

**Getting to 100 Percent:
Challenges to Treaty-Making in Hul'qumi'num Territory**

Summary of a strategic workshop held at the University of Victoria

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Sponsored by: Hul'qumi'num Treaty Group
and
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Executive Summary

A diverse team of specialists came together on February 17, 2003 at the University of Victoria for a strategic workshop called "Getting to 100 Percent: Challenges to Treaty-Making in Hul'qumi'num Territory". The participants included First Nations leaders, community members, researchers, academics, lawyers and consultants from across BC with a variety of expertise on treaty-related issues. The workshop was part of the "Hul'qumi'num Land Selection Study", conducted by the Hul'qumi'num Treaty Group (HTG) and the POLIS Project on Ecological Governance at the University of Victoria.

Robert Morales, chief negotiator for HTG, gave workshop participants an introductory presentation about Hul'qumi'num communities and the key challenges to treaty-making in Hul'qumi'num territory. Robert also described the "getting to 100 percent" mandate, i.e., the mandate to identify strategies for the Hul'qumi'num to retain a connection with all of their traditional territory.

The remainder of the day was spent in a combination of large group discussion and smaller breakout sessions to discuss the range of strategies that could be employed in "getting to 100 percent". Options discussed ranged from securing treaty settlement lands (including buying private, willing-seller, lands), to having an ongoing role in land and resource management, to establishing long-term fiscal and tenure arrangements.

The workshop was successful both in identifying innovative strategies and in bringing together a diverse group of people to learn more about the complexity of treaty-making in Hul'qumi'num territory. Summary notes from the workshop are included here. The ideas and strategies from the workshop will be incorporated into a report on the Hul'qumi'num Land Selection Study for use by HTG in treaty negotiations.

The workshop was followed by an evening public forum at the University of Victoria, featuring a talk by Robert Morales on the complexities of treaty-making on Hul'qumi'num territory. Over 60 people were in attendance. The forum was opened with a prayer song by local elder Dr. Samuel Sam and his son Greg Sam. Following Robert's presentation, there was a question and discussion period. The forum closed with a special honour song for the speaker by Dr. Samuel Sam and Greg Sam.

Background and Objectives of the Workshop

As part of preparations for treaty negotiations, the Hul'qumi'num Treat Group (HTG) commissioned the POLIS Project on Ecological Governance (University of Victoria) to carry out a *Hul'qumi'num Land Selection Study* to help identify lands that may be required, and suitable, for inclusion in a final agreement. One aspect of the study assessed the social, cultural, and economic values of lands in the territory. An additional objective of the study was to "identify strategies for the Hul'qumi'num to retain a connection with all of their traditional territory."

This latter objective was the focus of this workshop. It comes from the mandate given to HTG by Elders and community members to retain a connection to 100 percent of their traditional territory forever. The central goal of the workshop was to identify and assess strategies that the Hul'qumi'num may pursue, inside and outside the treaty process, to retain as much connection as possible to 100 percent of their traditional territory.

Challenges

Treaty-making in Hul'qumi'num territory is extremely complex, making the "getting to 100 percent" mandate a significant challenge. Perhaps most challenging is the lack of Crown land available for inclusion in a treaty agreement. The Esquimalt and Nanaimo Railway land grant of 1884 resulted in the privatization of more than 265,000 hectares of land in Hul'qumi'num territory. This land, originally granted to the coal-baron Robert Dunsmuir and his Associates (in exchange for the construction of the railway), was subsequently subdivided and sold off to a variety of interests. Today, the largest landowners are forest companies, including TimberWest (88,000 hectares), Weyerhaeuser (53,000 hectares), and Hancock (12,000 hectares). In the entire territory, there is less than 40,000 hectares of Crown land, or just under 12 percent of the entire territory. To complicate matters further, a significant portion (approximately 15 percent) of this Crown land is protected in parks or ecological reserves and thus not available for inclusion as treaty settlement lands.

A second major challenge is the high degree of overlap of Hul'qumi'num traditional lands with small private holdings. Many of the areas of cultural and economic importance to the Hul'qumi'num are found along the east coast of Vancouver Island, along major streams, and on the Gulf Islands. Some of these areas were included in Indian Reserves, but many were not. These areas have been highly subdivided into small private holdings, many of which have been developed into farmland, residential housing, or commercial enterprises. While some of these lands may be available for purchase (from willing-sellers) and transfer to the Hul'qumi'num through the treaty process, most of it will not be available.

A third challenge, related to the above issue, is the high cost of land in the region. Over the past few decades, the east coast of Vancouver Island and the Gulf Islands have experienced rapid growth (population influx and land development) and this trend is expected to continue in the coming decades. As a result, real estate prices are relatively high. This is particularly the case for land along the coast (waterfront) and on the Gulf Islands. Acquiring a significant amount of this land, even where owners are willing to sell, is a very expensive proposition.

The Hul'qumi'num approach to land negotiations is based on the principle that the land is inalienable from the people and the culture. The goal is not to craft a 'cede and surrender' or 'extinguishment' treaty, but to design one that reconciles Crown and Aboriginal Title. Since there is little chance of the Hul'qumi'num people owning in fee simple all of the traditional lands in the territory, the Hul'qumi'num Treaty Group is exploring creative approaches to "getting to 100 percent."

Not having 100 percent fee simple ownership does not preclude a settlement that meets HTG's mandate of maintaining Aboriginal Title connections to 100 percent of the traditional territory. The Hul'qumi'num are seeking a unique route to retain a connection to the territory, one that involves some combination of securing treaty settlement lands (including buying private, willing-seller, lands), having an ongoing role in land and resource management, and establishing long-term fiscal and tenure arrangements. These options are briefly described below.

Treaty Settlement Lands

A central goal of the treaty negotiations is to secure ownership of selected lands in Hul'qumi'num territory. Treaty settlement lands will likely include those areas where sole ownership and jurisdiction is judged to be most important. This may involve the selection of Crown lands or the purchase of willing-seller lands. There are several key questions related to securing treaty settlement lands. *How much land can be secured in this way? What criteria should be used to select these lands? Should the focus be on selecting lands of high cultural value? Lands of high economic value?*

An Ongoing Role in Land and Resource Management

Securing an ongoing role in the use and management of lands and resources in Hul'qumi'num territory is an important objective of treaty negotiations. Other treaty agreements have typically included provisions for some form of involvement in decision-making about resource use and management in areas outside of treaty settlement lands. This may take the form of rights to use specific resources (timber, fish, wildlife, water, etc.) and/or shared decision-making responsibilities to certain lands or resources (e.g., seats on management committees, co-management agreements with governments). *What kinds of arrangements are possible to ensure an ongoing role for the Hul'qumi'num in land and resource management?*

Long-Term Fiscal and Tenure Arrangements

Treaty settlements typically involve a capital transfer component, as compensation for the (historic and future) loss of lands and resources. This will be an important component of any agreement between the Hul'qumi'num, Canada and British Columbia. Apart from this capital transfer, *what other kinds of fiscal or tenure arrangements are possible to allow the Hul'qumi'num to benefit from the use of lands and resources in their traditional territory?*

One idea is to seek a share of royalties (or taxes) on lands and resources in the territory. Another idea is to extend the same level of services and benefits (education services, health services, tax status, etc.) to people living off treaty settlement lands, but still within the territory, as those that are able to live on treaty settlement lands.

In addition to these measures, formal recognition on the part of governments (and other parties) of the inalienable nature of Hul'qumi'num connections to the entire territory is important. One

way of recognizing this connection is to designate and protect sites of cultural importance to the Hul'qumi'num (particularly those outside of treaty settlement lands). *What forms might such protection take?*

Finally, outside of the treaty process there may be strategies that can contribute to the goal of getting to 100 percent. The issue of private lands is particularly pertinent here. *Are there ways that the Hul'qumi'num can maintain some degree of connection to, or control over, private lands and resources in the territory? What are the prospects for joint ventures with private firms, such as some of the large private forest owners in the area? Are there other mechanisms for the Hul'qumi'num to exert control over the use and management of private lands in their territory? What are the prospects for partnership between the Hul'qumi'num and other civil society (non-governmental and non-profit) organizations?*

What about the implementation of trust models, such as the "Community Ecosystem Trust" model proposed by POLIS? This model was developed to facilitate decentralization of decision-making, use and management of land and resources. It proposed that local groups, including First Nations, come together to form an institution to take over management of local lands and resources (ecosystems) in order to foster local economic development and ensure the sustainable management of these areas. Under this model, the local institution would be entrusted with the management of local ecosystems to achieve economic and ecological benefits for the local community. This model was developed for Crown lands and resources: *How relevant is this model in the Hul'qumi'num case, where most of the land is private?*

Reviewing these challenges and options raises a number of questions about strategies for getting to 100 percent. For example, one strategy in treaty negotiations would be to try to maximize the amount of treaty settlement lands that would be acquired, particularly the acquisition of Crown lands. A different strategy would be to seek some form of agreement with the Crown for shared management of Crown lands in the territory (e.g., through a trust or co-management model), and to focus on the acquisition of private lands from willing sellers.

An assessment of these and other questions about strategy formed a critical part of the workshop. The invited participants were asked to consider the above questions in advance of the workshop, and to come prepared to share ideas, experiences, resources and further questions that might contribute to meeting the challenges outlined.