



# Swinomish Indian Tribal Community

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

January 30, 2017

Dear Neighbor,

Last month, the Skagit County Commissioners sent a letter to you about the Swinomish Tribe and our proposed Constitutional amendments. Sadly, the County was misinformed and their letter was not accurate.

Their inaccurate letter has caused a lot of needless distress, confusion, and anxiety, all of which could have been avoided if the Commissioners had simply contacted the Tribe before sending out the letter. But since the County did not, I am writing to say to you what I would have said to the Commissioners, if they had called.

If you own land on March Point or Summit Park, you will continue to own it just the same if our Constitution is amended. If you pay taxes to the County now, you will continue to pay them to the County if our Constitution is amended. Under Federal law, we cannot tax lands owned by non-Indians, just as the County cannot tax tribal trust lands. Our Constitution does not dictate Federal law.

Let me be clear: despite what you may have read or heard from Skagit County, we are not “annexing” land. We will not be able to tax lands owned by non-Indians. We will not – and could not – “deport” anyone anywhere.

To explain why we are amending our Constitution, some history may be helpful. Native peoples who came to occupy the Swinomish Reservation governed ourselves successfully for thousands of years before the arrival of Europeans. We were guided by the teachings of elders and social protocols that were passed down through generations. We had no need for a written constitution.

Even after our ancestors negotiated a treaty with the United States in 1855, we continued to govern ourselves without a written constitution. But eventually in the 1930s, the Federal government decided that we and other tribes should conform to a different style of governance. An attorney for the Bureau of Indians Affairs prepared a prototype constitution based on Western styles of government that subsequently was adopted by Swinomish and many other tribes throughout the United States.

Swinomish has used this prototype constitution for more than 80 years. Since that time, dramatic changes have occurred in all of our lives, both Indian and non-Indian. As a result, our current Constitution is outdated. It is for this reason that we started our Constitutional amendment process. We want to bring our organizing document into the 21<sup>st</sup> Century.

Some of the changes are very important to us, but don't impact anyone outside of the Swinomish community. For example, right now some of our actions must be approved by the Bureau of Indian Affairs before they can take effect, such as hiring an attorney or leasing our land. These requirements have become a burden both for Federal employees and for the operations of our Tribal government. As a result, the BIA is urging not only us but all Indian tribes to remove this burden.

One of our proposed amendments was misinterpreted by the County. The proposed amendment would remove a reference to an 1873 Executive Order that is historically incorrect.

Again, the explanation requires a bit of history. Our Treaty from 1855 describes our Reservation as "the peninsula at the southeastern end of Perry's Island, called Shais-quihl." That island was later renamed Fidalgo Island. Maps made by the United States at Treaty time clearly established the Swinomish Reservation from the north end of March Point to the southeast end of Fidalgo Island. The western land boundary dividing the Reservation from the rest of the island is a north-south line from Similk Bay to Fidalgo Bay – right through the middle of the Swinomish Golf Links. The historical record is clear that this was what the United States intended, and our ancestors understood, to be the Reservation established in the 1855 Treaty. I am including a copy of the map made at Treaty time showing the boundaries of the Reservation.

Despite this clear original intention of the United States, in 1873 President Grant issued an executive order suggesting a change in those boundaries. But the United States Supreme Court has repeatedly ruled that only Congress has the power to diminish reservation boundaries. In light of the history and these court rulings, our proposed Constitutional amendment removes any reference to the 1873 Executive Order establishing the Swinomish Reservation, and instead, simply refers to the "Swinomish Reservation".

I truly regret that so many people in the County have been distressed and disserved by the County's mistaken and disruptive letter. But the Tribe is glad that this discussion is finally shining a bright light on the injustice of President Grant's 1873 Executive Order. We appreciate the opportunity to bring you the true story of this piece of our history.

I am including a copy of Frequently Asked Questions – also available on our website, where there is much more information about the history of the Treaty, the Swinomish Reservation and the Swinomish Tribe: <http://swinomish-nsn.gov/government/the-swinomish-reservation.aspx>.

I know that you may still have questions about the Swinomish Reservation and the Swinomish Tribe, so I plan to hold a meeting when you and your neighbors can come and talk with us directly. We will be announcing the time and place of the meeting when it is scheduled. For further information, please contact me at 360/708-7533 or contact my point staff on this matter, Stephen LeCuyer at 360/466-1058.

Sincerely,



Brian Cladoosby, Chairman

Cc: Senator Maria Cantwell  
Senator Patty Murray  
Congressman Rick Larsen  
Governor Jay Inslee  
The Hon. Sally Jewell, Secretary of the Interior, US Department of the Interior  
Weldon 'Bruce' Loudermilk, Director, Bureau of Indian Affairs  
Stanley Speaks, Regional Director, NWRO, Bureau of Indian Affairs  
Jennifer Washington, Chair, Upper Skagit Indian Tribe  
Tom Wooten, Chair, Samish Indian Tribe  
Norma Joseph, Chair, Sauk-Suiattle Indian Tribe  
The Hon. Robert Ferguson, Washington State Attorney General  
Vikki Smith, Director, Washington Department of Revenue  
Allen Rozema, Director, Skagitonians to Preserve Farmland  
Brandon Roozen, Director, Western Washington Agricultural Association  
Richard Weyrich, Skagit County Prosecuting Attorney  
Cory Ertel, Shell Puget Sound Refinery  
Matt Gill, Tesoro Anacortes  
Dr. Mark Wenzel, Superintendent, Anacortes School District  
Chief Roy Horn, Fire District No. 13  
Mayor Laurie Gere, City of Anacortes  
Dave Thomas, Skagit County Assessor  
Island County Board of Commissioners  
San Juan County Council  
Board of Directors, Wash. Ass'n of Counties

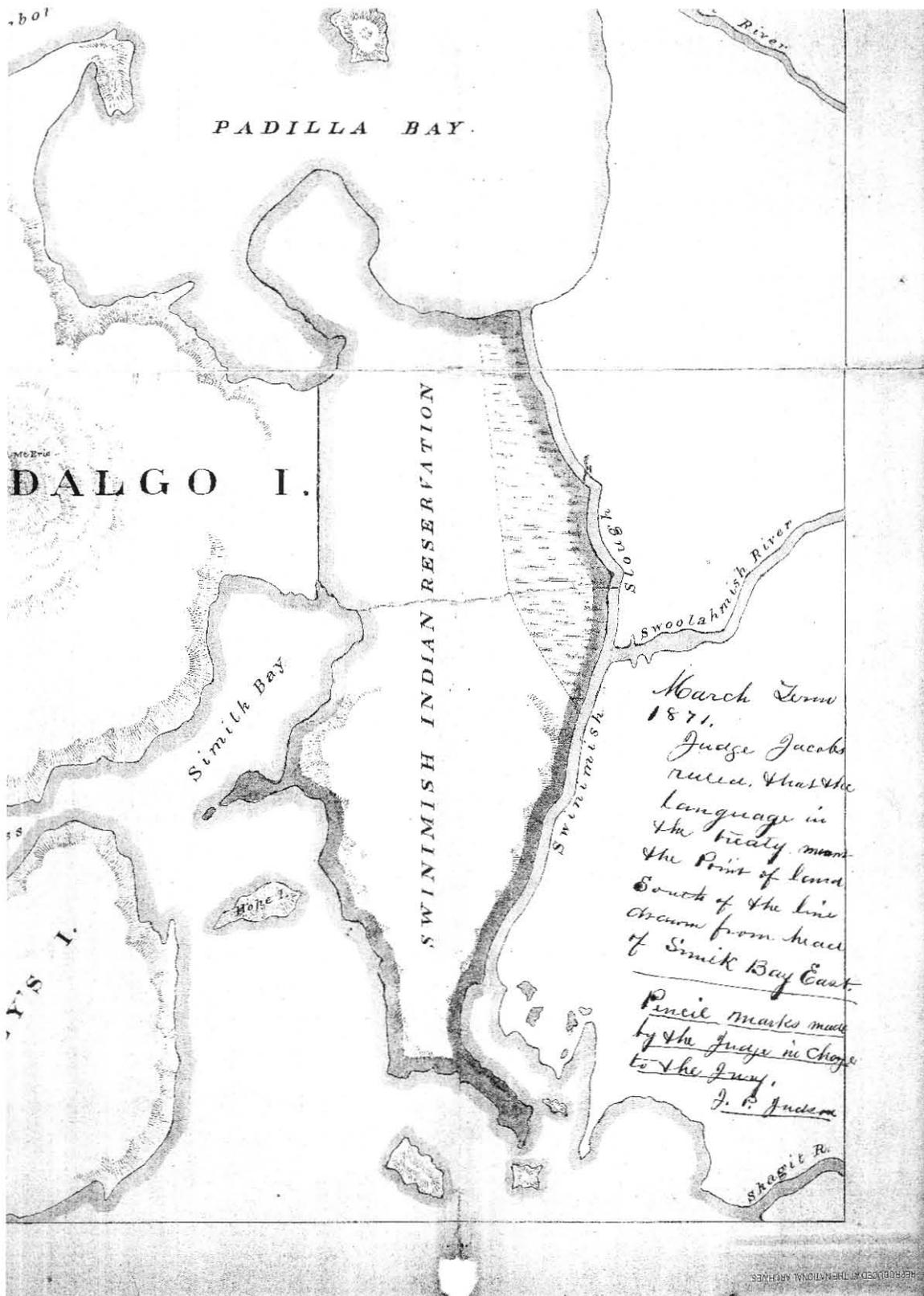


Figure 10: McKenny to Parker, April 11, 1871; attached map. Letters Received by the Office of Indian Affairs, 1824-1881, Letters Received from the Washington Superintendency, 1871, Letter M226, National Archives.

See reverse for Map Description

This map was sent to the Commissioner of Indian Affairs, Ely Parker, by the Superintendent of Indian Affairs for Washington Territory, T. J. McKenny, with an April 11, 1871 letter. In his letter, McKenny wrote that several maps depicting the Swinomish Reservation had been furnished by the Surveyor General's Office, the Land Office and the Indian Office, including "the original map made by [Governor Isaac] I. Stevens[,] the party who negotiated the treaty with the Indians." McKenny wrote that he was enclosing with his letter a "map of the reservation as it appears on the Stevens map[,] a copy of which was filed in the [Indian] office at Washington at the time the treaty was made and which has so appeared in all the reports of the Surveyor [Generals] for many years past." The map clearly shows that March Point was within the reservation, with the boundary dividing the reservation from the remainder of Fidalgo Island running due north from Similk Bay to Fidalgo Bay.

McKenny added the following handwritten note on the map (which is cut off on the image produced here):

Olympia W.T. March 10<sup>th</sup> 1871

I certify that the Swinimish [*sic*] Reservation as shown by this map is correctly given according to my understanding from reading the treaty, it being so shown and laid down on all the maps in the Surveyor Generals Office, Land Office and Commissioner of Indian Affairs Office.

T. J. McKenny  
Supt. Indian Affrs  
W.T.

Another handwritten note on the map states that, despite the evidence of Stevens' intent, a judge had drawn the northern boundary of the reservation from Similk Bay due east, but that boundary is not reflected in any other map or document, and was not the basis for the Executive Order boundary.

McKenny's successor as Superintendent of Indian Affairs, R. H. Milroy, confirmed that the boundary line running from Similk Bay due north to Fidalgo Bay on McKenny's map accurately reflected Stevens' map and the understanding of the Indians as to the boundary of the reservation. In a February 4, 1873, special report to the Commissioner of Indian Affairs regarding the Swinomish Reservation, Milroy referred to "a map sent by Gov. I. I. Stevens to the Comm. Ind. Affairs with a letter dated April 30, 1857." Milroy asserted it would "be seen by reference to the map forwarded by Gov. I. I. Stevens, as before stated, that the whole easterly division of the island is marked and colored as included in and constituting the reservation as set apart by the treaty, and the old Indians now on the reservation, who resided there at the time of the treaty, have assured me that this was the reservation as they understood it to have been set apart by the treaty." Milroy added that "[t]he western boundary of the reservation according to this apparent understanding of Gov. Stevens and of the Indians, would be about the section line, across the isthmus, between sections 4 & 5 – 8 & 9 in T. 34 N. R.2.E. from where said line intersects the waters of Sim-ilk Bay on the South to where it intersects the waters of Fidalgo Bay on the north – the eastern shores of Fidalgo Bay, Similk Bay and of the Sound on the west shore of said Eastern division." This boundary line clearly places March Point within the Swinomish Reservation.

## **FREQUENTLY ASKED QUESTIONS**

### **ABOUT AMENDING THE SWINOMISH CONSTITUTION**

#### **Is the Swinomish Tribe amending its Constitution?**

Yes. Last year, the Swinomish Indian Tribal Community started working with the Bureau of Indian Affairs (BIA) to make several amendments to the Tribal Constitution in order to bring it into the 21<sup>st</sup> century. The process the Tribe has followed is set out in the current Swinomish Constitution and in federal regulations, under the direction of the Secretary of the Interior.

Our constitution was written in 1936, by the Federal government. At that time, the United States governed tribes with a heavy hand. Our 1936 Constitution still includes elements of the Federal government's paternalism of that era. For example, it requires the Tribe to get the BIA's permission before we can hire an attorney, lease land or perform other routine tasks. Both BIA and the Tribe agree those elements need to be removed from our Constitution.

#### **What is the Swinomish Constitution?**

The Swinomish Constitution works much like the United States Constitution by organizing the Tribe's government. Essentially, the Constitution describes the form of government and the procedures by which the Tribe governs itself and the Swinomish Reservation.

For more information about the Swinomish government, visit:

<http://www.swinomish-nsn.gov/government.aspx>

#### **How is the Tribe governed under the Swinomish Constitution?**

The Swinomish Constitution established the eleven-member Swinomish Indian Senate, which is the Tribe's governing body. The Constitution spells out how Senators are elected, how officers of the Senate will be chosen, and provides for Senate committees responsible for various essential governmental functions, such as health, education, welfare, fisheries, law and order, etc.

For more information about the Swinomish Senate, visit:

<http://www.swinomish-nsn.gov/government/swinomish-indian-senate.aspx>.

For more information about the Senate's committees, visit:

<http://www.swinomish-nsn.gov/government/committees-and-boards.aspx>

## **Will the Tribe’s Constitutional amendments “annex” land onto the Reservation?**

No. Amending the Tribe’s constitution does not change the status of land ownership. Neither can a simple amendment of the Tribe’s Constitution change Tribal or County jurisdiction, which are governed by Federal law.

One of our proposed Constitutional amendments specifies that “*consistent with applicable federal law*” the Tribe’s territory includes the “Swinomish Reservation,” as well as lands owned by the Tribe or by the United States for the Tribe.

## **Why does Skagit County say that Swinomish will “annex” land?**

We believe those statements are based on a misunderstanding of the land status of Indian reservations. Annexation is a process used by cities. But an Indian reservation is not a city. In fact, many reservations in the U.S. overlap with towns or cities.

Fee-simple landowners on the Swinomish Reservation hold the deeds to their land like any other property owner. They pay their property taxes to the County, even though their land is within the Reservation.

But some residents on the Reservation don’t own their land, and instead lease it from the Tribe or individual Native Americans. Our land tenants pay taxes to the Tribe on the value of their homes and other structures. You may have heard about residents of the Shelter Bay neighborhood paying these taxes to the Tribe. That’s because the Shelter Bay development leases land from the Tribe and individual Natives.

## **Is the Tribe claiming that its taxes now apply to all of the buildings or lands on March Point that are outside of the Executive Order line?**

No. Several years ago the Tribe adopted its first tax on the value of buildings on leased trust land within the Reservation. In particular, the Tribe adopted a Use & Occupancy Tax after the Federal Courts ruled that the County and State could not tax buildings on leased trust land. Trust land is owned by the United States in trust for the Tribe or individual Native landowners.

The Tribe’s Use & Occupancy Tax applies to buildings on trust land that is leased from the Tribe or individual Native landowners. The Tribe’s tax *does not* apply to buildings on land that is owned by individuals in fee simple – that is, the tax does not apply to buildings *unless the building is on leased trust land*.

The Tribe does not have a tax on land, whether it be trust land or fee simple.

## **Is the Tribe claiming that it now has jurisdiction over all of the lands or activities on March Point that are outside of the Executive Order line?**

No. The jurisdiction of tribes, counties and states in Indian Country are controlled by numerous Federal laws and court rulings over the years.

The jurisdiction of a tribe or county in Indian Country depends upon the circumstances of the particular case, so it is difficult to make generalizations about jurisdiction.

The Swinomish Tribe recognizes that its jurisdiction is subject to Federal law as the supreme law of the land under the United States Constitution. The same is true for Skagit County and the State of Washington. The Tribe's proposed revisions to its Constitution explicitly state that the Tribe's jurisdiction must be consistent with applicable Federal law.

### **Will the proposed Swinomish Constitutional amendments expand the size of the Reservation?**

No. The boundaries of the Swinomish Reservation are a matter of Federal law. Those boundaries cannot be changed by a Swinomish Constitutional amendment.

The boundary of the Swinomish Reservation was established by the 1855 Treaty of Point Elliott, which reserved "the peninsula at the southeastern end of Perry's [now Fidalgo] Island, called Shais-quihl."

Maps created at Treaty time show clearly that the western boundary of the Swinomish Reservation is a north-south line between Fidalgo and Similk bays. This boundary line runs through the middle of Swinomish Golf Links.

In 1873, President Grant issued an Executive Order which attempted to unilaterally change the boundaries of the Reservation. But the United States Supreme Court has repeatedly ruled that only Congress – and not a President – can reduce the size of a reservation. The Supreme Court unanimously re-affirmed this rule earlier this year.

Based on the repeated decisions of the Supreme Court, the Tribe believes that President Grant's Executive Order did not and could not lawfully diminish the Swinomish Reservation as it was established in the Treaty of Point Elliott. But this is a question of Federal law, and not something that could be resolved through amendments to the Swinomish Constitution.

So, rather than refer to the 1855 Treaty Reservation or the 1873 Executive Order, proposed revisions to the Swinomish Constitution simply make clear that, "consistent with applicable federal law" the Tribe's territory includes the "Swinomish Reservation," as well as lands owned by the Tribe or by the United States for the Tribe.

### **What about businesses on March Point? How does the information given above apply to them?**

The answers above apply regardless of whether the land is residential or commercial.

### **Why am I hearing so much about this now?**

The Tribe has long opposed President Grant's Executive Order and the violation of our Treaty.

It's no secret that the United States has broken its promises to Indian Tribes across the country time and time again. The President's attempt to take away part of our Reservation and other violations of our Treaty are a painful part of our history. It is a story we have been telling for generations to anyone who would listen.

We can't be sure why the County has decided to publicize our issues with the Reservation boundary now. But we believe it's important for others to know this shameful history, and we are grateful that the County has focused public attention on this.

**What about the map of the Swinomish Reservation that includes March Point, mailed out by the County?**

We did not create the map for use in connection with our Constitutional amendments. We created the map to illustrate the Reservation boundaries that were defined by our Treaty with the United States. We're not sure why the County referenced it in the context of our Constitutional amendments. But the map is useful to help understand the boundary of the Swinomish Reservation as it was established in 1855 by the Treaty of Point Elliott, and then the line that was contained in President Grant's 1873 Executive Order.

**What does Swinomish Tribe's Code of its laws say about Tribal civil jurisdiction now?**

The Swinomish Tribal Code states that the Tribal Court's subject matter jurisdiction is limited to civil matters that arise within the exterior boundaries of the Reservation or lands outside the boundaries of the Reservation held in trust by the United States for the Tribe or tribal members. As just discussed, the boundary of the Swinomish Reservation is a question of Federal law.

**I have read that the Tribe is claiming all authority over any area where it has fishing or hunting rights. This seems like a huge area. Is it true?**

The Tribe has jurisdiction to regulate the Treaty fishing, hunting, and gathering activities of Swinomish Tribal members or other Native Americans. This Tribal jurisdiction was recognized by the Federal courts in the 1970s and has been exercised by the Tribe ever since. The Swinomish Tribal Code spells out the jurisdiction of the Tribal Court in criminal and civil matters that involve or are related to Treaty fishing, hunting and gathering activities as limited to all usual and accustomed fishing grounds and stations of the Tribe, all open and unclaimed lands reserved by treaty for hunting or gathering and on such other lands and waters as is necessary for access to such fishing, hunting and gathering sites.