Testimony of Chairwoman Sandra Klineburger, Stillaguamish Tribe of Indians
House of Representatives, Committee on Natural Resources

Hearing on H.R. 3742 and H.R. 3697 "To amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian tribes."
November 4, 2009

Introduction

Good afternoon, Chairman Rahall, Ranking Member Hastings, and Members of the Committee. Thank you for inviting me here today to provide testimony to the Committee on a critical issue confronting all of Indian Country – addressing the divisive Supreme Court decision of *Carcieri v. Salazar*, 129 S.Ct. 1058 (2009).

My name is Sandra Klineburger, and I am the Chairwoman of the Stillaguamish Tribe of Indians. Our tribal community supports both H.R. 3742 and H.R. 3697 because we firmly believe that *Carcieri* was wrongly decided, and more importantly, that it establishes highly problematic and ultimately unworkable American Indian policy. To be clear, as the Supreme Court in *Carcieri* expressly acknowledged, the decision does not impact the Stillaguamish Tribe. As discussed below, Stillaguamish has, at all relevant times, maintained a federal-tribal relationship since at least 1855. This is well before the enactment of the Indian Reorganization Act of 1934.

Although not directly implicated, the Stillaguamish Tribe still supports a fix to the problems created by *Carcieri*. We see the infirmity of the interpretation of the Indian Reorganization Act by the Supreme Court in the *Carcieri* decision. If this decision is not addressed, there will be "have's" (those who can take land into trust) and "have not's" in Indian Country.

Our community knows what it is like to be part of the "have not's." For decades, our federal-tribal relationship was not acknowledged by the Department of Interior. My grandmother, Chief Esther Ross, worked tirelessly to have our Tribe's federal-tribal relationship acknowledged. After many decades of work, our tribe was successful in that endeavor. But we are mindful that Indian policy should strive to treat equally all tribal communities. For this and other reasons, the Stillaguamish Tribe strongly believes that the *Carcieri* decision should be addressed through legislation.

In my testimony today, I would like to talk with you about the Stillaguamish tribal history and *Carcieri*'s technical inapplicability to Stillaguamish. Then I will describe the negative consequences being endured by our Tribe and all of Indian Country because of *Carcieri*. Finally, I will explain the myriad reasons why a legislative fix is needed for the good of the Nation generally and Indian Country specifically.

This Committee, I know, understands the essential nature of land to the survival and existence of Native American tribes, tribal sovereignty and tribal culture. Without land, tribes lack the ability to become more self-sufficient, and tribal governments cannot improve the well-

being of individual tribal members. On behalf of the Stillaguamish Tribe of Indians, I urge you to promptly pass H.R. 3742 and/or H.R. 3697 to remedy the damage done by *Carcieri* and remove the multitude of ill effects currently impairing the great progress that Indian Country is prepared to make for all Americans and Native Americans alike.

***Carcieri* Does Not Technically Apply to Stillaguamish**

At the outset, I want to make clear that Stillaguamish is technically not affected by *Carcieri v. Salazar* for several reasons.

First, Stillaguamish signed the Treaty of Point Elliott. As made clear in *United States v. Washington*, 384 F. Supp 312 (W.D. Wash. 1974); *aff'd*, 520 F.2d 676 (9th Cir. 1975); *cert. denied*, 423 U.S. 1086 (1976), Stillaguamish is a party to the Treaty, and the United States is – and has been since 1855 – responsible to honor and protect these Treaty rights.

Second, numerous opinions from a variety of federal courts have determined that Stillaguamish Treaty rights vested upon execution, thereby subjecting Stillaguamish to federal jurisdiction since 1855.

Third, Congress has appropriated funds to the Stillaguamish tribe for over six decades. This demonstrates the Federal Government's ongoing oversight and involvement in the Stillaguamish Tribe's affairs. At no time, has Congress terminated the federal jurisdiction with respect to Stillaguamish.

Fourth, in 1980, a Solicitor's Opinion provided a detailed analysis as to why Stillaguamish was subject to federal jurisdiction prior to 1934, thereby affirming that the Tribe was able to have land taken into trust on our behalf. *See* Memorandum to Asst. Sec., Indian Affairs, from Associate Solicitor, Indian Affairs, Re: Request for Reconsideration of Decision Not to Take Land in Trust for the Stillaguamish Tribe, October 1, 1980 (hereinafter "Solicitor's Opinion").

Finally, it is noteworthy that in both Justice Breyer's concurring opinion and Justice Souter's concurring/dissenting opinion in *Carcieri* itself, Stillaguamish's particular history is cited as evidence of a tribe that was "under federal jurisdiction" and was merely administratively overlooked by the Federal Government.

In short, it is clear from the record, that Stillaguamish has at all times maintained an unbroken relationship with the United States. Indeed, the Supreme Court expressly recognized that relationship in *Carcieri*. Nevertheless, we support a *Carcieri* fix. Such legislation would remove any extant uncertainties and unquestionably treat all tribes on equal footing. That is sound Federal Indian policy.

Stillaguamish Tribal History and Recognition

As stated above, my grandmother, Chief Esther Ross, devoted her entire life to ensuring that the Stillaguamish people were acknowledged as a Native nation by the Federal Government.

This history is relevant to summarize because it exhibits the level of detailed scrutiny Stillaguamish underwent in confirming the federal-tribal relationship.

In 1855, Chief Cha-Dis – the Chief of Stillaguamish at that time – signed the Treaty of Point Elliott along with several other tribes in present-day Washington state. *See* Treaty of Point Elliott, U.S.-Duwamish, Suquamish, and other tribes, Jan. 22, 1855, 12 Stat. 927. Ratified in 1859, the Treaty ceded Stillaguamish aboriginal land to the Federal Government in exchange for money, reservation land, fishing rights, the protection of the United States, and a number of other provisions. Based on the Treaty of Point Elliott and the on-going commitments set forth therein, it is undeniable that Stillaguamish has been under federal jurisdiction since 1855. In fact, Stillaguamish's status has been heavily and frequently scrutinized by various federal courts – all of which arrived at the same answer – that Stillaguamish has been and is subject to federal jurisdiction.

In 1934, Stillaguamish – and other signatory tribes to the Treaty of Point Elliot – sued the Federal Government in the Court of Claims. *See Duwamish, et al. Indians, v. United States*, (Docket F-275, 79 Ct. Cl. 530 (Ct. Cl. 1934). That court determined that Stillaguamish was a proper party to the lawsuit as it was undeniably a party to the Treaty. *Duwamish, et al. Indians*, 79 Ct. Cl. 530, *2. In 1965, pursuant to the Indian Claims Commission Act, Stillaguamish sued the United States for unconscionable consideration for lands ceded under the Treaty. *Stillaguamish Tribe of Indians v. United States*, Docket No. 207, 15 Ind. Cl. Comm. 1 (I.C.C. 1965). The Commission engaged in extensive fact-finding and concluded that Stillaguamish was a party to the Treaty and could properly bring the action against the United States. *Stillaguamish Tribe of Indians*, 15 Ind. Cl. Comm. at 1, 31-32, 36, 38, 41.

In 1974, Article V of the Treaty of Point Elliott was the subject of major litigation on fishing rights in the State of Washington. *United States v. Washington*, 384 F. Supp 312 (W.D. Wash. 1974). Stillaguamish was forced to intervene in the case to defend its Treaty rights. The court determined that Stillaguamish was a party to the Treaty of Point Elliott and that Stillaguamish enjoyed vested treaty rights to fish. *Id.* at 401-02, 406; *see also United States v. Washington*, 520 F.2d 676, 693 (9th Cir. 1975).

The struggle for confirmation of our tribal status came to a head in 1980 when the Solicitor for the Department of Interior published an Opinion on the status of Stillaguamish. *See* Solicitor's Opinion. By way of background, in the late 1970's, Stillaguamish wanted to acquire land in order to re-establish a tribal land base to preserve the very sovereignty that our leaders had worked so hard to obtain. The Solicitor's Opinion analyzed 25 U.S.C. § 479 – the same provision at issue in *Carcieri* – and unequivocally determined that Stillaguamish was subject to federal jurisdiction, thereby providing the Secretary of Interior with the requisite authority to take land into trust on behalf of Stillaguamish. *Id.* While Chief Esther Ross's struggle to confirm our status ended in 1980, the Supreme Court has created new negative ramifications for the rest of Indian Country by ignoring the policy and purpose of the IRA in rendering a decision in *Carcieri*. This Congress should preclude other tribes from undergoing the painful experience that we endured for nearly a century by passing legislation to fix *Carcieri*.

Carcieri **Ignores the Policy and Purpose of the Indian Reorganization Act**

The Indian Reorganization Act (IRA) attempted to end, among other things, the federal policy of allotment that had ravaged tribal communities across the United States. In particular, the IRA attempted to afford tribes that did not have a reservation, or had a very small reservation, with an avenue to acquire land in order to establish a permanent homeland. The IRA sought to strengthen tribal communities by empowering them to obtain land and create a land base so that tribes could preserve and protect tribal culture, values, and sovereignty. The IRA affirmatively recognized the common sense principle that land is critical to the survival of all tribes. For Stillaguamish, one can see how the IRA has played out in our tribal history. Currently, Stillaguamish has less than 250 acres of land in trust and our tribal government is proceeding with acquiring additional land to provide housing for tribal members, continue our environmental conservation efforts, and preserve our culture and history in the region.

Unfortunately, this purpose of providing an avenue to acquire land for tribes – explicit in the text of the IRA – was of no importance to the Supreme Court's consideration of *Carcieri v. Salazar*. Instead, the Court hinged its ruling on exploiting a technical absurdity found in a single word in the entire Act. The Court used this one word to read a limiting factor into the clearly expressed, broad policy of the IRA: tribes need to have land in order to maintain their existence.

The United States has an trust obligation to all Indian tribes – not just a certain select few – and this decision undermines that well-settled, long-standing concept. This Congress, and this Committee in particular, acknowledge and respect the trust relationship and the Federal Government's continuing obligation to all Indian tribes that is directly served by passing legislation to fix the destructive rule announced in *Carcieri*.

Carcieri **Further Mires an Already Long Process for Land–into-Trust Applications**

A primary consequence of *Carcieri* is the creation of unnecessary delay in the processing of land-into-trust applications. On the ground, this consequence impedes our efforts to provide housing to tribal members that are currently without homes. Our tribal members are suffering in this economy. Stillaguamish tribal government is working to obtain housing for displaced tribal members. These individuals have a tribal government that looks out for their well-being; but it is currently prevented from permanently addressing their needs due to *Carcieri*.

Plainly, this decision provides opponents of Indian tribes with a frivolous basis to impede our attempts to improve the quality of life for all our tribal members. We are not able to take land we currently own in fee and place it into trust status due to the uncertainty created by *Carcieri*. Accordingly, this uncertainty creates further delay in an already slow and overly burdensome land-into-trust process.

The tribal government cannot move forward with providing permanent housing to these individual members until land is placed into trust status. As this country has come to understand all to well in the past few years, housing is a pillar of the economy and allows people to provide for themselves and their families. Aid to our tribal members is unnecessarily delayed due to *Carcieri*. How long must our tribal members with both young children and elderly relatives be

forced to stay in a cramped one-room motel? Were it not for *Carcieri*, Stillaguamish would be taking immediate action to remedy situations like those to care for our members.

Stories like this reverberate throughout Indian Country. Our situation is not necessarily unique in that we are delayed and limited by *Carcieri*. Other tribes feel the same effects; regardless of our diverse tribal histories, we are all in the same situation – *Carcieri* impedes the progress that we are ready to make on behalf of our tribal members. For our people, this simply adds delay when we are trying to improve the welfare of our community by providing quality housing to tribal members who are in desperate need of assistance.

Carcieri **Creates Classes of Indian Tribes: Have's and Have Not's**

In addition to prolonging an already protracted land-into-trust process, *Carcieri* creates two classes of Indian tribes: "have's" and "have not's."

Carcieri reinvents the meaning of a federally recognized Indian tribe and creates unnecessary confusion as to the legal status and rights of Indian tribes. This re-engineering of the IRA is unwarranted and casts a long shadow of doubt over all tribes' ability to maintain a land base in order to preserve our culture, values, and sovereignty. It goes without saying that *Carcieri* gave short shrift to the critical policy, intent, and purpose of the IRA in arriving at the new rule regarding the Secretary of Interior's authority to place land into trust. Such division can simply have no place in the United States. This country has endured periods of division in all forms – religious, racial, gender, and others – none of which have improved the quality of life for Americans. Classes in the United States have no place.

Likewise, *Carcieri* created classes of Indian tribes, some of which have the right to have land taken into trust for them, while others do not. Whether someone is Narragansett, Stillaguamish, Navajo, or Cherokee, we are all Indians and come from tribal communities that have been routinely treated as similar since the founding of the United States. The distinction *Carcieri* found among our tribal communities has no origin in the real world – it is purely a technical absurdity that has led to an avalanche of negative effects on all tribal communities.

As a practical matter, it is cumbersome, burdensome, and unwieldy for the Department of Interior and Bureau of Indian Affairs to maintain various categorized lists of tribes – some of which have the full panoply of rights while others enjoy but a select few. The dividing up of Indian Country according to an arbitrary technicality creates further administrative delay in addressing matters of all sorts under the IRA. Administratively, *Carcieri* creates a nightmare for federal officials in executing uniform and sound American Indian policy.

The effect of *Carcieri* – to provide some tribes with more rights than others – undermines basic principles of Federal Indian Law, the federal-tribal trust relationship, and fundamental concepts upon which this country was founded, the most important of all being equality. In short, legislation is desperately needed to remove the class system that now divides Indian Country.

Not Fixing *Carcieri* will Force Tribes and the Federal Government to Defend a Multitude of Lawsuits that will Overwhelm the Federal Judiciary and Lead to Potentially Inconsistent Decisions

Opponents of Indian tribes are already utilizing *Carcieri* as a means to delay and frivolously challenge land-into-trust applications. In the event that legislation is not passed, both tribes and their trustee, the Federal Government, will be forced to go to federal courts around the country and defend routine and ordinary trust applications. Litigation of this sort is unnecessary given the background of the IRA, but will necessarily follow because of *Carcieri*.

No decision to take land into trust on behalf of a tribe is safe from challenge. Regardless of the legal merit of these challenges, tribes and their trustee have no choice but to expend limited governmental resources to defend these decisions. Furthermore, the myriad actions that will be filed will overwhelm the federal judiciary. With the flooding of these types of cases comes the potential for inconsistent and uneven interpretation of the law in *Carcieri*, creating further classes of Indian tribes. The courts should not be called on to interpret the particular lines dividing Indian tribes – there should be no lines at all.

Congress, under the leadership of Chairman Rahall and this Committee, can affect positive change in Indian Country by revisiting the IRA and making clear that all Indian tribes are treated equally. Not doing so will result in the inefficient use of scarce governmental funds and the usage of very limited tribal resources.

Conclusion and Recommendation

Mr. Chairman, Mr. Ranking Member, and Committee Members, I thank you for the opportunity to come here today and share my story with you. I am walking in the footsteps of my grandmother, Chief Esther Ross, and while they are too large for me to fill, I am compelled to be here and help finish the work she started in these same halls and buildings. Unfortunately, providence has brought me to D.C. to fight a battle similar to that which she fought nearly thirty years ago. As the designated leader of my tribe, I ask you to assist us in declaring once and for all that all Indian tribes are equal by passing H.R. 3742 and/or H.R. 3697. Thank you.

Native American

Treaty between the United States and the Dwámish, Suquámish, and other allied and subordinate Tribes of Indians in Washington Territory.

Concluded at Point Elliott, Washington Territory, January 22, 1855.
January 22, 1855.
Ratified by the Senate, March 8, 1859.
Proclaimed by the President of the United States, April 11, 1859.

JAMES BUCHANAN, PRESIDENT OF THE UNITED STATES, TO ALL AND SINGULAR TO WHOM THESE PRESENTS SHALL COME, GREETING:

JAMES BUCHANAN, PRESIDENT OF THE UNITED STATES, TO ALL AND SINGULAR TO WHOM

THESE PRESENTS SHALL COME, GREETING:

WHEREAS a treaty was made and concluded at Múckl-te-óh, or Point Elliott, in the Territory of Washington, the twenty-second day of January, one thousand eight hundred and fifty-five, by Isaac I. Stevens, governor and superintendent of Indian affairs for the said Territory, on the part of the United States, and the hereinafter-named chiefs, headmen, and delegates of the Dwámish, Suquámish, Sk-táhl-mish, Sam-áhmish, Smalhkahmish, Skope-áhmish, St-káh-mish, Snoquálmoo, Skai-wha-mish, N'Quentl-má-mish, Sk-táh-le-jum, Stoluck-whá-mish, Sno-ho-mish, Skágit, Kik-i-állus, Swin-á-mish, Squin-áh-mish, Sah-ku-méhu, Noo-whá-há, Nook-wa-cháh-mish, Mee-see-qua-guilch, Cho-bah-áh-bish, and other allied and subordinate tribes and bands of Indians occupying certain lands situated in said Territory of Washington, on behalf of said tribes and duly authorized by them; which treaty is in the words and figures following to wit:

Articles of agreement and convention made and concluded at Múckl-te-óh, or Point Elliott, in the Territory of Washington, this twenty-second day of January, eighteen hundred and fifty-five, by Isaac I. Stevens, governor and superintendent of Indian affairs for the said Territory, on the part of the United States, and the undersigned chiefs, headmen and delegates of the Dwámish, Suquámish, Sk-táhl-mish, Sam-áhmish, Smalh-kamish, Skope-áhmish, St-káh-mish, Snoquálmoo, Skai-wha-mish, N'Quentl-má-mish, Sk-táh-le-jum, Stoluck-whá-mish, Sno-ho-mish, Ská-git, Kik-i-állus, Swin-á-mish, Squin-áh-mish, Sah-ku-méhu, Noo-whá-ha, Nook-wa-cháh-mish, Mesée-qua-guilch, Cho-bah-áh-bish, and other allied and subordinate tribes and bands of Indians occupying certain lands situated in said Territory of Washington, on behalf of said tribes, and duly authorized by them.

ARTICLE I.

The said tribes and bands of Indians hereby cede, relinquish, and convey to the United States all their right, title, and interest in and to the lands and country occupied by them, bounded and described as follows: Commencing at a point on the eastern side of Admiralty Inlet, known as Point Pully, about midway between Commencement and Elliott Bays; thence eastwardly, running along the north line of lands heretofore ceded to the United States by the Nisqually, Puyallup, and other Indians, to the summit of the Cascade range of mountains; thence northwardly, following the summit of said range to the 49th parallel of north latitude; thence west, along said parallel to the middle of the Gulf of Georgia; thence through the middle of said gulf and the main channel through the Canal de Arro to the Straits of Fuca, and crossing the same through the middle of Admiralty Inlet to Suquamish Head; thence southwesterly, through the peninsula, and following the divide between Hood's Canal and Admiralty Inlet to the portage known as Wilkes' Portage; thence northeastwardly, and following the line of lands heretofore ceded as aforesaid to Point Southworth, on the western side of Admiralty Inlet, and thence round the foot of Vashon's Island eastwardly and southeastwardly to the place of beginning, including all the islands comprised within said boundaries, and all the right, title, and interest of the said tribes and bands to any lands within the territory of the United States.

ARTICLE II.

There is, however, reserved for the present use and occupation of the said tribes and bands the following tracts of land, viz: the amount of two sections, or twelve hundred and eighty acres, surrounding the small bight at the head of Port Madison, called by the Indians Noo-sohk-um; the amount of two sections, or twelve hundred and eighty acres, on the north side Hwhomish Bay and the creek emptying into the same called Kwilt-seh-da, the peninsula at the southeastern end of Perry's Island called Sháis-quihl, and the island called Chah-choo-sen, situated in the Lummi River at the point of separation of the mouths emptying respectively into Bellingham Bay and the Gulf of Georgia. All which tracts shall be set apart, and so far as necessary surveyed and marked out for their exclusive use; nor shall any white man be permitted to reside upon the same without permission of the said tribes or bands, and of the superintendent or agent, but, if necessary for the public convenience, roads may be run through the said reserves, the Indians being compensated for any damage thereby done them.

ARTICLE III.

There is also reserved from out the lands hereby ceded the amount of thirty-six sections, or one township of land, on the northeastern shore of Port Gardner, and north of the mouth of Snohomish River, including Tulalip Bay and the before-mentioned Kwilt-seh-da Creek, for the purpose of establishing thereon an agricultural and industrial school, as hereinafter mentioned and agreed, and with a view of ultimately drawing thereto and settling thereon all the Indians living west of the Cascade Mountains in said Territory. Provided, however, that the President may establish the central agency and general reservation at such other point as he may deem for the benefit of the Indians.

ARTICLE IV.

The said tribes and bands agree to remove to and settle upon the said first above mentioned reservations within one year after the ratification of this treaty, or sooner, if the means are furnished them. In the mean time it shall be lawful for them to reside upon any land not in the actual claim and occupation of citizens of the United States, and upon any land claimed or occupied, if with the permission of the owner.

ARTICLE V.

The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the Territory, and of erecting temporary houses for the purpose of curing, together with the privilege of hunting and gathering roots and berries on open and unclaimed lands. Provided, however, that they shall not take shell-fish from any beds staked or cultivated by citizens.

ARTICLE VI.

In consideration of the above cession, the United States agree to pay to the said tribes and bands the sum of one hundred and fifty thousand dollars, in the following manner - that is to say: For the first year after the ratification hereof, fifteen thousand dollars; for the next two years, twelve thousand dollars each year;

for the next three years, ten thousand dollars each year; for the next four years, seven thousand five hundred dollars each year; for the next five years, six thousand dollars each year; and for the last five years, four thousand two hundred and fifty dollars each year. All which said sums of money shall be applied to the use and benefit of the said Indians under the direction of the President of the United States, who may from time to time determine at his discretion upon what beneficial objects to expend the same; and the Superintendent of Indian Affairs, or other proper officer, shall each year inform the President of the wishes of said Indians in respect thereto.

ARTICLE VII.

The President may hereafter, when in his opinion the interests of the Territory shall require and the welfare of the said Indians be promoted, remove them from either or all of the special reservations hereinbefore made to the said general reservation, or such other suitable place within said Territory as he may deem fit, on remunerating them for their improvements and the expenses of such removal, or may consolidate them with other friendly tribes or bands; and he may further at his discretion cause the whole or any portion of the lands hereby reserved, or of such other land as may be selected in lieu thereof, to be surveyed into lots, and assign the same to such individuals or families as are willing to avail themselves of the privilege, and will locate on the same as a permanent home on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable. Any substantial improvements heretofore made by any Indian, and which he shall be compelled to abandon in consequence of this treaty, shall be valued under the direction of the President and payment made accordingly therefor.

ARTICLE VIII.

The annuities of the aforesaid tribes and bands shall not be taken to pay the debts of individuals.

ARTICLE IX.

The said tribes and bands acknowledge their dependence on the government of the United States, and promise to be friendly with all citizens thereof, and they pledge themselves to commit no depredations on the property of such citizens. Should any one or more of them violate this pledge, and the fact be satisfactorily proven before the agent, the property taken shall be returned, or in default thereof, or if injured or destroyed, compensation may be made by the government out of their annuities. Nor will they make war on any other tribe except in self-defence, but will submit all matters of difference between them and the other Indians to the government of the United States or its agent for decision, and abide thereby. And if any of the said Indians commit depredations on other Indians within the Territory the same rule shall prevail as that prescribed in this article in cases of depredations against citizens. And the said tribes agree not to shelter or conceal offenders against the laws of the United States, but to deliver them up to the authorities for trial.

ARTICLE X.

The above tribes and bands are desirous to exclude from their reservations the use of ardent spirits, and to prevent their people from drinking the same, and therefore it is provided that any Indian belonging to said tribe who is guilty of bringing liquor into said reservations, or who drinks liquor, may have his or her proportion of the annuities withheld from him or her for such time as the President may determine.

ARTICLE XI.

The said tribes and bands agree to free all slaves now held by them and not to purchase or acquire others hereafter.

ARTICLE XII.

The said tribes and bands further agree not to trade at Vancouver's Island or elsewhere out of the dominions of the United States, nor shall foreign Indians be permitted to reside in their reservations without consent of the superintendent or agent.

ARTICLE XIII.

To enable the said Indians to remove to and settle upon their aforesaid reservations, and to clear, fence, and break up a sufficient quantity of land for cultivation, the United States further agree to pay the sum of fifteen thousand dollars to be laid out and expended under the direction of the President and in such manner as he shall approve.

ARTICLE XIV.

The United States further agree to establish at the general agency for the district of Puget's Sound, within one year from the ratification hereof, and to support for a period of twenty years, an agricultural and industrial school, to be free to children of the said tribes and bands in common with those of the other tribes of said district, and to provide the said school with a suitable instructor or instructors, and also to provide a smithy and carpenter's shop, and furnish them with the necessary tools, and employ a blacksmith, carpenter, and farmer for the like term of twenty years to instruct the Indians in their respective occupations. And the United States finally agree to employ a physician to reside at the said central agency, who shall furnish medicine and advice to their sick, and shall vaccinate them; the expenses of said school, shops, persons employed, and medical attendance to be defrayed by the United States, and not deducted from the annuities.

ARTICLE XV.

This treaty shall be obligatory on the contracting parties as soon as the same shall be ratified by the President and Senate of the United States.

In testimony whereof, the said Isaac I. Stevens, governor and superintendent of Indian affairs, and the undersigned chiefs, headmen, and delegates of the aforesaid

tribes and bands of Indians, have hereunto set their hands and seals, at the place and on the day and year hereinbefore written.

ISAAC I. STEVENS,

Governor and Superintendent,

[L. S.]

SEATTLE, Chief of the Dwamish and Suquamish tribes. his x mark. [L. S.]

PAT-KA-NAM, Chief of the Snoqualmoo, Snohomish and other tribes. his x mark. [L. S.]

CHOW-ITS-HOOT, Chief of the Lummi and other tribes. his x mark. [L. S.]

GOLIAH, Chief of the Skagits and other allied tribes. his x mark. [L. S.]

KWALLATTUM, or General Pierce, Sub-chief of the Skagit tribe. his x mark. [L. S.]

S'HOOTST-HOOT, Sub-chief of Snohomish. his x mark. [L. S.]

SNAH-TALC, or Bonaparte, Sub-chief of Snohomish. his x mark. [L. S.]

SQUUSH-UM, or The Smoke, Sub-chief of the Snoqualmoo. his x mark. [L. S.]

SEE-ALLA-PA-HAN, or The Priest, Sub-chief of Sk-tah-le-jum. his x mark. [L. S.]

HE-UCH-KA-NAM, or George Bonaparte, Sub-chief of Snohomish. his x mark. [L. S.]

TSE-NAH-TALC, or Joseph Bonaparte, Sub-chief of Snohomish. his x mark. [L. S.]

NS'SKI-OOS, or Jackson, Sub-chief of Snohomish. his x mark. [L. S.]

WATS-KA-LAH-TCHIE, or John Hobtst-hoot, Sub-chief of Snohomish. his x mark. [L. S.]

SMEH-MAI-HU, Sub-chief of Skai-wha-mish. his x mark. [L. S.]

SLAT-EAH-KA-NAM, Sub-chief of Snoqualmoo. his x mark. [L. S.]

ST'HAU-AI, Sub-chief of Snoqualmoo. his x mark. [L. S.]

LUGS-KEN, Sub-chief of Skai-wha-mish. his x mark. [L. S.]

S'HEHT-SOOLT, or Peter, Sub-chief of Snohomish. his x mark. [L. S.]

DO-QUEH-OO-SATL, Snoqualmoo tribe. his x mark. [L. S.]

JOHN KANAM, Snoqualmoo sub-chief. his x mark. [L. S.]

KLEMSH-KA-NAM, Snoqualmoo. his x mark. [L. S.]

TS'HUAHNTL, Dwa-mish sub-chief. his x mark. [L. S.]

KWUSS-KA-NAM, or George Snatelum, Sen., Skagit tribe. his x mark. [L. S.]

HEL-MITS, or George Snatelum, Skagit sub-chief. his x mark. [L. S.]

S'KWAI-KWI, Skagit tribe, sub-chief. his x mark. [L. S.]

SEH-LEK-QU, Sub-chief Lummi tribe. his x mark. [L. S.]

S'H'-CHEH-OOS, or General Washington, Sub-chief of Lummi tribe. his x mark. [L. S.]

WHAI-LAN-HU, or Davy Crockett, Sub-chief of Lummi tribe. his x mark. [L. S.]

SHE-AH-DELT-HU, Sub-chief of Lummi tribe. his x mark. [L. S.]

KWULT-SEH, Sub-chief of Lummi tribe. his x mark. [L. S.]

KWULL-ET-HU, Lummi tribe. his x mark. [L. S.]

KLEH-KENT-SOOT, Skagit tribe. his x mark. [L. S.]

SOHN-HEH-OVS, Skagit tribe. his x mark. [L. S.]

S'DEH-AP-KAN, or General Warren, Skagit tribe. his x mark. [L. S.]

CHUL-WHIL-TAN, Sub-chief of Suquamish tribe. his x mark. [L. S.]

SKE-EH-TUM, Skagit tribe. his x mark. [L. S.]

PATCHKANAM, or Dome, Skagit tribe. his x mark. [L. S.]

SATS-KANAM, Squin-ah-nush tribe. his x mark. [L. S.]

SD-ZO-MAHTL, Kik-ial-lus band. his x mark. [L. S.]

DAHTL-DE-MIN, Sub-chief of Sah-ku-meh-hu. his x mark. [L. S.]

SD'ZEK-DU-NUM, Me-sek-wi-guilse sub-chief. his x mark. [L. S.]

NOW-A-CHAIS, Sub-chief of Dwamish. his x mark. [L. S.]

MIS-LO-TCHE, or Wah-hehl-tchoo, Sub-chief of Suquamish. his x mark. [L. S.]

SLOO-NOKSH-TAN, or Jim, Suquamish tribe. his x mark. [L. S.]

MOO-WHAH-LAD-HU, or Jack, Suquamish tribe. his x mark. [L. S.]

TOO-LEH-PLAN, Suquamish tribe. his x mark. [L. S.]

HA-SEH-DOO-AN, or Keo-kuck, Dwamish tribe. his x mark. [L. S.]

HOOVILT-MEH-TUM, Sub-chief of Suquamish. his x mark. [L. S.]

WE-AI-PAH, Skaiwhamish tribe. his x mark. [L. S.]

S'AH-AN-HU, or Hallam, Snohomish tribe. his x mark. [L. S.]

SHE-HOPE, or General Pierce, Skagit tribe. his x mark. [L. S.]

HWN-LAH-LAKQ, or Thomas Jefferson, Lummi tribe. his x mark. [L. S.]

CHT-SIMPT, Lummi tribe. his x mark. [L. S.]

TSE-SUM-TEN, Lummi tribe. his x mark. [L. S.]

KLT-HAHL-TEN, Lummi tribe. his x mark. [L. S.]

KUT-TA-KANAM, or John, Lummi tribe. his x mark. [L. S.]

CH-LAH-BEN, Noo-qua-cha-mish band. his x mark. [L. S.]

NOO-HEH-OOS, Snoqualmoo tribe. his x mark. [L. S.]

HWEH-UK, Snoqualmoo tribe. his x mark. [L. S.]

PEH-NUS, Skai-whamish tribe. his x mark. [L. S.]

YIM-KA-NAM, Snoqualmoo tribe. his x mark. [L. S.]

TWOOI-AS-KUT, Skaiwhamish tribe. his x mark. [L. S.]

LUCH-AL-KANAM, Snoqualmoo tribe. his x mark. [L. S.]

S'HOOT-KANAM, Snoqualmoo tribe. his x mark. [L. S.]

SME-A-KANAM, Snoqualmoo tribe. his x mark. [L. S.]

SAD-ZIS-KEH, Snoqualmoo. his x mark. [L. S.]

HEH-MAHL, Skaiwhamish band. his x mark. [L. S.]

CHARLEY, Skagit tribe. his x mark. [L. S.]

SAMPSON, Skagit tribe. his x mark. [L. S.]

JOHN TAYLOR, Snohomish tribe. his x mark. [L. S.]

HATCH-KWENTUM, Skagit tribe. his x mark. [L. S.]

YO-I-KUM, Skagit tribe. his x mark. [L. S.]

T'KWA-MA-HAN, Skagit tribe. his x mark. [L. S.]

STO-DUM-KAN, Swinamish band. his x mark. [L. S.]

BE-LOLE, Swinamish band. his x mark. [L. S.]

D'ZO-LOLE-GWAM-HU, Skagit tribe. his x mark. [L. S.]

STEH-SHAIL, William, Skaiwhamish band. his x mark. [L. S.]

KEL-KAHL-TSOOT, Swinamish tribe. his x mark. [L. S.]

PAT-SEN, Skagit tribe. his x mark. [L. S.]

PAT-TEH-US, Noo-wha-ah sub-chief. his x mark. [L. S.]

S'HOOLK-KA-NAM, Lummi sub-chief. his x mark. [L. S.]

CH-LOK-SUTS, Lummi sub-chief. his x mark. [L. S.]

Executed in the presence of us -

M. T. SIMMONS,

Indian Agent.

C. H. MASON,

Secretary of Washington Territory.

BENJ. F. SHAW,

Interpreter.

CHAS. M. HITCHCOCK.

H. A. GOLDSBOROUGH.

GEORGE GIBBS.

JOHN H. SCRANTON.

HENRY D. COCK.

S. S. FORD, Jr.

ORRINGTON CUSHMAN.

ELLIS BARNES.

R. S. BAILEY.

S. M. COLLINS.

LAFAYETEE BALCH.

E. S. FOWLER.

J. H. HALL.

ROB'T DAVIS.

And whereas, the said treaty having been submitted to the Senate of the United States for its constitutional action thereon, the Senate did, on the eighth day of March, one thousand eight hundred and fifty-nine, advise and consent to the ratification of its articles by a resolution in the words and figures following, to wit:

"IN EXECUTIVE SESSION,

"SENATE OF THE UNITED STATES, March 8, 1859.

"Resolved, (two-thirds of the senators present concurring,) That the Senate advise and consent to the ratification of treaty between the United States and the chiefs, headmen and delegates of the Dwámish, Suquámish and other allied and subordinate tribes of Indians occupying certain lands situated in Washington Territory, signed the 22d day of January, 1855.

"Attest: "ASBURY DICKINS, Secretary."

Now, therefore, be it known that I, JAMES BUCHANAN, President of the United States of America, do, in pursuance of the advice and consent of the Senate, as expressed in their resolution of the eighth of March, one thousand eight hundred and fifty-nine, accept, ratify, and confirm the said treaty.

In testimony whereof, I have caused the seal of the United States to be hereto affixed, and have signed the same with my hand.

Done at the city of Washington, this eleventh day of April, in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of the United States the eighty-third.

[SEAL.]

JAMES BUCHANAN.

By the President:

LEWIS CASS,

Secretary of State.

12 Stat. 927

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UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

OCT 1 1980

Memorandum

To: Assistant Secretary, Indian Affairs

Through: Commissioner, Bureau of Indian Affairs

From: Associate Solicitor, Indian Affairs

Subject: Request for Reconsideration of Decision Not to Take Land in Trust for the Stillaguamish Tribe

By letter dated June 6, 1978, the Stillaguamish Tribe of Indians requested Secretary Andrus to reconsider the October 27, 1976, decision of then Acting Secretary Kent Frizzell declining to take land in trust for the Stillaguamish. The Acting Secretary declined to take the lands in trust in part because he had doubts whether the Stillaguamish fell under the definitions of "Indian" and "tribe" in Section 19 of the Indian Reorganization Act (IRA) (25 U.S.C. §479). More specifically, the Acting Secretary apparently believed that a tribe must have had a reservation or other trust land and have been formally acknowledged as a tribe in 1934 in order to organize under or otherwise benefit from the IRA. Our research leads us to the conclusion that neither landownership nor formal acknowledgment in 1934 is a prerequisite to IRA land benefits so long as the group meets the other definitional requirements of a "tribe" within the meaning of Section 19 of the IRA. More specifically, it is our opinion that the Stillaguamish are indeed an Indian tribe within the meaning of Section 19.

Section 19 of the IRA provides in relevant part:

> "The term 'Indian' as used [in this Act] shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation and shall further include all other persons of one-half or more Indian blood . . . The term 'tribe' whenever used [in this Act] shall be construed to refer to any Indian tribe, organized band, pueblo, or the Indians residing on one reservation." 25 U.S.C. §479.

The first issue which must be resolved is whether the definitions of "tribe" and "Indian" should be read independently or whether the requirements for Indian status must be read into the definition of "tribe." We believe that the definitions must be read together. The definition of "tribe" itself contains the term "Indian." In addition, the IRA often uses the term "Indian" in contexts where it is clear that both tribes and individuals are being referred to. For example, Section 5 (25 U.S.C. §465) allows the Secretary to acquire lands in trust "for the purpose of providing land for Indians." Similar use of "Indian" to designate both tribes and individuals is found in 25 U.S.C. §461, and in the exchange authority enacted in 1939 (25 U.S.C. §463e-g). It is a well established principle that a section of a statute must not be read in isolation, but with a look to the provisions of the whole law, and to its object and policy. Richards v. United States, 369 U.S. 1, 11 (1962). A construction should be chosen which gives effect to all parts of the statute while avoiding a result contrary to the apparent intent of the Congress. Certified Color Manufacturers Association v. Mathews, 543 F.2d 284, 296 (D.C. Cir. 1976). Reading "Indian" and "tribe" separately in 25 U.S.C. §§ 465, 461, and 463 e-g would lead to results clearly not intended by Congress.

Having determined that the definitions of "Indian" and "tribe" must be read together, we must determine whether the Stillaguamish Tribe is a "recognized tribe now under Federal jurisdiction" for the purposes of Section 19.

We believe that that phrase includes all groups which existed and as to which the United States had a continuing course of dealings or some legal obligation in 1934 whether or not that obligation was acknowledged at that time. Although the United States was apparently unaware in 1934 that it had a continuing obligation to protect Stillaguamish treaty fishing rights, those rights put the Stillaguamish "under Federal jurisdiction" for purposes of the IRA.

Originally the definition of "Indian" in Section 19 included members of "any recognized tribe." The phrase "now under federal jurisdiction" was added during the Senate Hearings at the suggestion of Commissioner Collier in response to certain concerns of Senator Wheeler. At one point in the Senate Hearings, Senators Thomas and Frazier expressed concern for Indians who were not members of tribes, and not being supervised. The following exchange occurred:

> "The CHAIRMAN [Wheeler]: They do not have any rights at the present time, do they?

> Senator THOMAS of Oklahoma: No rights at all.
>
> The CHAIRMAN: Of course this bill is being passed, as a matter of fact to take care of the Indians that are being taken care of at the present time.
>
> Senator FRAZIER: Those other Indians have got to be taken care of, though.
>
> The CHAIRMAN: Yes; but how are you going to take care of them unless they are wards of the Government at the present time?"

To Grant to Indians Living under Federal Tutelage the Freedom to Organize for Purposes of Local Self-Government and Economic Enterprise: Hearing on S. 2755 before the Senate Committee on Indian Affairs, 73rd Cong., 2d Sess. 263 (1934) (hereafter Senate Hearings).

Senator Thomas then brought up the issue of the Catawbas. Wheeler stated that they should not be covered unless they were half-bloods. Thomas objected that many enrolled Indians had almost no Indian blood at all. Wheeler agreed that the situation was anomalous and that his preference would be to sever federal responsibility to all Indians of less than one-half blood. However, the bill would not attempt to change the status quo of Indians to whom the United States already had obligations. It is unclear which Indians Wheeler considered to be "wards." He speaks of Indians whose property is managed by the United States (Id. at 264), enrolled Indians (Id. at 264), wards (Id. at 263), and Indians under the supervision of the United States (Id. at 266).

Senator O'Mahoney noted that in his opinion the phrase "member of any recognized Indian tribe" would include the Catawbas who he described as a group living together as Indians although they were not half-bloods and were apparently being ignored by the Federal Government. Wheeler felt that the definition of "Indian" should be amended to exclude such groups. Collier suggested:

> "Would this not meet your thought, Senator: After the words 'recognized Indian tribe' in line 1 insert 'now under Federal jurisdiction'? That would limit the Act to the Indians now under federal jurisdiction, except that other Indians of more than one-half blood would get help." Id. at 266.

From the above it is clear that the drafters of the IRA intended to exclude at least some groups which could be considered Indians in a cultural or governmental sense, but they did not intend to use the Act to cut off any Indians to whom the Federal Government had already assumed obligations.

Collier's use of the phrase "federal jurisdiction" is puzzling because it is used nowhere else in the legislative history. Instead there are references to "federal supervision," "federal guardianship," and "federal tutelage." There is evidence that the term "federal supervision" was tied to management of property rights.

> "Senator THOMAS of Oklahoma: . . . In past years former Commissioners and Secretaries have held that when an Indian was divested of property and money, in effect under the law he was not an Indian, and because of that numerous Indians have gone from under the supervision of the Indian Office.
>
> Commissioner COLLIER: Yes."
>
> Id. 79-80.

However, Collier emphasized that membership in recognized tribes was an alternate basis for benefits.

> "Commissioner COLLIER: This bill provides for any Indian who is a member of a recognized tribe or band shall be eligible to government aid.
>
> Senator THOMAS: Without regard to whether or not he is now under your supervision?
>
> Commissioner COLLIER: Without regard, yes. It definitely throws open government aid to those rejected Indians."
>
> Id. 80.

To Wheeler's objection that the government should not be supervising persons of minimal Indian blood Collier replied:

> "Commissioner COLLIER: I may say, Senator, that we have tried in this bill, we have desired to avoid running into that particular horner's nest of defining an Indian, of settling contentious enrollment problems. We have tried

> to avoid that in order to keep the issues comparatively simple.
>
> But the bill does definitely recognize that the fact that an Indian has been divested of his property is no reason why Uncle Sam does not owe him something. It owes him more."
>
> Id. 80.

Note that even as to "Federal supervision" Thomas stated that money as opposed to a land base was a sufficient basis for federal supervision. Id. at 79-80.

Elsewhere the legislative history speaks of "federal guardianship" and "federal tutelage." The declaration of Congressional policy in H.R. 7902 stated that "it is hereby declared to be the policy of Congress to grant to those Indians living under Federal tutelage and control the right to organize for the purpose of local self-government." (Emphasis added.)

During the House Hearings Collier and Delegate Dimond of Alaska were unsure whether Alaska Natives (who in general had no reservations) were under federal tutelage. Readjustment of Indian Affairs: Hearing on H.R. 7902 before House Committee on Indian Affairs, 73rd Cong., 2d Sess. 79 (1934) (hereafter House Hearings). However, during the exchange in the Senate Hearings that produced the phrase "now under Federal jurisdiction" Collier stated that Alaska Natives were under federal guardianship for some purposes but not others. He went on to say that the land acquisition provisions should be extended to Alaska. Senate Hearings 265.

Elsewhere in the House Hearings, Collier assured Congressman Cartwright of Oklahoma that Indians in states with little or no reservations could participate in Section 5 acquisitions. House Hearings 137; see also Collier's statement on landless Indians in Oklahoma and other states, House Hearings 69.

As the IRA moved closer towards passage, Congressman Howard explained the definition of "Indian:"

> "In essence, it recognizes the status quo of the present reservation Indians and further includes all persons of one-fourth or more Indian blood. The latter provision is intended to prevent persons of less than one-fourth Indian blood who

> are not already members of a tribe or descendants of such members living on a reservation from claiming the financial and other benefits of the act." Cong. Rec. H. 12056 (June 15, 1934).

The Interior Department had reported that the definition in Section 19 was designed to clarify "that residence upon a reservation is deemed an essential qualification of charter membership in a community only with respect to persons who are not members of any recognized tribe and are not possessed of one fourth degree of Indian blood." House Hearings 196.

Although it is clear that the definition of Indian requires that some type of obligation or extension of services to a tribe must have existed in 1934, we conclude that neither a reservation nor other trust land is required by Section 19. Even Senator Thomas' definition of "federal supervision" included the management of trust moneys. Furthermore, Solicitor's Opinions have repeatedly treated reservations and trust land as a basis for eligibility for IRA benefits but not as a sine qua non for those benefits. 1/ Associate Solicitor's Opinion of April 8, 1935, on the North Carolina Siouan Indians; Solicitor's Opinion of August 31, 1936, on the Mississippi Choctaw; Associate Solicitor's Opinion of February 8, 1937, on the Mole Lake Chippewa; Solicitor's Opinion of May 1, 1937, on the Nahma and Beaver Island Indians; Solicitor's Opinion of March 20, 1944, on the Catawbas; Solicitor's Opinion of December 13, 1938, on the Miamis and Peorias; Solicitor's Opinion of February 6, 1937, on the St. Croix Chippewa; Acting Associate Solicitor's Opinion of August 13, 1971, on the Nooksacks.

We believe that the treaty fishing rights of the Stillaguamish render them a "recognized tribe now under Federal jurisdiction." In 1855, the Stillaguamish Tribe entered into the Treaty of Point Elliott (12 Stat. 927). The Ninth Circuit has held that:

> "[T]he members of the [Stillaguamish Tribe] are descendants of treaty signatories and have maintained tribal organizations. We therefore affirm the district

1/ The Solicitor's Opinions arise both out of requests to organize and petitions to have land taken in trust for a tribe. Since status as a "recognized tribe now under Federal jurisdiction" is a prerequisite to either action, the opinions relating to organizational rights are applicable to the issue under consideration here.

> court's conclusion that the Stillaguamish and Upper Skagit Tribes are entities possessing rights under the Treaty of Point Elliott." 520 F.2d 676, 693 (9th Cir. 1975).

It should be noted that the Ninth Circuit held that the Stillaguamish have a tribal right rather than a right as individuals. Further, that right was premised upon a finding of continuous tribal existence since 1855. The Stillaguamish Treaty right is "vested" and may be lost only by "unequivocal action by Congress." Id. Since the United States had a treaty obligation to the Stillaguamish in 1934, they were "under Federal jurisdiction." Because we believe that the treaty rights bring the Stillaguamish within the IRA definition, we need not consider the other dealings between the United States and the Stillaguamish which the tribe has submitted in support of its petition.

It is irrelevant that the United States was ignorant in 1934 of the rights of the Stillaguamish and that no clear determination or redetermination of the status of the tribe was made at that time. It is very clear from the early administration of the Act that there was no established list of "recognized tribes now under Federal jurisdiction" in existence in 1934 and that determinations would have to be made on a case by case basis for a large number of Indian groups. The Solicitor's Office was called upon repeatedly in the 1930's to determine the status of groups seeking to organize. Opinion of Associate Solicitor, April 8, 1935, on the Siouan Indians of North Carolina; Solicitor's Opinion of August 31, 1936, on the Mississippi Choctaw; Solicitor's Opinion of May 1, 1937, on the Nahma and Beaver Island Indians; Solicitor's Opinions of February 6, 1937, and March 15, 1937, on the St. Croix Chippewa; Associate Solicitor's Opinion of Feb, 8, 1937, on the Mole Lake Chippewa; Solicitor's Opinion of January 4, 1937, on the Landless Shoshone Indians of Nevada; Solicitor's Opinion of December 13, 1938, on the Miami and Peoria Tribes of Oklahoma.

None of these opinions expresses surprise that the status of an Indian group should be unclear, nor do they contain any suggestion that it is improper to determine the status of a tribe after 1934. Further, the Department has on at least two occasions reassessed the status of groups initially determined not to be tribes for purposes of section 19. By Opinion dated May 31, 1946, the Acting Solicitor found that there was insufficient evidence before him to show that the Burns Paiutes constituted a band capable of organizing under the IRA. On November 16, 1967, the Acting Associate Solicitor, Indian Affairs determined that the Burns Paiutes could organize as a band. Based on new evidence, the Acting Associate Solicitor, Indian Affairs held on August 13, 1971, that the Rocksanks did constitute a tribe, despite a finding to the contrary in the Solicitor's Opinion of December 9, 1947.

Thus it appears that the fact that the United States was until recently unaware of the fact that the Stillaguamish were a "recognized tribe now under Federal jurisdiction" and that this Department on a number of occasions has taken the position that the Stillaguamish did not constitute a tribe in no way precludes IRA applicability.

We therefore conclude that the Stillaguamish do constitute a tribe for purposes of the IRA. The Stillaguamish, however, must also demonstrate a need for the land before it may be taken in trust for them pursuant to Section 5. City of Tacoma v. Andrus, 457 F. Supp. 342 (D.D.C. 1978). According to BIA estimates the unemployment level of the Stillaguamish Tribe is three times the national average. Average income is at or below the poverty level. In 1977, the State of Washington Office of Community Development, Indian Economic Employment Assistance Program made a grant of $16,500 to the Stillaguamish to be used exclusively for the acquisition of land to be taken in trust. The tribe currently has no land base and proposes to use the acquired lands for a tribal government center, fish hatchery, low income housing and potential tribal businesses. Under these circumstances, we believe that the Stillaguamish have adequately established their need for trust land and that the Secretary has the authority and discretion to take land in trust for the tribe.

(Sgd.) Hans Walker, Jr.

Hans Walker, Jr.