



# Samish Indian Nation

OF WASHINGTON

May 5, 2022

The Honorable Teresa Leger Fernandez  
Chair, Subcommittee for Indigenous Peoples of the United States  
House Natural Resources Committee  
Washington, D.C. 20515

## **Re: Responses to Questions for the Record on Discussion Draft ANS to H.R. 6181**

Dear Chair Leger Fernandez:

Thank you for your letter dated May 2, 2022, following up from the Subcommittee's hearing on April 27, 2022, on the Discussion Draft Amendment in the Nature of a Substitute (ANS) to H.R. 6181. On behalf of the Samish Indian Nation (Tribe), we deeply appreciate the Subcommittee's efforts to consider the ANS. Please find below my responses to the questions for the record set forth in your letter.

### **Questions from Rep. Grijalva**

#### **1. Why is it important that Congress passes a *Carcieri* fix into law?**

**Answer:** The Tribe thanks the House on the passage of H.R. 4352, the *Carcieri* fix, introduced by Rep. Betty McCollum. This legislation would help prevent the erosion of tribal sovereignty and the federal trust responsibility and restore 75 years of past precedent prior to the Supreme Court's 2009 issuance of *Carcieri v. Salazar*, 555 U.S. 379, by reaffirming the authority of the Department of the Interior (Department) to take land into trust for all federally recognized tribes under the Indian Reorganization Act (IRA). The BIA's practice for 75 years after passage of the IRA to place land into trust for all federally-recognized tribes was upended by the *Carcieri* decision. This legislation would reinstate the status quo, save the U.S. taxpayer money, stop costly litigation that the U.S. must defend, and provide certainty and stability for tribal economies. As Rep. Tom Cole stated on the House floor during consideration of H.R. 4352, this legislation is needed to ensure that there is not a "two-tier system" of tribes so that all tribes are treated equally under the IRA. If the *Carcieri* fix can be enacted into law, then there would be no need for the ANS to H.R. 6181. Unfortunately, the Senate has yet to advance this legislation.

#### **2. In your testimony, you talk about some of the lands that the Nation has been trying to take into trust that have been held up since the *Carcieri* decision. Can you describe some of these lands?**

**Answer:** Below is a description of some of our lands where the Tribe provides critical programs and services for our citizens that have been held up in the Department's fee-to-trust process since the 2009 *Carcieri* decision:

**MAILING ADDRESS** P.O. Box 217 · Anacortes, Washington 98221

**LOCATION** 2918 Commercial Avenue · Anacortes, Washington 98221

**PHONE** 360-293-6404 **FAX** 360-299-0790 **WEB** [www.samishtribe.nsn.us](http://www.samishtribe.nsn.us)

- Tribal Administrative Complex (1.02 acres) – governmental headquarters and administration campus;
- Longhouse (0.52 acres) – Head Start and elder nutrition programs;
- Thomas Creek (45.7 acres) – community garden for Head Start and elder nutrition programs, salmon habitat enhancement, and watershed protection;
- Campbell Lake additions (45.86 acres) – agriculture, housing, community, and non-gaming economic development; and
- Mud Bay Flats (3.57 acres) – cultural preservation.

**3. Your testimony mentions how litigation has held up critical administrative processes for your Nation, like re-recognition and placing land into trust.**

**a. How have the time delays impacted the Nation’s capacity as a sovereign tribal government over the years?**

**Answer:** It was 53 years ago, in 1969, that the Department made a clerical error and left the Tribe off its internal list of federally recognized tribes, which Samish did not find out about until depositions in 1993. It took 27 years of administrative process and litigation for the Tribe to be re-recognized by the Department in 1996. From 1969 until 1996, the federal government wrongfully failed to acknowledge the Tribe’s inherent governmental authority and legal status, depriving the Tribe and our citizens of a tribal homeland as well as funding and support for essential services, including health care, resulting in extreme hardship and stress, the deterioration of our community and culture, and lack of economic means.

Since re-recognition in 1996, the Tribe has struggled to have land taken into trust due to changing policies and procedures of the Department under different Administrations and then under the *Carciere* decision. A tribal homeland is critical for the exercise of tribal sovereignty and jurisdiction and to provide essential services to members. It is also necessary for the tribe to qualify for many sources of federal Indian funding. For Samish, it took 10 years before the Department placed our existing 79 acres of trust land into trust, which occurred before the 2009 *Carciere* decision. It then took 9 years for the BIA to complete its *Carciere* analysis for the Tribe before the Department in 2018 approved taking our 6.7-acre Campbell Lake South property into trust. However, the Swinomish Indian Tribal Community immediately appealed this decision in the Interior Board of Indian Appeals (IBIA), arguing that Samish is not eligible to acquire land in trust. After 3 1/2 years, the IBIA still has not ruled and appeals of its decision in federal courts could last a decade. Due to this litigation, the Department has halted all of our pending fee-to-trust applications. All of these delays have impacted our ability to provide housing, build community facilities, and pursue economic development projects for the benefit of our citizens. Like all other federally recognized tribes, Samish needs trust land for self-government, self-sufficiency, and self-determination purposes.

## Questions from Rep. Gallego

- 1. Could you please provide the Samish Indian Nation's position on whether Samish would be willing to include a provision in the ANS to H.R. 6181 to make it clear that this legislation would not impact the treaty rights of other federally recognized tribes?**

**Answer:** While federal courts have made clear beyond any dispute that a federally recognized tribe's eligibility for federal services and benefits, including taking land in trust under the Indian Reorganization Act, does not involve treaty rights, the Tribe is willing to include a treaty rights neutrality provision to make it clear that the ANS would not impact treaty rights of other federally recognized tribes. The Tribe proposes the same following language previously drafted by the Congressional Research Service at Rep. Rick Larsen's request in the 116<sup>th</sup> Congress – which Samish agreed to then – to make it clear that the ANS would not impact the treaty rights of other federally recognized tribes: “Nothing in this ~~ratification~~ Act shall be interpreted as affecting treaty rights under the Treaty of Point Elliott.”

- 2. Could you please provide the Samish Indian Nation's efforts to include provisions in previous Samish trust land legislation to clarify that the treaty rights of other federally recognized tribes would not be impacted?**

**Answer:** Ever since Samish first had trust land legislation introduced in 2008 during the 110<sup>th</sup> Congress, Samish has included a treaty rights neutrality provision in every single one of our trust land bills in the 111<sup>th</sup>, 112<sup>th</sup>, 113<sup>th</sup>, 114<sup>th</sup>, 115<sup>th</sup>, and 116<sup>th</sup> Congresses. Please find attached our Background on Samish Indian Nation Trust Land Legislation and accompanying attachments providing details about the treaty rights neutrality provisions contained in past Samish bills since the 110<sup>th</sup> Congress and correspondence showing the Tribe's good faith efforts to clarify that treaty rights of other federally recognized tribes would not be impacted.

## Questions for Rep. Leger Fernandez

- 1. Can you elaborate on the “clerical error” that the Bureau of Indian Affairs made in 1969, which effectively left the Samish Indian Nation off the list of federally recognized tribes?**
  - a. How did he BIA's negligence on the matter affect your Nation's government and citizens?**

**Answer:** Until the early 1970s the Samish Tribe assumed that it had always been a federally recognized tribe and that this recognition continued unaffected. No decision had ever been made or suggested by the Interior Department that the Tribe had lost its recognition, and a 1970 Indian Claims Commission decision confirmed that the Samish Tribe had always existed and continued to exist. The Tribe suffered a significant setback in the 1960s when the BIA started to compile an internal list of 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 1993 during the Tribe's federal acknowledgment trial that she had no legal or factual basis for dropping Samish from that list. 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 and opposition from the Tulalip Tribes, the Swinomish Indian Tribal Community, the Upper Skagit Tribe, and the Lummi Tribe, the Tribe gained reinstatement as a federally recognized tribe in May 1996. Additional federal court litigation confirmed the Tribe's re-recognition in November 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.

The BIA's negligence created indescribable suffering and irretrievable loss for the Tribe and our citizens that continues to this day. The Tribe was deprived of all federal Indian funding that every other tribe received during this 27-year period. We are still working to undo the significant adverse impacts from the BIA's mistakes, inaction, misdeeds, and delay. 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 our efforts to restore our homelands and rebuild our community. The ANS would help right past wrongs and enable the Tribe to move forward

Thank you for the opportunity to respond to these questions of the Subcommittee. I look forward to continuing to work with you on this legislation.

Sincerely,



Tom Wooten  
Chairman

Attachments:

Background Samish Indian Nation Trust Land Legislation and accompanying attachments

## **Background on Samish Indian Nation Trust Land Legislation**

- 1996** After 27 years of lengthy administrative processes and contentious litigation, Samish’s federal recognition was reinstated. Federal courts reaffirmed Samish federal recognition and found the BIA’s conduct in dropping Samish from the list of federally recognized tribes “arbitrary” and “wrongful” and concluded that the Tribe “should have been federally recognized between 1969 and 1996.” BIA published notice of Samish federal acknowledgment in April 1996.
- 1997** Former Samish Chairman Ken Hansen, then Council Member Tom Wooten (now Chairman), and other Council Members met with Swinomish Indian Tribal Community (Swinomish) leadership to discuss issues.
- 2001 on** Samish submitted land-into-trust applications to DOI for essential governmental activities, including its Tribal Administration Complex and its Longhouse, which houses the Tribe’s Head Start and elder services programs. All but two trust applications have languished at the BIA due to bureaucracy, red tape, and other roadblocks.

### **110<sup>th</sup> Congress**

Samish held meetings at Squaxin Island and Nooksack in January and February 2008 inviting all Puget Sound tribes to discuss draft land-into-trust legislation for Samish. Swinomish and other tribes attend these meetings. Swinomish requested treaty rights neutrality language be included in the legislation and Samish agreed. Samish drafted treaty neutrality language and provided it to Congress. Samish also met with Skagit County and the City of Anacortes.

On June 26, 2008, Rep. Rick Larsen introduced H.R. 6405. The legislation authorized DOI to process Samish trust land applications as on-reservation applications under land-into-trust regulations, 25 C.F.R. Part 151, within a small, discrete geographic boundary. The legislation included the below treaty neutrality language, which had been included in previously enacted legislation for other tribes, such as the Grand Ronde Restoration Act (P.L. 98-165) and the Siletz Restoration Act (P.L. 95-195). Swinomish, the Lummi Nation (Lummi), Upper Skagit Indian Tribe (Upper Skagit), and the Tulalip Tribes (Tulalip) opposed the legislation even with the treaty neutrality language.

#### **SEC. 3. HUNTING, FISHING, TRAPPING, AND GATHERING.**

This Act shall not grant, restore, or diminish any hunting, fishing, trapping, or gathering treaty right of the Samish Indian Nation.

### **111<sup>th</sup> Congress**

The Supreme Court in Feb. 2009 issued the *Carciere* decision, further complicating and delaying DOI’s land-into-trust process.

On April 22, 2009, Rep. Larsen introduced H.R. 2040. Samish again requested that treaty neutrality language be included. The bill contained the following same treaty neutrality provision as in the 110<sup>th</sup> Congress:

### **SEC. 3. HUNTING, FISHING, TRAPPING, AND GATHERING.**

This Act shall not grant, restore, or diminish any hunting, fishing, trapping, or gathering treaty right of the Samish Indian Nation.

On June 3, 2009, the Committee on Natural Resources held a legislative hearing on H.R. 2040. Samish testified on behalf of the legislation. Swinomish, Lummi, Upper Skagit, and Tulalip opposed this bill.

#### **112<sup>th</sup> Congress**

On June 21, 2012, Rep. Larsen introduced H.R. 5992, the Samish Indian Nation Homelands Act. The legislation would place approximately 97 acres of land into trust for Samish. The bill included the following treaty neutrality provision:

### **SEC. 4. HUNTING, FISHING, TRAPPING, AND GATHERING.**

This Act shall not grant, restore, or diminish any hunting, fishing, trapping or gathering treaty right of any tribe.

The local counties and city where the land is located supported this bill. Swinomish, Lummi, Upper Skagit, and Tulalip opposed this bill.

#### **113<sup>th</sup> Congress**

On March 13, 2013, Rep. Larsen introduced H.R. 1225, which was the same bill he introduced in the 112<sup>th</sup> Congress. This bill contained the same treaty neutrality provision as follows:

### **SEC. 4. HUNTING, FISHING, TRAPPING, AND GATHERING.**

This Act shall not grant, restore, or diminish any hunting, fishing, trapping or gathering treaty right of any tribe.

On May 7, 2013, Samish Council met with the Upper Skagit Tribal Council to discuss their concerns with H.R. 1225.

On July 23, 2013, the House Natural Resources Subcommittee on Indian and Alaska Native Affairs held a legislative hearing on the bill. Samish testified on behalf of the legislation.

On Sept. 11, 2013, former Subcommittee Chairman Don Young facilitated a discussion in Washington, D.C., between Samish and Upper Skagit. Rep. Larsen and Rep. Suzan DelBene participated to discuss Upper Skagit's concerns over the treaty neutrality provision in H.R. 1225. Upper Skagit objected to the word "restore" in Section 4 above.

On Sept. 16, 2013, Samish provided written responses to questions from former Chairman Young about treaty rights in H.R.1225. See Attachments on History of Samish Indian Nation Trust Land Legislation (Attachments), p. 2. In response to the question regarding treat rights, Samish noted,

'...the 2010 decision of the 9th Circuit in *US. v. Washington*, 593 F.3d 790 (9th Cir. 2010), involving the Tribe's attempt to reopen the 1979 decision denying it treaty status for off-reservation treaty fishing. The 9th Circuit refers to this decision in shorthand as "*Samish*." See *Evans v. Kempthorne*, 604 F.3d 1120, 1121 (9th Cir. 2010). The 9th Circuit in *Samish*

held that "the Samish Tribe is not entitled to reopening of Washington II because of their subsequent federal recognition." Nothing in H.R. 1225 changes, alters or overrules that holding.'

On March 13, 2014, Rep. Larsen suggested legislative changes to H.R. 1225 to accommodate concerns raised by Upper Skagit during the Sept. 11, 2013, meeting. Samish agreed to these changes. Attachments, p. 5. The changes included:

1. Striking Section 3(c) and replacing with: "Nothing in the Act shall limit the eligibility of the Samish Indian Nation to acquire additional land in trust under applicable federal law and regulations."
2. Inserting language in any potential committee report explicitly stating that the bill is not intended to adjudicate whether any existing treaty rights exist or should exist.
3. In Section 4, deleting "restore".

Samish accepted Upper Skagit's proposal to remove the word "restore" from the treaty neutrality provision.

#### **114<sup>th</sup> Congress**

On March 25, 2015, Rep. Larsen introduced H.R. 1632, the Samish Indian Nation Land Conveyance Act, which was similar to the bills he introduced in the 112<sup>th</sup> and 113<sup>th</sup> Congresses but changing the name of the bill because Upper Skagit objected to the word "Homelands" in the previous bill title and including Upper Skagit's other requests. The legislation had 20 bi-partisan co-sponsors and would take approximately 97 acres of land into trust.

The following treaty neutrality provision was included in the legislation:

#### **SEC. 4. HUNTING, FISHING, TRAPPING, AND GATHERING.**

This Act shall not grant or diminish any hunting, fishing, trapping or gathering treaty right of any tribe.

Swinomish, Lummi, Upper Skagit, and Tulalip opposed this bill. Tulalip, Swinomish and Lummi then opposed the revised bill on the ground that removing the word restore meant that Samish had a secret plan to claim treaty rights.

#### **115<sup>th</sup> Congress**

On May 3, 2017, Rep. Larsen re-introduced H.R. 2320, the same bill he introduced in the 114<sup>th</sup> Congress. The bill had 24 bi-partisan co-sponsors and would take approximately 97 acres of land into trust for Samish. Local counties, neighboring city, and other Washington tribes supported this legislation. However, Swinomish, Lummi, Upper Skagit, and Tulalip opposed this bill.

On Nov. 15, 2017, the House Natural Resources Subcommittee on Indian, Insular, and Alaska Native Affairs held a legislative hearing on the bill. The bill included treaty neutrality language proposed by Samish. Samish testified on behalf of the legislation. Swinomish, Lummi, and Tulalip, and Upper Skagit opposed this bill.

On Dec. 18, 2017, Samish invited Swinomish, Upper Skagit, Lummi, and Tulalip to meet with Samish on Jan. 16, 2018, to discuss their concerns with H.R. 2320. Attachments, p. 11. None of these tribes accepted Samish's invitation to meet.

On March 12, 2018, Samish submitted yet again compromise legislative language to H.R. 2320 to the House Natural Resources Committee for consideration to address concerns raised by Swinomish, Lummi Nation, Tulalip, and Upper Skagit. The letter included Samish's responses to various changes put forward by the opposition tribes, and notes, "Despite our efforts, these tribes continue to raise the same objections packaged in different ways even though we have amended our legislation over the years to meet their prior objections." Attachments, p. 15.

On May 21, 2018, Swinomish invited Samish to a meeting on June 14, 2018, with the four opposition tribes to discuss their concerns with H.R. 2320. Samish accepted the meeting and sent a letter confirming that acceptance on May 24, 2018. Attachments, p. 19. Swinomish objected to the meeting being recorded. Attachments, p. 21. The meeting was canceled due to the passing of a Swinomish community member.

On July 19, 2018, Samish met with Swinomish, Lummi Nation, Tulalip, and Upper Skagit. The meeting concluded with no change in the opposition tribes' position.

On November 9, 2018, the BIA published a decision to take the 6.7-acre Campbell Lake South property into trust for the benefit of Samish. The decision included a positive *Carciari* analysis, determining that Samish fulfilled the requirements of being "under federal jurisdiction" in 1934.

On December 10, 2018, Swinomish appealed the BIA's decision to take the Campbell Lake South property into trust for the benefit of the Samish Indian Nation to the Interior Board of Indian Appeals.

### **116<sup>th</sup> Congress**

On May 23, 2019, Rep. Larsen introduced H.R. 2961, the Samish Indian Nation Land Reaffirmation Act, in the 116<sup>th</sup> Congress. The legislation had 16 bi-partisan cosponsors. The legislation ratified the November 9, 2018, decision by the BIA approving Samish's application to take the 6.7-acre Campbell Lake South parcel into trust. Local counties, the neighboring city, and other Washington tribes support the legislation.

On June 5, 2019, the House Natural Resources Subcommittee on Indigenous Peoples of the United States held a legislative hearing on the bill. Samish testified on behalf of the legislation. Swinomish, Lummi, and Tulalip, and Upper Skagit opposed this bill, and the Swinomish Chairman testified in opposition to the bill.

In an effort to address Swinomish's concerns, Samish offered to Rep. Larsen to include the following language in the bill: "This Act shall not impact any treaty rights."

Rep. Larsen's office worked with the Congressional Research Service to develop the following treaty rights neutrality language, which Samish agreed to include:

"Nothing in this ratification shall be interpreted as affecting treaty rights under the Treaty of Point Elliott."

On August 14, 2019, after over 2 months of requesting their views, Swinomish finally sent a letter in conjunction with Tulalip, Upper Skagit, and Lummi to Rep. Larsen proposing an entirely different bill for Samish. Their proposed bill went much further than a treaty rights neutrality provision. Instead, they changed the bill into a mandatory trust land acquisition of the 6.70-acre Campbell Lake South parcel and included language to eliminate Samish's "under federal jurisdiction determination" which would prevent Samish from being able to take future land into trust. In addition, instead of a treaty rights neutrality provision, their proposal included an elimination of any claim of Samish treaty rights. Attachments, p. 22.

On August 16, 2019, Samish responded that these provisions would endanger their ability to take future land into trust and called into question tribal government authority over the 6.7-acre parcel. It was also likely that these provisions would be opposed by all other Indian tribes because of the negative precedent it would set. Attachments, p. 25.

### **117<sup>th</sup> Congress**

On December 16, 2021, Rep. Ruben Gallego introduced H.R. 6181, the Samish Indian Nation Land Reaffirmation Act, to ratify the November 9, 2018, decision of BIA to take the 6.7-acre Campbell Lake South parcel into trust.

To address questions about the bill and the opposition of Swinomish, Tulalip, Upper Skagit, and Lummi to the bill as introduced, Samish, in coordination with Rep. Gallego, proposed the ANS to H.R. 6181 to simply reaffirm the Indian Reorganization Act's applicability to Samish so that Samish is treated the same as other federally recognized tribes. The ANS does not reaffirm BIA's 2018 decision or impact that decision. On April 27<sup>th</sup>, HNR SCIP held a hearing on the ANS.

While the Indian Reorganization Act does not involve treaty rights, Samish proposes the following treaty rights neutrality provision drafted by the Congressional Research Service for Rep. Larsen in 2019 to further accommodate concerns raised at the hearing:

"Nothing in this ~~ratification~~ **Act** shall be interpreted as affecting treaty rights under the Treaty of Point Elliott."

**Attachments on History of Samish Indian Nation Trust Land Legislation**

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# Samish Indian Nation

OF WASHINGTON

September 16, 2013

Honorable Don Young, Chairman  
U.S. House of Representatives  
Committee on Natural Resources  
Washington, D.C. 20515

Re: H.R. 1225 (Larsen), "Samish Indian Nation Homelands Act of 2013"

Dear Chairman Young:

Thank you for your letter of September 9, 2013, following up on the Hearing held on July 23, 2013, before the Committee on Natural Resources, Subcommittee on Indian and Alaska Native Affairs, on our Samish Indian Nation Homelands Act of 2013, H.R. 1225. I appreciated the opportunity to testify before the Subcommittee on behalf of the Samish Indian Nation ("Tribe") on the bill, and that the bill received a warm welcome from Subcommittee members.

In your letter, you asked me to respond to the following two questions in writing. My answers are attached.

- 1. Your testimony goes into great detail about the purposes for which the Tribe will use the parcels identified for trust status. Because the bill contains a gaming prohibition, gaming could not be one of those purposes. But Chairwoman Washington of the Upper Skagit Indian Tribe testified that her tribe is concerned that Samish could circumvent this prohibition. Please address this concern for the record.**

Answer: Chairman Young, thank you for the question. Upper Skagit Indian Tribe's concerns related to gaming are unfounded. H.R. 1225 contains a complete prohibition on gaming on the lands identified in the legislation. The language in our bill is the same language that has been included in other previously enacted legislation approved by the House Natural Resources Committee. This prohibition language could not be circumvented, and the Upper Skagit Indian Tribe has failed to explain how it could be circumvented. The Tribe does not intend to circumvent the complete gaming prohibition set out in H.R. 1225 for the lands to be taken into trust in this bill.

I do need to be clear about a separate matter, however. The Tribe, like every other federally recognized tribe in the United States, has the right to establish a gaming operation under the Indian Gaming Regulatory Act (IGRA), that complies with the provisions and restrictions of that Act. The Tribe intends to establish its own gaming operation at some point, to generate revenues to provide services and benefits to Samish tribal members. Any such gaming operation will have to be on lands that are not

contained in H.R. 1225, and will have to comply with all applicable provisions of federal law and regulations including but not limited to IGRA, NEPA, and fee-to-trust regulations. These plans by the Samish Tribe are completely separate from the non-gaming trust lands that are contained in H.R. 1225. I did not take Chairwoman Washington to say that the Upper Skagit Indian Tribe demands that the Tribe must forego gaming anywhere under any circumstances as the price to obtain a modest homeland. The Subcommittee should reject such an unreasonable demand if it were made.

2. **Your written statement indicates that conversion of the identified parcels in H.R. 1225 into trust would have no impact on the treaty rights of neighboring tribes. Please clarify the intent of this provision of the bill, and address *U.S. v. Washington* (9<sup>th</sup> Circuit) specifically in your response.**

Answer: Again, Chairman, thank you for your question. The Tribe strongly believes its legislation has no impact whatsoever on the treaty rights of any Indian tribe, including the Tribe. H.R. 1225 is intended to be completely neutral on this issue, and establishes no precedent of any kind that the Tribe or any other tribe could use on the issue of treaty rights. The Tribe, just like every other Indian tribe within the United States, has a right to a tribal homeland and the right to exercise sovereign authority over tribal territory. As the United States Supreme Court stated in *White Mt. Apache Tribe v. Bracker*, 448 U.S. 136, 151 (1980), "there is a significant geographical component to tribal sovereignty . . . ." Because of historical circumstances and past policies of the federal government, the Tribe has heretofore been denied a tribal homeland. H.R. 1225 is intended to remedy this inequity.

In a draft of H.R. 1225's predecessor bill in the 112<sup>th</sup> Congress (H.R. 5992), another tribe indicated to Congressman Larsen that it was concerned about potential impacts on treaty rights and asked for language to clarify that the Tribe's proposed legislation was not intended to have any effect on or to establish any precedent with regard to treaty rights. The Tribe was glad to add language to this effect since it had and has no intent that H.R. 1225 have any impact on treaty status of other tribes. The Samish Tribe added the language in Section 4 of H.R. 1225( and in H.R. 5992) that states: "This Act shall not grant, restore, or diminish any hunting, fishing, trapping or gathering treaty right of any tribe." This language was taken from Section 4 of the Grand Ronde Restoration Act, Pub. L. No. 98-165, Nov. 22, 1983, 97 Stat. 1064, codified at 25 U.S.C. § 713b(d), and from Section § 3 the Siletz Restoration Act, Pub.L.No. 95-195, Nov. 18, 1977, 91 Stat. 1415, codified at 25 U.S.C. § 711a(c). Those provisions were added at the request of the State of Oregon, which was concerned that restoration of the tribes in question and reestablishment of a tribal land base might restore treaty rights for each tribe. Those provisions have been existence for the last 30 and 35 years respectively and have worked as they were intended, to not grant or affect treaty rights in any manner. H.R. 1225 is intended to be completely neutral on the issue of treaty rights; it does not impact treaty rights of neighboring tribes and it does not grant or restore any treaty rights for the Tribe.

Honorable Don Young

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September 16, 2013

You asked me to specifically address the 9<sup>th</sup> Circuit's recent decision in *U.S. v. Washington* as part of my response. I assume you are referring to the 2010 *en banc* decision of the 9<sup>th</sup> Circuit in *U.S. v. Washington*, 593 F.3d 790 (9<sup>th</sup> Cir. 2010), involving the Tribe's attempt to reopen the 1979 decision denying it treaty status for off-reservation treaty fishing. The 9<sup>th</sup> Circuit refers to this decision in shorthand as "*Samish*." See *Evans v. Kempthorne*, 604 F.3d 1120, 1121 (9<sup>th</sup> Cir. 2010)(Canby, Circuit Judge).

The 9<sup>th</sup> Circuit in *Samish* held that "the Samish Tribe is not entitled to reopening of *Washington II* because of their subsequent federal recognition." 593 F.3d at 800. Nothing in H.R. 1225 changes, alters or overrules that holding. H.R. 1225 does not serve as a "stepping stone" for the Tribe to assert treaty rights for itself or to the detriment of any other tribe; any such rights must be determined under the precedent of the 9<sup>th</sup> Circuit. H.R. 1225 does not have any connection to such a determination. The Upper Skagit is possibly raising this issue to generate fear and opposition to the Tribe's modest homelands legislation. Their opposition should not be allowed to impact the Tribe's legislation.

Thank you for the opportunity to answer the Subcommittee's questions. I would be glad to answer any additional questions, should they arise.

Sincerely,

Thomas D. Wooten  
Chairman, Samish Indian Nation

Cc: Samish Tribal Council  
Craig Dorsay, Tribal Attorney

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Congress of the United States  
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ARMED SERVICES

March 13, 2014

Chairman Tom Wooten  
Samish Indian Nation  
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Dear Chairman Wooten:

Thank you for your continued communication and views on H.R. 1225. I appreciate your hard work on behalf of your constituents. Our ongoing government-to-government consultation is very important to me.

In our meeting on September 11, 2013, with Representative DelBene, we agreed to a number of changes to the bill that would clarify its intent. I would like to restate my commitment to making those changes should H.R. 1225 go to markup. In addition, I intend to make technical changes requested by the Department of the Interior in testimony during the House Natural Resources Subcommittee on Indian and Alaska Native Affairs hearing on July 23, 2013.

I have attached a list of the changes I believe we agreed to, along with written technical assistance from the Department of Interior. I intend to push for these changes should this bill go to markup.

I appreciate your ongoing counsel and leadership. I look forward to continuing our productive and respectful government-to-government relationship.

Sincerely,



Rick Larsen  
Member of Congress  
Washington State, 2<sup>nd</sup> District

**Proposed changes to H.R. 1225 agreed to during September 11, 2013 meeting**

1. Strike Section 3(c) and replace with: "Nothing in this Act shall limit the eligibility of the Samish Indian Nation to acquire additional land in trust under applicable federal law and regulations."
2. Insert language in any potential committee report explicitly stating that the bill is not intended to adjudicate whether any existing treaty rights exist or should exist.
3. In Section 4, delete "restore".



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

JUL 26 2013

The Honorable Rick Larsen  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Larsen:

In accordance with your request, the Department of the Interior has prepared the enclosed draft of legislative language to H.R. 1225, Samish Indian Nations Homelands Act of 2013.

This draft legislation has been prepared as a service to you. It has not been reviewed within the Department of the Interior or cleared by the Office of Management and Budget. We can, therefore, make no commitment at this time concerning the position of the Department on this matter.

Sincerely,

Christopher P. Salotti  
Legislative Counsel  
Office of Congressional and Legislative  
Affairs

Enclosure

HR 1225 IH

113th CONGRESS  
1st Session  
**H. R. 1225**

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.

**IN THE HOUSE OF REPRESENTATIVES**

**March 15, 2013**

Mr. LARSEN of Washington introduced the following bill; which was referred to the Committee on Natural Resources

---

**A BILL**

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.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Samish Indian Nation Homelands Act of 2013'.

**SEC. 2. DEFINITIONS.**

- (a) **Parcels-** The term 'parcels' means the 16 parcels of approximately 95 acres of land owned by the Tribe, located in Skagit County and San Juan County, Washington, and depicted on the Map.
- (b) **Map-** The term 'Map' means the map titled 'the Samish Indian Nation Homeland Map' dated June 20, 2012.
- (c) **Secretary-** The term 'Secretary' means the Secretary of the Interior.
- (d) **Tribe-** The term 'Tribe' means the Samish Indian Nation, a federally recognized Indian Tribe.

### SEC. 3. LAND INTO TRUST.

(a) Action by the Secretary of the Interior-

~~(1) FULFILLMENT OF CONDITIONS ACQUISITION OF LAND INTO TRUST- Upon approval of the survey required under subsection (b), On fulfillment of each condition described in paragraph (2),~~ and in accordance with the regulations of the Department of the Interior for implementing Section 5 of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) Indian Reorganization Act of 1934 that are applicable to trust land acquisitions for Indian tribes that are mandated by Federal legislation, the Secretary shall take the land described in the Map into trust for the benefit of the Tribe.

~~(2) CONDITIONS The conditions referred to in paragraph (1) are that the Tribe shall—~~

- ~~(A) convey to the Secretary all right, title, and interest in and to the parcels of land described in the Map; and~~
- ~~(B) submit to the Secretary a request to take the parcels of land described in the Map into trust for the Tribe.~~

(b) Survey-

(1) RESPONSIBILITY FOR SURVEY- As soon as practicable after the enactment of this Act, The the Tribe shall conduct a survey of the boundaries of the parcels described in the Map and designated for the Tribe and submit the survey to the Bureau of Indian Affairs.

(2) APPROVAL OF SURVEY-

- (A) Not later than 90 days after the date on which the survey is submitted under this subsection, the Director of the Bureau of Indian Affairs shall complete a review of the survey, and provide the Tribe with notice of concurrence of the survey.
- (B) Not later than 120 days after the date on which concurrence is provided to the Tribe, the Secretary shall submit a copy of the survey to the appropriate Committees of Congress, and make the survey available to the public at the appropriate office of the Secretary.

(c) Effect of Act- Nothing in this Act limits the existing rights or claims of the Samish Indian Nation.

Comment [SLS1]: As noted in the testimony, this is the only precondition for the acquisition.

Comment [SLS2]: As noted in the testimony, the conditions are unnecessary.

Comment [SLS3]: The "clear direction" requested in the testimony.

Comment [SLS4]: As noted in the testimony, the conditions are unnecessary.

Comment [SLS5]: The time for conducting the survey, as requested in the testimony.

### SEC. 4. HUNTING, FISHING, TRAPPING, AND GATHERING.

This Act shall not grant, restore, or diminish any hunting, fishing, trapping or gathering treaty right of any tribe.

**SEC. 5. GAMING PROHIBITION.**

The Tribe may not conduct on any land taken into trust pursuant to this Act any gaming activities--

- (1) as a matter of claimed inherent authority; or
- (2) under any Federal law (including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) (including any regulations promulgated by the Secretary or the National Indian Gaming Commission pursuant to that Act)).

*END*



# Samish Indian Nation

OF WASHINGTON  
December 18, 2017

**Certified Mail**  
**Return Receipt Requested**

The Honorable Jennifer Washington  
Tribal Chair, Upper Skagit Indian Tribe  
25944 Community Plaza Way  
Sedro-Woolley, WA 98284

Dear Upper Skagit Indian Tribe, Lummi Nation, Swinomish Indian Tribal Community, and Tulalip Tribes:

We understand that each of your Tribes has expressed concerns about not being adequately consulted or given the opportunity to offer input on the Samish Indian Nation's pending federal legislation, H.R. 2320, or previous Samish land-into-trust legislation. While the Nation has made various efforts to reach out to you and other Tribes in Washington over the past decade to inform you and others about our efforts to advance federal legislation to have lands taken into trust for governmental purposes and for cultural preservation and to obtain feedback on these efforts, we would like to provide the opportunity to sit down with us to convey any concerns you may have about H.R. 2320 and to provide any suggested technical changes you may have to address reasonable concerns.

The Nation proposes a joint meeting of our Tribal Councils to hear your concerns and proposed solutions, so that each Tribe has an opportunity to comment and hear what the other Tribes have to say. The meeting will be recorded so each Tribe will have a record of the proceeding. We propose a meeting on January 16, 2018, from 10 a.m. to 3 p.m. at the Convention Center at the Nation's RV Park Convention Center, at 4701 Fidalgo Bay Road in Anacortes. Lunch will be provided at the meeting.

Please let us know who will be attending from your Tribe so we can make sufficient seating and food arrangements by responding directly to me. We would appreciate it if you could please RSVP to this invitation by January 5, 2018.

We look forward to meeting with you and having a productive discussion.

Sincerely,

Thomas D. Wooten  
Chairman



# Samish Indian Nation

OF WASHINGTON  
December 18, 2017

**Certified Mail**  
**Return Receipt Requested**

The Honorable Jeremiah Julius  
Lummi Indian Business Council  
2665 Kwina Road  
Bellingham, WA 98226

Dear Upper Skagit Indian Tribe, Lummi Nation, Swinomish Indian Tribal Community, and Tulalip Tribes:

We understand that each of your Tribes has expressed concerns about not being adequately consulted or given the opportunity to offer input on the Samish Indian Nation's pending federal legislation, H.R. 2320, or previous Samish land-into-trust legislation. While the Nation has made various efforts to reach out to you and other Tribes in Washington over the past decade to inform you and others about our efforts to advance federal legislation to have lands taken into trust for governmental purposes and for cultural preservation and to obtain feedback on these efforts, we would like to provide the opportunity to sit down with us to convey any concerns you may have about H.R. 2320 and to provide any suggested technical changes you may have to address reasonable concerns.

The Nation proposes a joint meeting of our Tribal Councils to hear your concerns and proposed solutions, so that each Tribe has an opportunity to comment and hear what the other Tribes have to say. The meeting will be recorded so each Tribe will have a record of the proceeding. We propose a meeting on January 16, 2018, from 10 a.m. to 3 p.m. at the Convention Center at the Nation's RV Park Convention Center, at 4701 Fidalgo Bay Road in Anacortes. Lunch will be provided at the meeting.

Please let us know who will be attending from your Tribe so we can make sufficient seating and food arrangements by responding directly to me. We would appreciate it if you could please RSVP to this invitation by January 5, 2018.

We look forward to meeting with you and having a productive discussion.

Sincerely,

Thomas D. Wooten  
Chairman



# Samish Indian Nation

OF WASHINGTON  
December 18, 2017

**Certified Mail**  
**Return Receipt Requested**

The Honorable Brian Cladoosby  
Chairman, Swinomish Indian Tribal Community  
11404 Moorage Way  
La Conner, WA 98257

Dear Upper Skagit Indian Tribe, Lummi Nation, Swinomish Indian Tribal Community, and Tulalip Tribes:

We understand that each of your Tribes has expressed concerns about not being adequately consulted or given the opportunity to offer input on the Samish Indian Nation's pending federal legislation, H.R. 2320, or previous Samish land-into-trust legislation. While the Nation has made various efforts to reach out to you and other Tribes in Washington over the past decade to inform you and others about our efforts to advance federal legislation to have lands taken into trust for governmental purposes and for cultural preservation and to obtain feedback on these efforts, we would like to provide the opportunity to sit down with us to convey any concerns you may have about H.R. 2320 and to provide any suggested technical changes you may have to address reasonable concerns.

The Nation proposes a joint meeting of our Tribal Councils to hear your concerns and proposed solutions, so that each Tribe has an opportunity to comment and hear what the other Tribes have to say. The meeting will be recorded so each Tribe will have a record of the proceeding. We propose a meeting on January 16, 2018, from 10 a.m. to 3 p.m. at the Convention Center at the Nation's RV Park Convention Center, at 4701 Fidalgo Bay Road in Anacortes. Lunch will be provided at the meeting.

Please let us know who will be attending from your Tribe so we can make sufficient seating and food arrangements by responding directly to me. We would appreciate it if you could please RSVP to this invitation by January 5, 2018.

We look forward to meeting with you and having a productive discussion.

Sincerely,

Thomas D. Wooten  
Chairman



# Samish Indian Nation

OF WASHINGTON  
December 18, 2017

**Certified Mail**  
**Return Receipt Requested**

The Honorable Marie Zackuse  
Chairwoman, Tulalip Tribes  
6406 Marine Drive  
Tulalip, WA 98271

Dear Upper Skagit Indian Tribe, Lummi Nation, Swinomish Indian Tribal Community, and Tulalip Tribes:

We understand that each of your Tribes has expressed concerns about not being adequately consulted or given the opportunity to offer input on the Samish Indian Nation's pending federal legislation, H.R. 2320, or previous Samish land-into-trust legislation. While the Nation has made various efforts to reach out to you and other Tribes in Washington over the past decade to inform you and others about our efforts to advance federal legislation to have lands taken into trust for governmental purposes and for cultural preservation and to obtain feedback on these efforts, we would like to provide the opportunity to sit down with us to convey any concerns you may have about H.R. 2320 and to provide any suggested technical changes you may have to address reasonable concerns.

The Nation proposes a joint meeting of our Tribal Councils to hear your concerns and proposed solutions, so that each Tribe has an opportunity to comment and hear what the other Tribes have to say. The meeting will be recorded so each Tribe will have a record of the proceeding. We propose a meeting on January 16, 2018, from 10 a.m. to 3 p.m. at the Convention Center at the Nation's RV Park Convention Center, at 4701 Fidalgo Bay Road in Anacortes. Lunch will be provided at the meeting.

Please let us know who will be attending from your Tribe so we can make sufficient seating and food arrangements by responding directly to me. We would appreciate it if you could please RSVP to this invitation by January 5, 2018.

We look forward to meeting with you and having a productive discussion.

Sincerely,

Thomas D. Wooten  
Chairman



# Samish Indian Nation

OF WASHINGTON

March 12, 2018

Honorable Rob Bishop, Chairman  
Committee on Natural Resources  
U.S. House of Representatives  
Washington, D.C. 20515

Honorable Raul Grijalva, Ranking Member  
Committee on Natural Resources  
U.S. House of Representatives  
Washington, D.C. 20515

Honorable Doug LaMalfa  
Chairman  
Subcommittee on Indian, Insular Affairs  
and Alaska Native Affairs  
Committee on Natural Resources  
U.S. House of Representatives  
Washington, D.C. 20515

Honorable Norma Torres  
Ranking Member  
Subcommittee on Indian, Insular Affairs and  
Alaska Native Affairs  
Committee of Natural Resources  
U.S. House of Representatives  
Washington, D.C. 20515

## **Re: Response to proposed amendments to H.R. 2320, Samish Indian Nation Land Conveyance Act of 2017**

Dear Chairmen Bishop and LaMalfa and Ranking Members Grijalva and Torres:

On behalf of the Samish Indian Nation (“Samish” or “Nation”), thank you for your efforts on H.R. 2320. Since re-recognition in 1996 after 27 years of litigation to rectify a clerical error at the BIA leaving the Nation mistakenly off the list of federally recognized tribes in 1969, we have struggled to have land placed into trust so that we can provide essential governmental services for our people and preserve land of significance to us.

H.R. 2320 would greatly assist us by placing a modest 97 acres of land we already own into trust. The Tribe plans to continue the current uses of the lands contained in H.R. 2320, which include: IT, records keeping and general administration; operation of a Head Start and early learning program; operation of an elder care and meals program; salmon stream habitat enhancement; agriculture; community housing; and cultural preservation. Section 4 of the bill ensures neutrality with regard to treaty rights to make it crystal clear that no treaty rights of any tribe are impacted or altered by this bill and Section 5 contains a gaming prohibition on the lands that would be taken into trust under the bill. The simple and direct goal of H.R. 2320 is to preserve land that is culturally relevant to the Nation and to establish a community land base for governmental purposes. The legislation is purposefully limited to issues directly related to placing land into trust and any direct implications that could arise from such action.

The Nation has been working on land-into-trust legislation since the 110<sup>th</sup> Congress. Throughout this time, we have repeatedly reached out and have acted in good faith to seek compromise with not only the Tulalip Tribes (“Tulalip”), the Swinomish Indian Tribal Community (“Swinomish”), and the Lummi Nation (“Lummi”) but also the Upper Skagit Indian Tribe (“Upper Skagit”) and others. We have invited the leadership of these four Tribes to meet with us on many occasions to discuss our legislation—most recently on January 16, 2018. We extended an invitation to these four Tribes to meet with us to discuss H.R. 2320 and the November 15, 2017, hearing of the House Natural Resources Subcommittee on Indian, Insular,

and Alaska Native Affairs (“HNR IIANA”) on H.R. 2320. None of them accepted our invitation to sit down and discuss their concerns with us.

Throughout the years, we have done all that we can to accommodate legitimate concerns and answer questions about our legislation. For example, prior to introduction of Samish land-into-trust legislation in the 110<sup>th</sup> Congress, we invited all tribes in the Puget Sound area to two sessions to explain the need for the legislation as well as to provide information and request feedback from other tribes on the legislation. Further, in response to Upper Skagit’s testimony at an HNR IIANA hearing on Samish legislation on July 23, 2013, Congressman Young graciously facilitated a discussion between Samish and Upper Skagit tribal officials to discuss the issues raised by Upper Skagit during the hearing. We also submitted detailed written responses on September 23, 2013, to questions posed by then Chairman Young. Moreover, prior to the hearing, Samish agreed to change the name of the legislation to take out the term “homeland” based upon Upper Skagit’s objection. Then, in 2015, in response to these four Tribes’ opposition to our legislation, we submitted a response dated June 9, 2015, to HNR IIANA addressing the four Tribes’ assertions that the legislation would harm their treaty rights. Despite our efforts, these Tribes continue to raise the same objections packaged in different ways even though we have amended our legislation over the years to meet their prior objections.

I write to respond to Lummi’s letter dated February 12, 2018, Swinomish’s letter dated February 8, 2018, and Tulalip’s letter dated February 8, 2018, (collectively, “Tribes”) to HNR regarding H.R. 2320. Each of the Tribes submitted nearly identical proposed amendments to H.R. 2320 to purportedly address their concerns that the bill would impact their treaty rights. The Nation has carefully reviewed the Tribes’ letters and proposed amendments. Based upon this review and consistent with our long-standing efforts to work with the other Tribes to the extent possible on this bill, the Nation would be amenable to some of their proposed amendments as discussed below. Other proposed amendments we cannot accept because these amendments would result in the curtailment of Samish’s rights to tribal self-determination and self-governance that all other federally recognized tribes possess as sovereign nations. However, in an effort to resolve these issues and to move forward, we attach to this letter Samish’s substitute proposed amendments to H.R. 2320, either agreeing to proposed changes submitted by the other Tribes or proposing alternative language to the language proposed by them that we believe address their treaty rights concerns as articulated at the November 15, 2017, hearing and in their letters and other documents.

We can agree to the other Tribes’ proposed change to Section 3(a) to use the term “parcels” rather than “land” because “parcels” is a defined term in Section 2(a) of the bill. We also agree with their proposed change to Section 3(b)(2)(A) to add the phrase “if appropriate” to the end of the sentence. We do not understand their proposed change to Section 3(a) adding a legal citation to the National Environmental Policy Act since that citation is already in the existing bill. We also do not understand their proposed change to Section 5(2) to add the legal citation to the Indian Gaming Regulatory Act since that citation already appears in the existing bill.

The Nation cannot accept the other Tribes’ proposed amendments to Section 4 of the bill because, as described above, their proposed amendments would infringe upon Samish’s self-determination and tribal sovereignty, and would result in Samish being treated differently by the federal government with diminished rights compared to other tribes. The other Tribes’ proposed amendments to Section 4 go well beyond their purported concern that the legislation not affect

treaty rights, which Samish has already accommodated. The provision in existing Section 4 that “Nothing in this Act shall grant or diminish any hunting, fishing, trapping or gathering treaty right of any Indian tribe” is language used in other previously enacted tribal lands bills. Samish removed the word “restore” in this section in 2015 at the specific request of the Upper Skagit Indian Tribe, which indicated that it had cleared this amendment with the other three Tribes. However, we were recently provided with a copy of a letter to HNR IIANA from the Lummi Nation asserting that Samish’s removal of the word “restore” was a “secret plan” by Samish to argue that the legislation restored Samish treaty rights because “restore” had been removed from the legislation. Our hope is that the other Tribes could agree amongst themselves on the word “restore.” Samish would accept Section 4 as currently written in H.R. 2320 with or without the word “restore.”

The other amendments proposed by the other Tribes to Section 4 of H.R. 2320 would unduly complicate a simple treaty neutrality clause that has been successfully used in other federal legislation. The substitute language proposed by the other Tribes is unclear and would likely lead to litigation as to its meaning and intent. In the attached substitute amendment proposal, the Nation proposes language to return this provision to what it was intended – a treaty neutrality clause – while at the same time including several additional terms proposed by the other Tribes (*e.g.*, “or otherwise affect”) to satisfy any concerns that there could be a loophole in the proposed terms. Samish’s proposed substitute treaty neutrality language is as follows:

Nothing in this Act shall grant, restore, diminish or otherwise affect the treaty hunting, fishing, trapping or gathering rights of any Indian tribe.

The other Tribes have proposed a new Section 6 to prohibit establishing a reservation out of the parcels in this bill. This provision is not necessary based upon federal law because parcels taken into trust under the bill cannot be proclaimed reservation under the federal law provisions cited therein. The federal statute specifically authorizing Reservation Proclamations, 25 U.S.C. §467, is part of the Indian Reorganization Act and authorizes the Secretary of the Interior to establish new reservations or to expand existing reservations on lands acquired in trust under 25 U.S.C. §465. It does not authorize the Secretary to create a reservation from land taken into trust through legislation.

In addition, federal law, in a statute enacted in 1919, already prohibits the creation of any new Indian reservations by Executive Order. 43 U.S.C. §150. No President has established an Indian reservation by Executive Order since that date.

It is not clear whether any other legal authority exists in federal law to establish an Indian reservation in the circumstances that exist under this legislation. In such a situation, it would be inequitable to Samish to prohibit any establishment of a reservation. Therefore, we propose amending Tulalip’s and Lummi’s language in Section 6 to the proposed Samish substitute response amendment:

This Act does not create or establish reservation status for the parcels pursuant to 25 U.S.C. §467. Any designation, establishment or proclamation of reservation status for any or all of the parcels shall take place pursuant to applicable federal law and regulations.

Finally, in Section 7 of the other Tribes' proposed amendments, Samish in its substitute proposed amendments has tried to include the language proposed by the other Tribes to accommodate their concerns while removing gratuitously insulting language and avoiding provisions that would unduly infringe upon Samish's rights as a federally-recognized tribe:

Nothing in this Act shall

- (a) enhance, ratify, limit or otherwise affect –
  - (1) existing rights or claims of the Tribe; or
  - (2) the eligibility of the Tribe to acquire additional land in trust under applicable Federal law and regulations.
- (b) This Act shall not be used as authority in any legal proceeding in support of a legal or factual claim.

We very much appreciate the Committee's consideration of our views and respectfully request that the Committee consider H.R. 2320 for mark up.

Very truly yours,



Thomas D. Wooten  
Chairman

cc: Congressman Rick Larsen  
Congressman Don Young  
Office of the Assistant Secretary - Indian Affairs  
Maria Zackuse, Chairwoman, Tulalip Tribes (By certified mail)  
Jennifer Washington, Chairwoman, Upper Skagit Indian Tribe (By certified mail)  
Brian Cladoosby, Chairman, Swinomish Indian Tribal Community (By certified mail)  
Jeremiah Julius, Chairman, Lummi Nation (By certified mail)



# Samish Indian Nation

OF WASHINGTON

May 24, 2018

M. Brian Cladoosby, Chairman  
Swinomish Indian Tribal Community  
11404 Moorage Way  
LaConner, Washington 98257

Jennifer Washington, Chairwoman  
Upper Skagit Indian Tribe  
25944 Community Plaza Way  
Sedro Wooley, WA 98284

Marie Zackuse, Chairwoman  
Tulalip Tribes  
6406 Marine Drive  
Tulalip, WA 98271

Jeremiah Julius, Chairman  
Lummi Nation  
2665 Kwina Road  
Bellingham, WA 98226

Chairmen and Chairwomen:

I have received a letter dated May 21, 2018, from Chairman Cladoosby of the Swinomish Indian Tribal Community (Swinomish), requesting a meeting of Swinomish, the Upper Skagit Indian Tribe, the Lummi Nation and the Tulalip Tribes (Four Tribes) with the Samish Indian Nation (Samish Tribe) regarding the Samish Tribe's pending federal legislation, H.R. 2320. As you know, over the past decade the Samish Tribe has met with many tribes on various occasions including the Four Tribes, both collectively and individually, on federal legislation to assist in the Tribe's efforts to secure a modest land base so that we can provide essential governmental services for our people such as Head Start, conservation, housing, tribal administration and elder programs. As in the past, we are always willing to meet.

The Samish Tribe would be glad to meet with you on June 14, 2018, in Anacortes, to discuss your concerns with H.R. 2320. We recommend meeting at the Community Center at the Fidalgo Bay RV Park, which has enough room to accommodate all 5 tribes, at 10 a.m.

We remain concerned, however, if there is no recording the meeting because of inaccuracies communicated about Samish's positions and statements from past meetings. We therefore still desire that the proceedings be recorded. In an attempt to reach a compromise on this issue, the Samish Indian Nation would agree to limit any future use of any recording of the meeting between the Tribes by treating it as confidential. If all five tribes agree, it could not be used or disclosed in any other matter. We only want to reserve the right to use it in the context of our pending legislation, if necessary to clarify what happened at the meeting. We urge that all parties act in good faith in this meeting.

Please let us know if this compromise is acceptable. If it not, we would appreciate hearing why you believe recording the meeting is not appropriate. In this event, the Samish Tribe will have someone present at the meeting to take our own minutes and summary of the meeting.

**MAILING ADDRESS:** P.O. BOX 217 • ANACORTES, WA 98221  
**LOCATION:** 2918 COMMERCIAL AVE • ANACORTES, WA 98221  
**PHONE:** (360) 293-6404 • **Fax:** (360) 299-0790 • [www.samishtribe.nsn.us](http://www.samishtribe.nsn.us)

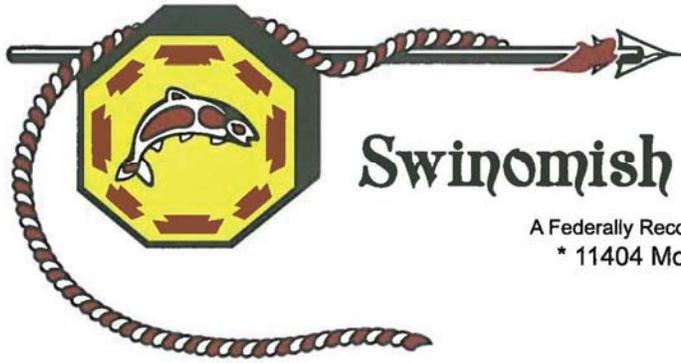
We look forward to this meeting on Samish's legislation. We will use our letter of March 12, 2018, responding to the Four Tribes' proposed amendments to H.R. 2320, as an outline for the meeting. Please let us know if you and/or other tribal official or representatives plan to attend this meeting so we can arrange the room to accommodate all participants.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom Wooten', written in a cursive style.

Thomas D. Wooten  
Chairman  
Samish Indian Nation

Cc: Samish Tribal Council  
Tribal Attorney



Main Office: 360.466.3163

Facsimile: 360.466.5309

# Swinomish Indian Tribal Community

A Federally Recognized Indian Tribe Organized Pursuant to 25 U.S.C. § 476  
\* 11404 Moorage Way \* La Conner, Washington 98257 \*

June 11, 2018

Thomas Wooten  
Samish Indian Nation  
PO Box 217  
Anacortes, WA 98221

Dear Chairman Wooten:

Thank you for your May 24, 2018 letter accepting our invitation to meet regarding the Samish Indian Nation's pending fee-to-trust bill, H.R. 2320, and for offering to host the meeting. 10 a.m. on June 14, 2018 will not work for us because of prior commitments, but we could meet with you at 4:00 p.m. that day.

We need to advise you that we continue to object to recording the meeting. In our view, recording the meeting will not promote a free and frank discussion among the tribes and will be counterproductive. However, we are of course comfortable with Samish and any other tribe which wishes having someone present at the meeting to take their own respective minutes and summary of the meeting.

Please let us know if you will be able to meet with us on June 14, 2018 at 4:00 p.m. at the Fidalgo Bay RV Park Community Center.

Sincerely,

A handwritten signature in blue ink that reads "Brian Cladoosby". The signature is written in a cursive style.

Brian Cladoosby  
Chairman

cc: Jeremiah Julius, Chairman, Lummi Nation  
Marie Zackuse, Chairwoman, Tulalip Tribes  
Jennifer Washington, Chairwoman, Upper Skagit Tribe



Main Office: 360.466.3163  
Facsimile: 360.466.5309

# Swinomish Indian Tribal Community

A Federally Recognized Indian Tribe Organized Pursuant to 25 U.S.C. § 476  
\* 11404 Moorage Way \* La Conner, Washington 98257 \*

August 14, 2019

The Honorable Rick Larsen  
2113 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Larsen:

As you know, the Swinomish Indian Tribal Community has serious concerns with H.R. 2961, the "Samish Indian Nation Land Reaffirmation Act." The bill would "ratify and confirm" a November 9, 2018, decision by the Bureau of Indian Affairs Northwest Regional Director. The Swinomish Indian Tribal Community has filed an appeal from that decision, which is currently pending before the Interior Board of Indian Appeals. As I explained in my testimony at the June 5, 2019, legislative hearing on H.R. 2961, ratifying and confirming the Regional Director's decision would terminate our pending appeal and upend 40 years of settled federal court precedent by transforming that decision into federal law.

During our last in-person meeting, you indicated that your intent when you introduced H.R. 2961 was to confirm the acquisition by the Bureau of Indian Affairs of the 6.7-acre Campbell Lake South parcel in trust for the Samish Indian Nation. We enclose a revised version of the bill that would achieve that result without ratifying and confirming the Regional Director's decision. Our revisions would preserve for another day the issues raised in our appeal, allowing the Campbell Lake South parcel to be acquired in trust immediately.

We developed these revisions with the assistance of the Tulalip Tribes, the Lummi Nation, and the Upper Skagit Tribe, and those tribes support the enclosed revisions. I would like to discuss these revisions with you in-person during the current August recess if your schedule allows. Please feel free to contact me directly.

Sincerely,

A handwritten signature in cursive script that reads "Brian Cladoosby".

M. Brian Cladoosby, Chairman

## A BILL

To mandate that certain land be taken into trust for the benefit of the Samish Indian Nation, and for other purposes.

1           *Be it enacted by the Senate and House of Representatives of the United States of America*  
2           *in Congress assembled,*

### 3           **SECTION 1. SHORT TITLE.**

4           This Act may be cited as the “Samish Indian Nation Campbell Lake South Trust  
5           Acquisition Act”.

### 6           **SEC. 2. DEFINITIONS.** As used in this Act:

7           (a)     “Regional Director’s Decision” means the November 9, 2018, decision of the  
8           Bureau of Indian Affairs Northwest Regional Director to acquire approximately 6.70 acres of  
9           land known as the Campbell Lake South Parcel in trust for the Samish Indian Nation.

10          (b)     “Campbell Lake South Parcel” means the parcel of land comprising  
11          approximately 6.70 acres that was the subject of the Regional Director’s Decision.

### 12          **SEC. 3. MANDATORY TRUST ACQUISITION OF THE CAMPBELL LAKE SOUTH PARCEL.**

13          (a)     **IN GENERAL.**—The Secretary of the Interior is authorized and directed to take the  
14          Campbell Lake South Parcel into trust for the benefit of the Samish Indian Nation.

15          (b)     **DISPOSITION OF APPEAL AND REGIONAL DIRECTOR’S DECISION.**—The pending  
16          administrative appeal of the Regional Director’s Decision, which was filed by the Swinomish  
17          Indian Tribal Community, shall be dismissed without prejudice by the Interior Board of  
18          Indian Appeals, and the Regional Director’s Decision, including Attachment 1 thereto, shall  
19          have no further force or effect.

1           (c)     EFFECT ON FUTURE TRUST ACQUISITIONS FOR THE BENEFIT OF THE SAMISH INDIAN  
2     NATION.—Nothing in this Act shall authorize, prohibit or otherwise affect any future  
3     acquisition of real property or any interest therein in trust for the benefit of the Samish Indian  
4     Nation, nor shall anything in this Act authorize, prohibit or otherwise affect the right of any  
5     person or entity to pursue an administrative appeal or seek judicial review of any future  
6     decision to acquire real property or any interest therein in trust for the benefit of the Samish  
7     Indian Nation.

8     **SEC. 4. EFFECT OF ACT.**

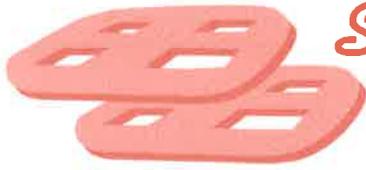
9     Nothing in this Act shall—

10           (a)    grant any hunting, fishing, trapping or gathering right to the Samish Indian  
11     Nation, provided that state and tribal authority to regulate hunting, fishing, trapping and  
12     gathering on the Campbell Lake South Parcel shall be determined in accordance with  
13     applicable law governing such authority on trust lands;

14           (b)    enhance, ratify, limit, or otherwise affect any existing rights or claims of the  
15     Samish Indian Nation;

16           (c)    diminish or otherwise affect any hunting, fishing, trapping or gathering right of  
17     any other Indian tribe; or

18           (d)    alter or constitute grounds to seek relief from any prior federal court judgment or  
19     order.



# Samish Indian Nation

OF WASHINGTON

August 16, 2019

The Honorable Rick Larsen  
U.S. House of Representatives  
2113 Rayburn House Office Building  
Washington, D.C. 20515

Re: H.R. 2961, Samish Indian Nation Land Reaffirmation Act  
Response of the Samish Indian Nation to Swinomish Indian Tribal Community  
Letter of August 14, 2019

Dear Congressman Larsen:

On behalf of the Samish Indian Nation (Nation), we deeply appreciate your efforts to assist the Nation over the past decade as we have worked to restore our community for our future generations despite grave historical injustices committed against the Samish people.

We have been provided a copy of the letter dated August 14, 2019, submitted to you by Chairman Cladoosby of the Swinomish Indian Tribal Community (“SITC”), offering suggested revisions to H.R. 2961, the Samish Indian Nation Land Reaffirmation Act. This letter provides a response to Chairman Cladoosby’s proposed revisions in the interest of not delaying Samish’s legislation any further.

As you know, the purpose of H.R. 2961 and the four prior land-into-trust bills has been to provide the Nation with a permanent land base in order to exercise our governmental authority, just like other federally recognized tribes. For over 9 years, due to the U.S. Supreme Court’s *Carcieri* decision, the Department of the Interior’s (Department) process to take land into trust was not available to the Nation as the Department conducted an exhaustive *Carcieri* analysis. We deeply appreciate your efforts over the past decade to assist us in our efforts to acquire a modest permanent land base through congressional legislation.

SITC and the 3 other tribes aligned with them have continually opposed Samish’s efforts to go through the administrative land-into-trust process and to enact congressional trust land legislation (which included Campbell Lake South) for over a decade. Last November, the Department, expending significant personnel and other resources over many years, concluded its *Carcieri* analysis, determining that Samish is eligible to take land into trust. Subsequently, the Bureau of Indian Affairs (BIA) approved one of the Nation’s applications to take 6.7 acres of land (Campbell Lake South) into trust. SITC opposes this decision based upon its flawed rationale that the Department does not have the authority to take land into trust for Samish under the *Carcieri* decision. This challenge to Samish’s ability to have land taken into trust on the

basis of the *Carcieri* decision could take more than 6 years to resolve. In the meantime, Samish's Campbell Lake South parcel cannot be taken into trust and all of Samish's pending land-into-trust applications are on hold until these challenges are resolved.

We raise our hands to you for introducing H.R. 2961 to reaffirm the BIA's decision to take the Campbell Lake South parcel into trust and to enable the Nation to move forward with the administrative land-into-trust process for our other applications, including the Nation's applications for our Tribal Administration Complex and our Longhouse, which is the site of our Head Start and elders programs. The 6.7 acres is adjacent to and will provide better access to Samish's only existing trust land, enabling the Nation to better utilize this land. We are also grateful for your support of H.R. 375, the *Carcieri* fix bill, which would clarify that the Department has the authority to take land into trust for all federally recognized tribes and prevent challenges to land-into-trust decisions on the basis of the *Carcieri* decision like SITC's challenge to the decision to take land into trust for Samish.

We have acted in good faith and have worked closely with your office to reach solutions to address legitimate concerns raised at the June 5, 2019, hearing on the bill before the House Natural Resources Subcommittee on Indigenous Peoples of the United States. We also informed your office last month that, in the spirit of compromise, the Nation would agree to the amendment language drafted by the Congressional Research Service at your request as well as other amendment language we have proffered.

SITC's proposed revision, however, would effectively reverse the last ten years of hard work of the BIA and the Nation on Samish's land-into-trust determination and would undo the Nation's significant progress to provide for our future generations. Therefore, Samish strongly objects to this proposed revision.

### **Specific Concerns with SITC Proposed Revisions**

#### *Section 3(b) Disposition of Appeal and Regional Director's Decision*

SITC's stated concern with H.R. 2961, as introduced, was that it would cut off SITC's right to appeal the Nation's Campbell Lake South land-into-trust decision, but SITC's proposed revisions to H.R. 2961 go much further than this and seek to erase Samish's positive *Carcieri* determination. Section 3(b) of the proposed revision states that "Attachment 1," which is the Samish *Carcieri* determination, will "have no further force or effect." This means that the Nation's *Carcieri* determination would be rendered legally rescinded, and the Department would have to undertake a whole new *Carcieri* determination in any subsequent Samish land-into-trust application, forcing Samish to begin a process again that took over 9 years to complete.

SITC's proposed revisions are not a compromise. The Nation simply cannot agree to any legislation that would rescind and make inoperative our *Carcieri* determination because this would significantly negatively impact our ability to take land into trust in the future. In order to

have land taken into trust, every tribe needs a *Carciere* determination until Congress passes H.R. 375 or other *Carciere* fix legislation.

*Section 3(c) Effect on Future Trust Acquisitions For the Benefit of the Samish Indian Nation*

Samish has significant concerns with proposed Section 3(c) because it would explicitly vest SITC with an automatic right to pursue an appeal or judicial review of any future Samish fee-to-trust application. No other tribe has been given such a right, and the right of parties with standing to appeal is adequately set out in existing law. Any party that seeks to appeal a decision in favor of another party must establish its legal “standing” to prosecute such an appeal and meet controlling legal standards. SITC’s proposed language in Section 3(c) separates out the Nation for discriminatory treatment and is contrary to controlling legal doctrine throughout the United States.

*Section 4 Effect of Act*

Under Section 4, SITC seeks to add treaty language to H.R. 2961. However, SITC’s proposed revisions in Section 4 go far beyond the issue of treaty rights and seek to strip the Nation of sovereign rights enjoyed by every other federally recognized Indian tribe in violation of 25 U.S.C. §§ 5123 (f) and (g).

The Nation has proposed reasonable treaty neutrality language in past legislative proposals and is prepared to accept the same or similar language in H.R. 2961, including stating that the legislation cannot be used to impact the Nation’s or any other tribe’s treaty rights or be used in any subsequent litigation for any purpose. However, the Nation is opposed to any language that would restrict our legal rights. Here are several comments on specific language in SITC’s proposed Section 4:

1. When land goes into trust, certain legal rights attach to the land because of its trust status. This principle applies to every Indian tribe in the country and to all trust land. In subsection 4(a), SITC seeks to subject the Nation to state regulation of hunting, fishing, trapping and gathering on our own land when no other tribe anywhere in the country is subject to such regulation. As drafted, the language could even subject the Nation to SITC attempts to regulate Samish trust land. The proposed language exceeds existing law and is, thus, unacceptable to the Nation.
2. Subsection 4(b) as drafted would mean that no tribal governmental authority would attach to the Campbell Lake South property when in trust. It states that putting the Campbell Lake South property into trust will not enhance any rights of the Nation. However, the rights of all Indian tribes are naturally enhanced when land goes into trust. A tribe assumes sovereign authority over the land, and state and local authority over the land is preempted. The language of proposed subsection 4(b) would completely eliminate any special legal status for the Campbell Lake South property when it goes into trust. It would deprive Samish of sovereign authority over its own land and is, thus, unacceptable to the Nation.

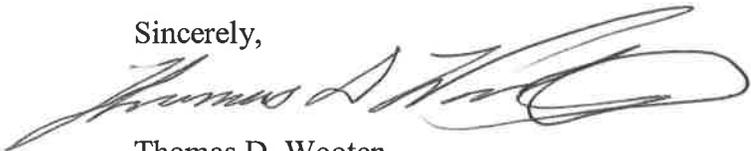
3. Subsection 4(c) tracks the treaty neutrality language to which the Nation has already agreed, but, as it is written, Samish is not included in its coverage.
4. Proposed subsection 4(d) does not even mention treaty rights but seeks to permanently limit the Nation's legal rights with respect to "any prior federal court judgment or order" of any kind, on any subject. This provision has no connection to the specific issue of taking a small parcel into trust. SITC does not explain what court judgments or orders it means to refer to, or on what subjects. Per the Ninth Circuit's 2010 *en banc Samish* decision at 593 F.3d 790, the Nation has already stated many times that it cannot challenge any final federal treaty rights decision that has been "finally adjudicated against it." The Ninth Circuit in *Samish* confirmed that the Nation cannot relitigate its off-reservation treaty fishing rights. The Nation has repeatedly acknowledged this decision.

### **Conclusion**

While these revisions would take into trust the Campbell Lake South parcel, they would also rescind and make inoperative Samish's *Carciere* determination, affecting the Nation's ability to have land taken into trust in the future, and would curtail the Nation's rights on the Campbell Lake South parcel. For these reasons, the Nation strongly objects to the revisions proposed by SITC in its letter.

We continue to be very appreciative of your efforts to help Samish be able to acquire land into trust just like other federally recognized tribes, and we look forward to continuing to work with you on this legislation.

Sincerely,



Thomas D. Wooten  
Chairman