

**DRAFT FOR RATIFICATION****Metlakatla Indian Band  
Forestry Interim Measures Agreement  
(the "Agreement")****Between:*****Metlakatla Indian Band*****As represented by  
Harold Leighton  
Chief Councillor  
Metlakatla Band Council****And****Her Majesty the Queen in Right of the Province of British Columbia  
As represented by the Minister of Forests  
(the "Government of British Columbia")****(collectively the "Parties")****Whereas:**

- **The *Metlakatla Indian Band* has Aboriginal Interests within the Traditional Territory.**
- **The Parties wish to enter into an interim measures agreement in relation to forest resource development and related economic benefits arising from this development with the Traditional Territory.**
- **The Government of British Columbia intends to fulfill any responsibility it has to consult and/or seek workable interim accommodation with *Metlakatla* on forest resource development activities proposed within the Traditional Territory that may lead to the potential infringement of *Metlakatla Indian Band* Aboriginal Interests.**
- **The *Metlakatla Indian Band* agree to participate in consultation initiated by the Government of British Columbia in relation to forest resource development activities proposed within the Traditional Territory that may lead to the potential infringement of *Metlakatla's* Aboriginal Interests.**

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- The Parties have an interest in seeking workable interim accommodations of Metlakatla's Aboriginal Interests where forest development activities are proposed within the Traditional Territory that may lead to the potential infringement of Metlakatla's Aboriginal Interests.
- This Agreement does not exclude *Metlakatla Indian Band* from accessing other forestry economic opportunities or benefits which may be available from time to time.

Therefore the Parties agree as follows:

### 1.0 Definitions:

For the purposes of this agreement, the following definitions apply:

- 1.1 "Aboriginal Interests" means asserted aboriginal rights and/or title.
- 1.2 "Operational Plan" means a Forest Development Plan or a Forest Stewardship Plan as defined in provincial legislation respecting forest practices and forest development activities that are carried out pursuant to those plans.
- 1.3 "Administrative Decision" means a decision made by a Ministry of Forests statutory decision maker related to forest resource development, or forest tenure administration and includes but is not limited to:
  - 1.3.1 decisions that set or vary Allowable Annual Cut (AAC) for a Timber Supply Area or a Forest Tenure
  - 1.3.2 the replacement of Forest Tenures;
  - 1.3.3 the disposition of volumes arising from undercut decisions on a Forest Tenure;
  - 1.3.4 AAC apportionment and reallocation decisions;
  - 1.3.5 transfer or change in control of forest tenures, including any associated reductions to Forest Tenure AAC and exchange of rights between or among tenure holders;
  - 1.3.6 the reallocation of harvesting rights as a result of the implementation of the *Forestry Revitalization Act*; and,
  - 1.3.7 the issuance or subdivision of a Forest Tenure.
- 1.4 "Forest Tenure" means an agreement issued under the Forest Act.
- 1.5 "Forestry Decision" means an operational plan or administrative decision.

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- 1.6 "Licensee(s)" means the holder of an agreement issued under the *Forest Act*.
- 1.7 "Traditional Territory" means the *Metlakatla Indian Band* asserted traditional territory as shown outlined in bold black on the map attached in Appendix A.
- 1.8 "Economic component of aboriginal interests" as used in this agreement is intended to refer to the financial or commercial aspects of Aboriginal Interests.
- 1.9 "Interim Accommodation" means accommodation of the potential infringement of *Metlakatla's* Aboriginal Interests arising from or as result of forest development, prior to the full reconciliation of those interests through a land claim settlement.

### 2.0 Purpose:

- 2.1 The purpose of this Agreement is to:
- 2.1.1 Increase the *Metlakatla Indian Band* participation in the forest sector;
- 2.1.2 Provide economic benefits to the *Metlakatla* through a forest tenure opportunity and the sharing of revenues received by the Government of British Columbia from forest resource development;
- 2.1.3 Address consultation requirements and provide a workable interim accommodation in respect of any potential infringements of the economic component of *Metlakatla Indian Band's* Aboriginal Interests with regard to Administrative Decisions and Operational Plans relating to forest resource development within the Traditional Territory during the term of this Agreement;
- 2.1.4 Provide a period of stability to forest resource development within the Traditional Territory during the term of this Agreement, while longer term interests are addressed through other agreements or processes;
- 2.1.5 Further the *General Agreement on Land Use Planning and Interim Measures* signed on April 4, 2001 by the First Nations of the Turning Point Initiative and the Crown which identified the need to develop forestry interim measures.

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### 3.0 Economic Benefits to Metlakatla Indian Band

During the term of this Agreement, the Government of British Columbia will provide the following economic benefits to the *Metlakatla Indian Band* to address a workable interim accommodation of any potential infringements of the economic component of *Metlakatla Indian Band's* Aboriginal Interests with regard to Administrative Decisions and Operational Plans relating to forest resource development within the Traditional Territory.

#### 3.1 Invitation to apply for a licence

- 3.1.1 Upon execution of this agreement by the Parties, the Minister will invite the *Metlakatla Indian Band* to apply for a non-replaceable forest licence under the *Forest Act* to harvest a total of up to 50,000 cubic meters over a two year term from undercut in the North Coast Timber Supply Area.
- 3.1.2 As soon as sufficient volume of timber is available for disposition as a result of the timber reallocation process in the Coast Region, the Minister will invite the *Metlakatla Indian Band* to apply for an additional forest licence to harvest a total of up to 160,000 cubic meters over a five year term (32,000 cubic meters annually) in the North Coast Timber Supply Area under the *Forest Act*.
- 3.1.3 The invitation to apply and any licence(s) entered into as a result of the invitation to apply under this agreement will be subject to the policies, regulations and statutes of British Columbia as amended from time to time.
- 3.1.4 The invitation to apply under this agreement will contain terms and conditions required by the Minister of Forests, including the requirement that the *Metlakatla Indian Band* submit, with its application for the licence, a business plan that is acceptable to the Minister.
- 3.1.5 Upon execution of this Agreement, the Government of British Columbia will provide *Metlakatla* with \$25,000 under the Economic Measures Fund (through an Economic Measures Agreement with *Metlakatla Band Council*) to assist in the development of a business plan for the licence.
- 3.1.6 Any licence entered into as a result of the invitation to apply under this agreement will:

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- 3.1.6.1 be for a term of no longer than 5 years as determined by the Minister,
  - 3.1.6.2 not be transferable or divisible without the consent of the Minister,
  - 3.1.6.3 not be replaceable as defined in the *Forest Act*,
  - 3.1.6.4 contain other terms and conditions required by law, including the condition that the *Metlakatla Indian Band* must comply with this agreement; and,
  - 3.1.6.5 include other terms and conditions as may be required by the regional manager.
- 3.1.7 Provided this Agreement remains in place, a subsequent licence opportunity may be invited under the *Forest Act* upon the expiry of the licences entered into pursuant to this Agreement, as set out in section 10.0 of this Agreement.
- 3.1.8 The Parties will agree to the operating area prior to *Metlakata Indian Band* making application for the non-replaceable forest licence. The operating area will be within Metlakatla Traditional Territory and the Parties have agreed to review McNichol Creek as a potential operating area.

### 3.2 Revenue Sharing

- 3.2.1 During the term of this Agreement, the Government of British Columbia will provide a revenue sharing economic benefit to the *Metlakatla Indian Band* totalling \$345,000 annually to address workable interim accommodation of Metlakatla economic interests as described in section 3.0.
- 3.2.2 For the purposes of determining amounts for partial years, one-fourth (i.e. 1/4) of the annual amount will be used for each fiscal quarter or part of that the Agreement is in effect. Payments will be made quarterly.
- 3.2.3 Subject to the Parties entering this Agreement by October 30, 2003, the effective date for calculating the Metlakatla share of forestry revenues will be April 1, 2003.
- 3.2.4 Revenue transfer payments will be subject to annual appropriations by the Province.
- 3.2.5 With respect to the use and expenditure of the revenue sharing economic benefit, the *Metlakatla Indian Band* will:

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- a) maintain financial records and prepare financial statements in accordance with generally accepted accounting principles for each year of this Agreement.
- b) upon request, provide to British Columbia a copy of the financial statement audited by an independent auditor recognized in the Province of British Columbia.

### 4.0 Consultation and Accommodation Respecting Operational Plans

- 4.1 The Government of British Columbia will consult with the *Metlakatla Indian Band* in a timely manner on all operational plans that may potentially infringe *Metlakatla Indian Band's* Aboriginal Interests, except for any economic component of those Interests, provided for under section 3.0 of this Agreement within the Traditional Territory.
- 4.2 The *Metlakatla Indian Band* will fully participate in a timely manner in the review of all Operational Plans within the Traditional Territory provided to them by the Government of British Columbia, and by the Licensee.
- 4.3 In reviewing and responding to an operational plan submitted to them, *Metlakatla Indian Band* will, in a timely manner, provide the applicable party with all reasonably available information about their aboriginal interests potentially affected by the development activities proposed in the operational plan other than the economic component of those interests addressed in paragraphs 3.1 and 3.2.
- 4.4 Upon receiving the response from *Metlakatla Indian Band* as specified in Section 4.3, the Ministry of Forests and/or the Licensee will discuss and attempt to resolve in a timely manner with the *Metlakatla Indian Band* any site specific operational impacts on the *Metlakatla Indian Band's* Aboriginal Interests that may occur as a result of proposed forest development activities other than the economic component of those Aboriginal Interests addressed in section 3.0.
- 4.5 For the purposes of this section, "timely manner" is defined as 60 days. This timeframe may be extended by mutual agreement of the Parties.
- 4.6 The Government of British Columbia will seek workable accommodation with the *Metlakatla Indian Band* where *Metlakatla* Aboriginal Interests are likely to be infringed as a result of Operational Plans within the Traditional Territory for the term of the Agreement.

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- 4.7 For the purposes of section 4.6, "workable accommodation" means modifications made to "Operational Plans" made in response to concerns raised by the *Metlakatla Indian Band* and may include, but is not limited to, spatial or temporal changes, different harvesting systems and similar changes.
- 4.8 If no response is received from the *Metlakatla Indian Band* within 60 days of the plan being provided to them as specified in section 4.3, then the Government of British Columbia may assume that the *Metlakatla Indian Band* does not intend to respond or participate in the consultation process in respect of the Operational Plan and that a decision on the Operational Plan may proceed.
- 4.9 In making a final decision on an Operational Plan, the Government of British Columbia will fully consider information it receives from the *Metlakatla Indian Band*, whether received directly or through a Licensee, and will consider whether the concerns identified by the *Metlakatla* have been addressed.
- 4.10 During the term of this Agreement, the *Metlakatla Indian Band* agrees that the Government of British Columbia has fulfilled its duties to consult and seek interim workable accommodation with respect to the economic component of potential infringements of *Metlakatla's* Aboriginal Interests in the context of Operational Plan decisions that the Government of British Columbia will make and the development activities that occur as a result of those decisions.

### 5.0 Consultation and Accommodation Respecting Administrative Decisions

- 5.1 The *Metlakatla Indian Band* agrees that in consideration of the economic benefits provided by the Government of British Columbia in Section 3.0 of this Agreement, that the Government of British Columbia has fulfilled its duties to seek workable interim accommodation with respect to the economic component of potential infringements of *Metlakatla's* Aboriginal Interests resulting from Administrative Decisions made by statutory decision makers from time to time during the term of this Agreement, including, but not limited to:
- the Minister of Forests' consent to the transfer of shares of Skeena Cellulose Inc. to NWBC Timber and Pulp Ltd.,

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- the Regional Manager's decision respecting cut control penalties (AAC reductions) for New Skeena's Forest Products' forest tenures (TFL 1, FL A16835),
  - the Minister of Forests' decision respecting disposition of undercut volumes associated with New Skeena Forest Products' forest tenures (TFL 1, FL A16835),
  - the Minister of Forests' consent to the replacement of TFL 1 as required under the *Forest Act*; and, the Regional Managers' consent to the replacement of forest licence A16835.
- 5.2 The Government of British Columbia will provide to the *Metlakatla Indian Band* on an annual basis, a list of all proposed Administrative Decisions anticipated within the year, and either upon the request of *Metlakatla* or when the Government of British Columbia becomes aware of other proposed Administrative Decisions, will provide to *Metlakatla* an updated list.
- 5.3 The Government of British Columbia may meet with *Metlakatla Indian Band* at mutually agreed times throughout the year to provide an opportunity for *Metlakatla* to provide their concerns and comments on the Administrative Decisions to representatives of the Government of British Columbia.
- 5.4 The Government of British Columbia will include the *Metlakatla Indian Band* in Timber Supply Review processes within the Kalum and North Coast Timber Supply Areas
- 5.5 The *Metlakatla Indian Band* agrees to fully participate in a timely manner in the Timber Supply Review processes and will provide in a timely manner all reasonably available information about their aboriginal interests potentially affected by AAC determinations to be made pursuant to Section 8 of the *Forest Act* within *Metlakatla Indian Band's* asserted traditional territory for the term of the Agreement.
- 5.6 For the purposes of this section "timely manner" is defined as 60 days. This timeframe may be extended by mutual agreement of the parties.
- 5.7 The Parties acknowledge that the Timber Supply Review processes will be consistent with approved land use plans when higher level objectives have been established.



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- 5.8 If after considering the strength of Metlakatla's *prima facie* evidence, the statutory decision maker is of the opinion that an Administrative Decision creates a potential infringement beyond the economic component of Metlakatla's Aboriginal Interests, then the statutory decision maker will either address the Aboriginal Interest in the Administrative Decision, or through the process in section 4.0 of this Agreement.
- 5.9 The *Metlakatla Indian Band* agree that in consideration of sections 5.1 to 5.8 of this Agreement that the Government of British Columbia has, for the purposes of this Agreement, developed an adequate consultation and workable interim accommodation process with respect to potential infringements beyond the economic component of Metlakatla's Aboriginal Interests resulting from Administrative Decisions made by statutory decision makers from time to time during this Agreement.
- 5.10 Any Administrative Decision made by the Ministry of Forests shall not be interpreted as concurrence by Metlakatla unless expressly stated.

### 6.0 Land and Resource Stability

- 6.1 The *Metlakatla Indian Band* will respond immediately to any discussions initiated by the Government of British Columbia and work co-operatively to assist in resolving any issues that may arise where acts of intentional interference by Metlakatla members with provincially authorized activities related to timber harvesting or other forestry economic activities occur.

### 7.0 Dispute Resolution

- 7.1 If a dispute arises between the Government of British Columbia and the *Metlakatla Indian Band* regarding the interpretation of a provision of this agreement, or the obligation of a party under this agreement, the parties or their duly appointed representatives will meet as soon as is practicable to resolve the dispute.
- 7.2 If the Parties are unable to resolve differences at the appropriate level, the issue will be raised to more senior levels of the Government of British Columbia and the *Metlakatla Indian Band*.
- 7.3 The Parties may choose other appropriate approaches to assist in reaching resolutions to the issue.

**DRAFT FOR RATIFICATION****8.0 Term**

- 8.1 This Agreement will take effect on the date that the Parties have executed it.
- 8.2 This Agreement will terminate on the occurrence of the earliest of any of the following events:
- 8.2.1 five years from the date this Agreement is executed; or
  - 8.2.2 the coming into effect of a treaty; or,
  - 8.2.3 the ratification of a treaty agreement-in-principle
  - 8.2.4 the mutual agreement of the parties; or,
  - 8.2.5 at the option of the Metlakatla, in the event that the Government of British Columbia fails to deliver the revenue sharing pursuant to s. 3.2 or the Minister fails to grant the licences pursuant to s. 3.1, or,
  - 8.2.6 written notice of withdrawal to the Agreement by either Party which will take effect 90 days following receipt of the notice by the other Party, or,
  - 8.2.7 the Government of British Columbia cancels economic benefits under this Agreement pursuant to paragraph 9.0..

**9.0 Suspension or Cancellation of Economic Benefits**

- 9.1 Without limiting the actions that may be taken by the Minister or by the Government of British Columbia, the Minister or a person authorised by the Minister may suspend the revenue sharing economic benefit and, in accordance with the terms of the non-replaceable forest licence entered into as a result of the invitation to apply under this agreement, may suspend or terminate the non-replaceable forest licence if the Minister determines that the *Metlakatla Indian Band* is not in substantial compliance with this agreement.
- 9.2 Prior to taking any action referred to in Section 9.1, the Government of British Columbia will provide notice to the *Metlakatla Indian Band* of any alleged contravention of this Agreement that may lead to the *Metlakatla Indian Band* not being in compliance with this Agreement.

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9.3 If, during the term of this Agreement, the *Metlakatla Indian Band* challenges or support a challenge of an Administrative Decision and/or Operational Plan, by way of legal proceedings or otherwise on the basis that the economic benefits set out in Section 3.0 and the consultation/accommodation processes set out in Sections 4.0 and 5.0 of this Agreement are not adequate or sufficient to:

- Substantially address the Metlakatla's concerns and to provide a workable accommodation in respect of any potential infringements of Metlakatla Aboriginal Interests with regard to Administrative Decisions relating to forest resource development within the Traditional Territory; or
- Substantially address the economic component of the Metlakatla's Aboriginal Interests with regard to Operational Plans relating to forest resource development within the Traditional Territory;

then, without limiting any other remedies that may be available to the Government of British Columbia, the Government of British Columbia may suspend or cancel the economic benefits set out in Section 3.0.

### 10.0 Renewal of the Agreement

- 10.1 If the terms and conditions of this Agreement are being met, and if the Agreement has not been superceded by a treaty or other process, the Parties will enter into negotiations for a renewal of this agreement prior to the expiry of the Agreement.
- 10.2 Any subsequent forestry agreement between the Government of British Columbia and *Metlakatla Indian Band* may provide for an opportunity to acquire a Forest Tenure and/or other economic benefits and other terms and conditions that are agreed to by the Parties.
- 10.3 The revenue sharing set out in this Agreement reflects an amount that the Government of British Columbia is willing to pay as an interim measure and the *Metlakatla Indian Band* have agreed to accept only for the term of this Agreement.

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### **11.0 Amendment of Agreement**

- 11.1 Any alteration or amendment to the terms and conditions of the agreement must be in writing and duly executed by the parties.**
- 11.2 Either Party may request the participation of the other Party to review the effectiveness of this Agreement annually and to consider amendments to this Agreement.**

### **12.0 Notice**

- 12.1 Any notice or other communication that is required to be given or that a party wishes to give to the other party with respect to this agreement, will be in writing and will be effective if delivered, sent by registered mail, or transmitted by facsimile to the address of the other party as in this section of the agreement.**
- 12.2 Any notice or other communications will be deemed to have been given on the date it is actually received, if received before 4:00 p.m. If received after 4:00 p.m., it will be deemed to have been received on the next business day.**
- 12.3 The address of either party may be changed by notice in the manner set out in this section of the agreement.**

#### **British Columbia**

**Deputy Minister  
Minister of Forests  
P.O. Box 9525 STN PROV GOVT  
Victoria B.C. V8W 9C3  
Telephone (250) 387-4809  
Facsimile (250) 387-7065**

#### **Metlakatla Indian Band**

**Chief Councillor,  
Metlakatla Band Council  
P.O. Box 459  
Prince Rupert, BC  
V8J 3R2  
Telephone: (250) 628 3234  
Facsimile: (250) 628 9205**

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### 13.0 Miscellaneous

- 13.1 The Parties differ on the question of the existence or extent of any duty or duties of consultation and/or accommodation owed by the forest Licensees to Metlakatla. Nothing in this Agreement, or the fact that the Parties have entered into this Agreement, is intended to limit or prejudice the position that either party may take in litigation or other negotiations on the existence or extent of any duty or duties of consultation and/or accommodation owed by forest licensees or other third parties to Metlakatla.
- 13.2 Nothing in this Agreement shall be interpreted to authorize any infringement which may occur following the termination of this Agreement.
- 13.3 Nothing in this Agreement shall be interpreted in a manner that requires the Government of British Columbia to act in a manner inconsistent with provincial or federal law, or that fetters the statutory discretion of any government decision-maker.
- 13.4 This Agreement is not a treaty or a lands claims agreement within the meaning of section 25 and 35 of the Constitution Act, 1982 and does not define, amend, recognise, affirm, or deny the existence of aboriginal rights, including aboriginal title, or treaty rights.
- 13.5 This Agreement will not limit the positions that a Party may take in future negotiations or court actions other than as set out in paragraph 9.3.
- 13.6 Any reference to a statute in this agreement includes all regulations made under that statute and any amendments or replacement of that statute.
- 13.7 There will be no presumption that any ambiguity in any of the terms of this agreement should be interpreted in favour of either party.
- 13.8 This Agreement shall not be interpreted as addressing any potential infringement that may occur following the termination of this Agreement.
- 13.9 This Agreement and any licenses issued as contemplated by this Agreement do not change or affect the positions either Party has, or may have, regarding jurisdiction and authorities.
- 13.10 The applicable laws of British Columbia and Canada shall govern this agreement.

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13.11 This Agreement may be entered into by each Party signing a separate copy of this Agreement, including a photocopy or faxed copy, and delivering it to the other Party by fax. Each facsimile will be deemed to be an original for all purposes and all counterparts taken together will be deemed to constitute one document.

13.12 This Agreement and any amendment to it constitute the entire Agreement between the Parties with respect to the subject matter of this Agreement.

This agreement is dated for reference December 8, 2003

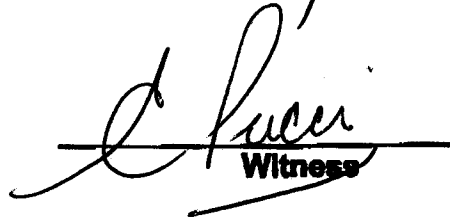
Signed on behalf of:

**Metlakatla Indian Band**

Date: Oct 27/2003

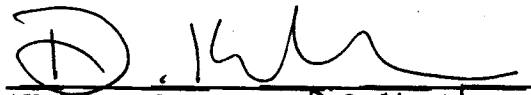


**Chief Councillor**

  
**Witness**

Signed on behalf of:  
**Government of British Columbia**

Date: Dec 8/03



**Minister of Forests** *Dep. Minister*

  
**Witness**

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**APPENDIX "A"**

**THE ASSERTED TRADITIONAL TERRITORY  
OF THE METLAKATLA INDIAN BAND**

# Traditional Territories of Metlakatla

## LEGEND

-  Metlakatla Traditional Territory Boundary
-  Water Features
-  Rivers & Streams

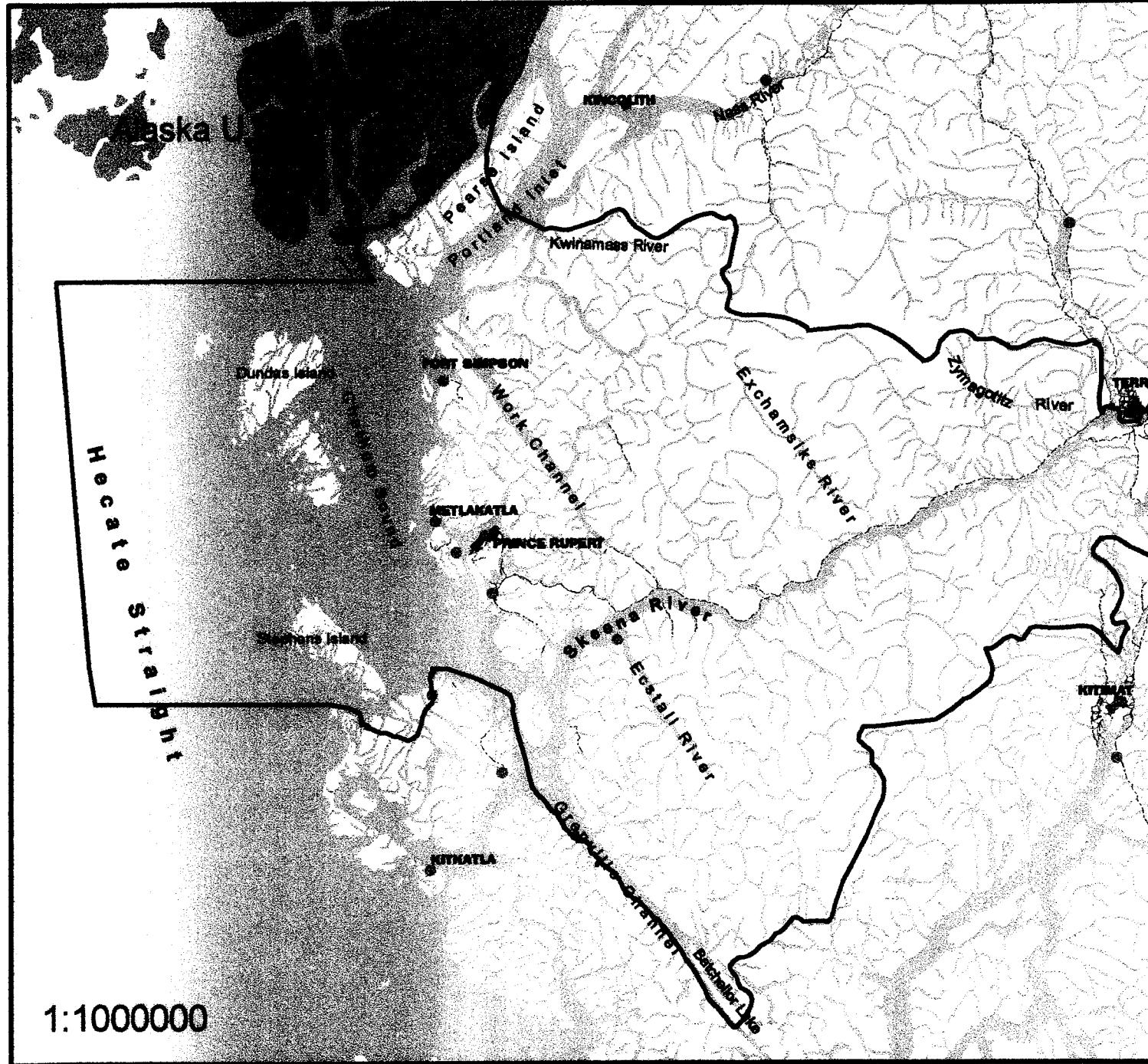
Universal Transverse Mercator Projection  
North American Datum - NAD 83  
UTM Zone 9

**Draft**

March 19, 2002



*Metlakatla Treaty Office*  
P.O. Box 224, Prince Rupert  
B.C. Canada V8J 3P6  
Ph: (250) 628-3201  
Fax: (250) 628-9259





# Traditional Territories of Metlakatla

## LEGEND

-  Metlakatla Traditional Territory Boundary
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Universal Transverse Mercator Projection  
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*Metlakatla Treaty Office*  
P.O. Box 224, Prince Rupert  
B.C. Canada V8J 2P8  
Ph: (250) 629-3201  
Fax: (250) 629-0259

