

BEFORE THE INDIAN CLAIMS COMMISSION

THE STEILACOOM TRIBE OF INDIANS, )  
 )  
 Plaintiff, )  
 )  
 v. ) Docket No. 208  
 )  
 THE UNITED STATES OF AMERICA, )  
 )  
 Defendant. )

Decided:

ADDITIONAL FINDINGS OF FACT

The Commission has previously determined that the Steilacoom Tribe held Indian title to lands described in Finding 19, 11 Ind. Cl. Comm. 304, 319 (1962), which lands were ceded to the United States on March 3, 1855.

The Commission makes the following findings of fact, which are supplemental to the findings numbered 1 through 19, previously entered herein, 11 Ind. Cl. Comm. 304 (1962).

20. Location of Lands To Be Valued.

The lands are located in the State of Washington, which was the Territory of Washington at the time the Medicine Creek Treaty was signed in December of 1854, and at the time the treaty was ratified on March 3, 1855 (10 Stat. 1132). The territory became a state in 1889. Washington Territory had been created out of the Territory of Oregon by the Act of March 2, 1853 (10 Stat. 172), seven years after the joint occupancy of the area by England and the United States was ended by the Treaty of 1846 (9 Stat. 869), and five years after the Territory of Oregon was established on August 14, 1848 (9 Stat. 323).

### 21. Land Description.

The Steilacoom tract, which lies entirely in Pierce County, Washington, is a strip of land about two miles wide and eight miles long. It borders the southeastern shore of Puget Sound and contains 10,900 acres.

The land is gently rolling, occasionally rising from the shores of Puget Sound to an elevation of 300 feet above sea level. Some areas have slopes of more than 25 percent, but most areas are reasonably level.

The tract is drained from the north by Chambers Creek, and from the south by Sequallitchew Creek. Chambers Creek is a deep waterway flanked by hills rising to approximately 300 feet. A series of small lakes lie near the southeastern boundary, giving rise to creeks which flow through the area.

### 22. Climate and Precipitation.

The climate of the Steilacoom tract is the mild coastal climate of Puget Sound with cool summers and mild winters, with an average temperature of 50°. Precipitation ranges from approximately 40 to 75 inches per year. There is a reasonably long growing season. Although there is ample moisture for agriculture, only crops which do not require high temperatures can grow to maturity.

### 23. Classification of the Land.

Plaintiff's appraiser, Mr. John D. Sanwick, concluded that the subject area had a value based primarily on its use potential, which would have been for the production of timber, the settlement and cultivation of the prairie areas, and the establishment of townsites.

Plaintiff's counsel urges that the Commission adopt the land classification found by defendant's appraiser. Defendant's appraiser, Mr. Frank R. Raney, classified the lands as follows:

Townsite	40 acres
Natural Prairie	5,360 acres
Forest with high yield (readily accessible)	1,460 acres
Forest with low yield (readily accessible)	2,460 acres
Forest, steep (readily accessible)	1,580 acres
	<hr/> 10,900 acres

The Commission finds that on March 3, 1855, approximately one-half of the tract had a highest and best use for the production of timber, while the remaining half was natural prairie land best suited for agricultural pursuits. There was also a site well situated for the development of a town.

#### 24. Forest Land.

The forest covered 5,500 acres, and both parties have classified this area as readily accessible. There were two areas of high yield timber, one running northeast and southwest through the center of the tract, and another of smaller size on Puget Sound, also near the center of the tract. Both areas were highly desirable because they were located within a mile of the sound.

The forested sections containing fair to poor yields of timber

were favorably situated less than a mile from the sound and had slopes of less than 25 percent.

There were three areas of steep forest. One was a long, narrow strip adjacent to Puget Sound. The second was an area running east and west up Chambers Creek. The third was a long, thin strip through the center of the tract. The forest located on bluffs overlooking the sound was desirable because the logs could be dumped directly into the water and transported to a sawmill. A mill was located to the north at Chambers Creek. The proximity of all the timberlands to the town of Steilacoom enhanced their value.

#### 25. Natural Prairie.

Three areas of prairie were located inland on the Steilacoom tract. The largest, with the best land for farming, was at the southeastern boundary, north of the Nisqually River. Two smaller prairies were situated in the northern portion of the tract.

The natural prairie was chosen first by early settlers in order to avoid the difficult task of clearing the land. The 5,360 acres of prairie land was suitable for farming, and many settlers were living on this land. A large portion near the town of Steilacoom was being farmed. The native vegetation of prairie grasses was excellent feed for livestock.

Defendant's appraiser valued the prairie land at \$1.75 per acre, nearly triple the value he placed on the forest lands.

#### 26. Townsite.

Steilacoom was situated on Puget Sound about midway in the tract. Established by Lafayette Balch in 1850, it was originally known as

Port Steilacoom. The next year another town builder took up a claim a mile away which was known as Steilacoom City. The two settlements became known as "Upper" and "Lower" Steilacoom. They thrived and grew together in the 1850's to become the present city of Steilacoom.

Stories had reached San Francisco of the fortunes to be made in lumbering in the northwest and more settlers came, adding to the population of Steilacoom, Tumwater and Olympia, the only villages at the southern end of Puget Sound. By 1853 enough people had settled around the community to warrant the construction of a hotel, a store, and, in 1854, a church and school in the little town. A large prairie area outside the town was being farmed. Plentiful fish in the water of the sound provided a means of subsistence for the town settlers. There was enough shipping to warrant the appointment of a Collector of Customs for the northern section of Oregon Territory and a surveyor was appointed for the Port of Nisqually which was to the south of the tract.

To accommodate the new settlers, Thomas Chambers built a sawmill and a gristmill on land he claimed near the mouth of Steilacoom Creek, which he renamed Chambers Creek. It was about a mile north of Steilacoom.

When Pierce County was formed by the Territorial Legislature in 1853, Steilacoom became the county seat. In that year Congress authorized construction of a military road from Steilacoom to Walla Walla. Through the 1850's Steilacoom was the market, post office, news center and metropolis for much of the southern Puget Sound country.

In 1853 the population of Steilacoom was reported to be 100 whites and 300 Indians. Pierce County was created that same year and contained 513 persons. By 1860, the population of Pierce County was 1,115.

27. Minerals.

No mineral deposits were known to exist within the area at the date of valuation, and there is no evidence that in 1855 the tract had any potential for mineral production.

28. General Economic Conditions.

The economy of the Puget Sound region was inextricably tied to the lumber industry. Although in 1855 the timber supply was thought to be virtually endless, labor was limited and the crude conditions under which the timber was processed made the lumber itself expensive. Lumbermen concentrated on timberlands located no more than one and one-half miles from drivable water. Since the Steilacoom tract was only two miles wide and bordered on Puget Sound, its forests were ideally located.

In September 1852, there were three sawmills in operation in what was to become Washington Territory, including the sawmill at Chambers Creek in the Steilacoom tract. Two years later there were 33. In 1855, 24 sawmills operated in the Puget Sound area alone.

By 1854, the San Francisco lumber market, which was the major market for Puget Sound lumber, had become glutted and prices fell. In 1855, the unfavorable business conditions in California became even worse in what was termed the post gold rush slump. Lumber prices in San Francisco dropped to a very low level.

By 1855, Puget Sound lumbermen were shipping to new markets in such places as South America, Australia, Hawaii, the Phillipines and the Orient. However, the long voyages and resultant high cost of shipping cargoes to such distant lands cut into profits. Overproduction and competition developed in the lumber market in the second half of the 1850's, partly as the result of the new sawmills which had been built. In addition, money was scarce and interest rates were high.

This tract provided immediate access to fish and shellfish, which were abundant and had fed the Indians of the area for centuries. While fishing had not attained the status of an industry, fish and shellfish were a major source of food supply, and their potential as a future factor in the region's economy was apparent.

#### 29. Transportation and Access.

The location of the Steilacoom tract on Puget Sound made travel and movement of goods to other points relatively convenient. In 1853 steamer service was inaugurated between Steilacoom, Olympia, Alki, and Seattle. In 1854 weekly passenger service and mail delivery to Steilacoom and numerous Puget Sound settlements began with a single steamer. Between 1856 and 1859 a successor ship shuttled back and forth from Olympia to Steilacoom and occasionally went on to Seattle.

In 1854 overland transportation of goods by means of a public conveyance became available. A firm began hauling light freight and mail between Portland and Olympia. Within two years Steilacoom and five other points were receiving this service regularly. The Wells Fargo firm started doing business in the Oregon Territory in 1853, and

by 1860 had opened offices in Steilacoom and four other towns.

30. Availability of Public Land.

Prior to 1855, various public land laws had been passed by Congress. The prospective purchaser of lands in this area in 1855 had, under these statutes, several methods by which he could acquire land then in the public domain.

A. Act of April 24, 1820 (3 Stat. 566). Under this act, a minimum of 80 acres of land could be purchased through public sale for \$1.25 per acre, payable in cash only.

B. Graduation Act of 1854 (10 Stat. 574). During the period of 1854 to 1862 it was possible to purchase, for less than \$1.25 an acre, land that had been available under the Act of April 24, 1820, with the price depending upon the length of time the land had been available for acquisition. The existence of the law and resulting cheap price for land in other areas was an important influence upon land prices in Washington Territory.

C. Preemption Act of 1830 (4 Stat. 420, as amended). This law protected the claims of squatters occupying and improving public land by giving them an opportunity to purchase the land before it was offered at auction. The squatters could purchase the land for \$1.25 per acre under the Act of April 24, 1820, supra.

D. The Oregon Donation Act of September 27, 1850 (9 Stat. 496), enabled settlers to acquire a right to land in Oregon Territory, which



included the present State of Washington. The act originally provided for grants of 320 acres to single, and 640 acres to married, white settlers who had settled on the land claimed prior to December 1, 1850. The act required that the settlers live on the land for four years, cultivate and improve it for their own use and not as an agent for anyone else, and limited the donations to one per person. Actual proof of a settler's compliance with all the terms of the act was required, and a survey had to be completed before a patent could issue.

In 1851, 58 entries were made in Washington Territory under the Donation Act, and in 1852 there were 117 entries.

E. Military Bounty Land Acts and Military Land Warrant Acts (2 Stat. 728 and successor statutes). Bounties, in the form of land warrants, were given to veterans of military service as early as 1847. These were transferable and often were acquired at a discount, sometimes as high as 60 per cent. However, the United States accepted the warrants at face value for payment of land purchased. Land acquired in this manner generally cost approximately 50 cents an acre.

F. University Grants (10 Stat. 306). In 1854, the Territory of Washington was granted 46,080 acres of land for university purposes. In 1861, the territorial legislature authorized sale of this land for \$1.50 per acre.

All of these acts and the general policy of the Government to provide public land at low cost had some effect on the value of the Steilacoom tract.

31. Land Disposals.

Acquisition of public lands during a period commencing shortly prior to March 3, 1855, and continuing until the latter 1860's, was deterred by the Hudson's Bay Company which contended that it had sovereignty over the country by virtue of its charter from the British Government. It was not until that company's holdings were liquidated and title to the land clarified in the latter 1860's that all settlers felt secure in purchasing land from the United States.

As of the date of valuation less than six percent of the tract had passed into private ownership of American settlers. In the following 18 years 36.11 percent was sold to private owners. With the exception of 634 acres sold in 1851 under the Oregon Donation Act, supra, no other land was sold until 1870. Between 1870 and 1873 some land was sold for \$1.25 and \$2.50 per acre under the Act of April 24, 1820, supra.

32. Comparable Sales and Early Lumbering Operations in the Puget Sound Area.

There is a scarcity of evidence of any private sales of land comparable to the tract in size, character and location in or close to the year 1855.

In 1861 the Pope and Talbot firm, which was the largest lumber company and one of the early purchasers of timberland in the Puget Sound

region, made its first purchase in that area when it acquired 225 acres in Snohomish County from the Board of the University of Washington Commissioners at \$1.50 per acre. The firm continued purchasing lands from 1863 to 1866, acquiring an additional 18,803.25 acres from the same source in Kitsap County, and some 17,398 acres from the United States, using military scrip for both purchases. From 1875 through the 1880's Pope and Talbot purchased 160-acre tracts in the Puget Sound area at an average price of about \$3.12 per acre, all of which involved timberlands located within a mile and a half of waterways. The bulk of the lands involved in these early purchases had Douglas fir and some cedar trees growing on them.

In 1862, the Greenan and Cranney Lumber Company made its initial purchase of timberland when it bought 301 acres in Snohomish County at \$1.50 per acre.

33. Expert Witness - Plaintiff.

Mr. John D. Sanwick, a real estate appraiser and consultant with a Seattle firm, appeared as an expert witness for the plaintiff. His opinion was that the Steilacoom tract had a fair market value of \$38,000.00, or an average of about \$3.50 per acre. However, his testimony and appraisal report provide little explanation to sustain his \$3.50 figure.

Mr. Sanwick prepared a list of transactions involving sales of land situated in Pierce County, the site of the Steilacoom tract, and in adjacent Thurston County. While Mr. Sanwick did not compute

any average selling price for these transactions or indicate his conclusions therefrom, plaintiff's counsel computed an average price per acre of \$4.18 from the recorded data. We have examined the listed transactions and find them to be of slight assistance in reaching a determination of the 1855 fair market value of the tract in question. The transactions in Pierce County which occurred during the period from October 1857 through June 1860, some two and one-half to five years after the valuation date, include a number of sales which indicate on their face that improvements or special circumstances were involved. The prices do not in any way reflect the value of timberland in the area. For example, three sales of land near the Hudson Bay Company's warehouse community called Thompson's Land Claim were listed. The transactions were of 160 acres for \$5,000.00 (or \$31.25 per acre); of a 1/3 interest in 160 acres for \$3,000.00 (or \$56.25 per acre); and of 160 acres for \$1,000.00 (or \$6.25 per acre). The elimination of these three sales would reduce the average price per acre for Pierce County by about \$1.00 per acre. Furthermore, a number of the sales appear to be resales. Many were resales of land acquired under the Oregon Donation Act, which transactions would have included improvements. Obviously many of the sales were of small tracts in the most desirable locations with improvements thereon.

The Thurston County list covered a period from 1852 to 1857, which would be more relevant to the 1855 valuation date. However, these transactions likewise are of little value as an indication of the fair

market value of the Steilacoom tract. There are four listed transactions of a 1/3 interest, a 1/6 interest, a 1/6 interest, and a 1/3 interest in a sawmill on four acres at New Market. Three of these transfers show a consideration of \$2,000.00, and the fourth lists the price as \$3,000.00. Also included are nine sales of portions of the "Sylvester Land Claim" ranging in size from three acres to 80 acres, all for an average consideration of \$10.00 per acre.

Plaintiff's counsel has urged that the Commission find a fair market value of \$10.00 per acre for the 5,360 acres of prairie, \$3.50 an acre for the 5,500 acres of forest land, and \$100,000.00 for the value of the townsite, which would produce a value of \$172,850.00 for the entire tract. This amount, which is an average of \$15.81 per acre, is four and one-half times the value found by plaintiff's own expert.

34. Expert Witness - Defendant.

The appraisers for the defendant were Messrs. Frank R. Raney and Chase W. Raney, partners in a real estate appraisal firm in Seattle. Their exhaustive appraisal report is in evidence. Frank Raney testified for the defendant. He stated that he considered the fair market value of the subject area, as of March 3, 1855, to be \$14,680.00, which is \$1.35 an acre. In arriving at that figure the witness stated that his opinion was derived as follows: 5,500 acres of forest land at \$0.60 per acre, or \$3,300.00; 5,360 acres of prairie at \$1.75 per acre, or

\$9,380.00; and 40 acres of the Steilacoom townsite at \$50.00 per acre, or \$2,000.00. Although Mr. Raney considered all the forest lands valuable because they were readily accessible, he classified only 1,460 acres as high yield timberlands. He noted, however, that even the steeper areas were on the bluffs overlooking the sound, and logs could be dumped directly into the water.

In arriving at the \$1.35 average per acre figure, Mr. Raney stated that the natural prairie in the tract, including a large portion near the town, was suitable for farming and needed little clearing. Steilacoom was thriving and was well established as one of the leading towns in the Puget Sound area. The town had numerous businesses and a further growth could be foreseen. Pierce County had grown from 513 settlers in 1853 to 1,115 settlers by 1860.

Mr. Raney was of the opinion that other advantageous factors in the subject tract were the moderate climate and the location of the tract on extensive water frontage with boats available for logging of timber, fishing, and for shipping goods to nearby markets. The entire area was within two miles of water. A military road had been authorized between Steilacoom and Walla Walla east of the mountains.

35. Monetary Consideration - Treaty of Medicine Creek.

In consideration for the cession by the Indian parties to the Treaty of Medicine Creek, the United States, by Article IV, agreed to pay to the tribes and bands the total sum of \$32,500.00 -- designated amounts to be paid annually and applied for the use and benefit of the

Indians under the direction of the President. By Article V the United States agreed to pay the sum of \$3,250.00 to enable the Indians to settle on their reservations. By Article X the United States agreed to establish and maintain for a period of 20 years, an agricultural and industrial school with instructors, as well as various craftsman shops and a physician. The United States expended \$173,936.85 in fulfilling its obligations under these articles of the treaty.

36. Reservations Established - Treaty of Medicine Creek.

Article II of the Treaty of Medicine Creek provided for the establishment of three reservations for the exclusive use of the nine Indian bands or tribes who were signatories. The reservations were:

- (1) The small island called Klah-che-min, now called Squaxin Island, containing 1,494.15 acres.
- (2) A square tract containing two sections, or 1,280 acres, on Puget Sound, near the mouth of the She-nah-nam Creek.
- (3) A square tract containing two sections, or 1,280 acres, lying on the south side of Commencement Bay.

Article VI of the treaty provided:

The President may hereafter, when in his opinion the interests of the Territory may require, and the welfare of the said Indians be promoted, remove them from either or all of said reservations to such other suitable place or places within said Territory as he may deem fit . . . .















