

**A-a-a sii em nu siiye'yu,  
sii em nu**

**Quw'utsun Mustimuhw**

*Hiiye'yutul tst 'u to' mukw' stem 'i 'u tun'a umuhw*

**"Everything in nature is part of our family  
– we are all relatives"**



# In the Beginning...

Cowichan people have creation stories  
- we have been here that long...

Cowichan people welcomed the very first  
*hwunitum* (white person) to our land



Cowichan people have been here for time-immemorial

We have creation stories referring to Mt Prevost and other landmarks in our traditional territory

Tell about one of the creation stories?

# Our Laws and Traditions

*'uy' shqwaluwun*

"Good thoughts and feelings"

*hwial'asmut tu tumuhw*

"Take care of the earth"

*'umu ni'us 'uw tumuhw'ul nilh s'ul'e'tst*

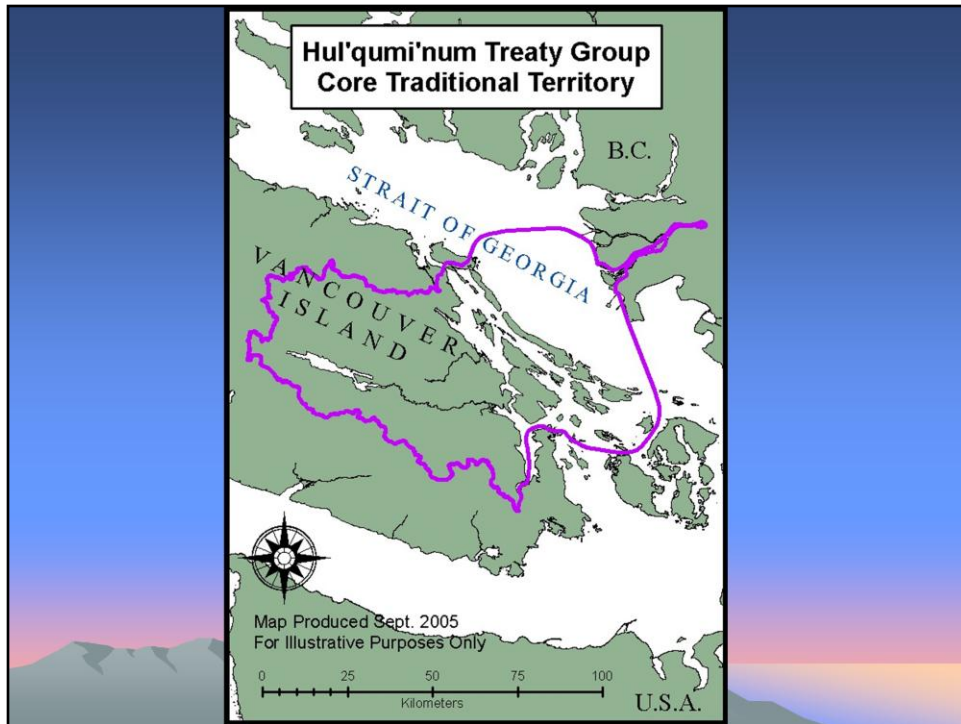
"It's not just land; it is our life"

*'uhwiinul*

"Take only what you need"

We have laws of conduct that relate to who we are, and how we are connected to the land

We are not separate from the land, but are part of it



almost 600,000 hectares

6,400 Hul 'q'umi'num Mustimuw

## Aboriginal Rights and Title

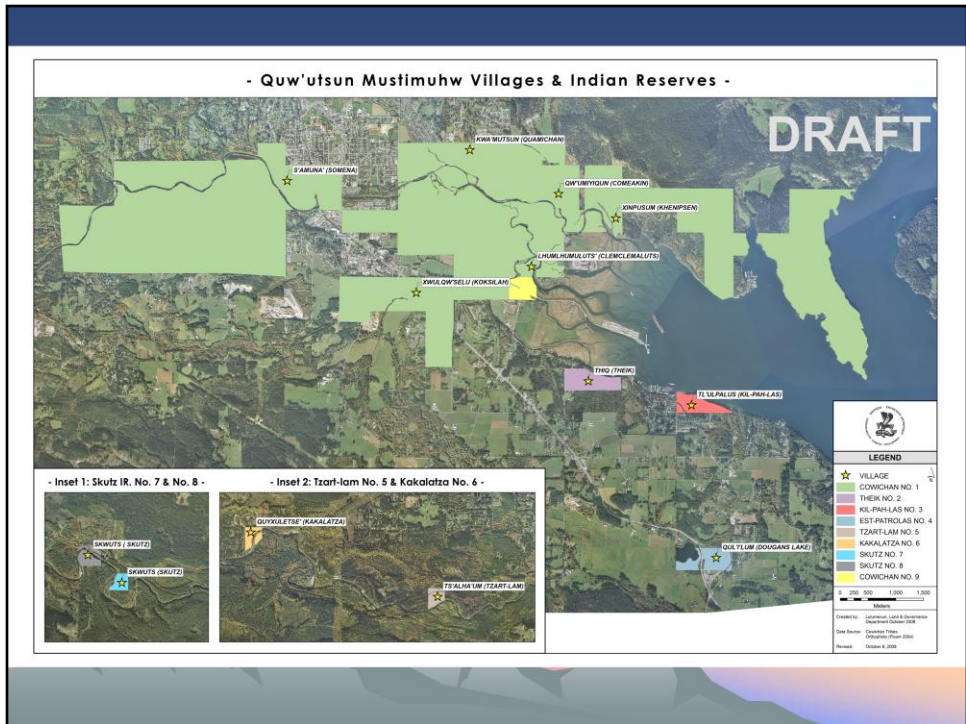
- We have never surrendered land, water or resources
- We have never signed a treaty
- We have never been compensated for the Alienation of our Territory

We have Hul q'umi'num place names for all landmarks in our traditional territory

James Douglas never negotiated a treaty with Cowichan. He considered them not to have enough of a hierarchical leadership structure, so purposefully neglected to pursue a treaty.

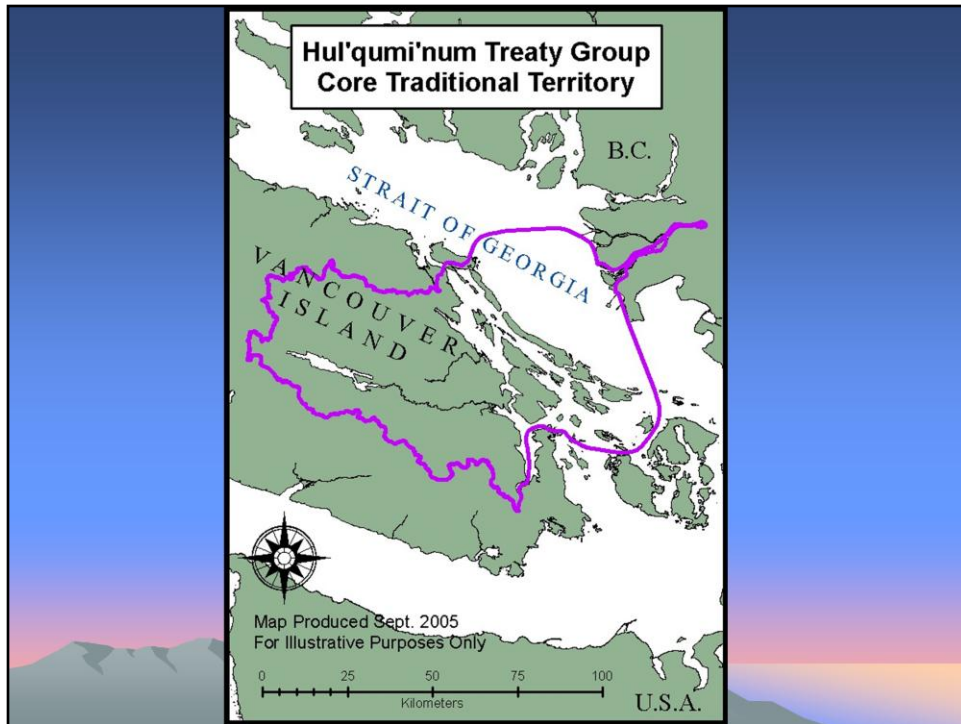
# Aboriginal Rights and Title

- The E&N land grant: Federal government handed over 80% of our territory for a railway to be built
- Colonization resulted in further lands being alienated
- Most of what little Crown Land available is encumbered with legally binding tenures
- Therefore, very little of the territory is on the table for Treaty Negotiations
- Also the government refuses to negotiate any mechanism that would allow Cowichan to obtain private lands on a willing buyer/seller basis.



This is the land that Cowichan Tribes has for housing and all other traditional and cultural uses.

8 reserves, of which IR 1 is the largest.



The reserves make up just a little spec on this map of the traditional territory

almost 600,000 hectares

6,400 Hul 'q'umi'num Mustimuqw



## Duty to Consult

- The Duty to Consult applies to the Federal and Provincial Crown, their Ministers, and employees or agents and cannot be delegated.
- THEREFORE, local governments that require Crown approval for zoning need to be involved in the consultation process
- Ultimately decisions come from the Crown

## Evolution of the Legal Duty to Consult

- 1763: Royal Proclamation of King George III recognizes aboriginal title and rights to land
- 1909: Three Salish Chiefs, one from Cowichan, went to England to petition King Edward VII to formally request a judicial hearing of the Indian Land question in British Columbia
- 1920s: Government of Canada makes it a criminal offense for First Nations to retain legal counsel

### Second point

Even though the Elders of the time spoke very little English they knew that something was being lost with respect to their land

And then in the 1920s they were proven correct – FN knew that their land was being taken away...

## Evolution of the Legal Duty to Consult

- 1973 Calder v. BC  
Decision recognized land rights based on Aboriginal Title in the absence of a treaty
- 1997 Supreme Court of Canada  
Delgamuukw Decision recognized Aboriginal Title exists and has not been surrendered by any acts of the Crown. Therefore, Aboriginal Rights and Title and Crown interest should be reconciled through a negotiation.
- 2004 Supreme Court of Canada  
Haida FN and Taku River Decisions

Haida and Taku decisions stated the Crown has a duty to consult, and if necessary accommodate FN in situations where aboriginal rights and title are asserted but have not been proven in a Court of Law or codified in a Treaty

## Duty to Consult

We require consultation when the following are going to be considered in our Territory:

- any alteration to heritage objects or heritage sites
- alienation of Crown lands, including park creation
- plans, licenses, tenures, permits or other authorization relating to lands and resources
- extraction of resources or exploration activities





We are not “the public” and require a separate and distinct process of discussion, consultation, negotiation and accommodation.

Separate and meaningful discussion is required – public open houses are not appropriate for consultation

## Steps in the Referral Process

1. Meet with the proponent prior to local government involvement

Discuss what the proponent would like to do, what are the potential negative impacts to Cowichan's rights and title, and what are the potential benefits to Cowichan

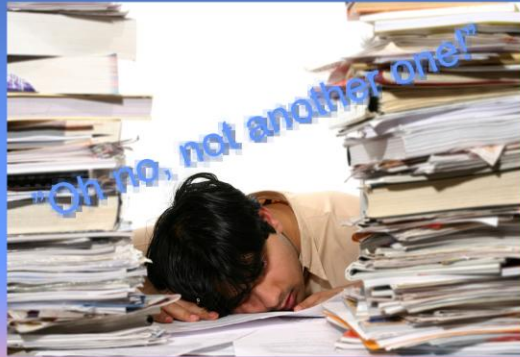
Ideally have discussions with proponent prior to local government involvement

This step can save a lot of time and money

The more successful developments have this as a first step

# Steps in the Referral Process

## 2. We receive the referral



Types of referrals – forestry, archeology, moorage, Crown Land dispositions, Residential Developments (eg. CVRD)

We always get inadequate maps!

30 days is not enough time for most FN to develop a well-formulated response



**We receive more than 700  
referrals per year!!!!**

And we spend an average of 2.5 days per referral

Requires lots of resources and time, depending on the referral

– example Paldi required 30 to 40 days of 1 full-time staff person

Sometimes there is legal involvement



## Steps in the Referral Process

3. Read, enter onto a database and determine who needs to be involved in a response.



Does the referral make sense? Is map good enough to tell us where it is?

First question would be, do we need to respond at all?

Is it in our territory? → GIS

Is it relevant to our interests?

Do we need to request assistance of cultural advisors?

## Steps in the Referral Process

### 4. Gather information from resource people:

Lands department  
GIS department  
Treaty department  
Archeology  
Cultural Advisors  
Fisheries  
Legal Advice  
HTG  
Fellow HTG member FN

Coordination of a referral in this process requires significant time and resources.

## Steps in the Referral Process

5. Determine if recommendations are required from the Committee and Council levels:

Lands Management Committee

Environment and Resources Committee

Chief and Council

Connection to previous slide – once info gathered and if the issue impacts CT there will be work done by all or most of the people or departments listed on previous slide before it gets to these committees.

Each committee provides direction to staff, and recommendations to Chief and Council, if required.

Major referrals may require Chief and Council to issue a Band Council Resolution (BCR)

# Steps in the Referral Process

Who pays for all our hard work?



Cowichan Tribes does (not INAC)... and we are under-funded

Referrals require lots of resources and time depending on the referral – example Paldi required 30 to 40 days of 1 full-time staff person, plus legal involvement and involvement of other staff and resource people

We receive no cash compensation for reviewing and responding to referrals

We are currently exploring a fee for responding to referrals from all levels of government

# Huy tseep q'u

