EXHIBIT A

Legal Description of the Restoration Property

DESCRIPTION OF RESTORATION SITE ALONG MIDDLE WATERWAY

Parcel A

A parcel of land situate in the Northeast Quarter (NE1/4) of Section 4, Township 20 North, Range 3 East and in the South Half (S1/2) of Section 33, Township 21 North, Range 3 East of the Willamette Meridian, Pierce County, Tacoma, Washington, said parcel being a portion of Parcel 2 as conveyed by Union Pacific Railroad Company to Union Pacific Land Resources Corporation by Deed dated April 1, 1971, and recorded January 27, 1977, as Instrument No. 2714454, Records of said County, said parcel bounded and described as follows:

Commencing at the intersection of the centerlines of East Eleventh Street (formerly South Eleventh Street) and St. Paul Avenue;

thence North 49°41′30″ East, along the centerline of said East Eleventh Street, 599.09 feet;

thence North 27°31′30″ West, 51.27 feet, more or less, to the TRUE POINT OF BEGINNING, said point also being on the northwesterly line of said East Eleventh Street;

thence continuing North 27°31′30″ West, 30.76 feet;

thence South 49°41′30″ West, 215.37 feet, more or less, to a point on the easterly line of an unnamed Street;

thence along the easterly line of said unnamed Street, North 22°24′32″ West, 105.09 feet to a point on the southeasterly line of Middle Waterway;

thence along said southeasterly line, North 49°41′30″ East, 63.06 feet, more or less, to the most easterly corner of Middle Waterway;

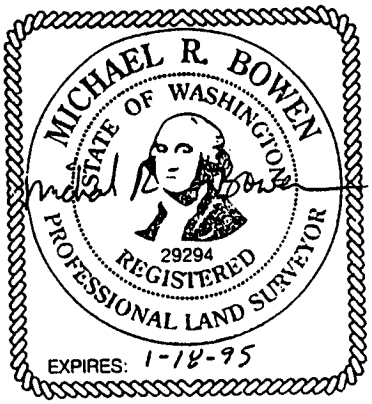
thence along the northeasterly line of Middle Waterway, North 22°24′32″ West, 960.98 feet;

thence leaving said northeasterly line North 67°33′30″ East, 194.00 feet;

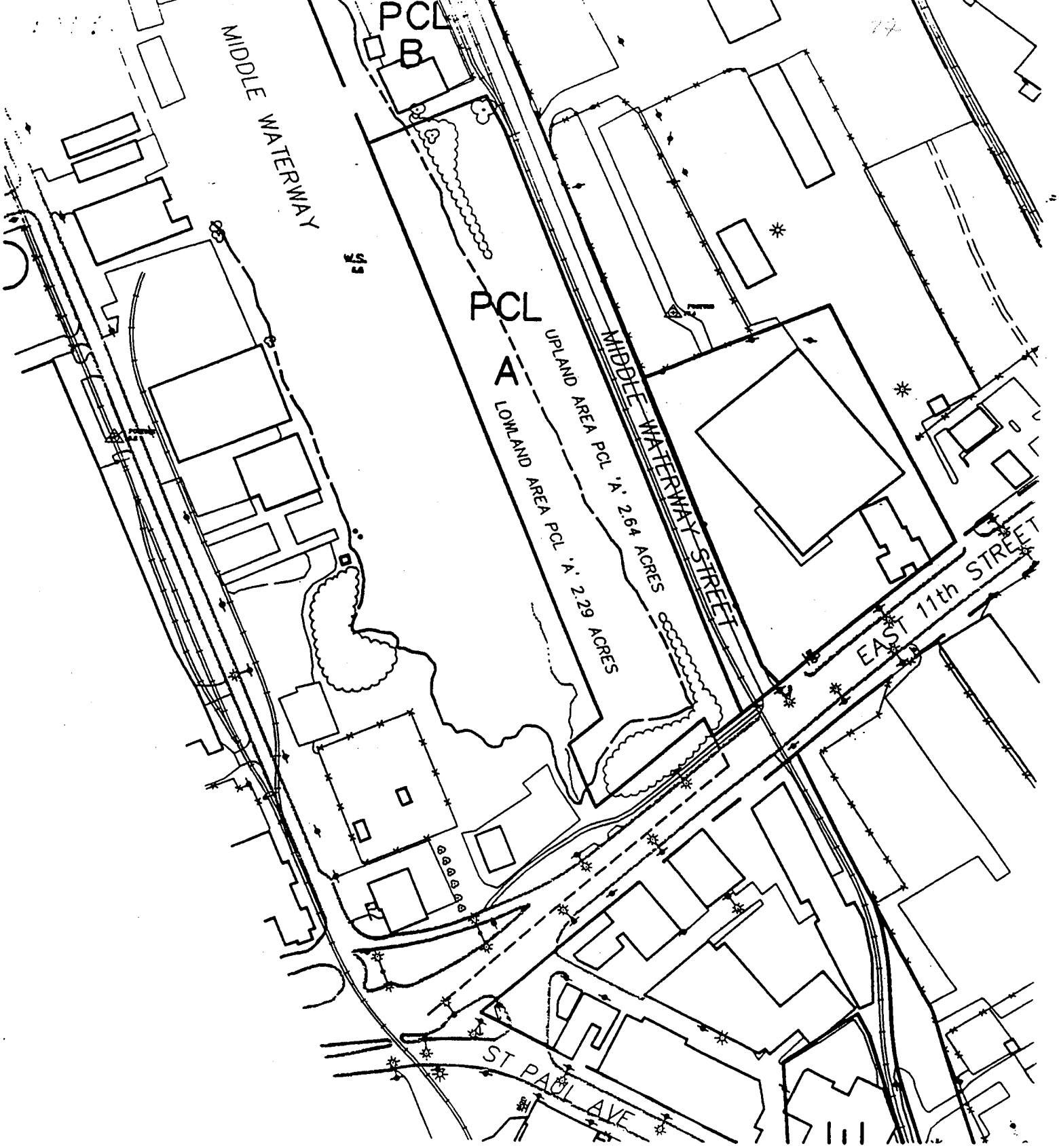
thence South 28°49′52″ East, 53.73 feet;

thence South 22°26′30″ East 979.51 feet to a point on the northwesterly line of said East Eleventh Street;

thence along said northwesterly line, South 49°41′30″ West, 55.63 feet, more or less, to the TRUE POINT OF BEGINNING.



55-1650-30



FILE: D:\SURVEY\SIMPSON\SIMPSON
JOB: 55-1650-30

Figure 1
MIDDLE WATERWAY
RESTORATION PROJECT
SIMPSON TACOMA KRAFT

SCALE IN FEET
0 200 400

N

EXHIBIT B

AFTER RECORDING, RETURN TO:

PRESTON GATES & ELLIS
5000 Columbia Center
701 Fifth Avenue
Seattle, WA 98104-7078

Attn: Konrad Liegel

C.T.I.
W447126-1C
JUN 30 1995

95 JUN 30 AM 11:56

RECORDED
CATHY PEARSALL-STIPEK
AUDITOR PIERCE CO. WASH

Restrictive Covenant

Notice is hereby given that the property legally described in exhibit A hereto (the Restoration Property) is subject to use restrictions and other obligations enforceable by the Natural Resource Trustees for Commencement Bay (enumerated in the Cooperative Agreement described below). The purpose of these restrictions and obligations is to ensure that the Restoration Property provides habitat value in perpetuity in the Commencement Bay environment.

These restrictions and obligations are described in Section IV of the Cooperative Agreement for the Middle Waterway Shore Restoration Project (Cooperative Agreement). Copies of the Cooperative Agreement are available from the United States District Court for the Western District of Washington, which has jurisdiction over the Consent Decree entitled "Commencement Bay Nearshore/Tideflats Superfund Site; St. Paul Waterway Problem Area Consent Decree," Civil No. C91-5260TC, filed with the court.

Potential purchasers and lessees are further put on notice that, pursuant to the Cooperative Agreement, the Restoration Property may not be disturbed in any manner that would impair or interfere with the integrity of the habitat restoration, unless the Natural Resource Trustees for Commencement Bay, or their successors in interest, determine that such disturbance is necessary to (i) maintain habitat value in perpetuity or (ii) reduce a threat to human health or the environment.

The restrictions and obligations described above are intended to run with the land and are intended to be binding on any and all persons who acquire an interest in the Restoration Property. This restrictive covenant may be removed from the Restoration Property if circumstances arise in the future that render the purpose of the restrictions and obligations impossible or impractical to accomplish, but only in the manner provided for in the Cooperative Agreement.

10

DATED this 16th day of June, 1995

SIMPSON TACOMA LAND COMPANY, Restoration Property Owner

By: R.P. Dennison

Its: PRESIDENT

SIMPSON TACOMA LAND COMPANY WASHINGTON 1987 CORPORATE SEAL

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 16th day of June, 1995 before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared R P Tennison, to me known to be the President, of the SIMPSON TACOMA LAND COMPANY, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument and that the seal affixed (if any) is the corporate seal of said corporation.

WITNESS my hand and official seal affixed the day and year in this certificate above written.

BONNIE L. HACKNEY NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 4-1-99

NOTARY PUBLIC in and for the State of Washington, residing at Seattle
My commission expires 4/1/99

9506300282

DESCRIPTION OF RESTORATION SITE ALONG MIDDLE WATERWAY

Parcel A

A parcel of land situate in the Northeast Quarter (NE1/4) of Section 4, Township 20 North, Range 3 East and in the South Half (S1/2) of Section 33, Township 21 North, Range 3 East of the Willamette Meridian, Pierce County, Tacoma, Washington, said parcel being a portion of Parcel 2 as conveyed by Union Pacific Railroad Company to Union Pacific Land Resources Corporation by Deed dated April 1, 1971, and recorded January 27, 1977, as Instrument No. 2714454, Records of said County, said parcel bounded and described as follows:

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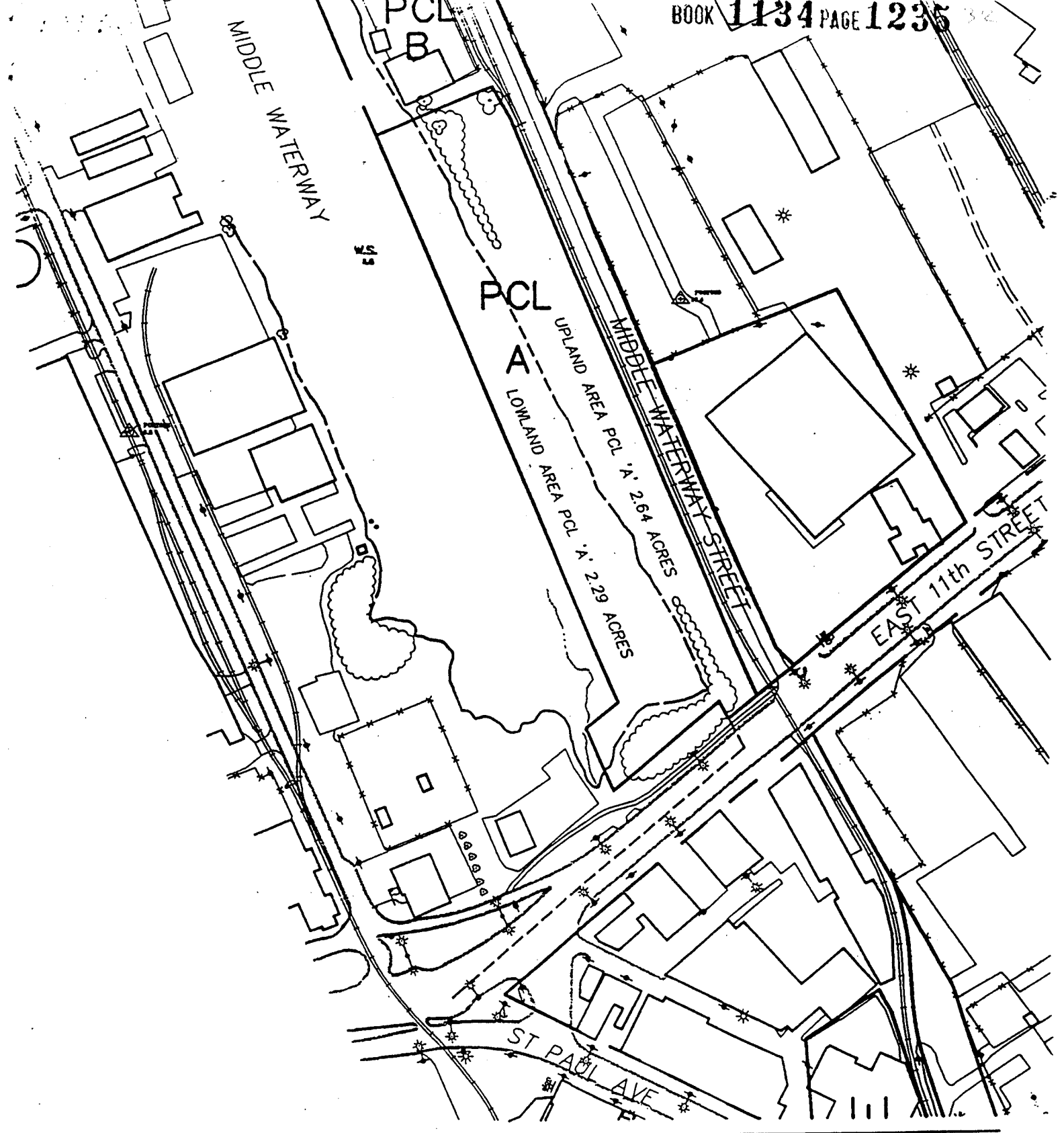
MICHAEL R. BOWEN
STATE OF WASHINGTON
29294
REGISTERED
PROFESSIONAL LAND SURVEYOR
EXPIRES: 1-18-95

55-1650-30

9506300282



FILE: D:\SURVEY\SIMPSON\SIMPSON
JOB: 55-1650-30

Figure 1
MIDDLE WATERWAY
RESTORATION PROJECT
SIMPSON TACOMA KRAFT

SCALE IN FEET
0 200 400

N

9506300282

EXHIBIT C

RELEVANT RESTORATION PROJECT PERMITS

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
Mail Stop PV-11 • Olympia, Washington 98504-8711 • (206) 459-6000

JAN 25 1994

January 20, 1994

Mr. Dave McEntee
Simpson Tacoma Kraft Company
Post Office Box 2133
Tacoma, WA 98401

Dear Mr. McEntee:

Re: City of Tacoma Permit #141.559
Simpson Tacoma Kraft Company - Applicant
Shoreline Substantial Development Permit #1994-15295

The subject Shoreline Management Substantial Development permit has been filed with this office by the City of Tacoma on January 6, 1994.

If this permit is not appealed to the Shorelines Hearings Board on or before February 7, 1994, authorized construction may begin. Other federal, state, and local laws regulating such construction shall be complied with. Unless an appeal is filed, this letter constitutes final notification of action on this permit.

Sincerely,

K-Y Su
Permit Coordinator
Shorelands and Coastal Zone
Management Program

KYS:pz
RECSDP.WP

cc: Kathlyn C. Henderson, City of Tacoma

35

Tacoma City of Tacoma
Hearing Examiner

RECEIVED
JAN 5 1994
KONRAD J. LIEGEL

January 5, 1994

Conrad Ligal, Attorney at Law
Preston, Thorgrimson, Shidler,
Gates & Ellis
5000 Columbia Center
701 Fifth Avenue
Seattle, Washington 98104-7078

RE: Shoreline Management Substantial Development Permit
Applicant: Simpson Tacoma Kraft Company
File No.: 141.559
Location: Southeastern Shore of Middle Waterway adjacent to East 11th Street and Middle Waterway Road

The above-application for a Shoreline Management Substantial Development Permit was considered by the Tacoma City Council on January 4, 1994.

The Tacoma City Council acted to concur with the recommendation of the Hearing Examiner, approving the permit by a vote of 9 - 0 (The Mayor and all Council Members were present).

Development pursuant to this permit will not begin or is not authorized until thirty (30) days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-14-090, or until all review proceedings initiated within thirty (30) days from the date of such filing have terminated: EXCEPT as provided in RCW 90.58.140(5)(a)(b)(c).

Rodney M. Kerslake

RODNEY M. KERSLAKE
Hearing Examiner

/mt
Attachment

cc: Department of Ecology
Attorney General
Public Works Department (BLUS)
Army Corps of Engineers

747 Market Street, Room 720 ▮ Tacoma, Washington 98402-3768 ▮ (206) 591-5195

SHORELINE MANAGEMENT ACT OF 1971 PERMIT FOR SHORELINE MANAGEMENT SUBSTANTIAL DEVELOPMENT, CONDITIONAL USE OR VARIANCE

Application No. 141,559
Administering Agency City of Tacoma
Date Received September 21, 1993
Approved XX _____ Denied _____
Dated January 4, 1994

Type of Action(s) (Check appropriate one)

- Substantial Development Permit X
- Conditional Use Permit _____
- Variance Permit _____

Pursuant to Chapter 90.58 RCW, a permit is hereby granted/denied to:

Simpson Tacoma Kraft Company, P.O. Box 2133, Tacoma, WA 98401 to undertake the following development:

See the attached Hearing Examiner Report and Recommendation to the City Council. upon the following property: See the attached Hearing Examiner Report and Recommendation to the City Council. within Middle Waterwayin the "S-10" Port Industrial Shoreline District.

The project will be within shorelines of state-wide significance (RCW 90.58.030).

The project will be located within a(n) urban designation. The following master program provisions are applicable to this development (state the master program section or page number): If a conditional use or variance, also identify the portion of the master program which provides that the proposed use may be a conditional use, or that portion of the master program being varied.

See the attached Hearing Examiner Report and Recommendation to the City Council.

Development pursuant to this permit shall be undertaken pursuant to the following terms and conditions:

See the attached Hearing Examiner Report and Recommendation to the City Council.

This permit is granted pursuant to the Shoreline Management Act of 1971 and nothing in this permit shall excuse the applicant from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project, but not inconsistent with the Shoreline Management Act (Chapter 90.58 RCW). This permit may be rescinded pursuant to RCW 90.58.140(8) in the event the permittee fails to comply with the terms or conditions hereof.

CONSTRUCTION PURSUANT TO THIS PERMIT WILL NOT BEGIN OR IS NOT AUTHORIZED UNTIL THIRTY (30) DAYS FROM THE DATE OF FILING AS DEFINED IN RCW 90.58.140(6) AND WAC 173-14-090, OR UNTIL ALL REVIEW PROCEEDINGS INITIATED WITHIN THIRTY (30) DAYS FROM THE DATE OF SUCH FILING HAVE TERMINATED: EXCEPT AS PROVIDED IN RCW 90.58.140(5)(a)(b)(c).

1-4-94
(Date)

(Signature of Authorized Local Government Official)

THIS SECTION FOR DEPARTMENT USE ONLY IN REGARD TO A CONDITIONAL USE OR VARIANCE PERMIT.

Date received by the Department _____
Approved _____ Denied _____

Tacoma City of Tacoma
Hearing Examiner

RECEIVED
DEC 2 1 1993
KONRAD J. LIEGEL

December 20, 1993

Conrad Ligal, Attorney at Law
Preston, Thorgrimson, Shidler,
Gates & Ellis
5000 Columbia Center
701 Fifth Avenue
Seattle, Washington 98104-7078

RE: Applicant: Simpson Tacoma Kraft Company
File No.: 141.559
Location: Southeastern Shore of Middle Waterway adjacent to East 11th Street and Middle Waterway Road

The referred-to Shoreline Management Substantial Development Permit has been recommended for approval, subject to conditions. The findings and conclusions of the undersigned Hearing Examiner are attached.

All development must be strictly in accordance with the permit to be issued after final Council action.

This action has been taken pursuant to the Shoreline Management Act, Chapter 90.58 RCW, and Chapter 13.10 of the Official Code of the City of Tacoma.

Wick Dufford/mt

WICK DUFFORD
Hearing Examiner Pro Tempore

/mt
Attachment

cc: Mayor and Members of the City Council
Department of Ecology
Attorney General

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

REPORT AND RECOMMENDATION TO THE CITY COUNCIL

APPLICANT: Simpson Tacoma Kraft Company **FILE NO.:** 141.559

SUMMARY OF REQUEST:

A Shoreline Management Substantial Development Permit for a restoration project to construct substantial new riparian and wetland habitat and improve existing intertidal habitat on a 7.9 acre site. Primary actions will be to excavate and contour upland portions to restore a natural shoreline, vegetative plantings, debris removal or containment and modification of approximatley 3.3 acres of existing tidelands through excavation to intertidal elevations and filling to create a vegetative bench and create screening to support, compliment, and preserve existing tideflats. This action is not associated with any development project.

LOCATION:

The site is located on the southeastern shore of Middle Waterway adjacent to East 11th Street and Middle Waterway Road.

RECOMMENDATION:

Recommend approval, subject to conditions.

PUBLIC HEARING:

After reviewing the report of the Public Works Department, examining other available information on file with the application, and visiting the subject property and the surrounding area, the Hearing Examiner Pro Tem conducted a public hearing on the application on November 23, 1993.

FINDINGS, CONCLUSIONS AND RECOMMENDATION

FINDINGS:

1. Simpson Tacoma Kraft Company (Simpson) seeks to restore a portion of the Commencement Bay tideflats located on the southeastern shore of the Middle Waterway adjacent to East 11th Street and Middle Waterway Road. The overall project site includes 7.9 acres owned by Simpson, southwest of the company's Tacoma mill. The proposal is to rehabilitate existing intertidal habitat and to construct adjacent riparian and wetland habitat.

2. The site includes one of the few remaining remnants of the original Commencement Bay tideflats. Of approximately 2,074 acres of mudflat present 100 years ago, only about 180 acres of natural mudflat remain on the Bay.

3. The concept is to recreate a fragment of the mudflat/wetland ecosystem which characterized the area historically. About 3.3 acres of the total project site are proposed to be converted to wetland and riparian habitat to support and protect the natural tideflats.

4. The proposal involves the excavation and contouring of upland portions of the site to restore a natural shoreline. Excavation and grading will create tidal channels and wetlands like those in a natural estuary. Appropriate vegetation will be planted at the new elevations, resulting in new upper intertidal marsh areas and an adjoining riparian buffer. Approximately 7900 cubic yards will be excavated and 580 cubic yards will be dredged.

5. A minor amount of the excavated or dredged material (534 cubic yards) will be placed on a small portion of the mudflat to construct the sort of vegetative bench commonly found in estuarine marshes on Puget Sound. Excavated or dredged material not used on site to create this bench or for the riparian buffer on uplands will be removed from the site and deposited, graded and leveled on nearby Simpson property.

6. This project is in close proximity, and functionally related, to new intertidal habitat constructed by Simpson and Champion International Corporation at the north end of the Tacoma Kraft Mill in 1988, as part of the St. Paul Waterway Area Remedial Action and Habitat Restoration Project. The instant proposal is an additional habitat restoration project for the Commencement Bay environment funded by Simpson and Champion under the St. Paul Waterway Natural Resource Damage settlement agreement.

7. Planning and oversight for the project involves the Natural Resource Trustees for Commencement Bay (Trustees). The Trustees include the National Oceanographic and Atmospheric Administration, the U.S. Fish and Wildlife Service, the Washington Department of Ecology, the Muckleshoot Indian Tribe, and the Puyallup Tribe of Indians.

8. A factor influencing the site selection for this project is that the area does not appear to have significant contamination problems. The present uplands consist of sand and gravel fill overlain by sawdust and rotted bark. Soil and groundwater sampling of the property has produced no materials that would be classified as dangerous or hazardous wastes. A reconnaissance of the project site revealed wood debris, scrap metal, old tires and other miscellaneous junk. This occasional surface debris scattered throughout the area will be gathered and disposed of off-site. Samples from the bank at the head of the waterway contained brass foundry metal debris exceeding sediment cleanup objectives for some metals. This foundry debris will either be removed and disposed of off-site or contained on-site in a berm hummock in a manner that will isolate possible contaminants from the environment.

9. The restoration project is located within an identified problem area of the Commencement Bay/Nearshore Tideflats Superfund Site. Sediments in the Middle Waterway that will require remediation under Superfund will be defined based on future sediment sampling results. Prior to any activity on this project that impacts marine sediments, sampling will be conducted and any contaminated sediments found will be disposed of or contained in accordance with applicable environmental regulations. However, based on preliminary work it does not appear that removal or containment of material from the project site will require state or federal involvement through the Model Toxics Control Act or Superfund.

10. Simpson is working with the Washington Department of Ecology (Ecology) Urban Bay Action Team, the U.S. Environmental Protection Agency (EPA) Superfund Remedial Branch and the Ecology Sediments Management Unit to ensure the project's consistency with applicable programs and requirements regarding the handling of sediments and soils.

11. The purpose of the project is to enhance the habitat value of the Middle Waterway to shorebirds, fishes and other aquatic organisms. Goals include: (1) preserving the integrity of a remnant of the historic Commencement Bay tideflats, (2) providing valuable information for planning future restoration projects along Commencement Bay, (3) furnishing a functional connection to the new intertidal habitat constructed at the north shore of the Tacoma Kraft Mill, to the Puyallup delta and to other nearby intertidal and subtidal habitat, (4) providing a habitat education opportunity close to the Tacoma city center. In addition, the site modifications will be designed to complement possible new upland stormwater pollution prevention and treatment facilities under consideration for the Simpson property immediately north of the site. If these facilities are built, treated stormwater from the adjacent uplands could be used to support the wetland-estuarine habitat on the project site.

12. Before proceeding, the applicant will need to obtain a 404 permit from the U. S. Army Corps of Engineers, a hydraulic project approval from state fish and wildlife authorities, and approvals concerning water quality from Ecology. In addition, a clearing and grading permit will be required from the City of Tacoma. Detailed plans for

excavation, contouring and erosion control, for any on-site containment, for planting to establish new intertidal marsh and buffer vegetation, and for on-going monitoring and adaptive site management will be submitted to the City as part of the grading permit application.

13. The uses adjacent to the project site are a combination of water dependent and non-water dependent uses, including a fire station, utility substation, boat brokerage and industrial uses. East 11th Street is a four-lane arterial designated as a state highway. Union Pacific Railroad tracks are located directly east of the site, A City stormwater outfall is located at the south end of the site.

14. The site lies within the "S-10" Port Industrial Shoreline District, and is designated as "urban" in the *Tacoma Shoreline Master Program* (*TSMP*). The area upland of the shoreline district is zoned "M-3" Heavy Industrial Zoning District. Under Section 13.10.130, *Tacoma Municipal Code (TMC)*, industrial use is expressly permitted in the "S-10" district.

15. Because no wetlands above ordinary high water now exist on the site, the project is not subject to the requirements of the City's *Critical Areas Ordinance.*

16. Pursuant to the State Environmental Policy Act (SEPA), implementing state regulations and the City's Environmental Code, a Determination of Environmental Non-Significance (DNS) was issued for the project by the Director of Public Works. No appeal of this DNS was filed. The determination was based on an environmental checklist provided by the applicant, incorporating a separate project analysis document prepared by Prametrix Incorporated.

17. The Department of Public Works (DPW) Preliminary Report and Environmental Evaluation, as entered into this record as Exhibit 1, accurately describes the proposed project, general and specific facts about the proposal, and applicable provisions of the TSMP and regulatory codes. The report is incorporated herein by this reference as though fully set forth.

18. Written notice of the public hearing was mailed to all owners of property within 400 feet of the site at least 47 days prior to the date of the public hearing. In addition, notice of ;the application was published in the *Morning News Tribune* on October 7 and 21, 1993.

20. The application was circulated to appropriate city departments, public utilities and government agencies. No objections were received. EPA proposed language for a condition to deal with sampling intertidal and subtidal sediments and with disposal if contamination is found.

21. At the hearing, the applicant explained that Simpson is working with the Trustees on a cooperative agreement to address long-term protection and maintenance

of the project site. The applicant has committed to inserting a deed restriction preventing other use of the property by subsequent owners. The applicant also advised of its intention to negotiate with the Union Pacific Railroad in an effort to specify methods for avoiding disturbance to the area in the course of track maintenance.

22. The applicant noted that because of the sensitive nature of the habitat to be provided through the restoration project, physical access of the public to the land on the site will be discouraged. However, tentative plans have been made to build facilities for viewing access from a platform west of the site and to promote viewing from small boats such as kayaks. Viewing facilities, if constructed, will be handled as a separate application.

23. The applicant expressed a willingness to discuss with the City a program for on-going clean-up of the site to control the effects of any littering or unauthorized dumping.

24. A citizens' group, Citizens for a Healthy Bay, made written and oral comments, in general approving of the project, but expressing concerns about the proper disposal of brass foundry metal debris and about measures to control public use of the site in order to prevent vandalism and misuse.

25. One citizen, Cheryl Miller, expressed concerns about the process for this application. She is not opposed to the project on its merits, but stated her view that a conditional use permit should be required for this shoreline development because restoration projects of this kind are not among the listed uses in the applicable shoreline district. She also expressed concerns about the role of the Trustees and on-going control and management of the property.

26. Representatives of the Trustees presented testimony in favor of the project, emphasizing the importance of the undertaking in providing a field laboratory for the study of restoration techniques which might be used at other sites. Rapid action on the shoreline permit was urged in order to try to take advantage of the opportunity for initiating the planting plan this spring.

27. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction over the parties and subject matter of this proceeding. Section 1.23.070.1, *Tacoma Municipal Code (TMC).*

2. The policy of the Shoreline Management Act explicitly speaks to the "utilization, protection, restoration, and preservation" of the shorelines of the state. The policy contemplates "protecting against adverse effects to the public health, the land and

its vegetation and wildlife and the waters of the state and their aquatic life." It speaks of preserving the public's opportunity to enjoy the "physical and aesthetic qualities of natural shorelines . . . to the greatest extent feasible." Uses are preferred which are "consistent with control of pollution and prevention of damage to the natural environment." Alterations of the "natural condition of the shorelines" are permitted only in "limited instances." Permitted uses "shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area." RCW 90.58.020. The underlying thrust of these policy pronouncements is that, whenever and wherever development is considered, the natural environment is to be maintained to the extent possible.

3. The habitat restoration project under consideration here is entirely consistent with the policy of the Act. Arguably, such projects could not be prohibited, but are allowed under the Act as a matter of law in any shoreline area. Seen against this policy background, the argument for employing a conditional use process here is not persuasive. The Examiner concludes that a substantial development permit is all that is necessary.

4. A shoreline conditional use permit is a statutory mechanism provided to deal with special situations involving developments not approvable in the ordinary course of carrying out the Act's policy. RCW 90.58.100(5). A conditional use permit is required where a particular kind of development is either specified as a conditional use or is not listed as a use permitted outright. *See* WAC 173-14-140. However, various activities which are not expressly identified as permitted uses are allowed without a conditional use process when incidentally necessary to constructing a permitted use, or when required in order to mitigate the adverse effects of a permitted use. Thus, a substantial development permit for a factory might include authorization for incidental excavation, even though excavation itself might not be on the list of permitted uses. Similarly, landscaping might be required around the same factory in a substantial development permit, as a mitigating feature, even though not itself among the listed uses permitted. The restoration project at issue is this sort of mitigating action incident to the permitted industrial use in the district.

5. It is doubtful that anyone would question that the instant proposal could be allowed under substantial development permit criteria, if it were proposed in conjunction with the construction of an industrial development. It would be viewed as a proper environmental condition, accessory to the principal use which is explicitly authorized in the district. *See* Section 13.10.130.D.13, *TMC*. In this case we deal with pre-existing industrial uses, such as the Simpson mill, which are part of the contemplated pattern of shoreline use in this area under Tacoma's shoreline program. The restoration project is made in response to the effects which such industrial developments have had over time. But, the fact that this project is not proposed concurrently with the initial industrial development should make no difference to the process for its approval. As a mitigating condition involving an accessory use, it is clearly allowable in the zone under the larger industrial use heading. Such a condition in a substantial development permit directly

implements the policy of the Act which calls for minimizing the "resultant damage" of permitted uses to the shoreline ecology and environment.

6. Under Section 13.10,180, *TMC*, an applicant for a substantial development permit must demonstrate consistency with the Shoreline Management Act, the TSMP, the *Land Use Management Plan* and applicable ordinances of the City and the intent and regulations of the specific shoreline district in which the proposed development is located. Findings have been entered, based upon the evidence in the record which support a conclusion that the restoration project, if conditioned as proposed below, will meet all of these requirements. It is designed to provide an enclave of protected natural shoreline within an urban designation in a shoreline district devoted principally to port and industrial development As such, it provides the kind of environmental balance contemplated by the Act as implemented by the TSMP and city ordinances.

7. The shoreline substantial development permit should be issued, subject to the following conditions:

A. SPECIAL CONDITIONS:

1. Construction of environmental improvements shall conform to the proposal as described in applicant's permit applications. As-constructed drawings shall be filed with the City upon completion.

2. The applicant shall conduct in-water work (e.g., placement of fill in an intertidal or subtidal area, or removal or dredging of sediments or soil at or below the MHHW level) in accordance with all applicable laws, including the federal Comprehensive Environmental Response, Compensation, and Liability Act (commonly referred to as "CERCLA" or "Superfund") and the State Sediment Management Standrds (ch. 173-204 WAC). Before conducting any activity that impacts marine sediments, the applicant shall contact and coordinate such efforts with the EPA Superfund Remedial Branch and the Ecology Sediment Management Unit. The applicant shall sample and evaluate the sediments that will be impacted to determine whether they are contaminated, and shall clean up any contaminated sediments that will be impacted in accordance with all applicable laws.

3. Before undertaking excavation activities on the project site, the applicant shall contact and coordinate any excavation and on-site containment or off-site removal and disposal of brass foundry debris found on the project site with the Ecology CB/NT Urban Bay Action Team to ensure consistency with EPA and Ecology Source Control Activities.

4. The applicant shall record a deed restriction on the portion of the project site exclusive of the railroad right-of-way. This deed restriction

shall impose use restrictions and other obligations on the applicant, its successors and assigns that are intended to ensure that the property provides habitat value in perpetuity in the Commencement Bay environment.

5. The applicant shall enter into negotiations with the Union Pacific Railroad to secure an agreement specifying how the railroad will perform its routine maintenance activities in a manner that is consistent with the proposed project.

6. The appliant shall enter into a cooperative agreement with the Natural Resource trustees for Commencement Bay addressing the long-term protection and maintenance of the project site. This cooperative agreement shall include an adaptive management and monitoring plan. In the event that monitoring shows that changes or additions to the project are necessary, as determined by the parties to the cooperative agreement, the applicant shall submit amendments for this permit, as appropriate.

7. City sewers shall be located in the field and measures taken to prevent damage to them during construction of the applicant's project. All dirt and debris tracked onto the right-of-way shall be removed promptly.

B. <u>USUAL CONDITIONS</u>:

1. The applicant shall comply with all federal, state, or local statutes, ordinances or regulations applicable to this project.

2. This permit may be rescinded pursuant to RCW 90.58140(8) of the Shoreline Management Act of 1971 and Chapter 13.10.330 of the City of Tacoma's Land Use Regulatory Code in the event the permittee fails to comply with any condition thereof.

3. If no appeal is filed within fourteen (14) days of the issuance of the Hearing Examiner's decision and the City Council votes to summarily concur in the decision of the Hearing Examiner, the matter will be transmitted to the State of Washington. However, if the City Council does not summarily concur with the Hearing Examiner's decision or an appeal is filed, the City Council will set a date for the determination of the matter. Subsequent to the determination of the City Council, the matter will be transmitted to the State. Construction pursuant to this permit will not begin or is not authorized until thirty (30) days from the date of filing the final order of the City of Tacoma with the Department of Ecology and Attorney General, or until all review proceedings initiated within thirty (30) days from the date of such filing have been terminated.

4. Construction or substantial progress toward construction of the authorized project must be taken within two (2) years after the approval of the permit by the City of Tacoma, or the permit shall terminate. If such progress has not been made, a new permit will be necessary. Local government may, however, at is discretion, extend the two-year time period for a reasonable time based on factors, including the ability to expeditiously obtain other governmental permits which are required prior to the commencement of construction.

5. If the authorized project has not been completed within five (5) years after the approval of the permit by the City of Tacoma, the City shall, at the expiration of the five-year period, review the permit, and upon showing of good cause, do either of the following:

1) Extend the permit for one (1) year; or

2) Terminate the permit.

PROVIDED that nothing herein shall preclude local government from issuing permits with a fixed termination date of less than five (5) years.

6. This permit may be rescinded pursuant to RCW 90.58.140(8) in the event the permittee fails to comply with any condition hereof.

7. The recommendation made herein is based upon representations made and exhibits, including project plans, submitted to the City and a part of the record. Any substantial changes or deviations in such plans or proposals or conditions of approval imposed (exclusive of refinements in the excavation and grading plan, planting plan, adaptive management and monitoring plan, construction methods, and similar actions resulting from review of the proposal by EPA, Ecology or other agencies with jurisdiction) shall be subject to the approval of the Hearing Examiner and may require further hearings.

8. Any finding herein which may be deemed a conclusion is hereby adopted as such.

RECOMMENDATION:

The application for a substantial development permit should be approved subject to the conditions set forth in Conclusion 7 above.

DATED this 20th day of December 1993.

Dick Dufford

WICK DUFFORD, Hearing Examiner Pro Tempore

TRANSMITTED this 20th day of December, 1993, via certified mail to:

Conrad Legal, Preston, Thorgrimson, Shidler, Gates & Ellis, Attorneys at Law, 1201 Pacific Avenue, Tacoma, WA 98402

TRANSMITTED this 20th day of December, 1993, to the following:

Dave McEntee, Simpson Tacoma Kraft Company, P. O. Box 2133, Tacoma, WA 98401
Fred Gardner, Toxics Cleanup Program, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600
M. Vernice Santee, Environmental Review Section, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600
Allison Hiltner, Remedial Project Manager, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, WA 98101
Citizens for a Healthy Bay, 771 Broadway, Tacoma, WA 98402-3700
Cheryl Miller, 3303 North 36th, Tacoma, WA 98407
City Clerk, City of Tacoma
Planning and Development Services Department, City of Tacoma (M. Smith)
Public Works Department, City of Tacoma (BLUS/Henderson)

N O T I C E

RECONSIDERATION AND APPEAL OF EXAMINER'S DECISION

RECONSIDERATION:

Any aggrieved person having standing under the ordinance governing such application and feeling that the decision of the Examiner is based on errors of procedure or fact may make a written request for review by the Examiner within fourteen (14) days of the issuance of the Examiner's decision or recommendation. This request shall set forth the alleged errors, and the Examiner may, after review of the record, take such further action as he deems proper and may render a revised decision. (Official Code of the City of Tacoma, Section 13.03.120)

APPEAL OF HEARING EXAMINER'S DECISION:

Within fourteen (14) days of the issuance of the Examiner's decision on a Shoreline Permit, the applicant, any aggrieved party owning property or residing within the area entitled to public notice by mail as set forth in Section 13.10.250 hereof, or any person who appeared in person, represented by counsel, or in writing at the Examiner's hearing, shall have the right to appeal the Hearing Examiner's decision to the City Council by filing written notice of appeal in duplicate with the City Clerk, stating the reasons the Hearings Examiner's decision was in error; provided, however, that in the event application is made pursuant to Section 13.03.120 of this Title for reconsideration by the Examiner, the appellant shall have five (5) days from the date of receipt of the Examiner's decision on the reconsideration to appeal the Examiner's decision to the City Council. Appeals shall be reviewed and acted upon by the City Council in accordance with Section 13.03.130 of this Title. (Official Code of the City of Tacoma, Section 13.10.280)

City of Tacoma
BUILDINGS DIVISION

NOTICE
Contractors must call 24 hours in advance for all inspections.

INSPECTION PHONE NUMBERS
Plumbing & Mechanical ...591-5005
Electrical .....383-2471, Ext. 277
Building 591-5004
Construction Division 591-5760

NOTICE
Post this card and approved plans conspicuously on construction site.

DATE ISSUED SEP 20 19 94
TO SIMPSON TACOMA KRAFT Owner/Contractor
TYPE OF WORK MIDDLE WATERWAY RESTORATION
ADDRESS 679 EAST 11TH STREET

REQUIRED	INSPECTION SCHEDULE	DATE	BY
I ___	Building (Footing)		
I ___	Building (Foundation wall(s))		
I ___	Plumbing (Groundwork)		
I ___	Energy (Slab perimeter insulation)		
II ___	Building (Slab) ***SEE NOTE BELOW***		
III ___	Plumbing (Rough-in)		
III ___	Mechanical (Rough-in)		
III ___	Gas Piping		
III ___	Electrical (Rough-in)		
III ___	Energy (Caulking)		
IV ___	Building (Framing) ***SEE NOTE BELOW***		
V ___	Energy (Insulation)		
V ___	Building (Drywall)		
VI ___	Plumbing (Final)		
VI ___	Mechanical (Final)		
VI ___	Electrical (Final)		
VI ___	Construction Division (sidewalks & sanitary sewer hook-up)		
VI ___	Energy (Final)		
VII ___	Building (Final) ***SEE NOTE BELOW***		

NOTE—Inspections listed as required inspections must be obtained in the numerical order indicated by the Roman numerals.

PERMITS:
Building # 443195 Contractor OWNER
Plumbing # _____ Contractor _____
Heating # _____ Contractor _____
Electrical _____ Contractor _____
Sanitary Sewer # _____ Sidewalks # _____

WARNING: It is unlawful to occupy the premises until all applicable final inspections have been made.

PWK 4125 0005 (06/88)

SUPPLEMENTAL INSPECTIONS ON BACK

~~JOB~~ Kim

CITY OF TACOMA

Department of Public Works
Division of Building and Land Use Services

747 Market Street
Tacoma, WA 98402
(206) 591-5004

BUILDING PERMIT

CASE NO: BLD95-00192 ISSUED: 5/24/95 EXPIRES:
PROJECT:
SITE ADDRESS: 922 E 11TH ST
PARCEL NO: 8950001262 CITY PARCEL KEY: 17440015
SUBDIVISON: TACOMA TIDELANDS LOT AND BLOCK: POR B 42 43 43A 44 44A 44B &

PROJECT DESCRIPTION:
GRADE 480 CUBIC YARDS FOR SURCHARGE #1 AT INDUSTRIAL SITE

OWNER
SIMPSON TACOMA LAND CO
C-1 PARCEL CAR
PO BOX 2133

CONTRACTOR
RUSHFORTH CONSTRUCTION CO Lic#: RUSHFC*305R1
1308 ALEXANDER AVE E Exp Date: 6/30/95
TACOMA, WA 98424
922-1884

Zoning:	Construction Type / Fire Protection			Building Use	
City Contact: PKA	Constr Type 1:	Sprinklers?:		Occ Grps	Use Codes
Type of Permit: BLD	Constr Type 2:	Sprinkler Type:		1	
Resid/Comm: C	Constr Type 3:	Sprinkler Installation:	Est Value:	2	
No of Units:		Other Fire Suppr Syst:		3	
Estimated Value:		Type of Suppr System:	Est Value:	4	
Type of Work:		Fire Alarm System:	Est Value:	5	

Building Area		Sign Information	
Number of Floors:	Det Garage/Carport:	Type of Business:	Street Frontage:
Total Floor Area:	Storage Bldgs:	Free/Wall:	Tenant Frontage:
Attached Garage:	Other Accessory Bldg:	Illuminated:	Total Height:
Basement:	Miscellaneous:	Exstng Face Area:	Sign Width:
Decks:		New Face Area:	Sign Height:
Other Area:	Total Acc Bldg Area:	No of Faces:	Sign Area:
Total Main Bldg Area:		Total Face Area:	

All plumbing, heating, and electrical work will be performed by either the homeowner or by a contractor licensed to do same.
Separate permits are required for other work, including but not limited to, sanitary and storm sewer, sidewalk, curb and gutter, driveways, parking lot paving, street improvements, plumbing, mechanical, fire protection, and signs.

X_____
Signature of Owner/Contractor

THIS PERMIT SHALL BECOME NULL AND VOID IF ANY OF THE ABOVE INFORMATION IS FOUND TO BE INCORRECT.

FEES

Type	Amount
Permit Issuance fee	$102.00
Plan Review fee	$32.50
State building permit fee	$4.50
Strong Motion Instr. Fund	$10.20
Total	$149.20

PAID

Kim

CITY OF TACOMA

Department of Public Works
Division of Building and Land Use Services

747 Market Street
Tacoma, WA 98402
(206) 591-5004

BUILDING PERMIT

CASE NO: BLD95-00210 ISSUED: 5/26/95 EXPIRES:
PROJECT:
SITE ADDRESS: 922 E 11TH ST
PARCEL NO: 8950001262 CITY PARCEL KEY: 17440015
SUBDIVISON: TACOMA TIDELANDS LOT AND BLOCK: POR B 42 43 43A 44 44A 44B &

PROJECT DESCRIPTION:
GRADE & FILL APPROXIMATELY 100,000 CUBIC YARDS

OWNER
SIMPSON TACOMA LAND CO
C-1 PARCEL CAR
PO BOX 2133

CONTRACTOR
RUSHFORTH CONSTRUCTION CO Lic#: RUSHFC*305R1
1308 ALEXANDER AVE E Exp Date: 6/30/95
TACOMA, WA 98424
922-1884

Zoning:	Construction Type / Fire Protection			Building Use	
City Contact: KSC	Constr Type 1:	Sprinklers?:		Occ Grps	Use Codes
Type of Permit: BLD	Constr Type 2:	Sprinkler Type:		1	MI
Resid/Comm: C	Constr Type 3:	Sprinkler Installation:	Est Value:	2	
No of Units:		Other Fire Suppr Syst:		3	
Estimated Value:		Type of Suppr System:	Est Value:	4	
Type of Work:		Fire Alarm System:	Est Value:	5	

Building Area		Sign Information	
Number of Floors:	Det Garage/Carport:	Type of Business:	Street Frontage:
Total Floor Area:	Storage Bldgs:	Free/Wall:	Tenant Frontage:
Attached Garage:	Other Accessory Bldg:	Illuminated:	Total Height:
Basement:	Miscellaneous:	Exstng Face Area:	Sign Width:
Decks:		New Face Area:	Sign Height:
Other Area:	Total Acc Bldg Area:	No of Faces:	Sign Area:
Total Main Bldg Area:		Total Face Area:	

All plumbing, heating, and electrical work will be performed by either the homeowner or by a contractor licensed to do same.
Separate permits are required for other work, including but not limited to, sanitary and storm sewer, sidewalk, curb and gutter, driveways, parking lot paving, street improvements, plumbing, mechanical, fire protection, and signs.

X_____
Signature of Owner/Contractor

THIS PERMIT SHALL BECOME NULL AND VOID IF ANY OF THE ABOVE INFORMATION IS FOUND TO BE INCORRECT.

FEES

Type	Amount
Permit fee	$600.00
Plan Review fee	$175.00
Strong Motion Instr. Fund	$60.00
State building permit fee	$4.50
Total	$839.50

PAID

Kim 52

GRADING PERMIT CONDITIONS

Project: Portland Ave Warehouse Project for Simpson Tacoma Land Co.
Location: 922 East 11th Street
Quantity: Cut is 25,000 CY and Fill is 100,000 CY
DNS: Environmental Checklist being reviewed under separate application
Decision: Approved per the following conditions
Date: April 26, 1995

1. All work to be done in accordance with approved plan, soils report, and Chapter 70 of the 1991 Uniform Building Code.

2. There shall be no material on city streets or other right of way at any time.

3. No material shall be allowed to enter catch basins and/or the city's storm sewer system. Clean out shall be at the permit holders expense.

4. Watering provisions must be in place at all times so no dust becomes air borne - violation of this condition will resort in a stop work order until corrected.

5. Fill to be placed that will support future foundations shall be placed under the inspection of a licensed Geotechnical Engineer. Soil to be placed shall be tested and compacted to 90 percent of its maximum density. Engineer shall document existing site conditions, soil and its placement and allowable bearing capacity submitted. Standard requirements for cuts and fill as contained in Chapter 70 of the Uniform Building Code as amended by the City of Tacoma shall be complied with.

6. Erosion Control Measures
   A. All erosion control shall be in place prior to clearing.
   B. Erosion control measures shall be maintained at all times to the approval of the Building Official.
   C. Should temporary erosion and sedimentation control measures, as shown on plans become inadequate, the contractor shall install facilities as necessary to protect adjacent properties and the Puget Sound drainage system, meeting approval of the Building Official.

7. Inspections. Call for inspection of the Building Official at 591-5001 upon completion of:
   A. Staking of clearing limits.
   B. Installation of erosion control and prior to site grading.
   C. Prior to removal of erosion control devices.

8. All demolition material and debris removed from site shall be placed only at a permitted site. Verify location of destination of material prior to exportation.

9. Traffic control provisions as approved by the traffic engineer shall be adhered to at all times.

10. Trees

A. Trees removed shall be clearly marked for removal.

B. Trees to be saved shall be fenced with barricade fence at the drip line (outer edge of tree branches) to keep construction vehicles from compacting root zone and killing trees. This fencing shall be maintained until construction ends.

11. Hydroseeding

A. All areas that are cleared and grubbed, graded, excavated or filled are subject to hydroseeding. Any of these areas that are left unpaved or unlandscaped shall be hydroseeded under the direction and approval of the Building Official.

B. Hydroseed only during the periods of April 1 though May 31 or September 1 though October 15. This hydroseeding requirement may be met during the months of June through August if irrigation is provided.

C. Maintain hydroseeding throughout the winter wet season.

D. No grading will be permitted after October 15th.

Signed By: _____

Date: _____

DEPARTMENT OF THE ARMY
SEATTLE DISTRICT, CORPS OF ENGINEERS
P.O. BOX 3755
SEATTLE, WASHINGTON 98124-2255

File: Middle entry Permits

REPLY TO ATTENTION OF

Regulatory Branch

SEP 19 1994

Simpson Tacoma Kraft Company
Post Office Box 2133
Tacoma, Washington 98401

Reference: 93-2-01466

Gentlemen:

Enclosed is a Department of the Army permit which authorizes performance of the work described in your referenced application.

You are cautioned that any change in the location or plans of the work will require submittal of a revised plan to this office for approval prior to accomplishment. Deviation from approved plans may result in imposition of criminal or civil penalties.

Your attention is drawn to General Condition 1 of the permit which specifies the expiration date for completion of the work. You are requested to notify this office of the date the work is completed.

Sincerely,

Thomas F. Mueller

Thomas F. Mueller
Chief, Regulatory Branch

RECEIPT

Date September 19 94

1244

Received From Simpson Tacoma Kraft Co

Address PO Box 2133 Tacoma Wa 98401

one hundred

For Simpson Tacoma Kraft Co 93-2-01466 Dollars $ 100.00

ACCOUNT			HOW PAID		
AMT. OF ACCOUNT	100	00	CASH		
AMT. PAID	100	00	CHECK	✓	
BALANCE DUE	—		MONEY ORDER		

Check # 141781

By Susan Powell

Certification of Compliance with Department of the Army Permit

Permit Number: 93-2-01466

Name of Permittee: SIMPSON TACOMA KRAFT COMPANY

Date of Issuance: SEP 19 1994

Upon completion of the activity authorized by this permit, sign this certification and return it to the following address:

Department of the Army
Seattle District, Corps of Engineers
Regulatory Branch
Post Office Box 3755
Seattle, WA 98124-2255

Please note that your permitted activity is subject to a compliance inspection by an Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit.

_____
Signature of Permittee

DEPARTMENT OF THE ARMY PERMIT

Permittee: Simpson Tacoma Kraft Company

Permit No: 93-2-01466

Simpson Tacoma Kraft Company
Post Office Box 2133
Tacoma, Washington 98401

Issuing Office: Seattle District

Note: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: The work is to modify approximately 3.3 acres of degraded, natural tideflats and created uplands to support, compliment, and preserve the integrity of the existing mudflats at the head of the Middle Waterway, Commencement Bay at Tacoma, Pierce County, Washington. Primary actions at the project site will include: excavating a total of approximately 7,900 cubic yards of material in uplands and wetlands to create tidal channels and wetlands similar to those existing in a natural estuary. This includes dredging approximately 500 cubic yards of material in an existing intertidal wetland area on the project site to about +8 to +9 MLLW; overdredging 160 cubic yards of contaminated material in the existing mudflat area and backfilling this with clean material; discharging about 534 cubic yards of the dredged material onto the existing mudflat on the site to construct an approximately 0.23 of an acre vegetated bench similar to those commonly occurring in the marsh areas of Puget Sound estuaries. In addition, upland areas will be contoured in an attempt to restore a natural shoreline; metal debris found on the site will be placed three feet below the surface, covered with a plastic liner or one foot clay layer, and covered by at least 2 feet of clean on-site fill as part of the berm construction; and appropriate natural vegetation will be planted at the new elevations to produce new upper intertidal marsh areas and an adjoining riparian buffer. Excess excavated or dredged material will be removed from the site and deposited, graded and leveled on the upland portion of the Simpson property. This work is not associated with any development project.

Project Location: In Middle Waterway, Commencement Bay, Tacoma, Washington.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on SEP 19 1997. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in good condition and in accordance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification to this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify

this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

a. You must provide a copy of the permit transmittal letter, the permit form, and drawings to all contractors performing any of the authorized work.

b. You must comply with the provisions of the attached Water Quality Certification.

c. A restoration monitoring report, as described in the Middle Waterway Shore Restoration Project Monitoring and Adaptive Management Plan, dated April 1994, or status report, if construction of project has not started, will be submitted to the District Engineer 13 months after the date of permit issuance. In addition, restoration monitoring reports will be submitted to the District Engineer 12 months from the date of the first monitoring report, or status report, if construction has not started, on an annual basis for the next consecutive five year period.

d. This permit does not exclude the permittee from liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended (42 U.S.C. 9601 et.seq.) of the 1989 Washington State Model Toxic Control Act (R.C.W. 70.105), nor does the permit waive any liability for response costs, damages, and any other cost that may be assessed under CERCLA. Additionally, the permittee will be financially responsible for any logistic problems associated with the construction and operation of this project and potential cleanup operation in this portion of Commencement Bay.

e. You must take the actions required to record this permit with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

(x) Section 10 of the Rivers and Harbor Act of 1899 (33 U.S.C. 403).

(x) Section 404 of the Clean Water Act (33 U.S.C. 1344).

( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorization required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of the permit.

b. The information provided by you in support of your application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

x _____ x August 5, 1994
Simpson Tacoma Kraft Company (DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

for _____ September ~~August~~ 19, 1994
DONALD T. WYNN (DATE)
Colonel, Corps of Engineers
District Engineer

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

This notice of authorization must be conspicuously displayed at the site of work.

United States Army Corps of Engineers

SEP 19 1994

A permit to EXCAVATE APPROXIMATELY 7,900 CU YDS OF MATERIAL IN WETLANDS, DREDGE APPR 500 CU YDS IN AN INTERTIDAL WETLAND AREA, OVERDREDGE 160 CU YDS OF CONTAMINATED MATERIAL, BACKFILL WITH CLEAN MATERIAL, DISCHARGE APPR 534 CU YDS OF DREDGED MATERIAL ONTO MUDFLAT (TO CREATE TIDAL CHANNELS AND WETLANDS) IN MIDDLE WATERWAY, COMMENCEMENT BAY

at TACOMA, WASHINGTON

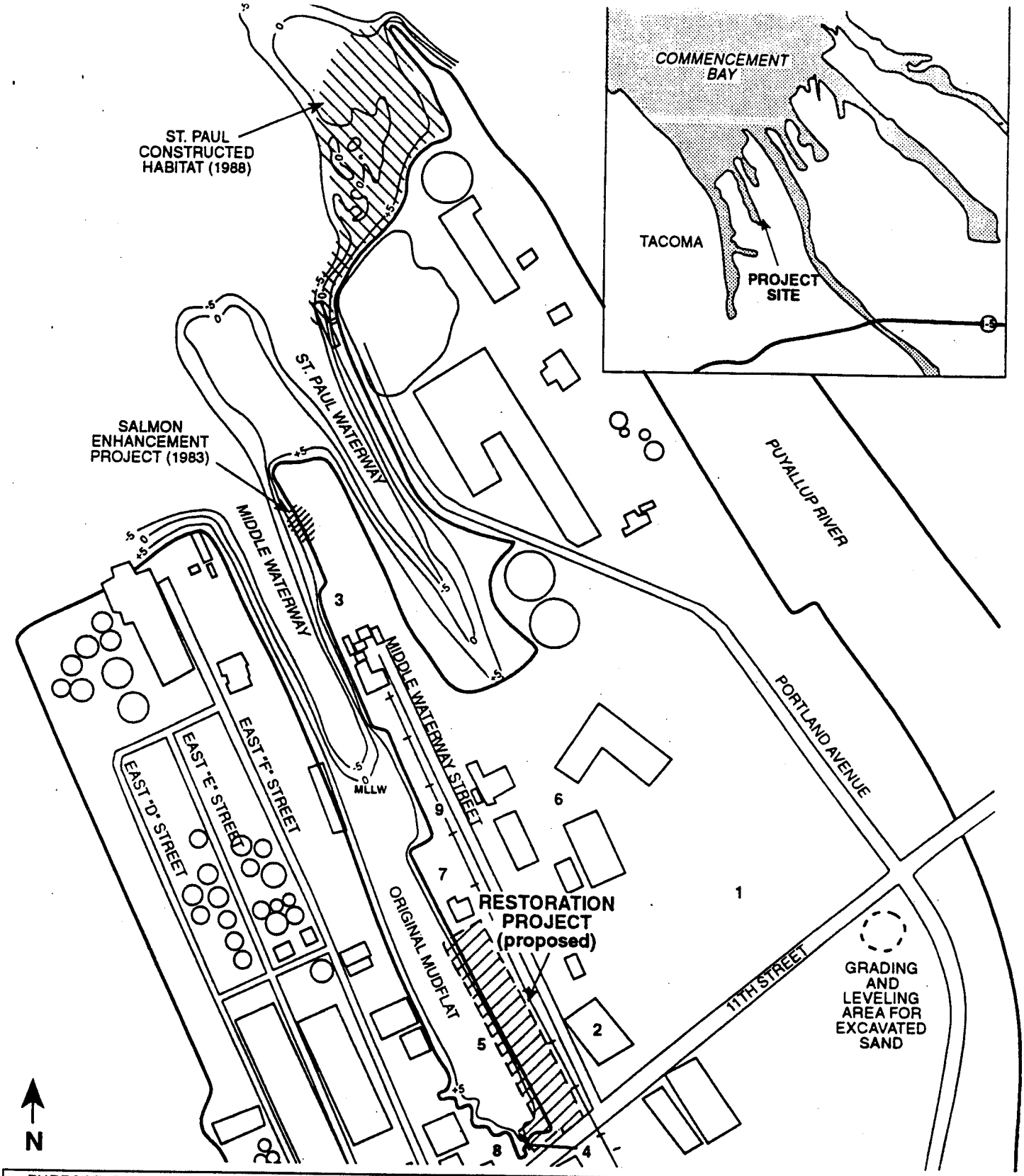
has been issued to SIMPSON TACOMA KRAFT COMPANY **on** SEP 19 1994

Address of Permittee POST OFFICE BOX 2133, TACOMA, WA 98401

Permit Number

93-2-01466

for _____
DONALD T. WYNN
District Commander
COLONEL, CORPS OF ENGINEERS



PURPOSE: Restoration of Riparian and Wetland Habitat
DATUM: MLLW
ADJACENT PROPERTY OWNERS:
1 Commencement Bay Mill Co.
2 Morse Industrial
3 Foss Towing/Foss Maritime
4 City of Tacoma
5 State of Washington/DNR
6 Investco Financial Corp.
7 Paxport Mills, Inc.
8 Pacific Yacht Basin
9 Union Pacific Railroad

FIGURE 1

VICINITY MAP, MIDDLE WATERWAY SHORE RESTORATION, COMMENCEMENT BAY

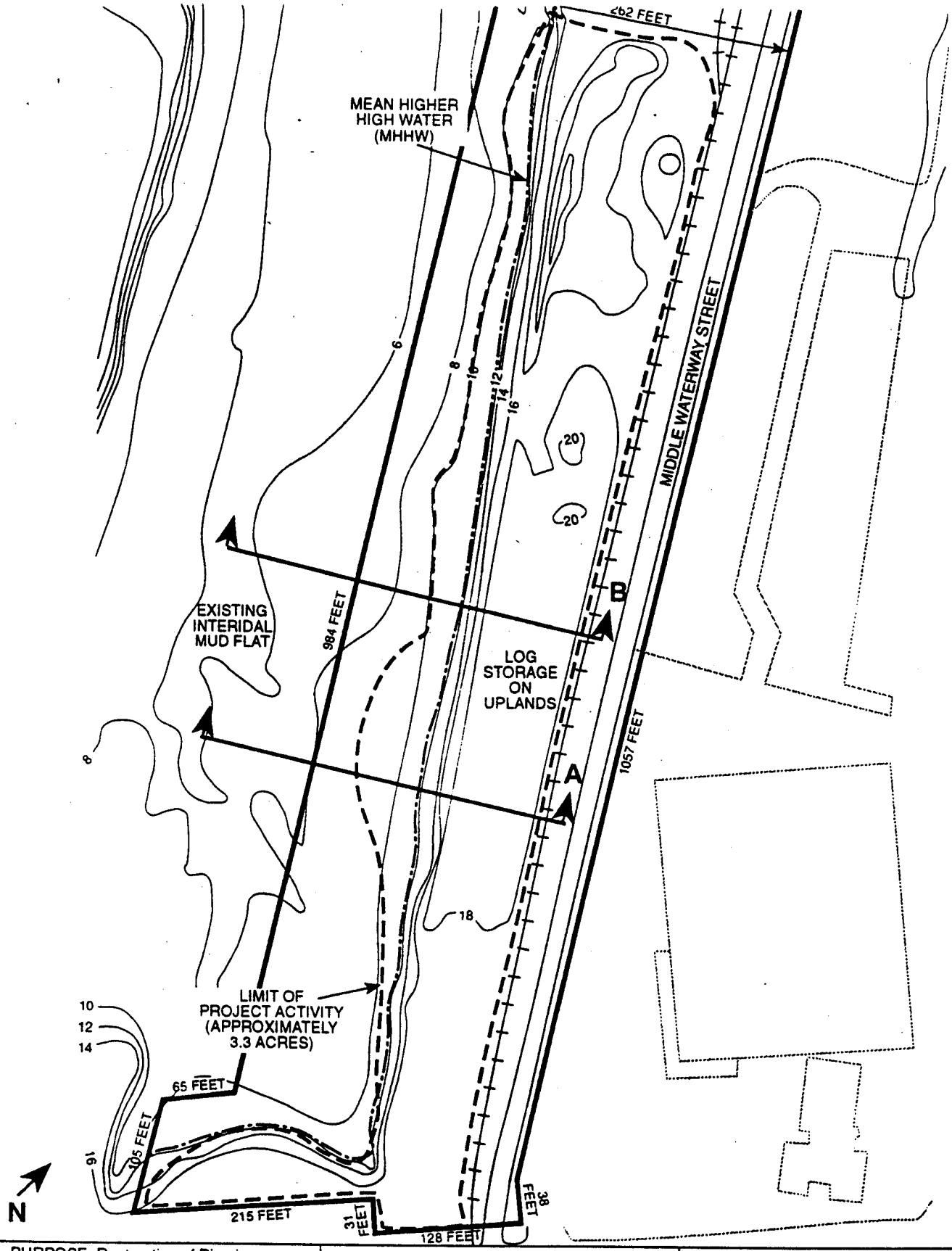
0 600 1200
1" = 600'

PROJECT #199301466

PROPOSED CONSTRUCTION OF RIPARIAN AND WETLAND HABITAT

IN: Middle Waterway
AT: Tacoma
COUNTY OF: Pierce
STATE: Wa
APPLICATION BY: Simpson Tacoma Kraft Company

1 of 5



PURPOSE: Restoration of Riparian and Wetland Habitat
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2 Morse Industrial
3 Foss Towing/Foss Maritime
4 City of Tacoma
5 State of Washington/DNR
6 Investco Financial Corp.
7 Paxport Mills, Inc.
8 Pacific Yacht Basin
9 Union Pacific Railroad

FIGURE 2

PLAN VIEW (PRE-PROJECT), MIDDLE WATERWAY SHORE RESTORATION, COMMENCEMENT BAY

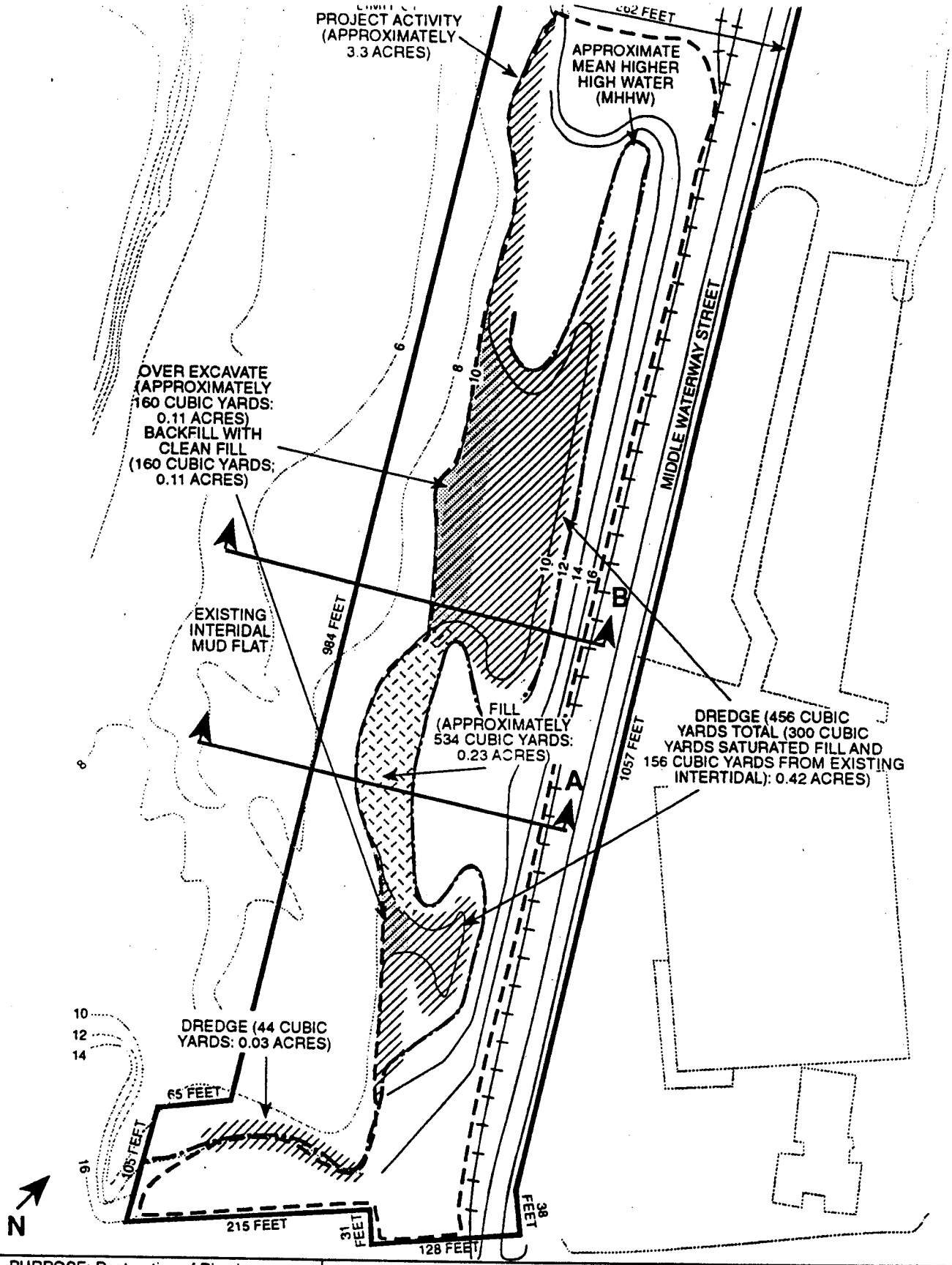
0 100 200
1" = 100'

PROJECT #199301466

PROPOSED CONSTRUCTION OF RIPARIAN AND WETLAND HABITAT

IN: Middle Waterway
AT: Tacoma
COUNTY OF: Pierce
STATE: Wa
APPLICATION BY: Simpson Tacoma Kraft Company

2 of 5



PURPOSE: Restoration of Riparian and Wetland Habitat
DATUM: MLLW
ADJACENT PROPERTY OWNERS:
1 Commencement Bay Mill Co.
2 Morse Industrial
3 Foss Towing/Foss Maritime
4 City of Tacoma
5 State of Washington/DNR
6 Investco Financial Corp.
7 Paxport Mills, Inc.
8 Pacific Yacht Basin
9 Union Pacific Railroad

FIGURE 3

PLAN VIEW
DREDGE AND FILL FOR THE MIDDLE WATERWAY SHORE RESTORATION

Existing Grades
Proposed Grades

0 100 200
1" = 100'

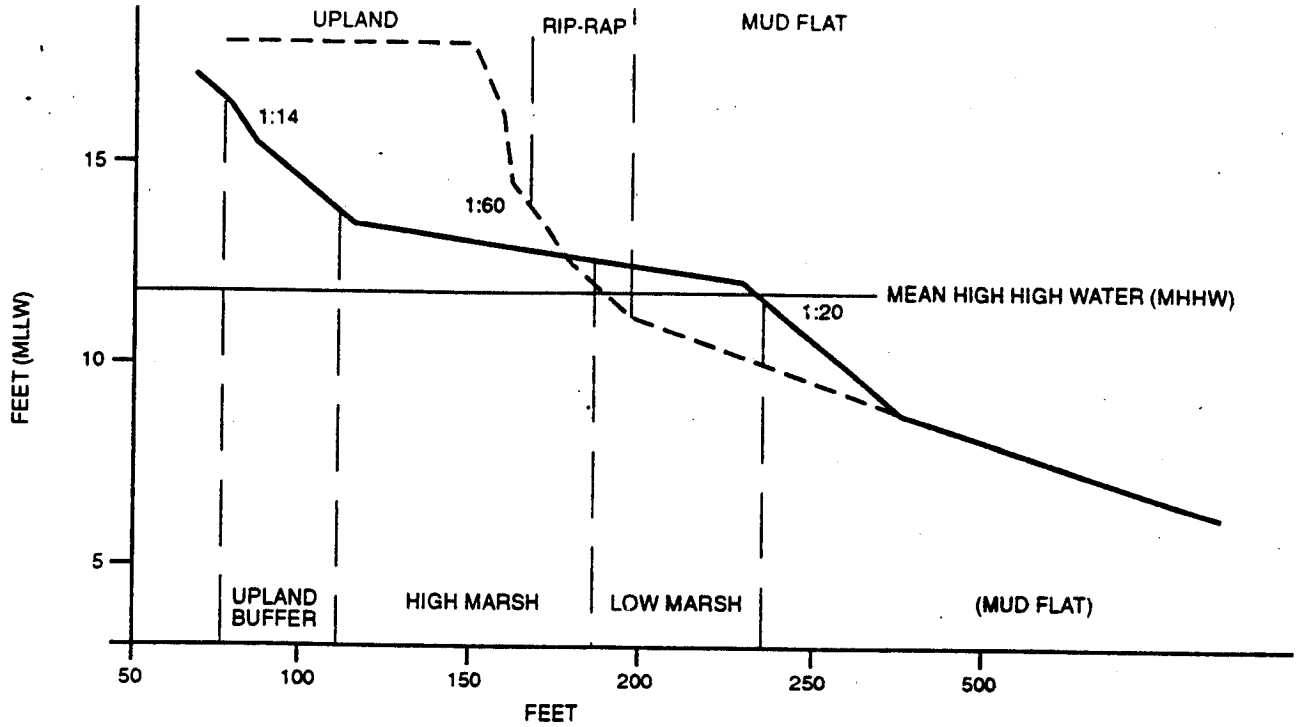
PROJECT #199301466

PROPOSED CONSTRUCTION OF RIPARIAN AND WETLAND HABITAT

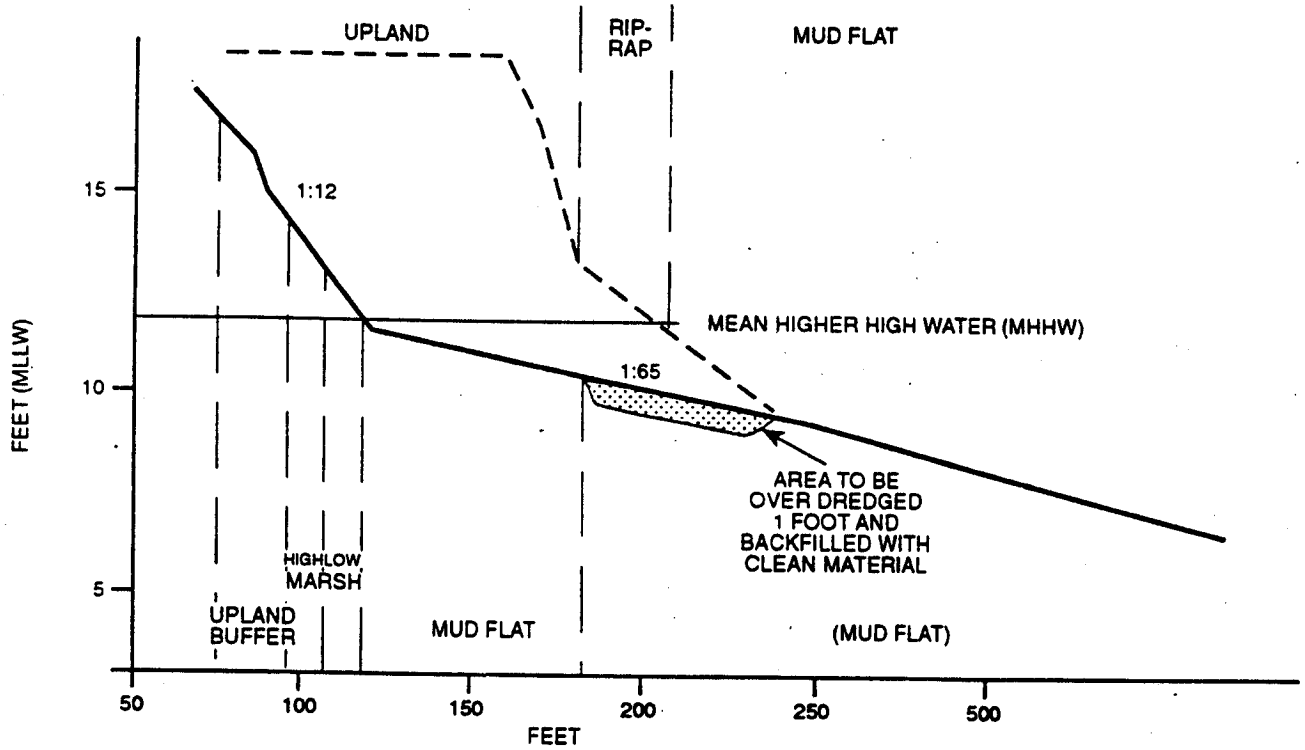
IN: Middle Waterway
AT: Tacoma
COUNTY OF: Pierce
STATE: Wa
APPLICATION BY: Simpson Tacoma Kraft Company

3 of 5

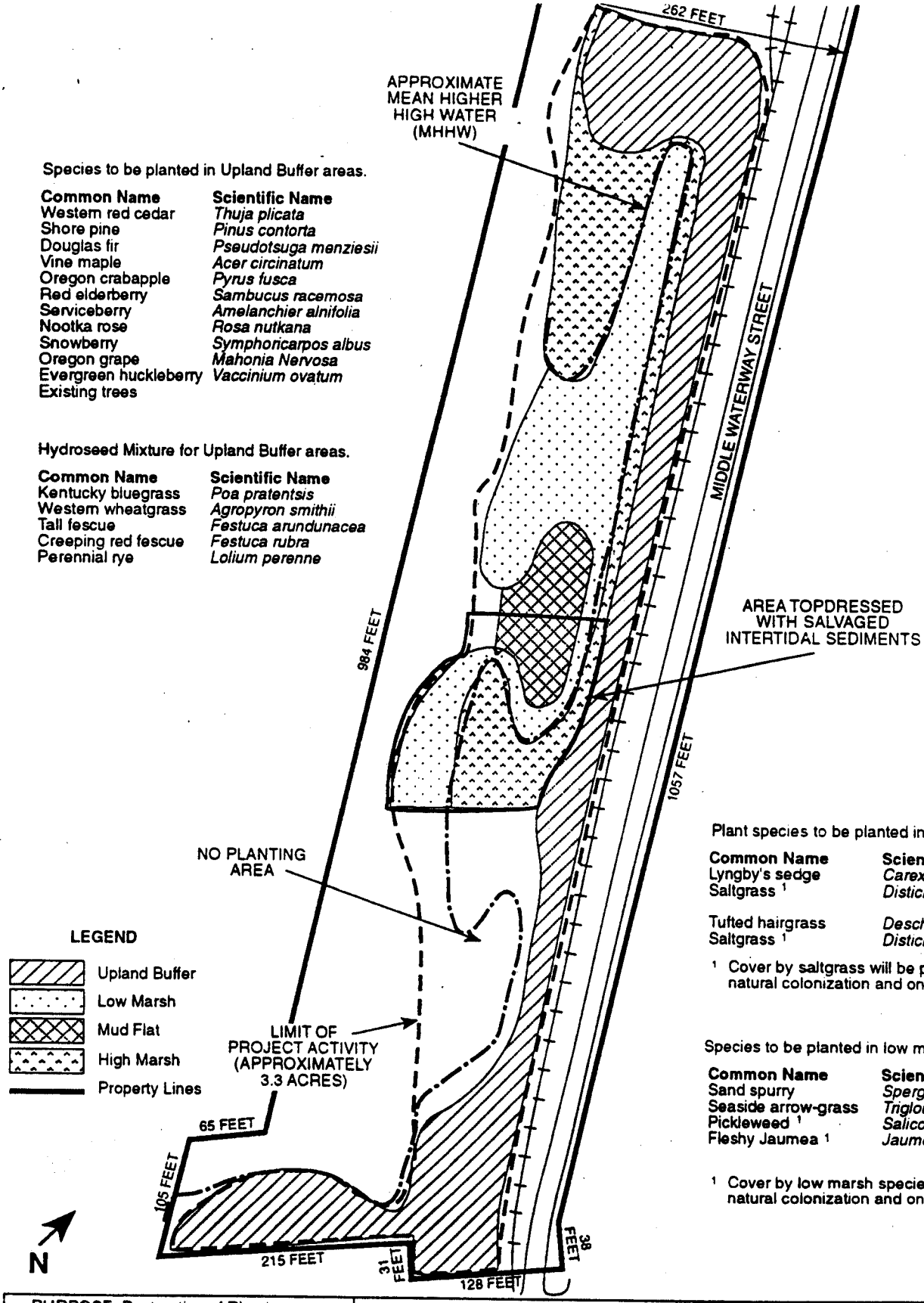
CROSS SECTION A



CROSS SECTION B



PURPOSE: Restoration of Riparian and Wetland Habitat DATUM: MLLW ADJACENT PROPERTY OWNERS: 1 Commencement Bay Mill Co. 2 Morse Industrial 3 Foss Towing/Foss Maritime 4 City of Tacoma 5 State of Washington/DNR 6 Investco Financial Corp. 7 Paxport Mills, Inc. 8 Pacific Yacht Basin 9 Union Pacific Railroad	**FIGURE 4** CROSS SECTION OF PROPOSED HABITAT RESTORATION VERTICAL:HORIZONTAL 1:10	PROJECT #199301466 PROPOSED CONSTRUCTION OF RIPARIAN AND WETLAND HABITAT IN: Middle Waterway AT: Tacoma COUNTY OF: Pierce STATE: Wa APPLICATION BY: Simpson Tacoma Kraft Company 4 of 5



Species to be planted in Upland Buffer areas.

Common Name	Scientific Name
Western red cedar	*Thuja plicata*
Shore pine	*Pinus contorta*
Douglas fir	*Pseudotsuga menziesii*
Vine maple	*Acer circinatum*
Oregon crabapple	*Pyrus fusca*
Red elderberry	*Sambucus racemosa*
Serviceberry	*Amelanchier alnifolia*
Nootka rose	*Rosa nutkana*
Snowberry	*Symphoricarpos albus*
Oregon grape	*Mahonia Nervosa*
Evergreen huckleberry	*Vaccinium ovatum*
Existing trees	

Hydroseed Mixture for Upland Buffer areas.

Common Name	Scientific Name
Kentucky bluegrass	*Poa pratentsis*
Western wheatgrass	*Agropyron smithii*
Tall fescue	*Festuca arundunacea*
Creeping red fescue	*Festuca rubra*
Perennial rye	*Lolium perenne*

Plant species to be planted in the high marsh.

Common Name	Scientific Name
Lyngby's sedge	*Carex lyngbyei*
Saltgrass [1]	*Distichilis spicata*
Tufted hairgrass	*Deschampsia caespitosa*
Saltgrass [1]	*Distichilis spicata*

[1] Cover by saltgrass will be primarily through natural colonization and on-site salvage.

Species to be planted in low marsh areas.

Common Name	Scientific Name
Sand spurry	*Spergularia marina*
Seaside arrow-grass	*Triglochin maritimum*
Pickleweed [1]	*Salicornia virginica*
Fleshy Jaumea [1]	*Jaumea carnosa*

[1] Cover by low marsh species will be through natural colonization and on-site salvage.

PURPOSE: Restoration of Riparian and Wetland Habitat
DATUM: MLLW
ADJACENT PROPERTY OWNERS:
1 Commencement Bay Mill Co.
2 Morse Industrial
3 Foss Towing/Foss Maritime
4 City of Tacoma
5 State of Washington/DNR
6 Investco Financial Corp.
7 Paxport Mills, Inc.
8 Pacific Yacht Basin
9 Union Pacific Railroad

FIGURE 5

PLAN VIEW
MIDDLE WATERWAY SHORE
RESTORATION VEGETATION PLANTING PLAN

0 100 200
1" = 100'

PROJECT #199301466

PROPOSED CONSTRUCTION OF RIPARIAN AND WETLAND HABITAT

IN: Middle Waterway
AT: Tacoma
COUNTY OF: Pierce
STATE: Wa
APPLICATION BY: Simpson Tacoma Kraft Company

5 of 5

Roles
Middle Waterway Project
Permit Role

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
P.O. Box 47600 • Olympia, Washington 98504-7600 • (206) 407-6000 • TDD Only (Hearing Impaired) (206) 407-6006

June 21, 1994

Simpson Tacoma Kraft Company
Post Office Box 2133
Tacoma, Washington 98401

ATTN: Mr. Dave McEntee

Re: Water Quality Certification
Public Notice No. 93-2-01466
Simpson Tacoma Kraft Company

Dear Mr. McEntee:

The public notice for the above referenced Corps of Engineers permit has been reviewed in accordance with all pertinent rules and regulations. The proposed project entails excavating approximately 7,900 cubic yards of material in uplands and wetlands to create tidal channels and wetlands, dredging approximately 500 cubic yards of material in an existing intertidal wetland area to about +8 to +9 MLLW; overdredging 160 cubic yards of contaminated material in the existing mudflat area with approved upland disposal, and backfilling with clean material. Project also includes discharging about 534 cubic yards of the clean dredged material onto the existing mudflat on the site to construct approximately 0.23 acres of vegetative bench.

Additionally, upland areas will be contoured in an attempt to restore a natural shoreline; metal debris from the site will be contained, along with planting of appropriate natural vegetation at the new elevations to produce new upper intertidal marsh areas and an adjoining riparian buffer. Excavated material not used on site will be deposited, graded and leveled on a nearby upland Simpson property. This work will be performed in Commencement Bay, Tacoma, Pierce County, Washington and is not associated with any development project.

This agency certifies these activities comply with applicable provisions of sections 301, 302, 303, 306, and 307 of the Federal Clean Water Act as amended, and other appropriate requirements of State law. This certification is subject to compliance with the provisions of the enclosed Hydraulic Project Approval from the Department of Fish and Wildlife, and the following:

GENERAL CONDITIONS:

1. Care shall be taken to prevent any petroleum products, chemicals, or other toxic or deleterious materials from entering the water. If an oil sheen or distressed or dying fish are observed in the project vicinity, the operator shall cease immediately and notify the Department of Ecology of such conditions. Contact Ecology's Southwest Regional Spill Response Office at (206) 407-6300.

2. Work in or near the waterway shall be done during low tides in order to minimize turbidity, erosion and other water quality impacts.

WETLAND CONSTRUCTION AND MONITORING:

3. Unless otherwise stated, construction activities shall be in accordance with the applicant's blueprints, entitled "*Middle Waterway Shore Restoration*", prepared by Parametrix, dated May 1994 and its revision, dated June 1994.

4. Unless otherwise stated, monitoring activities shall be in accordance with the applicant's report entitled "*Middle Waterway Shore Restoration Project Monitoring and Adaptive Management Plan*", prepared by Parametrix, dated April 1994.

5. All planted vegetation, and other habitat enhancements shall be protected and maintained, with a sufficient barrier to human traffic placed on either side of the revegetated wetland areas to prevent impacts to plantings.

6. All plant variations or substitutions to the proposed planting scheme contained in the mitigation plan shall be coordinated with the department. Please contact Perry Lund of Ecology's Wetland Section at 407-7260 concerning this requirement.

7. Monitoring of the wetland site shall be performed annually through year five (5). Copies of monitoring reports should be sent to Department of Ecology, Southwest Regional Office, Post Office Box 47600, Olympia, WA 98504-7600.

DREDGING/EXCAVATION CONDITIONS:

8. The upland disposal of dredged material (material not used in project construction) shall be into a dewatering basin that is properly designed, constructed, and maintained to contain the dredged material and any associated slurry. A supply of extra berm material or sandbags shall be available if needed to repair or reinforce the basin structure.

DREDGED MATERIAL TRANSPORT:

9. Dredged material shall be transported in a manner that prevents the dredged material, leachates, or drainage from the material from entering state waters, including wetlands.

10. Any vehicle transporting dredged material shall be suitably equipped to prevent the spillage of slurry water while enroute to the disposal site.

CONTINGENCY MEASURES:

11. Unless significant contingency fund expenditures occur early in the project development, a minimum of 40% of the contingency fund should be maintained through the third growing season to ensure adequate opportunity exists for site improvements.

12. Wetland monitoring reports shall be provided for review on an annual basis to Perry Lund, Wetland Specialist, Southwest Regional Office, Department of Ecology. In addition, the applicant shall submit a written report within thirty days after completion of the project. The report will identify restoration measures and certify that the restoration is in place.

DEED RESTRICTION:

13. Applicant will record a deed restriction on the property as provided in the Coorporative Agreement between Simpson Tacoma Kraft Company and the Natural Resource Trustees.

Please note this certification does not exempt, and is provisional upon, compliance with other statutes and codes administered by federal, state and local agencies.

If you have any questions about this certification, please contact Patricia Trerice at (206) 407-6595.

Sincerely,

Keith E. Phillips, Supervisor
for Environmental Review and
Sediment Management Section

Enclosure

cc: COE, Lori Morris
EPA, Seattle, John Malek
Muckleshoot Indian Tribe, Rod Malcom
Puyallup Tribe of Indians, Bill Sullivan
USF&WS
NOAA, Seattle, Robert Clark
NMFS, Portland, Ben Meyer
WDF&W, Randy Carman
WDOE, K-Y Su, P. Lund, R. Gersib, Fred Gardner

HYDRAULIC PROJECT APPROVAL

R.C.W. 75.20.100
R.C.W. 75.20.103

DEPARTMENT OF FISHERIES

[4] June 10, 1994
(applicant should refer to this date in all correspondence)

DEPARTMENT OF FISHERIES
General Administration Bldg.
Olympia, Washington 98504
(206) 753-6650

[10] LAST NAME: Simpson Tacoma Kraft Company; FIRST: ; [18] CONTACT PHONE(S): 596-0257	[1] CONTROL NUMBER: 93-S1466-02
[19] STREET OR RURAL ROUTE: P.O. Box 2133, ATTN: Dave McEntee	[7] [8] [9] WRIA: 10.MARI
CITY: Tacoma; STATE: WA; ZIP: 98401	[14] [17]
[12] WATER: Middle Waterway; TRIBUTARY TO: Commencement Bay	[11] TYPE OF PROJECT: Excavation to Create Wetlands & Tidal Channels
[13] QUARTER SECTION: ; SECTION: 33&4; TOWNSHIP: 20&21; RANGE(E-W): 03E; COUNTY: Pierce	

TIME LIMITATIONS: [5] THIS PROJECT MAY BEGIN June 15, 1994 [6] AND MUST BE COMPLETED BY March 15, 1996

THIS APPROVAL IS TO BE AVAILABLE ON THE JOB SITE AT ALL TIMES AND ITS PROVISIONS FOLLOWED BY THE PERMITTEE AND OPERATOR PERFORMING THE WORK.

SEE IMPORTANT GENERAL PROVISIONS ON REVERSE SIDE OF APPROVAL

NOTE: Washington Department of Fish and Wildlife (WDFW) reviewed your plans appearing in Corps of Engineers Public Notice 93-2-01466, received on May 24, 1994, and inspected the site of the proposed project on April 21, 1994.

1. This project is approved, as illustrated in your application, subject to the following provisions.
2. The applicant or contractor shall notify the Regional Habitat Manager listed below by fax, (206) 902-2946, or mail. Notification shall be received at least seven working days prior to the start of construction activities.
3. Work below the ordinary high waterline shall not occur from March 15 through June 14 of any year for the protection of migrating juvenile salmonids.
4. Project activities shall not occur when the project area is inundated by tidal waters.
5. Trenches, depressions, or holes created in the intertidal area that could potentially entrap fish during high tides shall be connected to lower tidal areas by channels (to create escape routes) or backfilled prior to inundation by tidal waters.

SEPA: DNS by City of Tacoma - October 22, 1993
REGIONAL HABITAT MANAGER - Randy Carman (206) 902-2573
PATROL - Tuggle [2]
APPLICANT - WILDLIFE - READER - PATROL - HAB. MGR. - WRIA

DEPARTMENT OF FISHERIES R. Timothy Flint for DIRECTOR

DEPARTMENT OF FISHERIES

HYDRAULIC PROJECT APPROVAL

R.C.W. 75.20.100
R.C.W. 75.20.103

4 June 10, 1994
(applicant should refer to this date in all correspondence)

DEPARTMENT OF FISHERIES
General Administration Bldg.
Olympia, Washington 98504
(206) 753-6650

10 LAST NAME Simpson Tacoma Kraft Company	18 CONTACT PHONE(S) 596-0257	1 CONTROL NUMBER 93-S1466-02
12 WATER Middle Waterway		9 WRIA 10.MARI

6. Excavated materials containing silt, clay, or other fine-grained soil shall not be stockpiled below the ordinary high water mark, except as may be necessary to construct the vegetative bench (approximately .23 acres).

7. All manmade debris on the beach at the project site shall be removed and disposed of upland such that it does not enter waters of the state.

8. Project activities shall be conducted to minimize siltation of beach areas and bed materials.

9. If a fish kill occurs or fish are observed in distress, the project activity shall immediately cease and WDFW Habitat Program shall be notified immediately.

10. Debris or deleterious material resulting from construction shall be removed from the beach area and project site and shall not be allowed to enter waters of the state.

11. Water quality is not to be degraded to the detriment of fish life as a result of this project.

If you have any questions or need additional information, please contact Randy Carman, Regional Habitat Manager, at (206) 902-2573.

LOCATION: Head of Middle Waterway, near the intersection of 11th Street and Middle Waterway Street, Tacoma.

lt:50:07

cc: Tom Luster, Ecology
Nick Lockett, WDFW Patrol

CENPS-OP-RG (1145)

27 July 1994
Morris/x6909

MEMORANDUM FOR Commander

SUBJECT: Department of the Army Permit Evaluation and Decision Document

1. Name: Simpson Tacoma Kraft Co.

Reference: 93-2-01466

[ ] Permit issuance, no objections.

[X] Issuance, no objections, special conditions.

[ ] Issuance, other objections.

[ ] Issuance, special conditions.

[ ] Agency objections to original proposal.

2. District Engineer sign Permit Evaluation and Decision Document.

Knaub (E.A.) [illegible]
Uhrich 8/1/94
Ch, Reg Br 5/3/94 151
Counsel _____
Ch, Opns Div _____
DD _____
DE _____

Encl

CENPS-DE 1st End

Commander

For Ch, Reg Br

Signed forms returned herewith.

DEPARTMENT OF THE ARMY PERMIT EVALUATION AND DECISION DOCUMENT

Reference: Simpson Tacoma Kraft Company - 93-2-01466

Concerning evaluation of a Department of the Army permit under Section 10 of the Rivers and Harbors Act of March 3, 1899, and Section 404 of the Clean Water Act.

1. Introduction. This permit decision document constitutes the State of Findings, the Finding of No Significant Impact (FONSI), the Environmental Assessment, and the Section 404(b)(1) Evaluation for the work described in the enclosed public notice.

My decision is to issue the permit with special conditions. These special conditions are discussed in paragraph 8.

2. Description of the Proposed Work. The work is to modify approximately 3.3 acres of degraded, natural tideflats and created uplands to support, compliment, and preserve the integrity of the existing mudflats at the head of the Middle Waterway, Commencement Bay at Tacoma, Pierce County, Washington. Primary actions at the project site will include: excavating a total of approximately 7,900 cubic yards of material in uplands and wetlands to create tidal channels and wetlands similar to those existing in a natural estuary. This includes dredging approximately 500 cubic yards of material in an existing intertidal wetland area on the project site to about +8 to +9 MLLW; overdredging 160 cubic yards of contaminated material in the existing mudflat area and backfilling this with clean material; discharging about 534 cubic yards of the dredged material onto the existing mudflat on the site to construct an approximately 0.23 of an acre vegetated bench similar to those commonly occurring in the marsh areas of Puget Sound estuaries. In addition, upland areas will be contoured in an attempt to restore a natural shoreline; metal debris found on the site will be placed three feet below the surface, covered with a plastic liner or one foot clay layer, and covered by at least two feet of clean on-site fill as part of the berm construction; and appropriate natural vegetation will be planted at the new elevations to produce new upper intertidal marsh areas and an adjoining riparian buffer. Excess excavated or dredged material will be removed from the site and deposited, graded and leveled on the upland portion of the Simpson property. This work is not associated with any development project.

3. Need and Purpose. The purpose of the proposed project is to improve water quality and habitat in Commencement Bay and to implement a restoration project under the St. Paul Waterway Natural Resource Damage settlement agreement entered into by Simpson Tacoma Kraft Company (Simpson), Champion International Corporation (Champion), the Washington Department of Natural Resources (WDNR), and the Natural Resource Trustees for Commencement Bay (the Trustees).

4. Alternatives. The proposed project site consists of a natural mudflat and created uplands that are currently being used for log storage. The mudflats appear to be part of the original historic Commencement Bay tidal mudflats. Historic charts and characteristics of the mudflats suggest that this area has never been dredged or filled at any time in the past. A set of preliminary restoration criteria was applied to ten potential sites and projects. This site was chosen because of its likely value for the Commencement Bay area, and the high probability of success. This project could demonstrate how similar projects could help re-establish natural features to restored shorelines and transition

areas in Commencement Bay, could be achieved with the available funds, had minimal contamination issues that could jeopardize the long-term viability of the project, and could occur completely on land that the owner was willing to place a deed restriction on to make the land available to the restoration project in perpetuity. The Trustees, Simpson and Champion identified no other location in Commencement Bay that would meet the main project objective of increasing valuable estuarine habitat within Commencement Bay in perpetuity at a location functionally related to the previously constructed Kraft Mill habitat, the Puyallup delta, and other nearby intertidal and shallow subtidal habitat, that would result in less impact to the aquatic ecosystem.

The proposed restoration project will not result in changes in the water circulation patterns which would permanently flood or dewater the mudflat. Periodic inundation will not be disrupted, but, rather, enhanced. This is expected to positively affect the chemical and biological exchange and decomposition process occurring on the mudflat. The proposed restoration activities are intended to increase the mudflat biota, foraging area, and nursery area of the original mudflat by increasing its size and providing more natural upland habitat for fish and wildlife species. The storm surge runoff capacity of the mudflat is expected to be enhanced by the proposed project.

5. Coordination. The work was coordinated with the general public and the appropriate local, state, and Federal agencies in accordance with procedures specified in 33 CFR, Parts 320-330. The following points are considered pertinent in evaluating comments received in response to the proposal's public notice dated 23 May 1994.

a. Federal Agencies. The Environmental Protection Agency (EPA) has no objection to the proposed work. The National Marine Fisheries Service (NMFS) has no objection to the proposed work. The U.S. Fish and Wildlife Service (USFWS) has no objection to the proposed work. The National Oceanic and Atmospheric Administration (NOAA) has no objection to the proposed work. Representatives from NOAA and USFWS have played an active role in the planning and design of the restoration project and are participants in the Natural Resource Trustees for Commencement Bay.

b. State and Local Agencies. The State of Washington, and the City of Tacoma, the local governing body, have no objections to the work. Comments of these agencies are predicated upon the applicant's compliance with the State Shoreline Management Act and other applicable local laws, regulations, and codes governing this work. The City of Tacoma issued a Shorelines Substantial Development permit for the work. The State of Washington has issued a Water Quality Certification (WQC) for the project and does not object to the issuance of the permit provided the WQC is included as a condition of the permit. The Washington Department of Ecology (WDOE) has participated in the planning and design of the restoration project as members of the Natural Resource Trustees for Commencement Bay.

c. Individual or Organized Groups. The Citizens for a Healthy Bay (CHB) have no objection to the proposed work. The Commencement Bay Cleanup Action Committee (CBCAC) has no objection to the proposed work.

d. Treaty Indians. No comments were received from any Indians or from any Treaty Indian Tribes. The Muckleshoot Indian Tribe and the Puyallup Tribe of Indians are participants in the Natural Resource Trustees from Commencement Bay.

In the mid-1800's, the United States entered into treaties with a number of Indian tribes in Washington. These treaties guaranteed the signatory tribes the right to "take fish at usual and accustomed grounds and stations...in common with all citizens of the territory". Over the years, the courts have held that this right comprehends certain subsidiary rights, such as access to their "usual and accustomed" fishing grounds, and the right to take up to 50 percent of the harvestable anadromous fish runs passing through those grounds, as needed to provide them with a moderate standard of living. In U.S. v. Washington 759 F2d 1353 (9th Cir 1985) the court indicated that the obligation to prevent degradation of the fish habitat would be determined on a case-by-case basis.

The work proposed in this application has been analyzed with respect to its effects on the rights described above, and my conclusions are that (1) the work will not interfere with access to usual and accustomed fishing grounds or with fishing activities; (2) the work will not cause the degradation of anadromous fish runs and habitat; and (3) the work will not impair the tribes' ability to meet moderate living needs.

6. Impact Evaluation.

a. Affected Environment. The proposed restoration project site is located along the southeastern shore of the Middle Waterway in Commencement Bay, adjacent to a relict mudflat owned predominantly by the State of Washington. The project site contains existing mudflats and uplands that are, and have been, used for lumber and log storage. The upland portions of the project site were likely originally filled with sand from dredging of the Puyallup River delta. Simpson owns the project site and leases the upland portions of the site to Paxport Mills.

Past sampling of the project site reveal no current soil or groundwater contamination problems. Brass foundry metal debris is scattered through an upland portion of the project site at the head of Middle Waterway. Testing of the brass foundry metal debris under the Toxicity Characteristic Leaching Procedure (TCLP) has shown the metals in the debris to be considerably below state dangerous waste (DW) and extremely hazardous waste (EHW) levels.

A PSDDA sediment characterization study of the project site, conducted in February 1994, indicates that sediments on portions of the project site are slightly in excess of Washington State Sediment Quality Standards (SQS). Surface sediments at the head of Middle Waterway exceed the state SQS for mercury. Subsurface sediments elsewhere on the project site exceed the state SQS for copper.

Upland portions of the project site are largely devoid of vegetation and covered with wood debris. Plant communities found were typical of disturbed areas in Puget Sound. Upland areas included blackberry thickets (*Rubus* spp.) with several other species of shrubs and small trees including big leaf maple (*Acer macrophyllum*), red osier dogwood (*Cornus stolonifera*), and black cottonwood (*Populus trichocarpa*). Intertidal areas are dominated by a few plant species including salt grass (*Distichlis spicata*) and pickleweed (*Salicornia virginica*), and various filamentous green algae in lower intertidal areas.

The vegetation on the project site provides limited habitat. Wildlife includes several passerine birds and several types of waterfowl common to Commencement

Bay. Mammals utilizing the site may include raccoons, river otters, opossum, and introduced rodents.

There are no properties in the area that are listed or determined to be eligible for listing on the National Register of Historic Places. There are also no threatened or endangered species in the project area.

b. Impacts to Water Quality. A water quality certification for the project was issued by the Washington Department of Ecology on 21 June 1994. It contains several conditions designed to protect water quality and is contingent upon compliance with the final monitoring and adaptive management plan for the proposal. The Water Quality Certification is included as a special condition to the permit. The monitoring and adaptive management plan is a part of the cooperative agreement between Simpson and the Trustees and is also included as a condition to the Department of Army permit to ensure compliance with Section 404 of the Clean Water Act.

The project will generally have a net positive or neutral effect on water quality. Containing the brass foundry metal debris, which exceeds sediment cleanup objectives (SCO) for arsenic, copper, lead, nickel, and zinc, at the east bank of the head of the waterway, will improve water quality in this area by eliminating a potential source of contamination. Excavating the existing surface sediments in the area of the tidal channels, on the other hand, could have a minor adverse effect on water quality because of the exposure of surface sediments containing copper at levels slightly above the SQS.

The project is not expected to have an impact on current patterns and water circulation and fluctuation in the overall project area. The project also will not impact salinity gradients in the overall project area.

Minor erosion and turbidity could occur during excavation of the tidal channels, construction of the vegetative bench, and resloping of the head of the waterway. General methods to control erosion and turbidity during project construction will include the placement of: (a) erosion control procedures to contain the excavation sediments, such as the placing of a silt fence in the waterway; and (b) straw mulch on exposed slopes. If necessary, work conducted below the mean higher high water (MHHW) line will also be limited to the six hours of low tide to minimize sediment discharge into the waterway.

c. Impacts to the Aquatic Ecosystem. The project is designed to enhance aquatic habitat through the restoration of estuarine intertidal and saltmarsh habitats. The project will increase the acreage of wetland and mudflat habitats on the project site. Currently, the project site only contains a very narrow fringing saltmarsh waterward of the MHHW line (there are no freshwater wetlands on the project site). A small portion of the existing mudflat habitat on the project site (0.23 acres) will be filled to create wetland habitat. Additional mudflat habitat will be restored resulting in a slight net increase of mudflat habitat (0.30 acres) on the site.

If successful, the project will provide a more complex component of the mudflat/wetland ecosystem than currently exists in Middle Waterway or Commencement Bay. Only an estimated 57 acres (or 1%) of emergent marsh habitat remains in Commencement Bay of the estimated 3,814 acres of emergent marsh habitat that once occurred in a wide band between the MHHW level and the present location of Interstate 5. Much of this remaining emergent marsh habitat is probably not original habitat.

The project is expected to enhance the aquatic food web over existing conditions at the site. New wetland habitat at the site may contribute to food chain production, fish and wildlife habitat, hydrologic support, shoreline protection, storm and floodwater storage, groundwater recharge, and water purification. New riparian habitat at the site may provide nesting, roosting, feeding, and cover for mammals, reptiles, waterfowl and songbirds. It will also stabilize the bank of the waterway with roots, and filter out nutrient runoff from uplands.

The tideflat's habitat value may also increase because of the food source provided by the newly established riparian vegetation combined with the protection provided by this buffer strip. Thus, the habitat may become more valuable to both aquatic organisms such as young marine fish and salmonids, as well as to the shorebirds and otter that presently use the Middle Waterway tideflat. Intertidal flats contribute nesting, nursery, and feeding habitat for invertebrates and fish; feeding and resting habitat for birds and mammals; nutrient cycling; shoreline protection from erosion; and dissipation of storm surge runoff (40 CFR § 230.42).

No long-term cumulative or secondary adverse impacts are anticipated to the aquatic ecosystem in either the project area or in Commencement Bay as a whole as a result of the project. The project is expected to have long-term positive secondary and cumulative impacts on the aquatic ecosystem of the Middle Waterway area and in Commencement Bay.

d. Impacts to Wildlife. No adverse impacts are expected to occur to wildlife as a result of the project. No federally listed threatened or endangered species will be impacted by the proposal.

The proposed habitat restoration project is expected to have a long-term positive impact on bird use in the project area as a result of changes in both the quality and quantity of habitat available. The new intertidal habitat will provide elevations suitable for shorebirds and the clean, new substrate will support benthic and epibenthic animals that shorebirds feed upon.

e. Impacts to Human Use. The project is expected to have a positive impact on recreational and commercial fisheries in the Puyallup River/Commencement Bay areas by provision of habitat that may be used by young marine fish and salmonids. Indian commercial and recreation fisheries and non-Indian recreational fisheries exist in Commencement Bay, primarily for several salmon species. The various dredge and disposal activities associated with the proposal will occur outside the major fishing periods and outside the fisheries closure period (15 March to 15 June) and will not adversely impact the fisheries. Other than positive impacts on fisheries, no other water-related recreation will be impacted by the project.

The current use of the site and adjacent properties is industrial urban shoreline. The proposal is compatible with surrounding land uses and is consistent with existing zoning, shoreline, land use plans, and policies. There are no known landmarks or evidence of historic, archaeological, scientific or cultural importance on or next to the site.

The project will take two to three months to construct. Views during construction will be of dredging and grading activities, not atypical of the Commencement Bay industrialized area. Other than short-term emissions to the air during construction and perhaps hydrogen sulfide during dredging, no impacts to air quality will occur due to project implementation. The proposed project will

not significantly affect energy use. No long-term noise impacts will be created by the project. The project will not impact public utilities or services.

Views in the immediate vicinity of the project site will be improved by the project. The project will restore the natural shoreline and create a natural transition from the original mudflat to upland industrial uses. The project will also remove debris from the surface of the site, restore riparian and wetland habitat on-site, and establish a vegetative buffer to screen the estuarine habitat from adjacent human activity.

f. Summary. Both the individual and cumulative impacts of the proposed work have been evaluated by this office. Evaluation considered relevant factors including conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. Possible alternatives to reducing identified adverse impacts have also been considered and incorporated where practicable.

The project helps to implement and is consistent with the restoration goal and principles of the Trustees and the Commencement Bay NRD Restoration Panel (1992-1993) and the U.S. Army Corps of Engineers Cumulative Impact Studies for Commencement Bay. The project also helps to implement and is consistent with the vision, and restoration and land use goals and principles, of the Commencement Bay Cleanup Action Committee (CBCAC), the CBCAC Commencement Bay Watershed Restoration Landscape Concept Plan, and other efforts in Commencement Bay and the Lower Puyallup Watershed.

This evaluation has not identified any potentially significant adverse effects that would accrue from any actions taken under the terms of this permit.

7. Section 404(b)(1) Evaluation. The work was evaluated pursuant to Section 404(b)(1) of the Clean Water Act in accordance with the guidelines promulgated by the Environmental Protection Agency (EPA) (40 CFR 230) for evaluation of the discharge of dredged or fill material into waters of the United States. A total of ten potential restoration sites were identified during the initial review of project implementation. The proposed discharge (with incorporation of the monitoring and adaptive management plan) represent the least environmentally damaging practicable alternative and include all appropriate and practicable measures to minimize adverse effects on the aquatic environment.

The restoration of the existing mudflat will reestablish the historic grade of the tideland, and allow it to function in a more natural way. The proposed restoration activities will reestablish the water circulation patterns, and decrease the possibility of erosion and accretion in this area. The changes in the patterns of inundation also may positively affect the chemical and biological exchange and decomposition processes occurring on the mudflat. This should restore the deposition of suspended material affecting the productivity of the area. The proposed changes may increase mudflat biota, foraging areas, and nursery areas.

Consideration has been given to the need for the work, and to such water quality standards as are appropriate and applicable by law. The work will not result in the unacceptable degradation of the aquatic environment.

8. Determinations. I have reviewed and evaluated, in light of the overall public interest, the documents and factors concerning this permit application, as well as the stated views of other interested Federal and non-Federal agencies and the concerned public, relative to the work in waters of the United States.

I have made the following determinations:

a. Special Conditions.

1. The permittee must provide a copy of the permit transmittal letter, the permit form, and drawings to all contractors performing any of the authorized work.

2. The permittee must comply with the provisions of the attached Water Quality Certification.

3. A restoration monitoring report, as described in the Middle Waterway Shore Restoration Project Monitoring and Adaptive Management Plan, dated April 1994, or status report, if construction of project has not started, will be submitted to the District Engineer 13 months after the date of permit issuance. In addition, restoration monitoring reports will be submitted to the District Engineer 12 months from the date of the first monitoring report, or status report, if construction has not started, on an annual basis for the next consecutive five year period.

4. This permit does not exclude the permittee from liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended (42 U.S.C. 9601 et.seq.) of the 1989 Washington State Model Toxic Control Act (R.C.W. 70.105), nor does the permit waive any liability for response costs, damages, and any other cost that may be assessed under CERCLA. Additionally, the permittee will be financially responsible for any logistic problems associated with the construction and operation of this project and potential cleanup operation in this portion of Commencement Bay.

b. Finding Of No Significant Impact. Performance of this work in accordance with the standard and special conditions of the permit, will not significantly affect the quality of the human environment. Further, I have determined that the issuance of this particular permit is a Federal action not having a significant impact on the environment. I have thus concluded that the preparation of a formal Environmental Impact Statement is not required.

c. Section 404(b)(1) Evaluation. The discharges and methods specified in the proposed work are in accordance with the Section 404(b)(1) guidelines.

d. Public Interest. The proposed work is considered to be not contrary to the general public interest. The project will result in positive impacts on the aquatic environment on the project site, including removal of a potential source of contaminants to the aquatic environment, generally cleaner substrate conditions than presently exist, and an increase in estuarine habitat valuable to bird and aquatic life and screened from adjacent industrial uses. The only adverse impacts to the aquatic ecosystem associated with the project are minor erosion and turbidity impacts occurring during project construction.

9. Findings. The work complies with state and local laws and is consonant with National policy, statutes, and administrative directives. I find that issuance of a Department of the Army permit with special conditions for this work is based upon a thorough analysis of the various evaluation factors and determinations that have been identified herein.

8/3/94
Date

for Donald T. Wynn
Colonel, Corps of Engineers
District Engineer