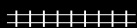




THE GREAT LAND GRAB

IN HUL'QUMI'NUM TERRITORY



Dominion Lands
Grant
to
The Esquimalt and Nanaimo
Railway Company,
situate in the
Province of British Columbia,
Certain lands on Vancouver Island,
Dated 21st. April, 1887.

Department of the Interior
Ottawa, 21st. October, 1913.
I hereby certify the within to be a
true and faithful copy of the record of
the original Letters Patent as entered in
Lib. 23. Folio 449.

W. C. Côté

Registrar of Dominion Lands Patents.

AK

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..... « AN ACT OF »

EGREGIOUS PIRACY

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IT'S CALLED THE GREAT LAND GRAB BY THE
HUL'QUMI'NUM PEOPLE. WHILE IT HAS YET
TO BE ACKNOWLEDGED BY GOVERNMENTS IN
VICTORIA AND OTTAWA, IT WAS A CLEAR ACT OF

C · O · L · O · N · I · A · L ≈ THEFT ≈

AND REMAINS TO THIS DAY A LARGELY
INVISIBLE STAIN

..... « ON BC HISTORY »





IT HAPPENED IN THE 1880s



The governments of Canada and BC gave more than 800,000 hectares of land to the E&N Railway Company to help finance it. About one-third—almost 270,000 hectares—was Hul'qumi'num land, a vast section of southeastern Vancouver Island.

For the Hùl'qumi'num peoples, the deal marked the beginning of a gradual, unrelenting decline in our economic, cultural and social well-being, in which we witnessed the loss of most of our land and resources — almost 85 percent.

Today, through the BC Treaty Process, the six First Nations that comprise the Hul'qumi'num Treaty Group — the Cowichan, Chemainus, Penakut, Halalt, Lyackson and Lake Cowichan — are committed to reclaiming the lands and resources of our traditional territories, developing new relationships with both levels of government — and ultimately, starting a new chapter of prosperity.

A fair treaty settlement requires a full understanding of the history of this territory—on our part and on that of our partners in the treaty process.

This booklet provides a brief summary of that history, paying particular attention to the event that had the biggest, and the gravest, impact on our communities — the Esquimalt & Nanaimo (E&N) railway land grant.

“Lands that had been owned and managed for centuries by Hul’qumi’num families and communities were suddenly off-limits.”

- Robert Morales

Front cover photo: Old growth forest
Royal BC Museum Photographic Collections, PN I-33657

E & N

COLONIAL 'PRE-EMPTIONS'

THE EROSION OF

HUL'QUMI'NUM LANDS BEGINS

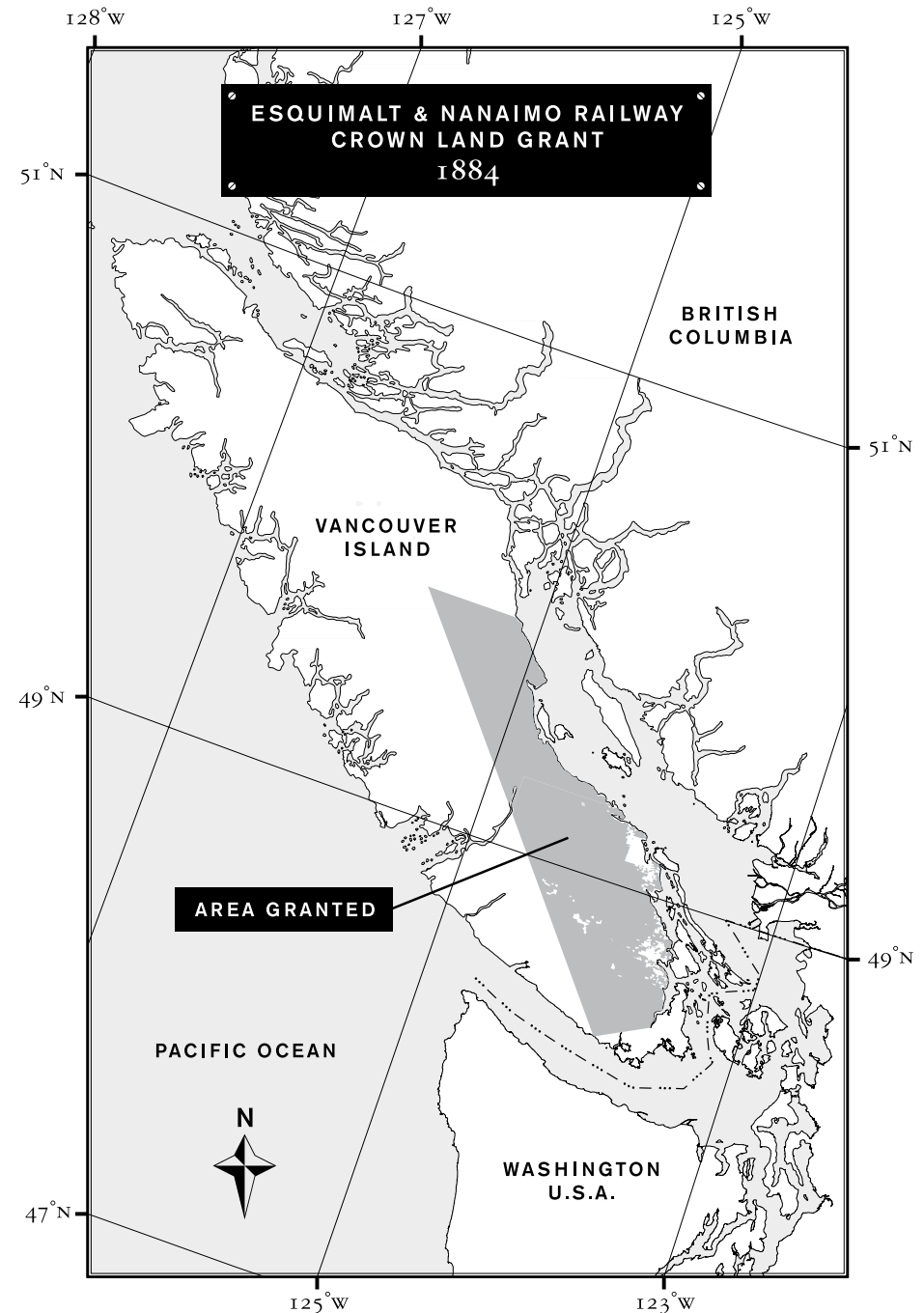


Although *Hwulunitum* (people of European descent) had been coming to the northwest coast of North America since the late 18th century, the alienation of Hul'qumi'num territories didn't really start until the 1850s, when the Colony of Vancouver Island began promoting the area to newcomers.

Between 1850 and 1854 Governor James Douglas negotiated 14 'land-sale agreements' with First Nations in and around Fort Victoria, Nanaimo and on the north Island at Fort Rupert. These agreements—commonly called the 'Douglas treaties'—extinguished Aboriginal title to certain areas within these First Nations territories and allowed *Hwulunitum* settlers to take possession of lands for farming and natural resources.

No treaties were ever signed with Hul'qumi'num peoples. After 1854 Douglas instructed colonial surveyors to mark out 'Indian Reserves' for First Nations communities in regions undergoing *Hwulunitum* settlement.

These reserves marked out some (though not nearly all) of the village areas owned by Hul'qumi'num peoples and a few of our important fishing places. The remainder of Hul'qumi'num territory—our other villages, graveyards, camping sites, hunting territories, fishing places, clam beds and camas harvesting areas, our spiritual sites, cultural sites, indeed the rest of the landscape with which we had developed an intimate relationship—were left unprotected from settlement or resource extraction by the colonial government.



THE ASSAULT

ON HUL'QUMI'NUM TERRITORY

Even as early as the mid-1850s very few *Hwulunitum* had settled in Hul'qumi'num territory. The 'discovery' of gold in the late 1850s in the BC interior would change all this. It put BC on the map, drawing tens of thousands of American miners into the region in search of fortune.

When the gold rush ended a few years later, many of these fortune hunters decided to settle. The massive increase in the *Hwulunitum* population — Victoria's population grew from a few hundred *Hwulunitum* in the mid-1850s to almost 4,000 in the early 1860s — meant increased pressure on First Nations lands. With much of the best farmland in the Victoria area already occupied, colonial officials looked to Hul'qumi'num territory as the next place to establish *Hwulunitum* settlements.

A formal survey of the area ordered by Douglas in 1859 reported that there were about 45,000 acres of superior agricultural land in the Cowichan Valley. There was enough good land in the area, the survey read, "to provide farms for a population of from 500 to 600 families, at an average of 100 acres each."

This land, which would eventually be taken from our control, included the fertile Cowichan Valley and the Fraser estuary, some of the finest agricultural land in BC.

In Victoria, *Hwulunitum* settlers and political and business leaders pressed Douglas to 'extinguish' Aboriginal title in Hul'qumi'num territory to pave the way for colonization.

Douglas chose to press ahead with colonization without securing a treaty or land-sale agreement with Hul'qumi'num leaders.

Initial colonial settlement went ahead in 1859 with mixed results. On Salt Spring Island a few settlers upheld their claim to land through marriage to Hul'qumi'num women. But an attempt to establish a settlement at Chemainus failed completely. Hul'qumi'num leaders refused to recognize the sale of these lands and forced the settlers to abandon their claims and return to Victoria.

In 1862, Douglas led a group of over 100 *Hwulunitum* settlers into the Cowichan Valley to take possession of lands they had 'purchased' from the colonial government. Douglas clearly anticipated resistance. The settlers were accompanied by a show of military force, a gunboat. As the settlers took possession of Hul'qumi'num lands, the gunboat visited regularly to impose colonial law and order. Though there were tensions, the Hul'qumi'num peoples hosted these newcomers in their territory, often helping the settlers survive.

DENYING



ABORIGINAL TITLE & RIGHTS

Following Douglas's retirement in 1864, Joseph Trutch significantly reshaped colonial policies around land and Aboriginal people, a new direction that forever altered the course of history in BC. As colonial land commissioner, Trutch believed First Nations should be relieved of as much territory as possible so that *Hwulunitum* settlers could properly 'develop' the colony's lands and resources.

"The Indians really have no right to the lands they claim," Trutch argued, "nor are they of any actual value or utility to them." Trutch's ideas weren't unique. In fact, they reflected broad *Hwulunitum* attitudes about First Nations peoples and their claims to land. Not long after, Premier William Smithe would utter his infamous decree:

"When the white man first came among you, you were little better than wild beasts of the field."

Little wonder that this kind of racism soon translated into narrow policies that plunged the province into a century of darkness for Hul'qumi'num peoples and other First Nations across BC.

By 1865, the concept of Aboriginal title and rights to land had been rejected by BC's colonial officials. The idea that First Nations should be compensated for their lands and resources through a treaty or land-sale agreement was likewise discarded. Colonial officials like Trutch argued that the setting aside

of small parcels of land as reserves was enough. In fact, some of the reserves created by Douglas were judged larger than required and were subsequently reduced.

In this way, BC was eventually divided into two vastly unequal parts, with a tiny fraction of the land set aside for First Nations and the rest made available for *Hwulunitum*.

Believing that they had resolved the 'Indian land question' through the creation of a system of Indian reserves and land legislation, British Columbia took the position that there was no reason to consult with or compensate First Nations.

Through the 1860s and 1870s, about 60,000 hectares of Hul'qumi'num land on Vancouver Island and the Gulf Islands were claimed and occupied by *Hwulunitum* settlers, including prime oceanfront and riverfront lands, and areas of the Cowichan and Chemainus valleys. These newcomers were settled among the long-established Hul'qumi'num villages, occupying and inhabiting many of the domestic and resource places owned by Hul'qumi'num peoples.

As settlement intensified, Hul'qumi'num peoples tried to defend their land and resources. Their efforts were repressed, often through military bombardment of villages and the execution of anyone suspected of resistance. Peaceful protests against the 'taking' of land were ignored. Formal appeals by the Hul'qumi'num leadership to officials in Victoria, Ottawa and England yielded only empty promises.

THE LAND GRANT: EXCESSIVE, UNLAWFUL AND UNJUST

The Island Railway, from Victoria to Nanaimo, was something Victoria politicians and businessmen had been looking at for years. They saw it as a way to speed up *Hwulunitum* settlement all along the east coast of Vancouver Island. It would also make it much easier to ‘develop,’ or exploit, the area’s valuable natural resources—timber, coal and minerals.

Canada agreed to contribute \$750,000 towards construction costs. BC agreed to grant a large tract of land along the rail line—a ‘railway belt’ of about two million acres (or about 809,000 hectares) on southeast Vancouver Island stretching from the head of Saanich Inlet to the Comox Valley. This land would be given to the company that built the railway as payment for construction and operation of the rail line.

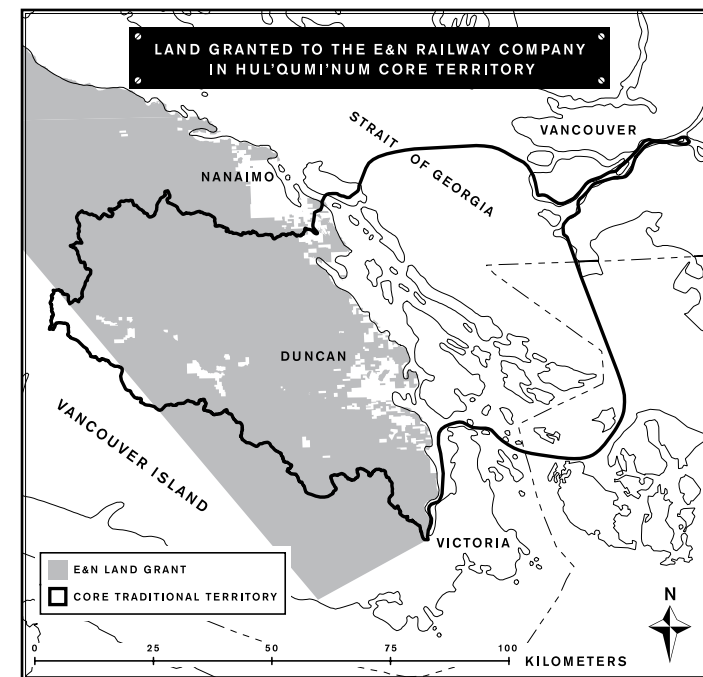
The third party behind the deal was Robert Dunsmuir. He was both the richest man in the province and, with a seat in the provincial legislature, influential in political circles.

He’d come to BC in 1851 from Scotland and made a fortune from coal mining in the Nanaimo area. His main interest in the railway was the land grant that came with building it; he was sure that there were great reserves of coal under these lands and he wanted to control them.

Dunsmuir used his economic and political influence to secure the contract to build the railway. He negotiated behind the scenes with Dominion officials in Victoria and Ottawa, all the while pretending in public to be a reluctant participant in the project.

The deal—favourable to Dunsmuir and his partners—was the basis for the agreement between Canada and BC to build the Island Railway.

By April 1884, the Esquimalt and Nanaimo (E&N) Railway Company was formally established, with Dunsmuir appointed president and holding almost half of the company’s shares.



SWEEPING LAND GRANT **P·R·I·V·A·T·I·Z·E·S**

FIRST NATIONS TERRITORIES



The most significant and long-term impact of the E&N land grant was the creation of private-ownership interests in the large area within the railway belt. Under the terms of the agreement to build the railway, BC agreed to provide a land grant to the government of Canada to help subsidize construction of the E&N railway. The extent of this land grant was described as:

...all that piece or parcel of land situated on Vancouver Island ... [b]ounded on the South by a straight line drawn from the head of Saanich Inlet to Muir Creek on the Strait of Fuca; On the West by a straight line drawn from Muir Creek aforesaid to Crown Mountain; On the North by a straight line drawn from Crown Mountain to Seymour Narrows; and On the East by the Coast line of Vancouver Island to the point of commencement.

The grant was to include “all coal, coal oil, ores, stones, clay, marble, slate, mines, minerals, and substances whatsoever” to be found on or under those lands. The grant was also to include “the foreshore rights in respect of all such lands ... and which border on the sea, together with the privilege of mining under the foreshore and sea opposite any such land.”

But it made no mention of Aboriginal title and rights in the areas affected by the land grant. Apart from the exclusion of Indian reserves from the grant, the agreement did nothing to protect existing First Nations land and resource uses.

They simply did not recognize any Aboriginal rights to lands and resources beyond the Indian reserves.

The agreement contained provisions to protect the rights of *Hwulunitum* settlers — what the legislation called ‘bona fide squatters’ — who had occupied and ‘improved’ land within the boundaries of the E&N land grant for at least one year prior to the agreement coming into effect. These ‘squatters’ would be allowed to buy up to 160 acres of land each at the price of one dollar per acre. The agreement also contained a provision allowing ‘actual settlers’ to buy up to 160 acres of land, at one dollar an acre, in the four years after the agreement came into effect.


Once the rail line from Esquimalt to Nanaimo was completed, the government of Canada transferred the land grant to the E&N Railway Company. This grant, made in 1887, effectively privatized the vast majority of Hul’qumi’num territory on Vancouver Island.

E&N

**AN ILL-CONSIDERED,
SELF-SERVING STRATEGY:**

SUBDIVIDE AND SELL

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nce granted the land, the E&N Railway Company began subdividing it into parcels and selling it off to *Hwulunitum* settlers and other private interests who sought to exploit the wealth of natural resources found in the area. One brochure published by the company in 1896 advertised “a large area of land for farming on Vancouver Island to be sold on easy terms,” at a price of \$3 to \$3.25 per acre. The same brochure advertised the sale of “tracts of valuable timber” within the railway belt.

In 1905, the Canadian Pacific Railway (CPR) Company bought the E&N Railway Company for \$2.33 million, including all the railway assets and most of the unsold land it had been granted.

By the time of the sale to the CPR, the E&N Railway Company had already sold off approximately 138,000 hectares of the original land grant for a total of \$1.44 million. In buying the E&N, the CPR paid \$1.25 million for 566,580 hectares of land. In 1910, Dunsmuir sold his coal mining interests in the grant area for \$11 million.

Over the ensuing decades, the original E&N rail line was extended in a number of directions—to Cowichan Bay, Lake Cowichan, Courtenay, Alberni—to provide access for the exploitation of resources, particularly timber, found on these lands. Eventually, the CPR sold off the remaining lands it had acquired from the E&N.



ADDING INSULT

RESERVE EXPROPRIATIONS FOR THE E&N LINE

Not only did the governments of the day not consult, accommodate or compensate First Nations for the land grant, but Dunsmuir and other officials from the E&N Railway Company demonstrated little concern for the rights of First Nations peoples. Work on the southern end of the rail line began on the reserve occupied by members of the Songhees and Esquimalt First Nations, without the consent of the residents.

In fact, the Superintendent of Indian Affairs in BC, I.W. Powell, wrote to the Superintendent of Indian Affairs in Ottawa to inform him that the residents of the reserve were “very anxious” because the company had already “completely denuded” a portion of the reserve and was “threatening to pull down two Indian houses.”

The company showed a similar lack of respect when it came to building the railway through Hul’qumi’num territory.

The railway was to pass through three reserves in the area: Cowichan No. 1 in the Cowichan Valley, Halalt No. 2 in the Chemainus Valley and Oyster Bay No. 12 near Ladysmith. In each case, Hul’qumi’num resistance to the railway was ignored. The company used federal legislation—the *Indian Act* (1880) and the *Consolidated Railway Act* (1879)—to expropriate land from these reserves for their railway.

TO INJURY

Under these laws, the company was required to pay compensation for the expropriation of land. But it was the Indian agent who calculated the amount of compensation to be paid, often in consultation with the railway company.

The First Nations owners of the land had little say in the matter.

Moreover, compensation was paid to the Department of Indian Affairs rather than directly to the First Nations landowners. In some cases, the department then paid only a portion of this amount directly to the people who were most affected. In many cases, payment took many years; in others, it seems that payment was never made.

Those who were charged with protecting the interests of First Nations—the local Indian Agent and the Superintendent of Indian Affairs in the province—often seemed more intent on helping railway companies (and other developers) overcome First Nations resistance than acting as their advocates. Writing to his superiors in Ottawa, Powell suggested that the passage of the railway across First Nations’ land would be beneficial, rather than damaging, to the interests of First Nations peoples.

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TODAY: COMMUNITIES,
TREATY NEGOTIATIONS

UNDER THREAT

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Today, 150 years later, the wound has not healed. Far from it. And the Hul'qumi'num peoples are exploring options to right this historic wrong. The long-term effects of the E&N Railway land grant are apparent on maps of south-east Vancouver Island. While the rest of Vancouver Island is mostly 'Crown' (or 'public') land, southeast Vancouver Island is largely privately owned.

The impact on Hul'qumi'num peoples is equally evident: because of the E&N land grant — which included almost 270,000 hectares of land in Hul'qumi'num territory — almost 85 percent of our traditional territory is private land. A few large forestry corporations now own most of this private land; these corporations hold almost 200,000 hectares, or 60 percent of the entire territory.

The lack of access to and benefits from these lands and resources undermines our cultural practices and has contributed significantly to the poverty our communities find themselves in today.

It's difficult to overstate the impact of this privatization on Hul'qumi'num communities. The E&N land grant removed vast areas of land from our control. In economic terms, we lost access to and influence over resources that had fed us for countless generations. As these private lands became 'developed,' fences and locked gates went up to block our entry to places where we'd always hunted, harvested plant foods and gathered other

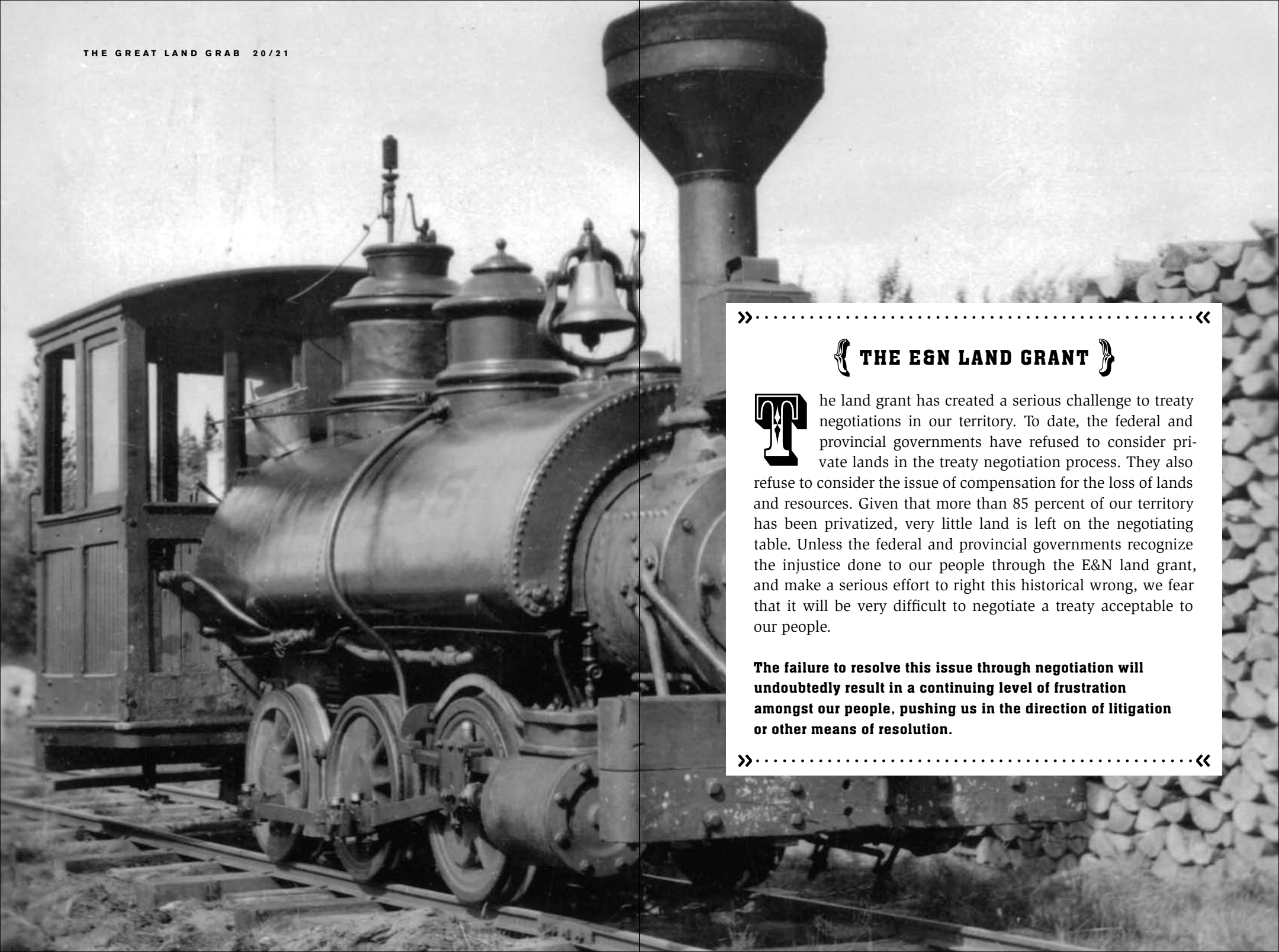
resources to meet our material needs. For over a century we've seen the natural wealth—timber, coal, minerals—leave our territory, making others wealthy at our expense.

The loss of these lands also affected our cultural life. We are prevented from using areas of great cultural importance, including bathing areas, burial grounds and other special places. Many of these sites have been destroyed by development, lost to us forever.

We've also lost access to many of the areas where we collected medicinal plants. All the best timber is now gone, making it difficult to carry on important traditions such as canoe-building and carving. Even finding wood to renovate and heat our longhouses is difficult.

In recent years, urban development of the E&N lands has accelerated and this has caused new worries. The forest companies that own prime tracts of forest land seem intent on logging these areas as fast as they can, directly exporting the raw logs and subdividing the lands for residential development. With more and more people wanting to move into the territory, it's clear that the companies want to profit by converting forest land into residential subdivisions. We know based on our experiences over the last 20 years that rampant development will further erode the cultural and economic lives of our Hul'qumi'num communities.

With hunting and gathering territories closed off, burial and ceremonial sites disturbed, fisheries depleted, clam beds polluted, we worry that further development threatens the supply of water to our communities.



».....«

{ THE E&N LAND GRANT }

The land grant has created a serious challenge to treaty negotiations in our territory. To date, the federal and provincial governments have refused to consider private lands in the treaty negotiation process. They also refuse to consider the issue of compensation for the loss of lands and resources. Given that more than 85 percent of our territory has been privatized, very little land is left on the negotiating table. Unless the federal and provincial governments recognize the injustice done to our people through the E&N land grant, and make a serious effort to right this historical wrong, we fear that it will be very difficult to negotiate a treaty acceptable to our people.

The failure to resolve this issue through negotiation will undoubtedly result in a continuing level of frustration amongst our people, pushing us in the direction of litigation or other means of resolution.

».....«



RECOGNITION, COMPENSATION AND CONTROL



TOMORROW'S HOPE:

The Hul'qumi'num Treaty Group was formed in 1993 to facilitate treaty negotiations by the six member First Nations — Chemainus, Cowichan, Halalt, Lake Cowichan, Lyackson and Penelakut — with federal and provincial governments in the BC Treaty Process. The mandate from our communities is clear: to have title recognized over 100 percent of our lands, and to negotiate for the recognition of Hul'qumi'num authority over these lands. And where our authority is not recognized through treaty, we demand adequate compensation for the loss of those lands and resources.

Because of this history we are being denied the opportunity to create meaningful mechanisms for jurisdiction and control over our lands and resources in treaty negotiations.

As our Elders have asserted time and again, and as is clear from the historical record, we have never ceded our lands by surrender or treaty, nor have we sold them or received any compensation for the taking of our resources. For a century and a half we have fought against the alienation of our lands and resources and we continue to assert our title and rights to 100 percent of our territory.

We view the E&N land grant as an unlawful and unjust violation of our Aboriginal rights and title. How could the governments of Canada and British Columbia transfer our lands

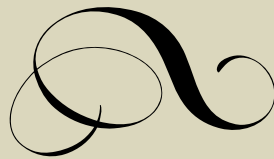
to a private company without our knowledge and consent? A fair resolution of treaty negotiations requires careful consideration of this question on the part of the federal and provincial governments.

A fair resolution of our long-standing land claim requires that Canada and BC acknowledge and address this historical injustice.

We recognize that we may never recover all of the lands that we have lost. We recognize that many people have moved here and are committed to this place and to the communities they have created.

What we seek is recognition of our Aboriginal title and rights in our territory, and to have this reflected in treaty and other agreements. This means that we regain full control or ownership over a significant portion of our territory, that we are compensated for the lands and resources that have been taken from us, and that we have an equal role—alongside federal, provincial and municipal governments—in making decisions about the management of all lands and waters in our territory.

We recognize we can't turn back the clock, but through a fair treaty process, we can determine a brighter future.



**For us, the railway deal marked the beginning
of a gradual and unremitting decline in our
economic, cultural and social well-being**

- Robert Morales

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The Great Land Grab:
Colonialism and the Esquimalt & Nanaimo Railway Land Grant in Hul'qumi'num Territory

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Canada.

John J. Mc-Gee,
Deputy Governor.

Victoria, by the Grace
of God, of the United Kingdom
of Great Britain and Ireland,
Queen, Defender of the Faith,
¶C., ¶C., ¶C.

To all to whom these Presents shall come

Greeting:

Whereas by an Act of the Legislature
of British Columbia, passed in the forty-seventh year
of Our Reign Chapter 14, and intituled an "Act relating
to the Island Railway, the Graving Dock, and Railway
lands of the Province" after reciting as is therein recited
there was by Section Three of the said Act granted

to

