have always been an island people. Prior to contact by the European nations, the Tribe inhabited the San Juan Islands. The Samish in pre-contact times moved from island to island depending on the season and the available harvest, with permanent winter village longhouses. The first recorded instance of European contact in the Northwest occurred in 1792 between Samish inhabitants of Guemes Island and the Spanish.

The Samish Tribe is a Coast Salish tribe of Indians. Our aboriginal territory stretches over a seven-county region of northwest Washington, ranging from the Cascades to the western shores of the San Juan Islands—bounded by the southeast tip of San Juan Island, Deception Pass, Padilla Bay, Samish Bay, Chuckanut Bay, and the northern end of Lopez Island. The Samish were a separate tribe of Indians who shared linguistic traits with some surrounding tribes. Our people harvested marine resources throughout the central San Juan archipelago and hunted game and used plant resources in the islands and surrounding coastal territory. Extensive Samish village and cultural sites are located on Fidalgo, Samish, Guemes, Cypress, and Lopez Islands, near Bay View and Sedro-Woolley on the mainland, and other locations.

The Tribe is comprised of the original Samish Tribe and the Nu-wha-ha Tribe (sometimes called the "Stick-Samish"). According to experts and our Federal Acknowledgment decision, Nu-wha-ha merged with Samish by 1850. During pre-treaty times, several Samish and Nu-wha-ha villages were located on Fidalgo Island, in the islands, and on surrounding territory. As we established in our 8-day federal acknowledgment trial in 1994, the Samish have continually existed and maintained our tribal government since before the time of the Treaty signing up to today.

The BIA's comprehensive *Carcieri* analysis confirmed the Tribe's continuous existence from pre-treaty times to the present and reaffirmed the findings and conclusions from the Tribe's federal acknowledgment decision. A couple of nearby tribes submitted hundreds of pages in opposition to Samish's legal status and *Carcieri* eligibility, but those submissions were rejected as not credible by the BIA. Some of the BIA's *Carcieri* analysis findings are referenced below.

While Samish areas of occupation and residence had decreased by 1855 because of deaths from disease and attacks from northern tribes, the Tribe continued to use its traditional territory for

gathering plants for food and medicine. Samish people continued to occupy Fidalgo, Guemes, and Samish Islands and maintained a central Samish community there into the 1880s.

The Samish did not move as a tribe to any of the reservations established under the Point Elliott Treaty -- both because of a desire to stay at our traditional sites and because there was not sufficient land available for settlement on the designated reservations.

After being driven off Samish Island, the main Samish village was located during the last part of the 1800's on Guemes Island. A 400-foot longhouse on Guemes Island located on land obtained as homesteads by two Samish citizens under an 1875 appropriations act, which extended benefits under an 1862 Indian Homestead Act, became a center of Samish culture over the next twenty plus years. However, this homestead land was eventually lost to tax arrears; and, while many Samish remained on Guemes Island, organized village activity slowly diminished at that location in the early 1900s.

The Tribe then established a tribal settlement next to the Ship Harbor cannery on Fidalgo Island. Maps of the time identify a "Samish village" there. This settlement continued in existence until the cannery closed during the Great Depression. While at that point a few individual Samish moved to existing nearby reservations, the core of the Tribe and most tribal citizens remained off-reservation in the Fidalgo Bay and Anacortes area, and even those few Samish who moved onto existing reservations maintained their involvement with and membership in the Tribe. Our tribal government continued to operate and handle governmental affairs, including the drafting of our first formal tribal constitution in 1926 and revision of tribal enrollment records. The Tribe did not have its own land base during this period, but Department records consistently identify the Samish as a tribe under the BIA Tulalip Agency's jurisdiction during this period from the 1920s up to and beyond the 1940s, and Department and other federal officials provided services to Samish tribal members.

Treaty negotiation records from the 1850s show that the treaty negotiation committee headed by Governor Stevens had originally planned to establish a separate reservation for the Samish, but this plan did not eventuate in the treaty itself. The Tribe's traditional territory was ceded in the Treaty of Point Elliott, but our Tribe was never compensated adequately for that loss. In the 1934 *Duwamish* Court of Claims case, Samish was held to be a still existing separate tribe of Indians that had lost its lands without compensation under the Treaty, but the court awarded no damages.

In 1951, the Tribe filed a new land claim action in the Indian Claims Commission (ICC) against the U.S. based upon the inadequate compensation the Tribe received for land that was taken by the Treaty of Point Elliot. In March of 1958, the ICC made a number of significant findings in favor of the Tribe. The court held that the Tribe was a tribal entity, was a signatory to the Treaty of Point Elliott, had continually existed up to that date, and was the legal and political successor to the historical Samish Tribe. The court also made two land-based rulings. First, the ICC ruled on Samish's historical exclusive territory, stating "The Samish held Samish Island, Guemes Island, eastern Lopez Island, Cypress Island, and Fidalgo Island." The ICC also found that, "The treaty cession includes the whole of the areas alleged by petitioner to have been used and occupied by the Samish Indians in aboriginal times." The ICC awarded monetary compensation to Samish for

the loss of its lands. After off-set for discretionary “benefits” allegedly provided to the Tribe by the United States, the ICC awarded the Tribe \$5,754.96 for the taking of our traditional homelands.

Today the Tribe’s headquarters remain in the heart of Samish’s ancestral area on Fidalgo Island in Anacortes, Washington. Tribal lands owned in fee are all located in the Tribe’s historical and aboriginal territory. The Tribe owns a number of parcels in fee in Skagit County and one in San Juan County. As mentioned above, only 79 acres of land located in Skagit County are currently held in trust for the Tribe, taken into trust under the IRA. Its use is restricted due to physical limitations. That property took close to ten years of extensive legal proceedings to have it confirmed in trust for the benefit of the Tribe.

Arbitrary BIA Action Removed Tribe from Federal List

Throughout the period described above, the Tribe continued to exist as a federally recognized Indian tribe under federal jurisdiction, although as a landless tribe. Federal records for Samish demonstrate a continuous course of dealing between the U.S. and the Tribe as set forth in the Department’s positive *Carieri* analysis on the Tribe, and records describe the Tribe as being “under the jurisdiction” of the Tulalip BIA Agency.

The Tribe suffered a significant setback in the 1960s when the BIA started its first internal effort to list all Indian tribes with which the U.S. has government-to-government relationships. The Tribe was included on the first such list that a BIA clerk assembled in 1966. When the list was revised in 1969, the BIA clerk dropped the Tribe from the list in error. The clerk testified about this in 1994 during the Tribe’s federal acknowledgment trial. Because of this clerical error, the BIA started treating the Tribe as unrecognized in the early 1970s even though no formal determination had ever been made by Congress or the Administration that the Tribe had lost its recognition. The Department consulted its internal list of tribes and, not finding Samish on it any longer, started denying services to the Tribe and our citizens, forcing us to litigate our status as a federally recognized tribe.

After a 27-year struggle through a lengthy administrative process and costly and contentious litigation to correct this clerical error over federal opposition, the Tribe gained reinstatement as a federally recognized tribe in May of 1996. Additional federal court litigation confirmed the Tribe’s re-recognition in November of 1996. The federal court found that “The Department of Interior could not adequately explain why the Samish had been omitted from a list of federally recognized tribes prepared during the 1970s.” A federal circuit court decision found the BIA’s conduct in dropping the Tribe from the list of federally recognized tribes to be “arbitrary” and “wrongful”. It concluded that the Tribe “should have been federally recognized between 1969 and 1996” – the entire period of time the federal government informally considered Samish to be unrecognized.

Upon re-recognition, the Indian Health Service designated the following 10 Washington counties as Samish’s service delivery area upon re-recognition: Skagit, San Juan, Whatcom, Island, Snohomish, King, Pierce, Kitsap, Jefferson, and Clallam.

The BIA, after an 8-year struggle upon re-recognition, finally designated the following 5 Washington counties as Samish’s service delivery area in 2004: Skagit, San Juan, Whatcom, Snohomish, and Island. These counties are located in the Tribe’s historical and aboriginal territory.

Struggles to Have Land Taken into Trust

After our long struggle to achieve federal re-recognition, the Tribe is still working to undo the significant adverse impacts of the BIA's mistake in dropping the Tribe from its internal list of recognized tribes. In addition to denying the Tribe trust and tribal resources and access to federal programs and funding, the Tribe has faced many challenges at the Department in the past in our efforts to restore our homelands. Since the BIA's clerical error was finally corrected in 1996, the Tribe has sought to restore our lands through the federal tribal land-into-trust process administered by the Department under 25 U.S.C. §5108 and 25 C.F.R. Part 151. However, due to various factors discussed below, the BIA's land-into-trust process has not worked well for Samish.

It took BIA nearly ten years to approve Samish's first fee-to-trust application in 2009, primarily because of internal technical errors the BIA made in its decision. Even then, the BIA only did so a day before the Tribe testified before this Committee about the lack of any action by the BIA in processing any of the Tribe's fee-to-trust applications. This 79-acre parcel is the only land currently held in trust for the Tribe. Because the parcel is not easily accessible, the Tribe has not been able to use the parcel to meet the Tribe's significant housing, cultural preservation, economic development and other tribal needs. Until the Administration's decision last November for the Campbell Lake South property, none of the Tribe's other fee-to-trust applications, pending for many years, have been decided by the BIA.

On February 24, 2009, the U.S. Supreme Court issued *Carcieri v. Salazar*, holding that the IRA authorizes the Interior Secretary to place lands into trust only for those Indian tribes that were "under federal jurisdiction" as of the date of enactment of the IRA, which was June 18, 1934. As a result of the *Carcieri* decision, the BIA froze aspects of the administrative land-into trust process while it tried to figure out how to interpret and implement the Court's decision. After several years, the Department developed a *Carcieri* analysis process set forth in the Department's 2014 Solicitor's Opinion M-37029 to which all tribes who want to take land into trust must adhere to show that the tribe was under federal jurisdiction as of 1934.

The Tribe requested that BIA complete a *Carcieri* analysis for the Tribe right after the *Carcieri* decision was issued, so the Tribe's pending fee-to-trust applications could continue to be processed. For Samish, a *Carcieri* analysis meant that the BIA would have to review the Tribe's entire history, including a review of all the documents from the Tribe's 27-year administrative and legal re-recognition battle, which had generated hundreds of thousands of pages of documents. For several years, the BIA told the Tribe that it simply did not have the manpower or financial resources to undertake a *Carcieri* analysis for the Tribe. Even when the BIA did begin the analysis, it could not provide a timeline for the completion.

Faced with an uncertain administrative process, the Tribe also pursued legislation to directly place a modest amount of land into trust. In 2012, Rep. Larsen introduced H.R. 5992, the Samish Indian Nations Homelands Act, to take approximately 95 acres of land into trust for the Tribe. The bill included a gaming prohibition and a treaty neutrality provision at the request of the Swinomish Indian Tribal Community (Swinomish). The bill had the support of the local counties and city where the lands are located. Again in 2013, Rep. Larsen re-introduced, H.R. 1225, the Samish Indian Nation Homelands Act, to take this same land into trust for the Tribe. In July of 2013, the

House Natural Resources Subcommittee on Indian and Alaska Native Affairs held a legislative hearing on the bill. In 2015, Rep. Larsen re-introduced H.R. 1632, the Samish Indian Nation Land Conveyance Act, to again take this same land into trust. The name of the bill was changed and the word “restore” was removed from the treaty rights provision to accommodate concerns from another nearby tribe. Despite the fact that the Tribe made legislative changes to accommodate these nearby tribes, they continued to oppose the legislation, on the grounds that Samish should be required to go through the administrative fee-to-trust process. Again, in 2017, Rep. Larsen re-introduced H.R. 2320, the Samish Indian Nation Land Conveyance Act, to take this same land into trust. In November of 2017, the House Natural Resources Subcommittee on Indian, Insular, and Alaska Native Affairs Subcommittee held a legislative hearing on the bill. No substantiated valid concerns were identified in that hearing.

Finally, in November 2018, after nine years, the Department finished its *Carcieri* analysis for Samish, finding that the Tribe was under federal jurisdiction as of 1934 and thus eligible to have lands taken into trust. The BIA then approved Samish’s application to take Campbell Lake South into trust. The Tribe completed the administrative fee-to-trust process demanded by the nearby tribes referenced above. Although this was a significant step forward for Samish, that decision was immediately appealed by Swinomish to the Interior Board of Indian Appeals (IBIA), claiming that the BIA is prohibited from taking land into trust for Samish under *Carcieri*. This is just a delaying tactic designed solely to hinder Samish development plans for as long as possible because it is likely that the appeals of this decision in the IBIA and federal court may take up to six years to resolve. During Swinomish’s appeal, for example, the final action to place this parcel of land into trust has been placed on hold. In addition, all other Samish fee-to-trust decisions have been frozen pending completion of the Campbell Lake South appeal. Future Samish fee-to-trust decisions will also likely be appealed by Swinomish.

Swinomish’s appeal of the Samish Tribe’s positive Campbell Lake South administrative fee-to-trust decision is occurring after Swinomish has repeatedly demanded that Congress forego land-into-trust legislation for Samish and force Samish to complete the administrative fee-to-trust process, expecting that process to result in a negative decision. Now that Samish has obtained a successful fee-to-trust decision, Swinomish is attacking the legitimacy of the administrative process and claiming, among other things, that the BIA is prohibited from taking land into trust for Samish under *Carcieri*. This tactic continues a long-standing pattern by Swinomish in opposing Samish no matter what the issue is. When the Samish Tribe was going through the federal acknowledgement process, nearby tribes testified before Congress that the existing federal acknowledgment process protected their due process rights and should not be changed. When Samish ultimately was successful in obtaining federal acknowledgment, the nearby tribes quickly flipped and argued that the administrative federal acknowledgment process violated their due process rights. The same thing is happening again now that the BIA has ruled in favor of the Tribe’s Campbell Lake South fee-to-trust application. Swinomish had every conceivable opportunity to submit evidence in opposition to Samish. Fortunately, Samish has been able to persevere in the face of constant opposition.

Purpose of and Need for H.R. 2961

To prevent further delay in finalizing the trust status of our 6.7-acre South Campbell Lake, H.R. 2961 would bring much-needed finality by reaffirming the BIA’s decision to take this property

into trust. This finality would further ensure that federal taxpayer funds are not wasted on protracted frivolous litigation given it is the United States that is tasked with defending its decision. This bill is modeled after P.L 113-179, the Gun Lake Trust Land Reaffirmation Act, enacted into law in 2014 to bring finality to litigation over a trust parcel taken into trust by the BIA for the Gun Lake Tribe. Moreover, the legislation would enable the BIA and the Tribe to move forward in considering other pending Samish trust applications, including applications for our Administrative Complex and Longhouse, which houses the Tribe's Head Start and elder services programs.

Over the past decade, Swinomish has repeatedly asked Congress to require Samish to go through the regular administrative fee-to-trust process instead of considering legislation that would direct the Department to take land into trust for Samish. We have done so and the BIA has finally determined, after nine long years, that the Tribe was under federal jurisdiction as of 1934 and is entitled to have land taken into trust like other tribal governments. It has been a half century since the BIA's 1969 clerical error arbitrarily dropped the Tribe from the Department's list of federally recognized tribes and 27 years since the Tribe was reinstated as a federally recognized tribe. The Tribe and our people continue our struggle to undo the adverse impacts of the BIA's mistake, but we have still been unable to acquire land into trust to establish a homeland like other federally-recognized tribes are able to do. The Tribe has endured years of inaction and delay on our trust land applications. This bill would help us move forward in rebuilding our community.

Support for H.R. 375, *Carcieri* fix

The Tribe strongly supports H.R. 375, introduced by Rep. Tom Cole and Rep. Betty McCollum, to clarify the Secretary of the Interior's authority under the IRA to take land into trust for all federally recognized tribes. The Tribe deeply appreciates this Committee's efforts in ensuring passage of this legislation in the House and is hopeful that the Senate can consider passage of this legislation as well during the 116th Congress.

The Supreme Court's *Carcieri* decision resulted in an undue delay before the BIA completed a *Carcieri* analysis for the Tribe. As discussed, the BIA was unable to undertake a *Carcieri* analysis for the Tribe for years. Now, despite an exhaustive *Carcieri* analysis demonstrating that the Tribe was under federal jurisdiction in 1934, Swinomish has appealed the BIA's decision arguing that the BIA is prohibited from taking land into trust for the Tribe under *Carcieri*. Had legislation been enacted by Congress to address *Carcieri* then the Tribe would not have had to endure what we did and the Department would not have to now expend precious taxpayer resources to defend its decision. The *Carcieri* decision continues to cost the Tribe and the federal government significant amounts of time and resources to take this land into trust and defend its land-into-trust decision for Samish against frivolous litigation.

Conclusion

The Tribe has endured tremendous adversity over the past two centuries to arrive at this point. By reaffirming the BIA's decision to take 6.7 acres of land into trust for Samish, H.R 2961 would enable us to take a significant step forward in achieving greater self-determination and self-governance and in meeting the needs of our tribal members. Thank you for this opportunity to testify. I am prepared to answer any questions.

(ATTACHMENTS)