ENCLOSURE NO. 1

COOPERATIVE AGREEMENT BETWEEN SIMPSON TACOMA KRAFT COMPANY AND THE COMMENCEMENT BAY NATURAL RESOURCE TRUSTEES REGARDING MIDDLE WATERWAY SHORE RESTORATION PROJECT

I. PARTIES

This Agreement is entered into on May 31, 1995 by and between the Simpson Tacoma Kraft Company or the Simpson Tacoma Land Company, a subsidiary of the Simpson Tacoma Kraft Company (Simpson), and the Commencement Bay Natural Resource Trustees, consisting of: The Puyallup Tribe of Indians (Puyallup Tribe); the Muckleshoot Indian Tribe (Muckleshoot Tribe); the Washington Department of Ecology (Ecology) as lead state natural resource trustee; the Washington Department of Natural Resources (WDNR); the Washington Department of Fisheries and Wildlife; the National Oceanic and Atmospheric Administration (NOAA) of the U.S. Department of Commerce; and the U.S. Department of the Interior (DOI) (Trustees). NOAA and DOI collectively constitute the federal Trustees. For purposes of this Agreement, Simpson and the Trustees shall be collectively referred to as the "Parties."

II. RECITALS

A. Governmental Parties

The above governmental parties are Trustees under applicable state, federal and tribal law. The Trustees enter into this Agreement in furtherance of their general responsibilities to replace and restore natural resources of the Commencement Bay environment injured by releases of hazardous substances.

B. Simpson Tacoma Kraft Company

Simpson is the present owner/operator of the paper mill on the St. Paul Waterway (Tacoma Kraft Mill) and the owner of the property on the Middle Waterway that is the subject of this Agreement (the Restoration Property), a legal description of which is described in Exhibit A attached hereto and incorporated herein. Simpson enters into this Agreement in furtherance of its corporate commitment to work cooperatively with interested

parties in improving the Commencement Bay environment and to ensure that restoration actions occur efficiently and effectively and achieve the most restoration that is possible with the available funds.

C. **Consent Decree and Settlement Agreement**

1. In 1991, Simpson, Champion International Corporation (Champion), WDNR, the United States, on behalf of the U.S. Environmental Protection Agency (EPA) and the federal Trustees, Ecology, on behalf of the state Trustees, and the Muckleshoot Tribe and Puyallup Tribe, on their own behalf, entered into a consent decree in the U.S. District Court for the Western District of Washington entitled "Commencement Bay Nearshore/Tideflats Superfund Site; St. Paul Waterway Problem Area Consent Decree" (Consent Decree). The Consent Decree, inter alia, approved the cleanup of contaminated sediments in the St. Paul Waterway Problem Area under the federal Superfund law, resolved natural resource damage claims for this area against Simpson, Champion and WDNR, and provided for long term monitoring of the 17 acre cleanup and habitat restoration area.

2. Simultaneously with entering into the Consent Decree, the Parties, WDNR and Champion entered into a settlement agreement entitled "Settlement Agreement Between Champion International Corporation, Simpson Tacoma Kraft Company, Washington Department of Natural Resources and The Commencement Bay Natural Resource Trustees Regarding St. Paul Waterway Natural Resource Damage" (Settlement Agreement) to settle natural resource damage claims against Simpson, Champion and WDNR for the St. Paul Waterway Problem Area. Among other things, the Settlement Agreement provided for construction of an additional restoration project(s) in the Commencement Bay environment, to be planned jointly by Simpson and Champion, WDNR, and the Trustees. Under the Settlement Agreement, Simpson and Champion deposited $500,000 into a Commencement Bay Restoration Project Trust Fund (the Fund) to fund the additional restoration project(s).

3. Specifically, Section V.B.3(b) of the Settlement Agreement provided that the Trustees establish one or more natural resource restoration projects, selected from a range of alternatives identified by the Trustees in consultation with Simpson, Champion and other interested entities, in the Commencement Bay environment. Section V.B.3(b) further specified the Trustees' intent that the restoration project or projects be developed under a memorandum of agreement or cooperative agreement between the Trustees and the appropriate settling party or parties (Simpson, Champion and/or WDNR).

D. **Planning and Permitting Background**

1. In February 1993, the Trustees, other federal and state agencies, Simpson and Champion (the Project Planning Group) commenced planning for the additional restoration project in the Commencement Bay environment. The Project Planning Group considered several potential sites and projects, evaluating each under preliminary restoration criteria, for cost, and for functional connectivity to the 17 acre habitat restoration area on the St. Paul Waterway. The Project Planning Group identified a restoration project along the southeastern shore of the Middle Waterway on property owned by Simpson as the preferred restoration project. This property is adjacent to, and includes, a portion of one of the few remaining original mudflats in Commencement Bay. The restoration project is called the Middle Waterway Shore Restoration Project (or the Restoration Project).

2. The Project Planning Group selected the Restoration Project because of the group's expectation that the Restoration Project: (a) would provide valuable riparian and wetland habitat in perpetuity; (b) could demonstrate how to re-establish hummocks and other natural wetland and shrubland features; (c) could be achieved with available funds; (d) does not appear to be exposed to contamination that would jeopardize the Restoration Project's long-term value; (e) and could occur completely on land on which the owner (Simpson) was willing to place a restrictive covenant on the deed to the Restoration Property that would make the land available to the Restoration Project in perpetuity. The restrictive covenant on the deed to the Restoration Property is attached hereto as Exhibit B and incorporated herein (Deed Restriction).

3. The Project Planning Group also recognized that the Restoration Project could provide valuable information for planning future restoration projects in the Commencement Bay environment. Many potential restoration sites within the Commencement Bay environment will be near areas of sediment contamination. Consequently, the Trustees may use this information to evaluate the practicability of conducting restoration activities in close proximity to contaminated areas.

4. Simpson submitted permit applications for the Restoration Project in September 1993 and hereby certifies that it has received all of the necessary federal and state permits for the Restoration Project. For informational purposes, relevant federal, state and local permits for the Restoration Project, and conditions thereto, are attached hereto as Exhibit C.

E. Implementation of the Restoration Project

The Trustees acknowledge that Simpson has successfully completed the planning design, sampling and final project design elements of the Restoration Project and acknowledge Simpson's certification that it has obtained all necessary permits for the Restoration Project (Implementation Phases I through IV herein), and hereby authorize Simpson to proceed with construction and monitoring of the Restoration Project as provided in Sections IV.B.2.(e) and IV.B.2.(f) herein.

F. Purpose of the Agreement

The purpose of this Agreement is to identify the rights and responsibilities of the Parties to cooperatively implement the Restoration Project and maintain it in perpetuity.

III. AUTHORITY

This Agreement is entered into pursuant to the Natural Resource Trustee provisions of § 107(f) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9607(f); Section 311 of the Clean Water Act (CWA), as amended, 33 U.S.C. § 1321; the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), Subpart G, 40 C.F.R. §§ 300.600 - 300.615, as amended; and other applicable federal, state and tribal law. The following officials or their designees act on behalf of the public as state, federal and tribal Trustees for natural resources under this Agreement:

- The Director of the Department of Ecology for the State of Washington, as lead state Trustee, the Commissioner of Public Lands, and the Director of the Department of Fisheries and Wildlife;
- The Tribal Council, or its designee, for the Puyallup Tribe of Indians;
- The Tribal Council, or its designee, for the Muckleshoot Indian Tribe; or
- The Secretary of the Interior; and the Undersecretary for Oceans and Atmosphere, Administrator of the National Oceanic and Atmospheric Administration, acting on behalf of the Secretary of Commerce.

IV. TERMS AND CONDITIONS

A. Restoration Project Purpose

1. The Restoration Project. The Restoration Project will construct substantial new riparian and wetland habitat and improve existing intertidal habitat for bird and marine life on the Restoration Property. Approximately 3.3 acres of the Restoration Property will be modified to support, compliment, and preserve the integrity of the existing mudflats. Primary actions will be the following: (a) excavating and contouring upland portions of the site to restore a natural shoreline, create intertidal wetlands, and screen the wetland-estuarine habitat from adjacent industrial activity; (b) filling about one-fourth of an acre of existing mudflat to construct a vegetative bench similar to those commonly occurring in the marsh areas of Puget Sound estuaries; (c) removing and/or containing metal debris found on the site; and (d) planting appropriate natural vegetation at the new elevations. Other actions may include incidental cleanup of toxic or other deleterious materials encountered during construction of the Restoration Project. Additional information regarding the Restoration Project is provided in the document entitled "Project Analysis Middle Waterway Shore Restoration Project" (Parametrix, September 1993) and "Project Supplemental Information Summary" (Parametrix, April 1994), the latter of which is attached hereto as Exhibit D and incorporated herein.

2. Restoration Project Purpose. The overall purpose of the Restoration Project is to restore natural resources injured by releases of hazardous substances. The Restoration Project is intended to provide estuarine habitat and to screen this habitat from adjacent developed uplands, thereby increasing the ecosystem complexity and habitat value of Middle Waterway to shore birds, fishes and other aquatic organisms.

B. Restoration Project Administration and Implementation

1. General Roles. This Section describes the Parties' general roles for developing and implementing the Restoration Project. Nothing in this Agreement is intended to create an agency relationship between the Trustees and Simpson.

(a) Project Planning Group. The Project Planning Group shall work with each other and interested agencies in planning the Restoration Project, including, but not limited to, developing a project analysis, an excavation and grading plan, a planting plan, a pre-construction monitoring plan, and an adaptive management and monitoring plan. The Project Planning Group also shall work together in developing work schedules and

applications for necessary federal and state permits, in preparing for public meetings and hearings related to the Restoration Project, and in reviewing monitoring results. Although it is the intent of the Project Planning Group to make decisions regarding the Restoration Project by consensus, the Trustees retain the right to make all final decisions with regard to the Restoration Project (other than those addressed by this Agreement).

(b) Simpson. Simpson shall be responsible for developing and implementing the Restoration Project in accordance with Section IV.B.2 below. Simpson shall be obligated to proceed with each of the six phases of the Restoration Project identified in Section IV.B.2 below upon Simpson's receipt of written authorization to proceed from the Trustees, which has been provided under Section II.E above. Simpson may retain consultants, contractors or other services, as are agreed to by the parties, to assist Simpson in developing and implementing the Restoration Project.

(c) The Trustees. The Trustees shall be responsible for overseeing the development and implementation of the Restoration Project. Specifically, the Trustees shall review and concur in all work plans and deliverable documents, shall review and approve all requests for reimbursement of Restoration Project expenses, and shall notify Simpson when to proceed with each phase of Restoration Project development and implementation. The Trustees have provided their authorization to proceed with all phases of the Restoration Project in Section II.E above.

2. Implementation Phases. Implementation of the Restoration Project shall be broken down into the following six phases described in this Section (several of which may overlap). A summary of Restoration Project deliverables may be found in Exhibit E attached hereto and incorporated herein.

(a) Planning design. Simpson (or its consultant or contractor) shall be responsible for preparing the project analysis (Project deliverable 1). The Parties shall use the project analysis as the basis for deciding whether to proceed with Restoration Project permitting. The Trustees acknowledge that Simpson has completed this phase of the Restoration Project.

(b) Permitting. Simpson shall be responsible for applying for and receiving all necessary permits, including the City of Tacoma Shoreline Substantial Development Permit (Shoreline Permit), the U.S. Corps of Engineers Section 10/404 permit (Corps Permit), and the City of Tacoma Excavating and Grading permit (Project deliverables 2 through 4, respectively). To the extent consistent with the Trustees' discharge of their duties under

CERCLA and other applicable laws, the Trustees shall cooperate with Simpson on all permit applications related to the Restoration Project. The Trustees acknowledge Simpson's certification that it has completed this phase of the Restoration Project.

(c) Sampling. Simpson (or its consultant or contractor) shall be responsible for preparing, in cooperation with the Project Planning Group, plans for pre-construction sampling (Project deliverable 5). Simpson (or its consultant or contractor) shall implement pre-construction sampling once the sampling plan is approved by the Project Planning Group and relevant resource agencies. Simpson shall deliver a report summarizing the results of the pre-construction sampling to the Trustees upon completion of the sampling (Project deliverable 6). The Trustees shall use the results of the permit process and pre-construction sampling in deciding whether to proceed with Restoration Project construction. The Trustees acknowledge that Simpson has completed this phase of the Restoration Project.

(d) Final project design. Simpson (or its consultant or contractor) shall be responsible for preparing, in cooperation with the Project Planning Group, final design plans for the Restoration Project, including plans for excavation and grading, planting, removal or containment of the brass foundry debris found on the Restoration Property, and post-construction monitoring and adaptive management (Project deliverables 7 through 10, respectively). The Trustees shall review and concur in final project design plans before Restoration Project construction. The Trustees acknowledge that Simpson has completed this phase of the Restoration Project.

(e) Construction. Simpson (or its consultant or contractor) shall be responsible for constructing the Restoration Project in accordance with the final design plans reviewed and concurred with by the Trustees and for conducting construction monitoring. Simpson shall proceed with Restoration Project construction only after Simpson has certified that it has obtained all necessary permits for the Restoration Project, and the Trustees have notified Simpson in writing to proceed, both of which have been provided under Sections II.D.4 and II.E, respectively. Simpson shall record the Deed Restriction within thirty (30) days of initiation of construction of the Restoration Project. Simpson shall provide as-built drawings to the Trustees upon the completion of Restoration Project construction (Project deliverable 11).

(f) Post-construction monitoring. Simpson (or its consultant or contractor) shall be responsible for implementing plans for post-construction monitoring and submitting monitoring

results to the Trustees as required under the Adaptive Management and Monitoring Plan (Project deliverable 12). The Trustees are under no obligation to continue post-construction monitoring of the Restoration Project.

C. Property Ownership, Use, Maintenance and Adaptive Management

This Section describes ownership, use, maintenance and adaptive management of the Restoration Property. Nothing in this Agreement is intended to make the Trustees the owners or operators of the Restoration Property.

1. Restoration Property Ownership. Simpson shall retain all ownership of the Restoration Property subject to the Deed Restriction. It is the purpose of this Deed Restriction to assure that the Restoration Property will provide habitat value in the Commencement Bay environment in perpetuity.

2. Restoration Property Use.

(a) Use of Restoration Property. Simpson shall not use or conduct activities on the Restoration Property except those necessary to implement this Agreement and those that are consistent with the purpose provided in Section IV.A above. Use of, or activity on, the Restoration Property inconsistent with this purpose is prohibited, and Simpson acknowledges and agrees that it will not conduct, engage in, or permit such use or activity.

(b) Use of Adjoining Properties Owned by Simpson. This Agreement is not intended to prevent or prohibit any use of, or activity on, properties owned by Simpson adjoining the Restoration Property, provided that any use or activity having the effect of causing a trespass on the Restoration Property is prohibited unless approved by the Trustees in accordance with Sections IV.B.2.(c) and (d) below. The Trustees specifically acknowledge that Simpson may continue to operate its properties adjacent to the Restoration Property as industrial facilities, and may make use of the existing railroad right-of-way adjacent to the Restoration Property for the transport of materials into and out of its facilities. The Trustees also acknowledge that Simpson desires to construct upland stormwater pollution prevention and treatment facilities on Simpson property adjoining the Restoration Property, but reserve their rights under this Agreement and their authority under applicable law to evaluate such a proposal at the time it is proposed.

(c) Notice. Simpson shall first notify the Trustees and receive their approval before undertaking any action on the Restoration Property that may be inconsistent with the purpose of

the Restoration Project provided in Section IV.A above or on adjacent properties that may have the effect of causing a trespass on the Restoration Property, except where Simpson must undertake emergency action to protect health, safety or the environment on the Restoration Property. Whenever notice is required, Simpson shall notify the Trustees in writing not less than sixty (60) days prior to the date Simpson intends to undertake the use or activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Trustees to make an informed judgment as to its consistency with the purpose of the Restoration Project. Simpson shall also notify the Trustees of any communications it receives from Union Pacific regarding vegetation management of the railroad right-of-way adjacent to the Restoration Property within four (4) working days of Simpson's receipt of such communication.

(d) Approval. Whenever notice and the Trustees' approval are required, the Trustees shall grant, condition or withhold their approval in writing within thirty (30) days of receipt of Simpson's written request for approval. The Trustees' approval may be withheld only upon a reasonable determination by the Trustees that the action as proposed would be inconsistent with the purpose of the Restoration Project and would significantly impair or interfere with the habitat value of the Restoration Project. The Trustees' approval may include reasonable conditions which must be satisfied in undertaking the proposed use or activity. If the Trustees do not grant or withhold their approval in the time period and manner set forth herein, Simpson may assume the Trustees' approval of the permitted use or activity in question.

3. Restoration Property Maintenance and Adaptive Management.

(a) In consultation with the Trustees, Simpson (or its consultants or contractors) shall be responsible for the upkeep and maintenance of the Restoration Property in the same manner as any other landowner would be responsible for such matters, and for any monitoring that may be required under the Monitoring and Adaptive Management Plan for the Restoration Project. Upkeep and maintenance of the Restoration Property shall include, at a minimum, keeping the Restoration Property free of unsightly debris, the railroad right-of-way adjacent to the Restoration Property free of woody vegetation, and a "No Spraying" sign placed along the railroad right-of-way. The Trustees are under no obligation to continue upkeep, maintenance, and monitoring of the Restoration Project.

(b) The Trustees shall consult with Simpson as to the need for adaptive management activities on the Restoration Property, and how such adaptive management activities will be funded and implemented on the Restoration Property. For purposes of this Agreement, "adaptive management activities" shall be additional actions undertaken on the Restoration Property to maintain the constructed habitat or change the habitat in some manner to meet the Restoration Project purpose provided in Section IV.A.2 above. Anticipated changes or developments that may require adaptive management include, among others, the failure of the vegetation to establish or spread and substantial erosion or sedimentation that adversely alters habitat characteristics. Simpson shall not be financially responsible for adaptive management activities on the Restoration Property.

4. Coordination and Consultation. Subject to their mutual agreement, Simpson and the Trustees shall continue their on-going relationship of working together on restoration planning and plan implementation in the Commencement Bay environment (Bay-wide Restoration Activities), including, if requested by Simpson, Simpson's participation in non-confidential Trustee-sponsored groups that involve potentially responsible parties and the public in Bay-wide Restoration Activities. Simpson and the Trustees shall meet at least annually to discuss matters related to the following: (i) Restoration Project monitoring; (ii) Restoration Property upkeep and maintenance and the need for adaptive management on the Restoration Property; (iii) use of adjoining properties owned by Simpson; and (iv) general non-confidential Bay-wide Restoration Activities. If mutually convenient, this meeting shall be arranged to coincide with the receipt of any monitoring results from the previous year. At each such annual meeting, Simpson shall provide the Trustees with information regarding the level of effort and cost incurred by Simpson in fulfilling its Restoration Property upkeep and maintenance and monitoring obligations under Section IV.C.3.(a). Simpson or the Trustees may also request and arrange a meeting with each other at any time to consult on matters related to the Restoration Project, the Restoration Property, use of adjoining properties owned by Simpson, or general non-confidential Bay-wide Restoration Activities. Simpson shall consider, but is not obligated to follow voluntarily, any recommendations provided by the Trustees concerning the use of adjoining properties owned by Simpson; provided, however, that nothing in this Section shall affect Simpson's obligations under Section IV.C.2.(b) and (d), the Trustees' rights under Section IV.F, nor any other legal rights or remedies available to the Parties under applicable law. The Trustees shall consider, but are not obligated to follow voluntarily, any recommendations provided by Simpson concerning general Bay-wide Restoration Activities.

D. Restoration Property and Project Expenses

1. Restoration Property Expenses. Except as provided in Section IV.D.3 below, Simpson shall provide the Restoration Property for the Restoration Project, and assume all responsibility for the payment of expenses related to the ownership and operation of the Restoration Property, including the maintenance of adequate comprehensive general liability insurance coverage and the payment of all taxes, assessments, fees, charges of whatever description levied on or assessed against the Restoration Property by competent authority.

2. Restoration Project Expenses. Except as provided in Section IV.D.3 below, Simpson shall bear the costs incident to planning, permitting, sampling, final project design, construction and planting in accordance with the final plans and specifications for the Restoration Project, and post-construction monitoring in accordance with the Monitoring and Adaptive Management Plan for the Restoration Project, including any obligation that arises as a consequence of permit conditions associated with the Restoration Project. As provided in Section IV.C.3.(b) above, Simpson shall not be financially responsible for adaptive management activities on the Restoration Property.

3. Trustee Compensation and Reimbursement. The Trustees shall compensate Simpson for the Restoration Property and reimburse Simpson for Restoration Project related expenses from moneys deposited in the Fund as provided in "Schedule 1" attached hereto and incorporated herein by this reference. Schedule 1 shall become null and void upon entry by the court of a Commencement Bay-wide Natural Resource Damage settlement agreement involving Simpson and the Trustees and incorporating alternative terms and conditions for such compensation and reimbursement, provided that such settlement agreement is entered by the court on or before June 30, 1996.

E. Access

1. Simpson Access. Simpson (or its consultant or contractor) may enter and freely move about the Restoration Property for purposes of inspecting conditions, activities, and the results of activities; carrying out Restoration Project- or Property-related activities under this Agreement; and undertaking emergency action to protect health, safety or the environment on the Restoration Property. Otherwise, Simpson shall notify the Trustees in advance before entering the Restoration Property.

2. Trustee Access. At all reasonable times and upon prior notice to Simpson, the Trustees (or other parties specifically designated by the Trustees) may enter and freely move about the

Restoration Property for the purposes of inspecting conditions, activities, and the results of activities; reviewing the progress of Simpson in implementing the Restoration Project or carrying out the terms of this Agreement; conducting tests and taking samples of soil, water, air and biota as the Trustees deem necessary; using a camera, sound recording device or other documentary type equipment; placing monitoring devices; and verifying the data submitted to the Trustees by Simpson.

3. Public Access. Access by the general public to any part of the Restoration Property shall be made through Simpson, but only after consent by the Trustees (which may be given orally or in writing).

F. Enforcement of Agreement Terms and Conditions

1. Notice of Dispute. If a dispute arises between the Parties concerning any provision of this Agreement, including the violation or threatened violation of any provision of this Agreement, the notifying party shall give written notice to the other party (the notified party) of such dispute. In the case of a violation or threatened violation, the notification shall identify corrective action sufficient to cure the violation and, where the violation involves injury to the Restoration Property resulting from use or activity inconsistent with the purpose of this Restoration Project, to restore the portion of the Restoration Property so injured.

2. Dispute Resolution.

(a) Informal Negotiations. The Parties shall attempt to resolve expeditiously and informally any dispute concerning this Agreement and its implementation. Informal negotiations between the Parties may last for a period of up to fourteen (14) calendar days from the date that written notice of the existence of the dispute is served on the notified party, unless it is extended by written agreement between the Parties.

(b) Preparation of Joint Statement of Position. In the event that any dispute arising under this Agreement is not resolved informally within the fourteen (14) day time period indicated above, the Parties shall jointly prepare a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting each position, and all supporting documentation on which each party relies (hereinafter the "Joint Statement of Position"). The Parties shall complete the Joint Statement of Position within fourteen (14) days after the conclusion of informal negotiations, unless it is extended by written agreement between the Parties.

(c) Referral of Dispute to District Court. In the event that the Parties still cannot resolve the dispute within the fourteen (14) day time period indicated above for completion of the Joint Statement of Position, the Parties shall promptly lodge the Joint Statement of Position with the U.S. District Court for the Western District of Washington for a decision. The U.S. District Court for the Western District has continuing jurisdiction over the Consent Decree.

(d) Failure to Respond. The notifying party may bring an action under the U.S. District Court for the Western District of Washington's continuing jurisdiction over the Consent Decree to enforce the terms of this Agreement if the notified party:

(1) Fails to meet with the notifying party to resolve the dispute within the fourteen (14) day period identified above for informal negotiations or to cure the violation within such period;

(2) Fails to work with the notifying party to complete a Joint Statement of Position within the fourteen (14) day period identified above for such completion or to cure the violation within such period;

(3) Fails to commence substantial activities to cure a violation within thirty (30) days after agreeing to cure such violation; or

(4) Fails to continue diligently to cure such violation until finally cured.

3. Remedies. The Parties agree that the remedies at law for violation of the terms of this Agreement are inadequate and that the prevailing party shall be entitled to injunctive relief, in addition to such other relief to which the prevailing party may be entitled, including specific performance of the terms of this Agreement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. For instance, where the violation involves injury to the Restoration Property resulting from an unapproved trespass or any use or activity on the Restoration Property inconsistent with the purpose provided in Section IV.A above, the prevailing party may require the party responsible for the violation to restore the portion of the Restoration Property so injured.

4. Enforcement Discretion. Enforcement of the terms of this Agreement shall be at the discretion of the Parties, and any forbearance by either of the parties to exercise its rights under this Agreement in the event of any breach of any term of this

Agreement by the other party shall not be deemed or construed to be a waiver by the party of such term or any of the party's rights under this Agreement. No delay or omission by either party in the exercise of any right or remedy upon any breach by the other party shall impair such right or remedy or be construed as a waiver.

G. Subsequent Transfers or Removal of the Deed Restriction and Termination of the Agreement

1. Subsequent Transfers.

(a) Simpson agrees to incorporate the terms of the Deed Restriction in any deed or other legal instrument by which Simpson holds title to the Restoration Property and in any deed or legal instrument by which Simpson conveys any interest in all or a portion of the Restoration Property, including without limitation, a leasehold interest.

(b) Simpson further agrees to give written notice to the Trustees of the transfer of any interest in all or a portion of the Restoration Property at least sixty (60) days prior to the date of such transfer. Such notice shall include the names and address of the proposed transferee, its corporate relationship, if any, to Simpson, and the nature of the proposed transferee's business. If the Trustees conclude that the proposed transferee is not a suitable entity for taking on the maintenance and monitoring obligations under this Agreement, the Trustees shall request in writing, within thirty (30) days after receiving the information under this paragraph (or forfeit their opportunity to make such request), that such maintenance and monitoring obligations be transferred to the Trustees or other suitable entity acceptable to the Trustees, together with a mutually agreeable right of entry and such moneys as are reasonably necessary, based on Simpson's records of actual annual maintenance and monitoring expenditures, to carry out over a ten year period any remaining maintenance and monitoring obligations under this Agreement. Simpson's consent to any such request shall not be unreasonably withheld.

(c) The failure of Simpson to perform any act required by this paragraph shall not impair the validity of the Deed Restriction or this Agreement or limit its enforceability in any way.

2. Removal of the Deed Restriction and Termination of the Agreement. If circumstances arise in the future that render the purpose of the Restoration Project impossible or impractical to accomplish, the Parties may agree to remove the Deed Restriction from the Restoration Property and terminate this Agreement. If

the Parties agree to remove the Deed Restriction from the Restoration Property and terminate this Agreement, Simpson shall pay the Trustees an amount in cash equal to the following:

(a) The value of the Restoration Property at the time of removal of the Deed Restriction, based on highest and best use of the Restoration Property at the time of removal of the Deed Restriction and not limited to its value as habitat, as determined by a qualified appraisal conducted by or for, and at the expense of, the Trustees; and

(b) Such moneys as are reasonably necessary, based on Simpson's records of actual annual maintenance and monitoring expenditures, to carry out over a ten year period any remaining maintenance and monitoring obligations under this Agreement.

The Deed Restriction shall be removed and this Agreement terminated upon payment to the Trustees of such moneys as determined under subparagraphs (a) and (b) above.

H. Indemnification and Hold Harmless Provisions

It is the intent of Simpson and the Trustees that nothing about this Agreement or the construction or operation of the Restoration Project shall result in the creation of liability for the Trustees as a consequence of any hazardous substances, including all known or subsequently discovered hazardous substances, that remain on, in, under or about the Restoration Property as of the effective date of this Agreement ("Historic Contamination"). Simpson shall continue to remain liable for the cleanup and/or remediation of any Historic Contamination, and for all monitoring, testing or other ongoing or future requirements regarding Historic Contamination on, in, under or about the Restoration Property that either have been, or may in the future be, imposed by the EPA, Ecology or by other lawful means. Simpson shall hold the Trustees harmless and shall indemnify and defend the Trustees against any claim that may be asserted by any person against the Trustees due to the presence of hazardous substances on, in, under or about the Restoration Property. If by operation of law any property interest is transferred to the Trustees pursuant to this Agreement, such transfer shall not create liability for future cleanup, remediation and/or natural resource damages due to the presence of Historic Contamination that remains on, in, under or about the Restoration Property as of the date that such interest is transferred.

V. COMMUNICATIONS

Written Communications among the parties to this Agreement shall be addressed to their representatives identified below, or

to such other representative or representatives as shall subsequently be designated in a written notice to the other party.

TRUSTEES

Robert C. Clark, Jr.
NOAA Restoration Center/Northwest
Northwest Regional Office F/NWO
National Marine Fisheries Service - NOAA
7600 Sand Point Way N.E.
Seattle, WA 98115-0070

Robert A. Taylor
National Oceanic and Atmospheric Administration
Damage Assessment and Restoration Center
7600 Sand Point Way N.W.
Seattle, WA 98115-0070

SIMPSON TACOMA KRAFT COMPANY

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Preston Gates & Ellis
5000 Columbia Center
701 5th Avenue
Seattle, Washington 98104-7011

VI. GENERAL PROVISIONS

A. Liberal Construction

Notwithstanding any general rule of construction, this Agreement shall be liberally construed to effect the purpose of the Restoration Project. If any provision is found to be ambiguous, an interpretation consistent with the purpose of the Restoration Project that would render the provision valid shall

be favored over any other interpretation that would render it invalid.

B. Severability

The clauses of this Agreement are severable, and should any part of this Agreement be declared by a court of competent jurisdiction to be invalid, the other parts of this Agreement shall remain in full force and effect.

C. Entire Agreement

This Agreement constitutes the entire understanding of the Parties with respect to its subject matter.

D. Modifications

All modifications of this Agreement shall be in writing and executed by all the Parties.

E. Termination of Rights and Obligations

A party's rights and obligations under this Agreement shall terminate upon transfer of the party's interest in the Restoration Property, except for the following rights and obligations which shall survive transfer: (1) Simpson's obligations concerning use of adjoining properties owned by Simpson and indemnification of the Trustees for environmental matters concerning Historic Contamination, as provided in Sections IV.C.2 and IV.H, respectively, and rights concerning consultation on Bay-wide Restoration Activities, as provided in Section IV.C.4, and (2) Simpson's liability for acts or omissions occurring prior to transfer.

F. Member of or Delegate to Congress

In accordance with 41 U.S.C. § 22, no Member of or Delegate to Congress shall be admitted to any share or part of this Agreement, or to any benefit that may arise from this Agreement.

G. Counterparts

This Agreement can be executed in one or more counterparts, all of which will be considered the original document.

H. Effectiveness Date

This Agreement is effective as of the date first provided in Section I of the Agreement.

VII. PARTIES BOUND

The provisions of this Agreement shall apply to and be binding upon the Parties to this Agreement, their agents, successors and assigns. The undersigned representative of each party certifies that he or she is fully authorized by the party or parties whom he or she represents to enter into this Agreement and to bind that party to it.

IN WITNESS WHEREOF, the Parties have signed this Agreement on the day and year appearing opposite their signature.

TRUSTEES

By the signature of its authorized representative below, the State of Washington approves and enters into this Cooperative Agreement.

Tim Hillman	5/26/95
State of Washington	Dated

By the signature of its authorized representative below, the Puyallup Tribe of Indians approves and enters into this Cooperative Agreement.

William C Sullivan
Puyallup Tribe of Indians

5/25/95
Dated

RECEIVED
MAY 30 1995
STOEL RIVES BOLEY
JONES & GREY

By the signature of its authorized representative below, the Muckleshoot Indian Tribe approves and enters into this Cooperative Agreement.

Muckleshoot Indian Tribe

5-31-95
Dated

By the signature of its authorized representative below, the National Oceanic and Atmospheric Administration approves and enters into this Cooperative Agreement.

C N Ehler. 5/25/95.

National Oceanic and Dated
Atmospheric Administration
Charles N. Ehler
Director, Office of Ocean Resources Conservation and Assessment
National Ocean Service

By the signature of its authorized representative below, the Department of the Interior approves and enters into this Cooperative Agreement.

Charles S. Pittman

Department of the Interior

5/30/95

Dated

SIMPSON

By the signature of its authorized representative below, Simpson approves and enters into this Cooperative Agreement.

R.P. Simpson

5/31/95
Dated

EXHIBITS

A. Legal Description of the Restoration Property

B. Deed Restriction on the Restoration Property

C. Relevant Restoration Project Permits

D. Restoration Project Supplemental Information Summary - Middle Waterway Shore Restoration Project (Parametrix, April 1994)

E. Restoration Project Deliverables

SCHEDULE

1. Terms and Conditions Regarding Compensation for the Value of the Restoration Property and Reimbursement of Restoration Project Expenses