

**Testimony of Tom Wooten, Chairman, Samish Indian Nation
House Natural Resources Subcommittee on Indian, Insular and Alaska Native Affairs
Legislative Hearing on H.R. 2320, the Samish Indian Nation Land Conveyance Act of 2017**

November 15, 2017

Introduction

Good morning Chairman LaMalfa, Ranking Member Torres, and Members of the Subcommittee. My name is Tom Wooten, Chairman of the Samish Indian Nation (“Tribe”), a federally recognized Indian tribe based in Anacortes, Washington, in the San Juan Islands. The Tribe is comprised of approximately 1,500 citizens. Thank you for this opportunity to testify today on H.R. 2320, the Samish Indian Nation Land Conveyance Act of 2017. H.R. 2320 would provide our Tribe with a small land base that will enable our tribal government to provide basic services to our citizens, address tribal government administrative needs, and give the Samish people more opportunities to participate in our traditional ways of life.

On behalf of the Tribe, I extend our tremendous thanks to Congressman Rick Larsen for introducing H.R. 2320. This is the third time Rep. Larsen has introduced this bill. Our quest to obtain a land base for our people has been an extremely long and difficult road, and we greatly appreciate his commitment to assist the Samish Nation in rebuilding our community.

I also want to thank Anacortes Mayor Laurie Gere and the City Council of Anacortes for their support and partnership, and for working with us over the past 14 years under a memorandum of agreement for mutual cooperation. I also would like to thank San Juan County Chair Rick Hughes and the County Board, Skagit County Chair Ron Wesen and County Commissioners, as well as our local state delegation for their support of H.R. 2320 as well as their friendship with the Samish people. Finally, I want to thank Charles “Guy” Miller, Chairman of the Skokomish Tribal Council, and William Iyall, Chairman of the Cowlitz Indian Tribe, for their support of this legislation.

In addition to the support of Rep. Larsen, H.R. 2320 has the strong bi-partisan support of 20 co-sponsors, including various members of this Subcommittee.

H.R. 2320 would permanently protect a modest 97 acres of land the Tribe already owns in fee by placing the land into trust. The lands are located in Skagit and San Juan Counties, within the Tribe’s historical area. 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 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 significant and culturally relevant to the Tribe and to establish a land base for our community for governmental purposes.

History of the Samish Indian Nation

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

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

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

While Samish areas of occupation and residence had contracted by 1855 because of attrition from disease and attacks from northern tribes, the Tribe continued to use its traditional territory for gathering plants for food and medicine. Samish people continued to occupy Fidalgo, Guemes and Samish Island and maintained a Samish community there into the 1880s. The Samish did not move as a tribe to any of the reservations established under the Point Elliott Treaty both because of a desire to stay at our traditional sites and because there was not sufficient land available for allotments on the designated reservations.

After being driven off Samish Island, the main Samish village was located during the last part of the 1800’s on Guemes Island. A 400-foot longhouse on Guemes Island, on land obtained as homesteads by two Samish citizens under the 1874 Indian Homestead Act, became a center for maintenance of traditional Samish culture over the next twenty plus years. However, this homestead land was eventually lost to tax payments; and, while many Samish remained on Guemes Island, village activity slowly diminished at that location in the early 1900s.

The Tribe then established a tribal settlement next to the Ship Harbor cannery on Fidalgo Island. Maps of the time identify a “Samish village.” This settlement continued in existence until the cannery closed during the Great Depression. While at that point a few individual Samish moved to existing nearby reservations, the core of the Tribe and most tribal citizens remained in the

Fidalgo Bay and Anacortes area. Our tribal government continued to operate and handle governmental affairs, including the drafting of a new tribal constitution and revision of tribal enrollment records. Our Tribe did not have its own land base during this period, but Bureau of Indian Affairs' (BIA) records consistently identify the Samish as a tribe under the BIA Tulalip Agency's jurisdiction during this period from the 1920s up to and beyond the 1940s.

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

In 1951, the Tribe filed a new land claim action in the Indian Claims Commission (ICC) against the United States, based upon the inadequate compensation the tribe received for land that was taken by the Treaty of Point Elliot. In March of 1958, the ICC made a number of significant findings in favor of the Tribe. The court held that the Tribe was a tribal entity, was a signatory to the Treaty of Point Elliott, had continually existed up to that date, and was the legal and political successor to the historical Samish Tribe. The court also made two land-based rulings. First, the ICC held that "The Samish held Samish Island, Guemes Island, eastern Lopez Island, Cypress Island, and Fidalgo Island." The ICC also found that, "The treaty cession includes the whole of the areas alleged by petitioner to have been used and occupied by the Samish Indians in aboriginal times." The ICC awarded monetary compensation to Samish for the loss of its lands. After off-set for discretionary "benefits" allegedly provided to the Tribe by the United States, the ICC awarded the Tribe \$5,754.96 for the taking of our traditional homelands.

Today the Tribe's headquarters remain in the heart of Samish ancestral homelands on Fidalgo Island in Anacortes, Tribe owns a number of parcels in fee in Skagit County and one in San Juan County. Only one 78-acre parcel of land located in Skagit County is currently held in trust for the Tribe. Its use is restricted, and it has physical limitations. That property took more than eight years of extensive legal proceedings to have it placed into trust for the Tribe's benefit.

Arbitrary BIA Action Removed Samish Tribe from Federal List

Throughout the period described above, the Tribe continued to exist as a federally recognized Indian tribe under federal jurisdiction, although as a landless tribe. Federal records demonstrate a continuous course of dealing between the United States and the Tribe, and records describe the Tribe as being "under the jurisdiction" of the Tulalip BIA Agency.

However, the Tribe suffered a significant setback in the 1960s when the BIA started its first organized effort to list all Indian tribes with which the United States had a government-to-government relationship. The Tribe was included on the first such list that the BIA drafted in 1966. When the list was revised in 1969, a BIA clerk dropped the Tribe from the list for no reason. The clerk testified to this fact in 1994 during the Tribe's federal acknowledgment trial. Because of this clerical error, the BIA started treating the Tribe as unrecognized even though no determination had ever been made by Congress or the Administration that the Tribe had lost its recognition. The

Department of the Interior 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, the Tribe regained reinstatement to status as a federally recognized tribe in May of 1996. Additional federal court litigation confirmed the Tribe's re-recognition in November of 1996. The federal court found that "The Department of Interior could not adequately explain why the Samish had been omitted from a list of federally recognized tribes prepared during the 1970s." Another federal circuit court decision found the BIA's conduct in dropping the Samish Tribe from the list of federally recognized tribes "arbitrary" and "wrongful". It concluded that the Tribe "should have been federally recognized between 1969 and 1996."

Purpose of and Need for H.R. 2320

We are approaching nearly a half century since the BIA's 1969 clerical error arbitrarily dropped the Tribe from the Interior Department's list of federally recognized tribes and more than 21 years since the Tribe was reinstated as a federally recognized tribe. The Tribe continues to persevere and fight to undo the adverse impacts of the BIA's mistake.

In addition to denying the Tribe trust and tribal resources, the Tribe has been denied the opportunity to restore our homelands. H.R. 2320 would help begin to right this wrong by restoring a small land base for our community.

Upon re-recognition, our tribal government sought to restore homelands through the BIA's administrative land-into-trust process. Despite the Tribe's significant efforts, it took the BIA nearly 10 years to approve one of the Tribe's trust applications. The BIA only did so days before the Samish and the BIA were scheduled to testify before this Committee about the Tribe's land needs and lack of movement on the part of the BIA. To date, that 78-acre parcel is the only land that is held in trust for the Tribe. The land is effectively unusable for its stated purpose – housing - due to its severe grade and does not come close to meeting the growing needs of our 1500-member community.

Self-determination cannot happen without a land base. In addition, like every tribal government, we hope to establish a land base that helps us address the unmet housing, health care, education, cultural preservation, governmental, economic development and other needs of our government and our people.

H.R. 2320 seeks to remedy this inequity. It would direct the Secretary of the Interior to place approximately 97 acres of land that the Tribe already owns in fee in San Juan and Skagit Counties into trust for the benefit of the Tribe.

The bill includes a comprehensive prohibition against gaming on any of the lands identified in H.R. 2320. The language in our bill is the same language that has been included in previously enacted Indian land-into-trust bills that have been approved by the House Natural Resources Committee. This prohibition language has never been circumvented.

H.R. 2320 also guarantees neutrality on the issue of treaty rights. To address any perceived/potential impacts on treaty rights, the Tribe agreed to include language in predecessor bills to H.R. 2320, and the language remains in this version of the bill. Section 4 of H.R. 2320 provides: "This Act shall not grant or diminish any hunting, fishing, trapping or gathering treaty right of any Indian tribe." This language was taken from similar tribal land restoration bills. Our bill will not affect the treaty rights of any other tribe, and will not grant us any treaty rights. We cannot use this legislation to try to establish treaty rights in the future.

As noted above, the local communities directly related to the parcels identified in H.R. 2320 have expressed support for the bill, including the City of Anacortes, Skagit and San Juan Counties, and State legislators representing these communities. The Tribe has been party to a memorandum of agreement with the City of Anacortes since 2003 for mutual cooperation in terms of overlapping jurisdiction areas and recognition of tribal sovereignty, with a provision for property tax exemption and a system of compensating the City for services, via payment in lieu of taxes (PILOT), for any land taken into trust. We have a similar agreement in place with Skagit County.

The Tribe intends to continue the current uses of the lands, which are to provide governmental services and cultural activities to address the needs of our citizens and to provide for their well-being. Placing these parcels into trust status would allow the Tribe to become eligible for federal programs and services available on Indian trust lands.

Below is a short description of the parcels that are contained in H.R. 2320 and a brief explanation of the current and future land uses:

- ***Administrative complex*** (4 parcels, 1.02 acres) – natural resources, archives, accounting, IT & records, and government administration;
- ***Longhouse*** (2 parcels, 0.52 acres) – preschool activities and elder care activities/meals;
- ***Thomas Creek*** (3 parcels, 45.7 acres) – natural resource conservation, salmon habitat enhancement, and agriculture;
- ***Campbell Lake*** (7 parcels, 45.86 acres) – agriculture, community housing, non-gaming development; and
- ***Mud Bay Flats*** (1 parcel, 3.57 acres) – cultural preservation.

Again, the Tribe currently already owns these lands in fee simple. We have considerable historical and ancestral ties to all of these lands. These parcels have been identified as areas of Samish occupancy and subsistence use, as documented by renowned ethno-historians and anthropologists. In recognition of the Tribe's occupancy and use of these lands and islands, state and federal agencies frequently consult with the Tribe about archeological and cultural resource management issues in the area, pursuant to applicable state and federal laws requiring consultation with relevant tribal governments on issues that arise on these lands and within the Tribe's historical and aboriginal territory.

Fidalgo Island is the location of the Tribe's governmental headquarters and administration campus, our Head Start and elder nutrition programs, our 78-acre parcel of trust land that is restricted to housing, and our Fidalgo Bay RV Resort, which the Tribe owns and operates as an economic

development venture. Fidalgo Island itself also has many documented Samish village sites, including Ship Harbor, the north shore of Guemes channel and the west coast of Guemes Island, Fidalgo Bay, and March's Point. The RV Park itself is on a Samish Village site and is located directly across from a Samish village site on March's Point. The Tribe conducts and continues to perform archaeology and scientific research on and around Fidalgo Island.

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

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

For centuries, Cypress Island has and continues to be a place of religious and cultural significance for Samish citizens seeking spiritual cleansing and solitude. A documented Samish cemetery site exists on Cypress Island, and tribal citizens resided on the island well into the twentieth century.

As with the other parcels identified in H.R. 2320, the Tribe owns the Thomas Creek Property in fee simple. The Property consists of three parcels comprising a total of 45.7 acres of agricultural land located in Skagit County, WA. The Property is located in an area of traditional Samish/Nu-wha-ha occupancy, and Samish families have long-standing ties to the area.

The Tribe inherited the Thomas Creek Property from Ms. Josephine Miller in 2004. *A covenant in her will provides that the Tribe cannot sell or commercially develop the land.* The deed transferring title of the land to the Tribe expressly authorizes the Tribe to transfer the land into trust. The gaming prohibition applies to the Thomas Creek Property as it does to all the other land contained in H.R. 2320. As noted above, the Thomas Creek Property will continue to be used solely for agricultural and natural resources conservation purposes.

The Samish Department of Natural Resources has managed several successful projects on the Thomas Creek Property for more than 13 years. Current uses and partnerships include the following:

- The Samish Community Garden is located on the Property. It is an all-volunteer effort with some support from the tribal government for supplies and materials. The garden supplements food resources for the Samish Elders' nutrition and the pre-school programs. Tribal citizens gather to prepare, plant, and harvest the produce.
See <http://www.facebook.com/samishcommunity.garden>
- The USDA Conservation Reserve Enhancement Program (CREP) through the Skagit Conservation District Wetland restoration project took four acres out of agricultural use for stream restoration and fisheries habitat enhancement. This was a demonstration model of wetland restoration and agricultural coexistence.

- Water quality monitoring on the Property is a part of the Clean Samish Initiative to protect the Samish River watershed from impurities and prevent toxins from contaminating shellfish beds in Samish Bay.
- The Skagit Fisheries Enhancement Group has a small native plant nursery for restoration projects.
- Samish Watershed Knotweed grant works to eradicate invasive species. Over 60 acres of Samish watershed have been treated and local area landowners were encouraged to partner on private property.
- The Tribe received a Partner of the Year Award 2012 from the Skagit Fisheries Enhancement Group. Highlights are posted on a 15 minute video on the Samish DNR Facebook site:
<http://www.facebook.com/photo.php?v=388908344501745&set=vb.100001477497185&type=2&theater>

Placing the Thomas Creek Property into trust status will permit the Tribe to enhance our current agricultural and resource conservation efforts by allowing the Tribe to become eligible for federal programs and services available on Indian trust lands.

Conclusion

The Samish Indian Nation and our people have endured much over the past two centuries. It has been a long and winding journey to come to this point. By providing a base for basic Samish tribal government services and cultural preservation, H.R. 2320 will help put us on the path to true self-determination. I hope to work with you to help Samish take the next crucial step in rebuilding our community by enacting H.R. 2320 into law. Thank you again for this opportunity to testify today. I am prepared to answer any questions.

(ATTACHMENTS)