

Subcommittee on Indian, Insular and Alaska Native Affairs

Doug LaMalfa, Chairman

Hearing Memorandum

November 13, 2017

To: All Subcommittee on Indian, Insular and Alaska Native Affairs Members

From: Majority Committee Staff,
Subcommittee on Indian, Insular and Alaska Native Affairs (x6-9725)

Hearing: **Legislative hearing on H.R. 2320 (Rep. Rick Larsen),** To direct the Secretary of the Interior to place certain lands in Skagit and San Juan Counties, Washington, into trust for the Samish Indian Nation, and for other purposes,
Wednesday, November 15, 2017, at 10:00 a.m. in 1324 Longworth HOB

H.R. 2320 (Rep. Rick Larsen), “*Samish Indian Land Conveyance Act of 2017*”

Summary of the bill

H.R. 2320 was introduced by Rep. Rick Larsen on May 3, 2017. H.R. 2320 would require the Secretary of the Interior to acquire approximately 97 acres in Washington in trust for the Samish Indian Nation. The lands consist of seventeen parcels of dry and marine lands in five non-contiguous areas spread across San Juan and Skagit Counties, Washington. Gaming pursuant to the Indian Gaming Regulatory Act¹ would be prohibited on the lands placed in trust under the bill. Maps of the land to be taken into trust are attached to this memo.

Cosponsors

Rep. Pete Aguilar (D-CA), Rep. Tony Cardenas (D-CA), Rep. Matt Cartwright (D-PA), Rep. William Lacy Clay (D-MO), Rep. Tom Cole (R-OK), Rep. Paul Cook (R-CA), Rep. Jeff Denham (R-CA), Rep. Ruben Gallego (D-AZ), Rep. Raul Grijalva (D-AZ), Rep. Colleen Hanabusa (D-HI), Rep. Walter Jones (R-NC), Rep. Doug LaMalfa (R-CA), Rep. Betty McCollum (D-MN), Rep. Alexander Mooney (R-WV), Rep. Jared Polis (D-CO), Rep. Raul Ruiz (D-CA), Rep. Gregorio Kilili Camacho Sablan (D-MP), Rep. Darren Soto (D-FL), Rep. Norma Torres (D-CA).

Invited Witnesses

Mr. John Tahsuda III
Acting Assistant Secretary—Indian Affairs
U.S. Department of the Interior
Washington, D.C.

¹ 25 U.S.C. § 2701 et seq.

The Honorable Tom Wooten
Chairman
Samish Indian Nation
Anacortes, WA

The Honorable Brian Porter
Vice Chairman
Swinomish Indian Tribal Community
LaConner, WA

Background

The Samish Indians originally ranged from the foothills of the Cascade Mountains to the San Juan Islands in northwest Washington. The tribe was a signatory to the Treaty of Point Elliott of 1855, but the tribe was omitted from the final version that was ratified by the U.S. Senate in 1859. Nonetheless, many Samish Indians moved to certain other Indian reservations. In 1951, Samish Indians filed certain claims in the Indian Claims Commission, which provided for the award of \$5,755 to resolve them.

Formal recognition of the Samish Indian Nation was granted in modern times under unusual circumstances involving the Executive and Judicial branches. The tribe has claimed it was listed on an internal Department of Interior list of recognized tribes in 1966, but in 1969 – due to a clerical error – it was omitted from an official, published list of recognized tribes. The group petitioned the Bureau of Indian Affairs (BIA) in 1975 to recognize it. In 1987, the BIA denied acknowledgment of the Samish as an Indian tribe under its formal regulatory procedures.² The denial was vacated by a U.S. District Court in 1992. In 1996, the BIA extended formal recognition to the Samish.

The tribe is in possession of a single 78-acre parcel of land in trust that is used for tribal housing. The tribe seeks to place the 97 acres of land identified in H.R. 2320 in trust as well. According to the Samish, the lands would be used for its “homelands” area: an administrative complex, housing, agriculture, community services such as elderly care and a preschool, natural resource conservation department, and non-gaming economic development.

Section 3 of the bill provides that the Secretary “shall” take the 97 acres of land in trust “in accordance with the regulations of the Department of the Interior for implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) (NEPA) that are applicable to trust land acquisitions for Indian tribes that are mandated by Federal legislation.” While this language may purport to require a NEPA study of the trust acquisition, any mandatory trust acquisition legislated by Congress actually waives NEPA.³ Accordingly, the only requirement for the Secretary to comply with NEPA under this bill is to waive it. This is not an unusual waiver: over the years, the House has routinely passed bipartisan bills waiving NEPA for Indian trust land acquisitions.

² 25 C.F.R Part 83.

³ “NEPA ... requirements are not applicable to mandatory acquisitions ...” *Acquisition of Title to Land Held in Fee or Restricted Fee Status (Fee-to-Trust Handbook)*, Department of the Interior, Bureau of Indian Affairs, Office of Trust Services, Division of Real Estate Services, Issued 5/16/16, p. 34.

If the Secretary of the Interior were seeking to acquire these lands on a discretionary basis, a requisite environmental assessment or environmental impact study would have to be conducted prior to any final decision on the acquisition.

Need for legislation

H.R. 2320 would mandate the acquisition of the Samish tribe's 97 acres of land identified in the bill, and avoid problems posed by a Supreme Court ruling. Section 5 of the Indian Reorganization Act⁴ (IRA) authorizes the Secretary to acquire lands in trust for Indians, however, the Supreme Court in *Carcieri v. Salazar*⁵ limits the application of the IRA only to tribes "under federal jurisdiction" in 1934. The Department of the Interior has never divulged to the Committee the names of tribes that were or were not under federal jurisdiction in 1934. Under H.R. 2320, *Carcieri* would effectively be waived.

Cost

Unknown.

Administration Position

Unknown.

Section by Section Analysis of H.R. 2320

Section 1. Short Title. Provides the short title.

Section 2. Definitions. Provides definitions to terms throughout the bill.

Section 3. Land Into Trust

Subsection (a). Action by the Secretary of the Interior- Section 3(a) requires the Secretary of the Interior to place the designated 97 acres of land outlined on the "Samish Indian Nation Land Conveyance Map" into trust for the Samish Indian Nation. The land must be placed into trust "in accordance with regulations of the Department of the Interior for implementing the National Environmental Policy Act of 1969⁶ that are applicable to trust land acquisitions for Indian tribes that are mandated by Federal legislation".

Subsection (b). Survey. Requires the tribe to survey the lands that will be placed into trust, and for the Secretary to issue its concurrence of the survey no later than 90 days after the tribe submits the survey. No later than 120 days after the Secretary submits its concurrence to the tribe, the Secretary must also submit a copy of the survey to Congress and the public.

Section 4. Hunting, Fishing, Trapping, and Gathering. Provides that the tribe's hunting, fishing, trapping or gathering treaty rights cannot be diminished or expanded.

⁴ 25 U.S.C. §465 et seq.

⁵ 555 U.S. 379 (2009).

⁶ 42 U.S.C. §4321 et seq.

Section 5. Gaming Prohibition. Provides that the tribe may not conduct gaming activities on the lands placed into trust under the bill.

Section 6. Effect of Act. Provides that the Act does not limit existing rights or ability to have future lands placed into trust for the tribe.

The Samish Indian Nation Land Conveyance Map

Dated July 25, 2013

Total Acreage: 96.67 acres

The parcels depicted on this map represent the general parcel area; they should be used for reference only and not for determining legal boundaries.

Key

- Tribal Property
- Locations
- City Boundaries



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Miles



