

**TESTIMONY OF
CHAIRMAN TOM WOOTEN, SAMISH INDIAN NATION
BEFORE THE HOUSE NATURAL RESOURCES COMMITTEE
ON HEARING ON H.R. 2040**

**A BILL TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO PROCESS
CERTAIN LAND-INTO-TRUST APPLICATIONS OF THE SAMISH NATION AS ON-
RESERVATION APPLICATIONS UNDER 25 C.F.R. 151(B)**

June 3, 2009

Introduction

Thank you, Chairman Rahall, Ranking Member Hastings, and other Members of the Committee, for holding this hearing on H.R. 2040 and for allowing me the opportunity to testify today. My name is Tom Wooten, Chairman of the Samish Indian Nation, based in Anacortes, Washington, in the San Juan Islands.

I would like to take a moment to thank Congressman Rick Larsen for introducing H.R. 2040 and for all his efforts to assist the Samish Nation in rebuilding our community. It has been an extremely difficult and long road for us, and we greatly appreciate Congressman Larsen's commitment to help us in righting a grievous wrong caused by a simple clerical mistake at the Bureau of Indian Affairs (BIA) that left the Tribe without federal benefits for over 30 years. We also would like to thank the Mayor and City Council of Anacortes, Washington, and the Skagit County Board of Commissioners for their support of H.R. 2040 as well as their friendship with the Samish people.

The Samish Indian Tribe had been continuously federally recognized by the United States since the signing of the 1855 Treaty of Point Elliot. However, for a period of time beginning in 1969, the BIA, due to its own administrative error, treated the Tribe as an unrecognized tribe. Essentially, the Samish Indian Tribe was on the BIA's list of federally recognized tribes in 1966 but was omitted from this list when the BIA retyped the list in 1969. This treatment has had many adverse consequences for the Tribe, including the loss of treaty rights and the loss of federal services and benefits, such as taking land into trust. The Samish Tribe struggled for over 27 years through lengthy administrative processes and contentious litigation to overturn this mistake; and, in May 1996, the Tribe successfully obtained reinstatement of its federal recognition as an Indian tribe.

We are still working hard to undo the effects of this clerical error that has had devastating impacts upon us. H.R. 2040 would assist us by allowing us to go through the land-into-trust regulatory process that almost all other federally recognized tribes go through with respect to certain of our trust applications within a small and defined geographic boundary. The Samish Indian Nation needs and deserves a home land that other tribes have, and H.R. 2040 would help us achieve this.

History of the Samish People

The Samish Indian Tribe is and always has been an island people. The Samish Indian Tribe inhabited the San Juan Islands in pre-European contact times. Extensive village and cultural sites are located on Fidalgo, Samish, Guemes, Cypress, and Lopez Islands, among others, and its members harvested marine resources throughout the central San Juan archipelago. The first recorded instance of European contact occurred in 1792 between Samish inhabitants of Guemes Island and a Spanish sloop memorialized in a painting made by a member of the crew which hangs in the Spanish Naval Museum in Madrid. The Samish people throughout history were considered somewhat nomadic as they moved from island to island depending on the time of year and the activities in which they were engaged. The notion of being restricted to one location on a reservation did not appeal to the Samish.

During the time of the signing of the 1855 Treaty of Point Elliott, several Samish and Nu-wa-ha villages (the Nu-wa-ha Band of Indians had assimilated with the Samish by 1850 and were sometimes known as the “Stick Samish”) were located at that time on March’s Point on Fidalgo Island, within the area designated by Governor Stevens in the Treaty as one of the Indian reservations to be established for the Indians of Puget Sound. That area was later removed from consideration as a reservation by territorial judicial decree. The remaining designated area was later proclaimed by Executive Order as the Swinomish Reservation. The Samish did not move as a tribe to any of the reservations established under the Point Elliott Treaty. Samish villages were located during the last half of the 1800’s on Samish and Guemes Islands. The Samish were forced from these village sites by white homestead settlement. In the early 1900s, the Samish established a settlement next to the Ship Harbor cannery. This settlement continued in existence until the cannery closed during the depression. At that point, some Samish individuals and families with family connections moved to existing reservations. However, the core of the Samish Tribe remained in the Anacortes area, and its tribal government continued to operate and handle governmental affairs, including the drafting of a new tribal constitution, revision of tribal enrollment, and filing of a land claim lawsuit. The Samish Tribe did not have a land base during this period.

Purpose and Need for H.R. 2040

H.R. 2040 would designate a discrete geographic boundary within which the BIA would utilize the regulations under 25 C.F.R. Part 151 that pertain to on-reservation fee-to-trust applications instead of the regulations that pertain to off-reservation fee-to-trust applications for Samish trust applications. The federal regulations pertaining to tribal land acquisitions are located at Part 151 of Title 25 of the Code of Federal Regulations. The “on-reservation” trust application process applies when a tribe requests that the BIA take land into trust for it when the land is within or contiguous to its existing reservation (25 C.F.R. §151.10). Fee-to-trust land applications outside

of and non-contiguous to an existing reservation are considered “off-reservation” under the regulations (25 C.F.R. §151.11).

The off-reservation regulation presumes an existing reservation, requiring the tribal applicant to provide the “distance from the tribe’s reservation,” and to meet additional criteria. Meeting the requirements contained in the regulations for on-reservation fee-to-trust applications is very rigorous, but meeting the requirements contained in the regulations for off-reservation fee-to-trust applications is extremely onerous, costly, and time-consuming. These regulations are unfair to tribes who do not have reservations or who do not have any trust lands because it ironically dictates that these tribes must go through the off-reservation regulation process. It can take a decade before the BIA takes land into trust for a tribe under the off-reservation trust application regulations and the BIA, in the past, has had an unwritten policy that it is not approving off-reservation applications and that all off-reservation applications must be approved by the central office, which adds years of delay, and cannot be approved by the regional offices. For example, 10 years ago, the Tribe submitted an off-reservation trust application to the BIA to take land into trust for tribal member housing on Fidalgo Island. This past Monday, on the eve of this hearing, the BIA informed us that the process for the trust application was completed and the land was officially in trust for the Tribe. It should not have taken 10 years for this to happen.

The BIA has stated that it cannot administratively establish an on-reservation designation for the Samish and that it must be done through legislation. According to the Department of the Interior’s Solicitor’s Office, the Department of the Interior is prohibited from establishing an on-reservation designation when lands are not held in trust by the United States. It believes that the Code of Federal Regulations limits its ability and that it can only apply the on-reservation trust application regulations only when trust parcels or a reservation already exist. Thus, according to the BIA, the only way to establish an on-reservation designation is through legislation.

It is important to note that H.R. 2040 does not automatically create trust lands or a reservation for the Tribe but rather allows for Samish fee-to-trust applications to be treated under the same process as the on or near reservation fee-to-trust applications of almost every other federally recognized tribe. In previous instances, the Congress, when enacting legislation restoring federal recognition of tribes or providing federal acknowledgment of tribes, has included provisions in the legislation designating areas as reservations or mandating that the Secretary of the Interior take certain lands into trust for the tribe. Samish does NOT request similar mandatory provisions even though such provisions would greatly alleviate the challenges it faces in rebuilding its community. Instead, Samish simply asks that it be afforded the same opportunities as most other federally recognized tribes in utilizing the on reservation land-into-trust regulatory process instead of the off-reservation land-into-trust regulatory process.

Further, H.R. 2040 would prohibit gaming under the Indian Gaming Regulatory Act on the lands that the BIA would take into trust for the Tribe under the legislation.

Basis for the On-Reservation Geographical Boundary

The geographic boundaries designated in H.R. 2040 would provide the Tribe with an opportunity to gain scattered trust lands within its aboriginal and historical territory. The Tribe's goal is the opportunity to acquire some land that is significant and culturally relevant to the Tribe and for use for tribal programs. The Tribe knows that it will face challenges when it seeks to purchase land given that real property is in demand in the area. Further, the Tribe realizes that it will be difficult to acquire land to create a consolidated area given that almost all the property in the area is already owned by others. The geographic boundary encompasses a land mass of 29,265.83 acres.

The islands contained in the boundaries have been identified as areas of exclusive Samish occupancy and subsistence use, as documented by renowned ethno-historians. In recognition of the Samish Indian Tribe's occupancy and use of these islands, state and federal agencies frequently consult with the Tribe about archeological and cultural resource management pursuant to applicable state and federal laws requiring consultation with the tribal governments on issues that arise on these lands. The geographical boundary would be a limited area found exclusively within a portion of Skagit County but would allow the Samish Tribe to begin re-establishing a homeland for tribal programs and services in its historical area.

Specifically, Samish Island is the site of the largest pre-contact and post-contact Samish Village. Today, Samish Island has a mass Samish grave site on private lands that the Tribe maintains. The Tribe has done archaeology and scientific research on and around Samish Island confirming Samish ties.

Fidalgo Island is the location of the Tribe's government headquarters and administration campus, Head Start and elder nutrition programs, land for low income housing and the Fidalgo Bay RV Resort, which the Tribe owns and operates as an economic development venture. Fidalgo Island also has four documented village sites at Ship harbor, north shore Guemes channel, Fidalgo Bay, and March's Point (March's Point is excluded from the geographic boundary under H.R. 2040 at the request of a tribe located in the area). The RV site is both on a Samish Village site and directly across from Samish Village site on March's Point. The Tribe has done and continues to do archaeology and scientific research on and around Fidalgo Island.

On Guemes Island, the west and south shores were village sites with the west shore site being the last inhabited traditional Samish Village. First European contact (Spanish and English) was made from the south shore site on Guemes Island in the 1790's. Also, a documented Samish cemetery site exists on Guemes Island and Samish tribal members presently reside there and are part of the community.

Cyprus Island was and is a special place for tribal members seeking spiritual identity and solitude. A documented Samish cemetery site exists on Cyprus Island as well and tribal members resided there well into the twentieth century.

Other smaller islands that would be contained in the geographic boundary are: Northwest Island, Williamson Rocks, Allan Island, Young Island, Burrows Island, Hat Island, Saddlebag Island, Huckleberry Island, Strawberry Island, Jack Island, Cone Islands, Towhead Island, and Dot Island. Most of these islands are too small to sustain human habitation or development but these islands are culturally and historically significant to the Samish people.

Conclusion

Thank you for the opportunity to present this testimony. I look forward to working with you on passage of H.R. 2040. I am hopeful that, with this legislation, the Samish people can soon have a permanent homeland.