

BEFORE THE INDIAN CLAIMS COMMISSION

THE LUMMI TRIBE OF INDIANS,)	
)	
Petitioner,)	
)	
vs.	)	Docket No. 110
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: October 30, 1957

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The Lummi Tribe of Indians, petitioners herein, is an identifiable group of American Indians within the meaning of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049; 25 U.S. Code, Sec. 70(a)), and as such is entitled to maintain this cause of action.

2. Petitioner alleges that it had the exclusive aboriginal use and occupancy of the following described area within the territory ceded to the United States in the Point Elliott Treaty of January 22, 1855 (12 Stat. 927, II Kapp. 669). (Pet. Rec. Fdg. 6).

Commencing at the town of Blaine; thence around the town of Simiamoo to the west; thence southwestward to Alden Point on Potos Island; thence to Turn Point on Stuart Island; thence to English Camp on San Juan Island; thence along the center length thereof to Cattle Point; thence to Davis Point on Davis Bay; thence northeastward across Lopez Island through Port Stanley to Humphrey Head; thence northeastward around Blakely Island through Obstruction Island and north of Sinclair Island to Carter Point on Lummi Island; thence to Chuckanut Island; thence to the northwestern end of Lake Whatcom; thence to the town of Laurel on Guide Meridian Road; thence north along said road to the Canadian Border; thence west along the Canadian Border to Blaine, the place of beginning.

3. The first ethnological work in the area in question in this case was done by Horatio Hale of the United States Exploring Expedition in this region during the years 1838-1842 (Def. Ex. 21). Hale makes no mention of a Lummi Tribe. However, in 1851-1857, Dr. Henry R. Schoolcraft, under the direction of the Bureau of Indian Affairs, published an account (Def. Ex. 170, pp. 490-491) wherein he gave the population figures of a Nummi River people at 450. Schoolcraft also included the census of De Harley (Def. Ex. 170, pp. 700-701) where the Nooklummi are listed at 222 and said to live around Bellingham's Bay.

4. A map purporting to be made by Dr. George Gibbs and others in 1853-1854, shows the name "Lummi" on the Lummi Peninsula, the northernmost part of Bellingham Bay and east thereof; the word "Shimialmoo" appears in the northern part of the areas claimed; no name is given for the San Juan Islands.

In 1854 Gibbs reported (Def. Ex. 189, p. 461) "The Lummi, living on a river emptying into the northern part of Bellingham bay and on the peninsula, are variously estimated at from four to five hundred. Their chief is Sah'hopkan; in general habits they resemble the Clallams."

Another map apparently made by Dr. Gibbs and Lt. G. H. Mendell in 1856 shows the name "Lummi" on the Lummi Peninsula at the mouth of the Lummi River and on the southern tip of Orcas Island. A map dated 1856 and drawn by Gibbs shows the name Lummi at the mouth of the Lummi River and at the north end of Orcas Island. The island between the Lummi Peninsula and Orcas Island is labeled Lummi Island.

Dr. Gibbs reported in his work entitled "Vocabularies," published in 1863 (Def. Ex. 212):

The Lummi tribe live on the lower part of a river heading in the Cascade Range, north-east of Mount Baker, and emptying by two mouths, one into Bellingham Bay, the other into the Gulf of Georgia, the upper waters of which are inhabited by the Nooksahks (Nuk-sak). They are, however, intruders here, their former country having been a part of the group of islands between the continent and Vancouver Island, to which they still occasionally resort. Their own name is Mukhlummi. The Skagits call them Mukhlesh, and some of the other tribes Ha-lum-mi. Their dialectic affinities are rather with the Sannitch of the south-eastern end of Vancouver Island than with any of the Indians of the main land, and the two probably at one period formed a single tribe, which more remotely was connected with the Clallams and Songhus. The Simiahmoo (Si-mi-a-mu), a small remnant, living on the bay of that name, north of them, belong likewise to this group.

The W. H. Doll map, based on the work of Dr. Gibbs, which was published in 1876, shows the Lummi Peninsula and Lummi Island, as well as a large area between the Nooksack and Samish Rivers under the name "Lummi"; the San Juan Islands are not shown as "Lummi" (Def. Map 193).

In a more comprehensive report published in 1877 Dr. Gibbs again lists the Lummi as being around Bellingham Bay and the Lummi River.

Dr. Hodge in "Handbook of American Indians," B.A.E., Bull. 30, p. 417, included the Lummi in the Songish group of coast dialects and listed this group as being on Juan de Fuca strait, San Juan island and parts of the coasts of Washington and British Columbia.

Under the name "Lummi", Hodge notes (B.A.E. 30, p. 778):

Lummi, a Salish tribe on and inland from Bellingham bay, n.w. Wash. They are said to have lived formerly on part of a group of islands E. of Vancouver id., to which they still occasionally resorted in 1863. According to Gibbs their language is almost unintelligible to the Nooksak, their Northern neighbors. Boas classes it with the Songish dialect. The Lummi are now under the jurisdiction of the Tulalip school superintendent, Washington, and numbered 412 in 1905. Their former villages were Kutatchl, Lemaltcha, Statshum, and Tomchiksen. The Klalaksmish, of Orcas id. were a former band.

5. Dr. Edward S. Curtis in his "The North American Indian" (1913), wrote:

The most powerful and warlike of all the Salish tribes on the coast of Washington were the Clallam, a group comprising about a dozen populous villages on the southern shore of the Strait of Juan de Fuca from Port Discovery on the east to Hoko creek on the west, as well as some settlements on the upper west coast of Whidby island and the southern shores of San Juan and Orcas islands. * * *

The Lummi, at the time of their first accurate observation by white men, held Lummi island and the mainland about Bellingham bay and Lummi bay, extending inland as far as the site of Ferndale, Washington. An unusually clear tradition related by a man born about the year 1820 shows that this tribe has been pushing slowly eastward during the last two centuries.

This tradition states that early in the eighteenth century the Lummi, inhabiting the islands of the San Juan group, began to desire a place on the mainland so that they would have a salmon stream and in the war that resulted they almost exterminated the inhabitants of the mainland and those who remained were assimilated by the Lummi.

Even as late as about 1830 the Lummi claimed, in addition to the mainland from Chuckanut bay to Birch bay, the following islands: Orcas, Elakely, Lopez (on the north and the west coast). Shaw, San Juan (except the west coast, and even that they held in earlier days). Spieden, Stuart, Waldron, and all the many islets in the waters thus defined.

6. In the Forty-first Annual Report of the Bureau of American Ethnology (1919-1924) Appendix, is a map drawn by Franz Boas, which shows "The Distribution before 1800," based on information collected by James A. Teit, Franz Boas, and Leo J. Frachtenberg; the name "Lummi" covers the coastal area on the mainland from the Samish River north to beyond the Canadian southern boundary (Def. Ex. 105).

In 1927, Dr. Erna Gunther published her "Klallam Ethnography," in which she stated (Def. Ex. 40):

Curtis states that there were Klallam settlements on the upper west coast of Whidby Island and on the southern shores of San Juan and Orcas Islands. These have never been mentioned to me. The locations are directly across the Straits from the Klallam territory and may at some time have been fishing stations. * * *

A few years before 1850 a group of Klallam from Clallam Bay, who always went to Lummi territory to fish, settled there near Marietta. They intermarried with Lummi and received allotments there when the reservation was created.

In 1934, B. J. Stern published his ethnology entitled, "The Lummi Indians of Northwest Washington," in which he wrote as follows (Def. Ex. 4):

The Lummi Indians who speak a Coast Salish dialect are now settled on a reservation in northwest Washington near the Canadian border, covering the area of their former mainland villages. In former times they also inhabited the shores of the San Juan Islands in Puget Sound and subsisted on food obtained by fishing, hunting and plant gathering.

Stern also states at pages 126-127 of his ethnology:

Members of the Lummi tribe fished with the reef net at seven different sites: Tceltenem or Point Roberts; Sqalekwcan or Village Point on Lummi Island; Xwtcixom or Bee Station north of Sandy Point; Tiqwologs or Point Doughty on Orcas Island; Xoxolox, a point on Orcas Island south of Freeman Island; Xwitcosang, in Upright Channel south of Shaw Island; Sxoletc, a point on Lopez Island opposite Lopez. * * *

Each of these locations, which contained enough frontage on the lee side of the reef for as many as five nets, was owned and managed by an individual who was a direct descendant of the former owners.

7. Dr. Leslie Spier's study, "Tribal Distribution in Washington," published in 1936, contains the following statement (Def. Ex. 5):

The Lummi proper live about the mouth of the Nooksak River, for only a few miles upstream (to Ferndale), on the shores of Lummi and Bellingham Bays, and Lummi Island. Fitzhugh writes that they "are divided into three bands-- a band for each mouth of the Lummi (Nooksak) River." Gibbs notes a winter village named Tomwhiksen on Hale Passage (the channel between Lummi Island and the peninsula). Curtis notes the same, others from the mouth of the Nooksak River to Lummi Island, and one on Orcas Island at West Sound.

A map of Lummi territory was published by Stern after the foregoing was written. He assigns them a generous section of the sound: on the mainland from above Bellingham to the international boundary (and beyond?); an indefinite extent inland on the Nooksak River; the whole of Lummi, Orcas, Shaw, and Waldron Islands; the northwestern side of Lopez Island and the eastern shore of the San Juan Island; and the tip of Point Roberts on the peninsula south of the Fraser mouth. Several villages are indicated in the general region of the mouth of the Nooksack River; one on Orcas Island at West Sound; and one (named Semiamoo) on the peninsula opposite Blaine. Fishing sites are as far flung as Point Roberts and Lopez Island.

Stern's testimony would include as Lummi, territory which for the purposes of the present paper I prefer to see set forth separately as that of the Lummi proper, Nooksack, and Swallah.

It is noteworthy that Stern's wide Lummi territory does not include the Samish. Since Stern nowhere discusses tribal composition or territory, the divergences of his views and those of earlier writers must go unresolved.

Swallah. It may not be proper to separate the Swallah from the Lummi proper. Eells however gives it as a coordinate division: "the Swallah who lived on Orcas, (and) San Juan (Islands)." This is clearly Mollet's Swalash.

8. In 1938, Dr. H. G. Barnett published "The Coast Salish of Canada," in which he stated (Def. Ex. 88):

All accounts agree that the West Sanetch had well established fishing privileges on Boundary Bay, inside of Point Robert, and regularly resorted there in summer; so did the Lummi. The Cowichan and Nanaimo frequently came to a camp on Lulu Island, either to fish for sturgeon and Sockeye themselves or to bargain for them with dried

clams. The Squamish in summer came out of Howe Sound, in part, it is said, to escape the mosquitoes. Some camped about Point Roberts. * * *

Dr. Marian W. Smith's ethnology, "The Coast Salish of Puget Sound," was published in 1941 (Def. Ex. 14). At page 211 she states:

A. Lummi: Bellingham Bay, Nooksack River below Ferndale, Orcas Island and western San Juan Island. The islands between the mainland and the tip of Vancouver Islands were inhabited by Samish, see above, and by peoples who spoke the Lummi dialect. These villages were undoubtedly autonomous, as were all Lummi villages, thus explaining the discrepancy noted by Spier between Stern's account and the earlier records. Eastern San Juan Island seems to have been Sanetch Territory. The western tip of Point Roberts was visited every summer by Lummi families but was actually outside of their home waters.

In Dr. Smith's 1949 publication, "Indians of the Urban Northwest," she states (Def. Ex. 143):

Lummi. Northernmost of the Coast Salish of Puget Sound, of the San Juan Islands, Lummi Island, and the present site of Bellingham, Wash. Now the people of the Lummi Reservation.

9. In 1951, Wayne Prescott Suttles published his work entitled, "Economic Life of the Coast Salish of Haro and Rosario Straits," in which he stated (Def. Ex. 58):

Songish. The territory of the Songish included * * * from Open Bay on Henry Island to Eagle Cove on San Juan Island.

Saanich. Saanich territory included * * * perhaps as far as the northern shores of Orcas and San Juan Islands.

The yearly round of the Saanich took them as far as East Sound, Orcas Island (really Lummi territory) for clams, and to Point Roberts (where Semiahmoo and Lummi also came) for reefnetting. * * *

In the spring Semiahmoo went to the north end of Waldron Island for camas, and hunted deer and elk inland at Custer or Lake Terrall. In the summer they moved across to Cannery Point on Point Roberts where they shared the extensive reefnetting grounds with Saanich, Lummi, and members of other groups. * * *

Lummi. The territory of the Lummi included a few miles of mainland shoreline and about half the area of the San Juan Islands. In the islands it included the northern and eastern shores of San Juan Island (facing Spieden and San Juan Channels), the western and northern shores of Lopez Island (facing San Juan, Upright and Harney Channels), all of Shaw and Orcas Islands, possibly Waldron Island, possibly the northern shores of Blakely Island, the smaller islands northeast of Orcas, and Lummi Island. And on the mainland it included the shore from Point Whitehorn or Cherry Point to Chuckanut Bay and inland as far as Lake Terrell in the northwest and perhaps the outlet of Lake Whatcom in the southeast, and in the center the mouths of the Nooksack River and its course up to a spot just below Ferndale.

Dr. Suttles goes on to give various village locations at the time of the arrival of white settlers on Bellingham Bay in 1852. He states that the three major winter villages of the Lummi were on the mainland at Gooseberry Point and at the Portage, and that smaller villages may have stood on the sites of former villages occupied by the people from whom the Lummi were supposed to have taken the area.

He states that in the summer the Lummi went to the islands for gathering, fishing and hunting and that they owned reefnet locations on the west shore of Lopez, possibly on Shaw, and on the north shore of Orcas, and most importantly off Village Point, Lummi Island. In the fall the Lummi gathered at a point where several sloughs separated from the main mouth of the river, and built a weir. The river at this time flowed mainly into Lummi Bay, cut what is now called the Lummi, or Red River. The following have been identified as village sites: (Indian names are omitted.)

1. Mitchell Bay, San Juan Island
2. Open Bay, Henry Island

3. Garrison and Westcott Bays. San Juan Island
4. "The Fitzhugh place" on the north shore of San Juan, opposite Spieden Island.

Dr. Suttles goes on to say that these four sites were associated with the Faleqamis. The Saanich informant LP said they were a separate tribe with their principal village on Garrison Bay. The Songish informant TJ claimed that the Songish originally came from here and regarded this group as the ancestors of the Songish.

Dr. Suttles lists other village sites in the area and comments thereon. It does not seem necessary to quote the whole report because the information is much the same as that testified to and which will be set out in the following finding.

In 1953, Dr. H. C. Taylor published a map which shows the name "Lummi" in a small area including the Lummi Peninsula and Lummi Island; much of the areas claimed he shows under the name "Semiahmoo"; the San Juan Islands he apparently gives to the "Swallah" (Def. Ex. 103).

Dr. Taylor's 1955 map of western Washington shows as "Lummi" the "Lummi Peninsula" and the coastal area between Chuckanut Bay and Cherry Point; the name "Semiahmoo" appears in the northern part of the areas claimed. (Def. Ex. 180)

10. The following village locations were testified to by Dr. Suttles, petitioners' witness, as being Lummi locations (See Tr., pp. 155-157; Def. Ex. 58, p. 34): Number 1 is on Mitchell Bay, San Juan Island; number 2 is on Open Bay on Henry Island; number 3 is on Garrison Bay, San Juan Island; number 4 is on the north shore of San Juan Island, opposite Spieden Island. Dr. Suttles says these four villages were

said to have been those of the Syilal-ko-absh group who appear to have been a part of the Lummi.

Village number 5 is on the east side of West Sound on Orcas Island; number 6 is at the head of East Sound on Orcas Island; number 7 is at Rosario on East Sound; number 8 is at Olga on East Sound; number 9 is at Block Point or Stanley Point on Lopez Island. Dr. Suttles says that site number 6 is somewhat doubtful.

Village number 10 is at Gooseberry Point on the mainland; number 11 is at Portage on the north shore; number 12 is on the south shore of Portage; number 13 is at the point where the mouths of the Nooksack River separate and is marked as a temporary fishing site, although there were permanent houses there; number 14 is just south of the northernmost mouth of the Nooksack River, which is called the Lummi or Red River; number 15 is located up the Nooksack River, about at the edge of the area claimed by the petitioners, and appears to be questionable as a pre-treaty site; number 16 is at the mouth of Squalicum Creek; number 17 is at the site of what was called Lummi Old Town above Fish Point on Bellingham Bay; number 18 was on the shore north of Gooseberry Point; and number 19 is at the site of the present town of Lummi. Number 17, 18 and 19 are said to have been villages of the Skalakín Tribe which were absorbed by the Lummi after conquering them. The map on page 34 of defendant's exhibit 58, which map was prepared by Dr. Suttles, also shows the subsistence areas of the Lummi.

11. Dr. Riley, who testified for the defendant, listed at page II-12 of his ethnological report (Def. Ex. No. 1) the following village

sites (Indian names omitted): 1. Site at north end of Portage where the potlatch house stood. 2. Village and stockade at Gooseberry Point, two houses. 3. Old village, occupied 50-60 years ago. Along beach just south of the mouth of the Nooksack River and north of Fish Point. 4. Site of the present Lummi town near mouth of the Nooksack River. This may have been a "Skalakan" village originally but was not extensively occupied by "Lummi" till after white times. 5. Squalicum creek at Bellingham, a temporary fishing village. 6. On north side of Lummi River, above delta, one house. It is not clear to what extent this was aboriginal. 7. On the small slough running into the marshland north of the mouth of the Nooksack River. 8. East Sound, Orcas at Crescent Beach, just east of the present town. Originally a "Swallah" settlement. May not have been permanently occupied in settlement times. 9. At West Sound, Orcas; just west of the present town. Probably not permanently occupied in settlement times.

In his footnote to the above locations, Dr. Riley gives the villages set out by Lummi witnesses in the Duwamish case (79 C. Cls. 530), which was a total of 19. He also states that one of his informants, JH, spoke of 23 inhabited places of Lummi at the time of the treaty.

12. He states in his summary (pp. II 16-17), that the nuclear area of settlement of the Lummi villages at least at the time of white contact, was in the region around Lummi Bay and northern Bellingham Bay. The main settlements were at Gooseberry Point and at the portage where there were three or more large cedar plank houses, including a potlatch house. Smaller settlements, summer camps for fishing and berrying, were found along the two main mouths of the Nooksack River, which flows into

Bellingham and Lummi Bays, respectively. There may have been also a temporary settlement on or near the present site of Marietta. In the islands, there was a fishing village on the west side of Lummi Island, and perhaps one on Orcas Island. The situation on San Juan Islands, in general, is not completely clear; San Juan Island itself was at least visited seasonally by Indians from the Washington mainland, as well as by Indians from Canada.

Land area outside of the lower Nooksack drainage was utilized for the most part sporadically for hunting and collecting. Probably none of the land area, except for parts of the actual river delta, was used exclusively by the Indians settled there, being shared with villagers from outside of this area. This is also true of the sea areas in which fishing and clamming grounds were probably open to numbers of Indian groups. This situation is true for San Juan, Orcas and smaller islands of the archipelago and even for Lummi Island itself. The Lummi villagers seem to have hunted sporadically in the upwaters of the Nooksack River and they gathered seafoods on beaches from Birch Bay to Samish Bay. The northern area they shared with Semiahmoo and Sannich villagers, the interior with Nooksack and Duwaha and the Chuckanut and Samish Bays with large numbers of other people. The greatest economic concentration, however, was on the rich lowlands of the Nooksack River delta and the fisheries around Lummi Island.

13. Captain Charles Wilkes, who headed the United States Exploring Expedition, in 1838-1842, makes no mention of "Lummi" Indians (Def. Exs. 29; 11b, p. 463). Wilkes' population estimate shows "Birch Bay ...300" (Def. Ex. 11b, p. 463).

Wilkes' map of Washington, which may have been made by Philologist Hale, who accompanied him, does not show the name "Lummi" in the areas claimed (Def. Ex. 112).

In the Autumn of 1844, W. F. Tolmie, of the Hudson's Bay Company, took a census of the "various Indian tribes living on or near Puget's Sound." Tolmie lists the "Nooh-lum-mi" with a total population of 244 (Dft. Ex. 11b, p. 463), including 23 slaves (Dft. Ex. 81, p. 12).

On October 13, 1849, Joseph Lane, Superintendent of Indian Affairs for Oregon Territory, reported (Dft. Ex. 131):

The Nooklulumic Indians live about Ballingham's Bay; total number about 220; warlike; disposition to the whites not known; live by hunting and fishing.

On September 16, 1854, Governor Stevens reported to the Commissioner of Indian Affairs (Dft. Ex. 11b, p. 450, pp. 454-455):

One cause of the over-estimate so frequently made of Indians is their habit of moving about, gathering in bodies--one day at one place, and in another the next--thus leaving the impression of great numbers in each. * * *

Below, the Skagits again occupying land on the main, upon the northern end of Whitty's island, Perry's island, and the canoe passage, are three more tribes--the Squi-namish, Swo-da-mish, and Sin-a-ah-mish--probably 250 or 300 altogether; and lastly, the Samish, on the small river of that name, and the southern part of Bellingham bay, estimated at one hundred and fifty. With these, according to the best information procurable during a rapid journey of inspection, the Nisqually nation terminates the next tribe to the north speaking a dialect of the Clallam. It is probably that that of the Samish is a hybrid between the two.

The Lummi, living on a river emptying into the northern part of Bellingham bay and the peninsula, are variously estimated at from four to five hundred. Their chief is Sah-hop-kan. In general habits they resemble the Clallams.

Estimate of Indian tribes in Washington Territory, west of the mountains, by Gov. I. I. Stevens, January, 1854.

<u>Names of tribes and bands</u>	<u>Where located</u>	<u>Males</u>	<u>Women</u>	<u>Total bands</u>	<u>Total tribes</u>	<u>Remarks</u>
Nook-saak	South fork, Lummi river	...	...	...	450	Estimate
Lummi	Lummi river, and peninsula	...	...	...	450	Do.
Shim-i ah moo	Between Lummi point and Frazer's river	...	...	...	250	Do.

On January 22, 1855, the Treaty of Point Elliott was signed by "Chowitshoot, Chief of the Lummi and other tribes" and by representatives of the United States (Dft. Ex. 182). It provided for four reservations one of which was the present "Lummi Reservation," described as "the island called Chah-choc-sen, situated in the Lummi River at the point of separation of the mouths emptying respectively into Bellingham Bay and the Gulf of Georgia."

On June 15, 1856, settler Henry Welter wrote from San Juan Island that there were "seven hundred Indians living on the island," (Dft. Ex. 81, p. 37). No other information is given by Mr. Welter. If this statement is true, it probably refers to a summer gathering of various groups.

On September 21, 1856, Agent C. C. Fitzhugh reported (Dft. Ex. 80, p. 75):

Before and since the commencement of the Indian war in this Territory, I have had under my supervision three tribes, viz: the Lummas, Nooksacks and Samish--numbering in all, man, women and children, some 850 souls, divided as follows: Lummas, 385; Nooksacks, 367; and the remainder, say, 98 of Samish. * * *

The Lummas have been principally residing at a fishery called Sky-lak-sen, and also at the mouth of Lumma river; the Samish at the river whence they derive their name, and the fisheries adjacent; and the Nooksacks stretched along the river, called indifferently the Lumma or Nooksack.

Indian Agent E. C. Fitzhugh reported as follows on June 18, 1857

(Dft. Ex. 66):

From the commencement of the Indian War I have had under my supervision three tribes of Indians, besides straggling ones from the back country. The tribes are designated here as the Neuk-sack, Samish, and Lummis, who were placed in my charge together with a portion of the Neuk-wers and Sia-man-nas, who live in the back country on the lakes and streams adjacent. The total number of all--men, women, and children--estimated at twelve hundred and fifty, divided as follows: Neuk-sacks, four hundred and fifty; Lummis, five hundred and ten; Samish, one hundred and fifty; and the Sticks, or Neuk-wers, and Sia-man-nas, about two hundred.

The Lummis are divided into three bands--a band for each mouth of the Lumma river--but all acknowledge Chow-ate-sot to be their head; he is also the proper chief of their tribe. They have also suffered much from the northern Indians. At one time they were one of the most powerful tribes on the Sound, claiming a large tract of the main land and numerous islands. But, according to their own estimate, they now number only between five and six hundred total.

Agent J. R. Brown reported on November 17, 1857 (R.C.I.A. 1857, p. 9): "Lummas numbering 540, who live at the mouth of the river Lumma or Noot-sack, seven miles from the town of What-Kam at Bellingham Bay."

On April 3, 1860, H. R. Crosbie reported to the Secretary of State concerning the British occupation of San Juan Island (Dft. Ex. 10, p. 7):

The island of San Juan is nineteen miles long, with a width of seven miles, containing about 50,000 acres of land. The soil is fertile. There are on it many prairies, and, as the woods have not that thick matted undergrowth so common to the Oregon coast, is easy of access in all directions. The causes before assigned are the only reasons why it has not been before entirely occupied.

There is but a small band of Indians residing on the island, a part of the Lummi tribe of Bellingham Bay. The Sanich and Cowitchins, of Vancouver's island, both large tribes, frequent it in great numbers during the fishing season in summer. The Sanich are a tribe whose winter camping grounds adjoin the town of Victoria.

In 1880, Anson Dart, Superintendent of Indian Affairs for Oregon Territory, reported (Dft. Ex. 166, pp. 15-20):

"Nooklummi . . . Bellinghams Bay and neighborhood . . .
222 . . . warlike . . . Mode of subsistence . . . Farming,
fishing and hunting"

14. A map showing the boundaries of the land claimed by the "Lummi Tribe" and the boundaries of land claimed by the "San Juan Tribe" was Exhibit A-3 in the Duwamish case which was heard in 1926-1927. This map is inconsistent with the present "Lummi" claim and shows that the "Lummi" claimed only the Lummi Peninsula and Lummi Island and part of the mainland from Chuckanut Bay to Canada; the "Lummi" did not claim any of the San Juan Islands; the "San Juan" claimed most of the San Juan Islands (Dft. Ex. 26).

On June 21, 1927 the Secretary of the Department of the Interior wrote the Attorney General (R. 771 in F-275):

The Lummi Reservation was to consist of the island called Chah-choo-sen in the Lummi River. 820 acres of this island were excluded from the reservation, but the area was enlarged to include 2,170 acres of the main land by Ex. Order of Nov. 22, 1873 (1 Kapp. 917), and 12,560.94 acres were later allotted. The treaty reservation is shown under No. 350, map No. 1 of Washington, Royce's Indian Land Cessions, and the enlargement is shown under No. 555, Map No. 2 of Washington. In addition to the Executive order enlargement of the Lummi Reservation, two acres were purchased for the location of a school for these Indians.

15. The autonomous nature of the villages in the Puget Sound area, the social and cultural characteristics of the people, and the policy of the defendant in treating these groups or tribes has been the subject of findings in previous cases and reference is made thereto. See Findings 14 and 15 and cases cited in The Snohomish Tribe of Indians v. The United States, 4 Ind. Cls. Comm. 549, 561-562.

16. Based upon the evidence herein and the findings made therefrom, it is the finding of this Commission that the petitioners, The Lummi Tribe of Indians, are the successors in interest of their ancestors who held aboriginal title to the following areas of land which were ceded to defendant under the terms of the Treaty of Point Elliott, which was ratified by Congress and became effective on March 8, 1859:

Beginning at the place known as Cherry Point on the Washington shoreline bordering the Gulf of Georgia; thence easterly in a direct line to the town of Ferndale, Washington; thence southeasterly in a direct line to the westernmost point of Lake Whatcom, near the town of Larsens Mill; thence southwesterly in a direct line to a point on the shore opposite Chuckanut Island; thence in a northwesterly direction to Point Francis on the Lummi Peninsula; thence following the western shoreline along its length to Cherry Point, the place of beginning. Petitioners' ancestors also held aboriginal title to all of Lummi Island, Orcas Island and Shaw Island.

17. Any rights which petitioners or their ancestors and predecessors in interest may have retained or acquired to any lands within the boundaries as set forth in Finding 16 may be made the subject of inquiry at the further hearing respecting the consideration paid to petitioners or their

ancestors and predecessors in interest and the value of said lands as of the effective date of the treaty on March 8, 1859.

Edgar E. Witt
Chief Commissioner

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner