

WATER BOUNDARIES OF THE LUMMI RESERVATION
RESERVATION TIDELANDS
and
POINT FRANCIS - TREATY ROCK BOUNDARY LINE

Prepared for:
THE LUMMI INDIAN TRIBE
by
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WATER BOUNDARIES OF THE LUMMI RESERVATION

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Documents

Isaac I. Stevens to George Manypenny	Dec 30, 1854
Asst. U.S. Atty. to Supt. Tulalip Agency	May 9, 1902
State Atty-Genl. to State Land Commissioner	May 9, 1902
State Land Commissioner to State Governor	May 9, 1902
Whatcom Co. Auditor to Supt. Tulalip	May 15, 1902
State tideland deed to C.X. Larrabee	Feb 21, 1902
Secy. to State Governor to Supt. Tulalip	May 27, 1902
Article in Bellingham Herald, Sunday edition	Jun 11, 1911
Asst. Commr. State Lands to Frank O. Sether	Jan 25, 1956
Affidavit (1917) Lummi Indians re: boundary	Feb 2, 1924
Manuscript map (ca. 1857) - Point Francis	

Point Francis - Treaty Rock Boundary Line

In the Romaine case mentioned in the foregoing section of this report, elderly Indian witnesses, some of whom had been present at the treaty negotiations testified as to their understanding that the eastern boundary of the Lummi reservation was a straight line extending from Point Francis to Treaty Rock.

We have attempted to find additional documentation relating to this boundary. The only evidence which is presently at hand consists in the recorded statements of Indians who were at the treaty negotiations and descendants of such individuals who corroborate that this is what the older Indians passed down through aural history. In addition to the record of testimony in the Romaine case we attach herewith a separate affidavit made in 1917 by some of the Romaine witnesses and other Indians which was recorded in 1917 and published in the record of House of Representatives Indian Committee hearings in 1924. This affidavit describes the boundaries of the Lummi Reservation as understood by these people and includes the Point Francis - Treaty Rock straight line boundary.

Further, in addition to the maps and documents which we previously supplied to the Lummi Tribe we add the 1925 Gooch survey showing Treaty Rock as well as other maps showing Treaty Rock and Point Francis. (See attachments).

Several questions have been raised regarding the treaty understandings of the eastern boundary of the Lummi Reservation. One of these questions relates to the lack of official records in the treaty proceedings or elsewhere denoting the Treaty Rock - Point Francis line. In this regard it is noted that the Treaty of Point Elliott was negotiated at Mukilteo and there is no record that Governor Stevens was at Bellingham Bay at around January 1855 to point out Treaty Rock or to discuss the eastern boundary of the Lummi Reservation.

Governor Stevens was at Bellingham Bay exactly one year prior to the treaty - in January 1854 - and during that visit, according to his own correspondence with the Commissioner of Indian Affairs he discussed the future treaty matters with the Indians. While details are not provided specifying the content of the discussions, it seems entirely possible that the Treaty Rock - Point Francis line was discussed at this meeting.

It seems reasonable that the Indians and Stevens discussed this line on site at Bellingham Bay and that the understanding was reiterated later at Mukilteo. In this regard it is worth noting that the exact boundaries of the reservations do not form a part of the official treaty records. The Lummi Reservation is not unique in this respect.

Memorandum dated September 24, 1973 from G.D. Dysart to Superintendent of the Western Washington Agency - Lummi Reservation Boundary, Point Francis to Treaty Rock

Testimony re: Point Francis - Treaty Rock Boundary Line

The 1973 Dysart memorandum points out that apart from Indian statements there is no evidence that Governor Stevens represented to the Indians that the eastern boundary of the Lummi Reservation would be a straight line extending from Point Francis to Treaty Rock. The memorandum notes that the decision in the Romaine case apparently relied on Indian testimony regarding the straight line boundary, but that the actual testimony given in that case is apparently no longer available.

At pages 3-4, Dysart says:

"The Indians allege that Governor Stevens pointed out the intended reservation boundary as being a straight line from Treaty Rock to Point Francis (tip). Certainly if this were true we would have no difficulty in holding this to be the true boundary in view of the consistent holdings of the Supreme Court regarding the interpretation of ambiguous language in Indian treaties or in statutes or Executive Orders in fulfillment of treaty obligations. However, we have no convincing evidence (indeed, no evidence at all other than Indian hearsay allegation) that Governor Stevens or anyone else on behalf of the United States ever made such a representation. There have been claims that Indians present at the treaty or immediate post-treaty discussions have testified to this effect in earlier court cases but we have not been able to uncover proof of such testimony.

. . . . The Court refers to testimony of Indians that it was always understood that on the eastern side of the reservation "the boundary line ran from Treaty Rock down to Point Francis." Another said it ran "from Point Francis out to Treaty Rock" (emphasis added). (The quoted language is from the Court's opinion and may or may not be the exact words used by the witnesses. We do not have their testimony available and we understand it is no longer available in the Court records or case files. We have examined the "Plaintiff's proposed statement of testimony, apparently prepared by the United States Attorney and his assistant (both now deceased) in connection with the appeal to the Circuit Court of Appeals and approved by the District Judge. This evidently formed the basis for statements in the Court of Appeals decision.)"

Our research indicates that the testimony given to the Romaine court by the elderly Indian witnesses was independently preserved in a joint affidavit signed by thumb prints and witnessed December 10, 1917.

The Indians who jointly signed the affidavit were:
Louis Washington, Henry Kwina, George Tislano, August Martin,
Albert Descanum and George Warbass.

Henry Kwina, George Tislano, Albert Descanum, and George Warbass (signers of the above affidavit) were also among the Indian witnesses in Romaine. We do not have the exact date of their testimony in Romaine, but the District Judge, Jeremiah Neterer, signed an order dated March 13, 1918 approving the summary of their evidence for transmittal to the appeal court.

The proximity of the dates (December 10, 1917 for the affidavit and March 13, 1918 for the approval of the summary of evidence in Romaine) and the identity of the Indians strongly suggests that the testimony of these aged individuals (some of whom had been at the treaty negotiations) was preserved both by affidavit and by testimony in court at about the same time.

The affidavit, like the testimony in court, gave the Indian understanding that the eastern boundary of the Lummi Reservation ran in a straight line from Point Francis to Treaty Rock.

A typewritten copy of the December 10, 1917 affidavit was offered in evidence at a hearing before the Committee on Indian Affairs of the House of Representatives February 2, 1924. At that time, Peter James, of the Lummi Reservation said that he had the original handwritten affidavit in his possession. Peter James had also served as interpreter for the Indian witnesses in Romaine. The typewritten copy given to the House Committee was printed in 1924 at page 35. A copy of the printed affidavit and the cover sheet are reproduced on the next two pages.

Memorandum dated September 24, 1973 from G.D. Dysart to Superintendent of the Western Washington Agency - Lummi Reservation Boundary, Point Francis to Treaty Rock

Point Francis as a specific point or as a broad area of land

This issue is discussed at several places in the 1973 Dysart memorandum.

At page 2, lines 1-3:

" In 1958 we modified that view and said that "if 'Point Francis' * * * means an isolated point of land, the boundary includes a portion of Bellingham Bay."

And at page 2, lines 11-14:

" In that opinion we concluded that "in the absence of proof that Point Francis was the name of the entire peninsula at the time of the treaty, the eastern boundary of the reservation would include a portion of Bellingham Bay."

Later at page 5, lines 1-11 Dysart discusses difficulties in defining the eastern boundary from Point Francis to Treaty Rock if Point Francis is not a definite point of land.

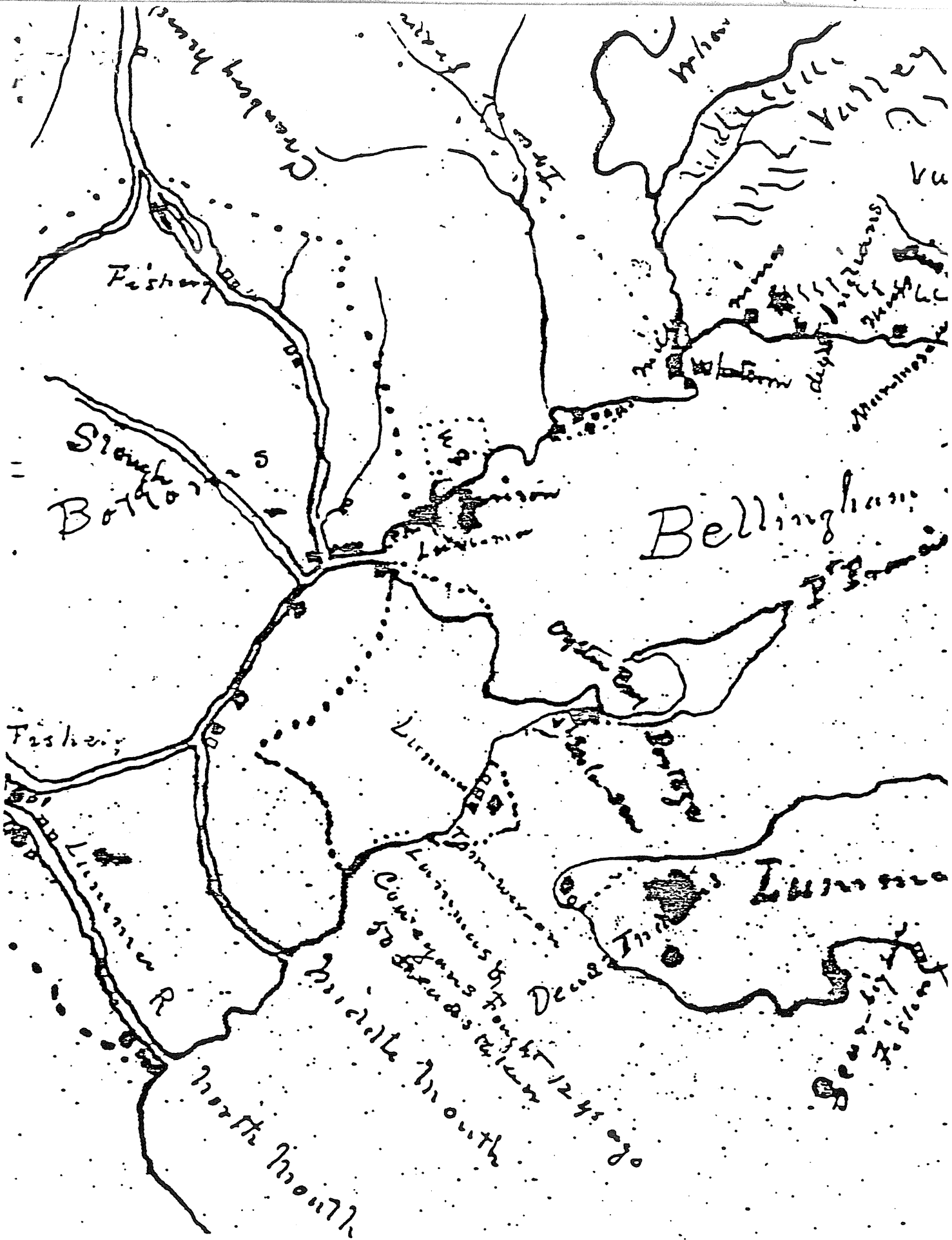
"We believe that the above-quoted portions of the opinion could be construed as expressing the Court of Appeals' view that the Point Francis-Treaty Rock line was a straight line between two points rather than a low water line along the shore.

This does present problems, however. Where is the point on Point Francis at which the line takes off? The language of the Executive Order is "around Point Francis." Point Francis is actually a rounded peninsula without a sharp tip or point. How far "around" it do you go before you start a line northeasterly to Treaty Rock. In fact, from the tip of Point Francis to Treaty Rock was almost northerly rather than northeasterly."

* * * * *

Our research indicates that at least one map from the treaty era shows Point Francis as a definite point of land. This suggests that at treaty time Point Francis had - or was conceived to have - a different contour from the more rounded one which appears on modern maps.

This map, a portion of which is reproduced on the following page, is an unsigned manuscript map which dates from about 1857. The mill which is noted on the map was constructed in 1857. The map is part of a collection of maps transmitted by the Northwest Boundary Commission to the federal government about 1861 or 1862. A copy of the map was entered as a United States exhibit in U.S. v. Washington. We have previously supplied a copy of this map to the Office of the Lummi Reservation Attorney.



Greenberry branch

Fishing

Sloughs
Baths

Fishing

Linnell

North mouth

Bellingham

Linnell

Tom-wagon
Covey's Spring
Duck
of 12/43 ago
Covey's Spring 12/43 ago

ed people in every way as far back as I can remember up to this

The CHAIRMAN. Do you say that these 500 Indians living on the
 mmi Reservation are all making a living fishing, logging, etc.?
 Mr. JAMES. Yes.

The CHAIRMAN. You say they are reasonably contented and pros-
 perous?

Mr. JAMES. I could say yes. They are contented, in a way. They
 living and are earning enough to take care of their families.
 ese all have farms and do farming the same as any other farmers.
 The CHAIRMAN. There is not a feeling of discontent on account of
 it not being able to make a living?

Mr. JAMES. There is, because they should have allotments.
 The CHAIRMAN. I am not speaking of that end of it. Whatever
 recover from this claim is another story. I am trying to find
 the condition of the Indians who live on the reservation. You
 e they are all making a living and are fairly contented. Of
 rse, they are not contented about this thing at issue, but as citi-
 ns of the country they are in about the same shape as all the other
 izens.

Mr. JAMES. I would say that they are contented, as far as that
 es.

Mr. HANLEY. They are good, law-abiding citizens.

Mr. JAMES. Yes, sir.

Mr. HANLEY. What was their attitude bearing on that point during
 e war?

Mr. JAMES. During the war we had a number of boys who had been
 rsons, and some came back wounded to that very reservation, and
 ost of our young people were overseas. Some of them did not get
 er there.

The CHAIRMAN. Have you anything further to say to us that is
 tal to the claims?

Mr. JAMES. The only thing I wanted to say is this, that the people
 the Sound country are supporting this bill, and that is why this
 egregation is sent over here before the committee to see that the bill
 e carried through the way it is framed. These different claims will
 e for the Court of Claims to pass upon, to determine the nature of
 e claims, and these claims which I cited are included, not only this
 e reservation but on other reservations having these claims against the
 e government for making their reservation smaller and also for the
 e allotment of land according to what was stated in the treaty.

The CHAIRMAN. Suppose the committee should see fit to proceed
 ith the bill, dealing only with these Indians who are connected with
 ty by reason of treaties, would you have the same interest in the suc-
 cessful progress of the bill or not?

Mr. JAMES. In regard to being a party to the treaty, I am part of
 he parties to the treaty, because I am one of the Duwamish, and if
 here is any reasonable settlement I believe I would be included.

The CHAIRMAN. I just wanted to get your attitude on it. We will
 recess now until 2 o'clock.

(Thereupon, at 12:45 o'clock p. m., the committee recessed until
 2 o'clock p. m.)

INDIAN TRIBES OF WASHINGTON.

AFTER RECESS.

The committee reconvened, pursuant to recess, at 2 o'clock p. m.,
 Hon. Homer P. Snyder (chairman) presiding.

STATEMENT OF MR. PETER J. JAMES—Resumed.

The CHAIRMAN. Proceed.

Mr. JAMES. I have an affidavit in the original handwriting, and
 I had this typewritten, in regard to the Lummi Tribe. I have this
 map showing the different points and size of the original reservation.
 These are witnessed by thumb mark, and two of them are still living.
 They are very old people, who swear to the original boundaries of
 the reservation before it was made smaller. I would wish to have
 these filed in the language of the old people, 90 years old and older.
 (The statements referred to are as follows:)

(Northern Branch Northwestern Federation of American Indians. President, Mrs.
 Martha Follmer, Clear Lake, Wash.; vice-president, Chum Wilbur, Lattimer, Wash.;
 Audie Heck, secretary-treasurer, Mount Vernon, Wash.)

LUMMI INDIAN RESERVATION.

Washington, December 10, 1917.
 We, the undersigned Indians of the Lummi Tribe, respectively sign, by
 thumb mark, regarding the knowledge with reference to boundary lines of
 our reservation, according to agreement arranged before us at the time of the
 survey.

Beginning at Yas-yes-yes-son or Treaty Hook, running due north to Ch.
 la, km between Nu kutch kaum or now Haveli Lake; thence west to Nu-eh-eh-
 hom or now Ice Station, a large post being set for reservation corner point
 red 8 feet high 14 inches at the base and about 6 inches at the top; thence
 south across bay to Che-pun-nung or Lummi Hook; thence east through Sim-
 may-oh or Lummi Island and around Se-ah-ah or Point Francis; thence due
 north-easterly to the place of beginning Yas-yes-yes-son or Treaty Hook.
 With reference to the corner post mentioned above, all of the undersigned
 are living witnesses as being the corner of Lummi Reservation.

Albert Descummi, who at one time was employed as chairman by Surveyor
 John Tennant in surveying adjacent land to said post, stated to said Albert
 Descummi that "this is your reservation corner post." First survey of reser-
 vation about six or seven years after treaty.

LOUIS WASHINGTON (decdt).
 HENRY KWINA.
 GEORGE TIELAUSHI (decdt).
 BY ALBERT MARTIN.
 ALBERT DESCUMMI.
 GEORGE WAMASS (decdt).

Witnesses to thumb mark:

FRANK PLASTER,
 Nohmar Guai.

STATE OF WASHINGTON,

County of Pierce, ss.

Charley Saticummi, being first duly sworn and under oath, says that he is
 a member of the Duwamish Tribe of Indians, which formerly lived in the
 territory extending from north of Ballard, on Angel Sound, running thence
 back beyond Lake Washington to the hills, and southward, including Renton,
 and crossing the valley near the present site of Orilla, and over to the sound
 at Point Pulley.

That in the year 1854 Gov. Isaac I. Stevens, representing the United States
 made a treaty with this allot and other members of said tribe, by which he
 agreed--they should have a reservation covering a large portion of the lands
 above noted; but that in the year 1856 he again called on allot and his as-
 sociates and desired them to cede a large part of said lands.