

DUWAMISH TRIBAL OFFICE
6425 South 141st
Seattle, Washington, 98168

Historical and Legal Information of The
Duwamish Tribe

Information researched from the findings of ethnologist Swanton's North American Indian Tribes, placed the Duwamish Tribe and Bands north of Fort Lawton and eastwardly to the Snoqualmie Tribal areas, thence southeastwardly to the Headwaters of the Green and White Rivers, along these rivers and their drainage areas; along the Black and Cedar rivers and their drainage areas; the Headwaters of the Duwamish River and its drainage areas, to the mouth of said river and its tributaries; at the present site of Yesler Avenue in Seattle, Lake Washington, Lake Sammamish, Issaquah and Cedar Falls.

Barbara Lane, a noted Anthropologist, has completed a detailed study of the Duwamish Village locations. Additional information may be obtained at the Duwamish Office. The original copy of this report is being utilized for the present case on the fishing rights of the Duwamish Tribe. Post-Trial Briefs were filed and oral argument was heard at the Federal Courthouse in Tacoma on February 12, 1976. A final ruling will be made in this case during the Month of March, 1976.

The Point Elliott Treaty was signed on January 22, 1855, U.S. Statutes at Large, 12, page 927. The Treaty was ratified on March 8, 1859 and Proclaimed by then President Buchanan on April 11, 1859. Chief Seattle, signed as a representative of the Suquamish and Duwamish Tribes; Now-a-chais, also signed as a Sub-Chief of the Duwamish; and Ha-seh-doo-an or Keo-kuck as a Chief of the Duwamish. The land area ceded under this Treaty is described on Washington map number one, from the Bureau of American Ethnological Reports, Bulletin 18, part 2, as ceding number 347. Two Sections or 1280 acres were reserved at Fort Madison, surrounding the small bight at the head of what the Indians called Noo-shok-um. Two sections or 1280 acres were also reserved on the north side of Rwhomish Bay and the creek emptying into the same called, Kwilt-seh-do; the peninsula at the southeastern end of Ferrys Island, called Shais-quihl, and the island called, Chah-choo-sen, situated in the Lummi River, at the point of separation of the mouths emptying respectively, into Bellingham Bay and the Gulf of Georgia.

Article/³ of the Treaty provided that in addition to the Reservation areas listed above, 36 sections, or one full township, would be reserved on the northeastern shore of Port Gardner, and north of the mouth of the Snohomish River, including Tulalip Bay, and the before mentioned, Kwilt-she-da Creek, for the purpose of establishing an Agriculture and Industrial School, with the view in mind, of moving all Indians west of the Cascades living in said Territory to this Reservation. Provided however, the President may establish the Central Agency and General Reservation, at such other point as he may deem, for the benefit of the Indians. The Tribes were to move to the first above-mentioned Reservations, within one year from the date of ratification of the Treaty.

In the mean time, it shall be lawful for the Indians to reside upon any land not in the actual claim and occupation of citizens of the U. S., or upon any land claimed or occupied, if the permission of the owner is granted. The right of taking fish at usual and accustomed grounds was guaranteed in common with other citizens of the Territory and of erecting temporary houses for the purpose of curing, together with the privilege of hunting and gathering roots and berries on open and unclaimed lands. provided, that they shall not take shell fish from any beds staked or cultivated by citizens.

Article 7 provided for the removal by the President of the Indians to the general reservation mentioned as the Tulalip Reserve, or to such other Reservation within said Territory as he may deem fit on remunerating them for improvements and expenses for such removal, or may consolidate them with other friendly Tribes or Bands, and cause the named reservation to be surveyed into lots for homesites or such other lands that may be selected as a permanent home on the same terms and subject to the same regulations as provided in Article six of the Omaha Treaty, as far as may be applicable. (Article 6 of the Omaha Treaty provided for allotments of 80 acres of land for single Indians and 160 acres of land for two married persons. Additional land would be allowed according to the size of the family.) The value of improvements and the cost of moving shall be valued under the direction of the President and payment made accordingly therefor.

Under article 9, the said Tribes and bands acknowledged their dependence on the U. S. Government. Article 14 provided for the establishment, one year after ratification, a agriculture and industrial school, to be free to children of the said tribes and bands, in common with other tribes and bands of said district, which would continue for 20 years. The U. S. Government also agreed to furnish a physician and medical treatment, with none of these costs to be deducted from any annuities, and also included the schools mentioned above.

The Point Elliott Treaty was not Ratified until March 8, 1859. On January 20, 1857, Then President Franklin Pierce, established the Muckleshoot Reservation with reference to the Treaty of December 26, 1854, (the Puyallup Treaty). On November 22, 1873, then President U.S. Grant, issued and Executive Order establishing the Lummi Reservation for the Duwamish and other allied Tribes of the Point Elliott Treaty..

Early correspondence relating to the Duwamish Tribe by Indian Agents and Army Officials discloses that the majority of the Duwamish did not choose to go to the Lummi, Fort Madison or Muckleshoot Reservation. They continued to live on their ancestral lands on and about the Black River, The Cedar River, The Green River, The White River, Lake Washington, Lake Sammamish, around Fort Lawton and the present site of Seattle. There is no information available at this time that would show that the Duwamish were allowed to take up Homesteads as other citizens, nor were they ever given Public Domain Allotments. Later records show that a very small per cent of the Duwamish, intermarried into those Tribes place upon the Tulalip Reservation. The correspondence files indicate that the Duwamish were not on the most friendly terms with the Suquamish at Port Madison, The Lummi and those Tribes subsequently placed upon the Tulalip Reservation.

In 1925, Congress passed a Jurisdictional Act giving the Duwamish and other Tribes of Western Washington, the right to sue the U. S. Government legal and equitable rights relating to their Treaties and also included non-Treaty Indians, such as the San Juan Island Tribe, the Chinook, the Chehalis, the Muckleshoot, but excluded the Clallams. A case was filed in the Court of Claims entitled Duwamish et Als, 79 Court of Claims. This case is a historical document in itself, describing the location of the Tribes as to their land areas and also determined the offsets that the Government claimed for appropriations under the Treatys. This case set forth the size of the Duwamish Tribal longhouses as accomodating approximately 50 to 75 Indians in each condominium area and determined that there were 54 Duwamish Longhouses. This would indicate that the Duwamish Tribe was one of the larger Tribes under the Point Elliott Treaty.

This case lasted for approximately nine years and was then dismissed, with no appeal taken to the Supreme Court, as provided in the Jurisdictional Act. In 1946, Congress passed an Act creating the Indian Claims Commission. This Commission was limited to hearing matters that occurred prior to the date of the Act, August 13, 1946. The then acting Tribal Council of the Duwamish Tribe employed attorney Frederick Post to represent them in their case before the Claims Commission. The copies of all Indian Claims Cases are on file at the University of Washington Law Library. However, all cases on file preceding 10 Indian Claims Commission Cases, are on microfilm, for which arrangements would have to be made prior to obtain these prior cases. Excerpts of the Duwamish Case Doc. 109 under 10 Ind. Cl, shows the following information as follows:

The Claims Commission heretofor found that the Duwamish Tribe had Indian Title to 54,790 acres of land and that said tribe was a party to the Point Elliott Treaty of January 22, 1855, 12 Stat. page 927; and that the U. S. extinguished title to their lands on March 8, 1859, the effective date of the ratification of the Treaty. The Commission then concluded that the value of the Duwamish lands on March 8, 1859, was \$74,000 and entered an interlocutory Order on July 6, 1959, directing that the case proceed to determine the offsets of moneys expended by the U.S. Government on behalf of the Duwamish, and whether such consideration paid under the Treaty was unconscionable. \$12,000 was finally determined as reasonable offsets under a compromise agreement. This amount subtracted from \$74,000, netted the sum of \$62,000. "The Commission considered Affidavits of five members of the Tribe and also officials of its Tribal Council. These affidavits show that the members of the tribe and its officials fully understand the proposed compromise settlement and voluntarily approved it."

Additional findings of 10 Ind. Cls Comm. Rpts, page 442, Doc 109.

Stipulation for entry of final judgment. This stipulation has been approved by the Duwamish Tribe (Resolution dated July 23, 1960), by the United States, defendant, and the Commissioner of Indian Affairs. The \$12,000 shall include all counter-claims which the defendant (U.S.) could have asserted for the period between March 8, 1859 to June 30, 1960, inclusive, but shall be without prejudice to any claim in any other suit or action between the parties relating to any period prior to March 8, 1859 or after June 30, 1960. page 444 makes reference to a meeting held at Renton Washington on July 21, 1960 at which time a resolution was passed approving the compromise offsets. Levi Slade, Ruth Cley Scranton, Ruby S. Wells, and Byron J. Overacker are listed as Tribal Councilman each signed affidavits accepting the compromise settlement.

13 Indian Claims Commission Reports, Doc 109 discloses the following information on page 533:

Order relating to allocation of Point Elliott consideration, filed September 11, 1964. " That the above named petitioning Tribes are chargeable with consideration received from the United States under the Point Elliott Treaty in the Aggregate sum of \$ 286,231.50.

Duwamish Population	312	Land Allotted 3.5 allotments
Per cent of Point Elliott Treaty Tribes	8.9	or 2.2 of all lands allotted
		Value \$588.54
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Moneys expended	\$ 23,274.65	
Land	588.54	
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Total	\$ 23,863.17	

The Claims Commission based its population and offsets on the findings in Duwamish Et Als, 79 Ct Cls, page 612. " The Commission finds that in the absence of proof of how much of the monetary consideration each petitioner received, it is proper to allocate the monetary consideration in proportion to the approximate tribal population at the effective date of the Treaty, March 8, 1859. The total population of the Indians at the time of the Point Elliott Treaty was 4300, and the now petitioners, 3511." Total Treaty payments are set at \$320,124.94. 81.77 per cent of this is \$261,512.65

It is believed by the undersigned that there is good cause to have the entire Duwamish case reviewed. In viewing the Township map of King County, I believe that is a fair estimate to say that the Duwamish Tribe covered a land area within King County exceeding a million acres of land. The earlier case Doc. 109 which is on microfilm should be reviewed to determine how the land area of 54,000 was concluded.

The denial of fishing, hunting, shell fish, roots and berries, allotments and a permanent land base are issues that should be presented in a new suit.

During the past two years, numerous Laws have been passed regarding programs and funding for Indians and Indian Tribes. Public Law 93-638, The Indian Self-Determination Act, P. L 93--644 of which Title VIII provides for Native American Programs, P.L. 93-203, The CETA Manpower Programs, The revolving loan fund Act of 1974, The Economic Development Act of 1975, P. L. 94--188, which amends the Public Works Act of 1965. In addition there are funds available through the Dept. of Agriculture for Housing, Public Bldgs., crop loans, stock, and land acquisition. The Bureau of Indian Affairs has issued regulations for Indians to obtain family housing in an amount up to \$25,000, if you cannot qualify through anyother existing source.

It is hoped that the above information will be of assistance in the Duwamish Tribes' efforts to enforce its treaty rights and other available programs regarding funding for Indian Tribes.

Donald F. Bellinger
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Research Consultant

ADDENDUM INFORMATION FOR TASK FORCE TEN OF THE
AMERICAN POLICY REVIEW COMMISSION
DUWAMISH TRIBE

The following excerpts are included as addendum to questions numbered 36 (b) and 39 of this questionnaire and are set forth as follows:

1. The 1934 Reorganizational Act of June 18, 1934 (25 USCA 461-479) defines an Indian as follows:

"An Indian is any person of Indian descent who is a member of any RECOGNIZED TRIBE and descendants of all members RECOGNIZED AND NOW UNDER FEDERAL JURISDICTION, or residing on any reservation on June 1, 1934, and shall further include all persons of ONE HALF OR MORE INDIAN BLOOD."

"Section 478 (a) states, viz. The Laws, Treatys and Rights are unaffected by the passage of 461-479 of this title (25 USCA, to those Tribes WHO VOTED TO BE EXCLUDED FROM THE PROVISIONS OF 461, 466, 470, 471, 473, 474 and 479."

2. Current Bureau of Indian Affairs Regulations codified under 25 CFR, Chapter 52. 1 (b) defines an Indian as follows;

"An Indian means all persons who are members of, or are eligible for membership in any Indian Tribe UNDER FEDERAL JURISDICTION AND WHICH TRIBE HAS NOT VOTED TO EXCLUDE ITSELF FROM THE ACT OF JUNE 18, 1934.

3. Chapter 52. (g) Provides, viz: "RECOGNIZED TRIBE MEANS ANY INDIAN TRIBE WHICH HAS ENTERED INTO A TREATY, CONVENTION OR EXECUTIVE AGREEMENT WITH THE FEDERAL GOVERNMENT, OR WHOSE TRIBAL ENTITY HAS BEEN OTHERWISE RECOGNIZED BY THE UNITED STATES.

4. It would appear that present BIA Regulations are violating section 478 (a) of the Reorganizational Act under the present wording.

5. The Duwamish Tribe was found to be a principal Party to the Point Elliott Treaty of January 22, 1855 and Ratified March 8, 1859 in their Indian Claims Commission Case Doc. 109.

6. Numerous other statutory laws pertaining to Indians and Indian Tribes deny Indians and Indian Tribes funding by simply requiring that and Indian or Indian Tribe must be recognized as such by the Bureau of Indian Affairs.

7. An Eleven-Page Informational Digest was presented to Task Force Eight, Dated November 7, 1975 and also presented to other Task Force representatives and NCAI Leaders at the NCAI meeting last November, 1975, Portland, Oregon.

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Date: August 10, 1976