

CURT SMITCH  
Director



STATE OF WASHINGTON

DEPARTMENT OF WILDLIFE

5405 N.E. Hazel Dell Ave., Vancouver, WA 98863 Tel (206) 696-6211

January 28, 1992

Mr. Bruce Stevenson  
SDS Lumber Company  
P.O. Box 266  
Bingen, WA 98605

Subject: Mitigation Agreement  
SDS Lumber Company  
Corps. #071-OYB-2-009558

Dear Bruce:

The mitigation agreement between SDS Lumber Company, the Department of Fisheries and the Department of Wildlife specified that all work must be completed by December 31, 1990. In our last conversation, you stated that the work had not yet started because you were still waiting for a permit from the U.S. Army Corps of Engineers.

We discussed this situation with Mr. Rudy Pajtinger of the Corps, and he produced a letter dated September 12, 1989 (enclosed). Mr. Pajtinger stated that this is a valid authorization letter.

In a recent inspection of the site by our agency, it was obvious that SDS had not yet started the work required by the mitigation agreement, even though the company appears to have all the necessary approvals.

It is imperative that this work begin as soon as possible. Please present us with a time schedule for this project, specifying when the various requirements of the mitigation agreement will be completed.

Bruce Stevenson  
January 28, 1982  
Page 2

If any parts of the agreement are unclear, or if you have any additional questions, please feel free to call me at (206) 696-6211 or (206) 835-8831.

Sincerely,



Carl Dugger  
Area Habitat Biologist

Enclosure

cc: Gene Tillett  
David Mudd ✓  
Bob Bicknell  
Rudy Pojtinger, Corps, Seattle  
Employers' Mutual of Wausau  
Michael E. Haglund

SEP 14 1989

Regulatory Branch

Mr. Michael E. Haglund  
Haglund and Kirtley  
One Main Place  
101 Southwest Main, Suite 70  
Portland, Oregon 97204

Reference: 871-DYS-2-009553  
SDS Lumber Company

Dear Mr. Haglund:

The work described in this letter will resolve the referenced violation of Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. This creation and preservation of fish and wildlife habitat will mitigate the natural resources lost from the unauthorized fill.

We have coordinated this work with Mr. Carl Dugger, Washington State Department of Wildlife, to assure that the work is consistent with the Mitigation Agreement between SDS Lumber and the Washington State Departments of Wildlife and Fisheries. The mitigation work must be completed by December 31, 1990.

The requirements for completing the mitigation work follow:

Planting guidelines:

black cottonwood (*Populus trichocarpa*) and willow (*Salix fluviatilis*) ten feet on center. Additional species as recommended by the Department of Wildlife.

Monitoring period:

Two years of monitoring to be performed by the Corps and/or the Department of Wildlife or Fisheries. Site visits approximately twice per year beginning after planting is completed.

Survival rate:

75% survival after two years of the planted vegetation or equivalent including naturally established riparian vegetation. If survival is less than 75%, the Corps and Departments of Wildlife or Fisheries will review the circumstances of failure and evaluate whether an increase in survival can reasonably be accomplished.

**Changes:**

The Washington State Departments of Wildlife or Fisheries may direct changes in plantings or other requirements under the Mitigation Agreement.

Please note on the drawing that we have recalculated the ordinary high water (OHW) at SDS Lumber's site to 76.2 feet above National Geodetic Vertical Datum (N.G.V.D.). Also, we have reestimated the soil elevation for tree planting to be 79 to 80 feet N.G.V.D. The reestimate is based on the elevation of the alders growing in the inlet near the chip loading facility.

Because Mr. Bruce Stevens and his staff are most familiar with this area, please contact Messrs. Robert Martin or Carl Dugger if the planting elevations do not seem appropriate. If you have any other questions, you may contact Mr. Martin at (206) 764-3495.

Sincerely,

Warren E. Baxter  
Chief, Regulatory Branch

Enclosures

Copy Furnished:

Mr. Carl Dugger  
Washington State Department of Wildlife  
5405 Northeast Hazel Dell Boulevard  
Vancouver, Washington 98663

JOSEPH R. BULL  
Director



cc: Tama  
Zimmer

STATE OF WASHINGTON  
DEPARTMENT OF FISHERIES

115 General Administration Building, MS AX-11 • Olympia Washington 98504 • (206) 753-6611 • (SCAN) 234-6600

December 5, 1990

Mr. Chris Drivdahl  
Assistant Director  
Department of Wildlife  
MS: GJ-11  
Olympia, Washington 98504

RE: FY91-16 Mitigation Agreement

Dear Mr. Drivdahl:

Enclosed are two (2) copies of the fully executed Mitigation Agreement between SDS Lumber, Department of Fisheries and Department of Wildlife. Please forward one to SDS Lumber Company and retain one for your files.

Page 5, Section 10 has a change and has been initialed by Fisheries. A copy of this page is enclosed for initialing. Please forward to SDS for initialing and return to my attention at the above address. Once completed, this page will be distributed to all parties for their records.

If you have any questions or concerns, please contact me at 438-4904.

Sincerely,

A handwritten signature in cursive script that reads "Denise C. Hurley".

Denise C. Hurley  
Contracts Specialist  
Contracts Administration

Enclosures

cc: Steve Keller  
Duane Phinney  
Steve Genson

MITIGATION AGREEMENT

THIS AGREEMENT is made between SDS Lumber Company, Owner, and the Washington State Department of Wildlife and Washington State Department of Fisheries, both representing the State of Washington. This is a real covenant entered into so as to bind the parties, assignees, or purchasers.

1. The Owner has proposed to construct the following Project:

- (a) a barge servicing facility;
- (b) a barge turnaround bumper;
- (c) modifications to an existing barge loading facility;
- (d) removal of old fill north, west and east of the barge moorage area, in order to restore shallow water fish habitat, as shown in Exhibit A, which is attached hereto and incorporated into this Agreement, and;
- (e) establishment of and construction of a natural area along the water's edge in order to create or restore fish and wildlife habitat, as shown in Exhibit A.

The Project will be constructed at the Owner's mill site situated near Bingen, Washington, and shown on the map, Exhibit A.

The legal description of the Project area is as follows:

Portions of the Southeast 1/4 and portions of the Northeast 1/4 of Section 30, Township 3 North and Range 11 East of the Willamette Meridian, situated in Klickitat County, Washington.

Plans for the project are shown on Exhibit A, which is attached hereto and incorporated into this Agreement.

The portions of the property which are to be used for shallow water fish habitat and for the natural area shall provide protection for fish, wildlife, and their habitat, and provide mitigation for unavoidable, adverse impacts from construction of the Project and for previous work such as inwater fill and the construction of docks, piers, and pilings conducted on the site by the Owner or his contractors. Compliance with this Agreement shall fulfill the Owner's obligations in that regard.

2. The Washington State Department of Wildlife has the responsibility to preserve, protect and perpetuate and manage the fish and wildlife resources in the State of Washington. The Washington State Department of Fisheries has the responsibility to preserve, protect, perpetuate and manage the food fish and shellfish of the State of Washington in state and offshore waters. Through this Agreement, these Departments also implement their responsibility under the Fish and Wildlife Coordination Act, 16

U.S.C. § 61, et seq., to report to various agencies regarding appropriate measures for mitigating the adverse impacts of this Project on the fish and wildlife resource.

3. The impacts of the Project upon fish and wildlife resources, their habitat, and fishing and other wildlife recreational activity has<sup>ve</sup> been identified. Appropriate mitigation measures have been identified by the Departments and are set forth below. This Agreement also constitutes a real covenant running with the Project lands, and it will be filed of record in Klickitat County to bind the parties, their successors, assignees or purchasers.

4. The specific areas in which mitigation measures will occur are identified on the Project map, Exhibit A.

5. The Owner shall perform the following functions with the natural area described in Section (1)(e) above:

- (a) Dedicate it to fish, wildlife and related recreation in perpetuity.
- (b) Construct a low, flat area along the water's edge no less than 12 feet wide nor greater than 20 feet wide and place on it soil or other suitable substrate for the growth of appropriate natural vegetation.
- (c) Plant willows, cottonwoods and other appropriate vegetation beneficial to wildlife, as directed by the Department of Wildlife.
- (d) Remove all litter, trash, mill remnants, and other manmade debris and keep the natural area

free of all manmade debris in the future.

- (e) Set the natural area aside and forbid any future filling or development of the natural area by any and all parties, except as specified by the Departments of Wildlife and Fisheries.
- (f) Protect and retain the planted vegetation in the natural area, except as specified by the Departments of Wildlife or Fisheries.
- (g) Construct at least 15 Canada goose nesting platforms as directed by the Department of Wildlife.

6. The Owner shall perform the following functions with the shallow water habitat described in Section (1)(d) above:

- (a) Remove existing fill, as shown in Exhibit A, to a depth of 4 feet below mean lower Bonneville Pool elevation.
- (b) Set aside the shallow water habitat and forbid any future filling or development of the area by any and all parties, except as may be allowed by the Department of Wildlife or Fisheries.

7. All mitigation activity which is done on this Project shall be completed in conjunction with the construction of the various barge servicing facilities as described in Section (1)(a), (b), and (c) and these mitigation activities shall be

completed no later than July 1, 1991.

8. No work shall be accomplished within the ordinary high waterline without a written and signed Hydraulic Project Approval.

9. The Owner shall post a performance bond in the amount of \$25,000 to be forfeited in equal amounts to the Departments of Wildlife and Fisheries in the event of failure to complete all mitigation activities specified in this Agreement by July 1, 1991.

10. The Departments of Wildlife and Fisheries agree to make all reasonable efforts to expeditiously process any Hydraulic Project ~~Approvals~~ Applications <sup>SMB</sup> <sup>JD</sup> required for construction and operation of this Project upon receipt of all of the following:

- (a) the above mentioned performance bond;
- (b) fully signed and executed copies of this Agreement;
- (c) a properly completed Hydraulic Project Application; and
- (d) evidence of full compliance with the requirements of the State Environmental Policy Act (SEPA).

11. This Agreement shall be effective as of the date of execution by all parties and shall continue in full force and effect until all parties mutually agree to discontinue it, and shall be binding on the Owner, his successors, assignees, or purchasers.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as below subscribed.

WASHINGTON DEPARTMENT OF WILDLIFE

By James Linton  
Title: Assistant Director

Date: 8/3/90

WASHINGTON DEPARTMENT OF FISHERIES

By Stuart H. Borchardt  
Title: Contracts Officer

Date: 12/4/90

SDS LUMBER COMPANY

By Bruce R. Stevenson  
Title: President

Date: May 30, 1990

APPROVED AS TO FORM:

ASSISTANT ATTORNEY GENERAL

By Signature on File

Date: 11-13-90

HAGLUND & KIRTLEY

By Michael E. Haglund  
Attorneys for SDS Lumber Company

Date: May 30, 1990

STATE OF OREGON )

County of Multnomah ) ss.

On this 30th day of May, 1990, before me appeared Bruce R. Stevenson, to me personally know, who being duly sworn did say that he is the President of SDS Lumber Company, and that the foregoing instrument was signed in behalf of said Corporation by authority of its Board of Directors, and acknowledged that said instrument is the free act and deed of said Corporation.

Michael E. Haglund  
Notary Public for Oregon  
My Commission Expires: 11/26/90

MEHr6105

PROJECT: MITIGATION

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SUBJECT: SDS LUMBER  
071-0YB-2-009558

COMPUTED BY:  
R. MARTIN

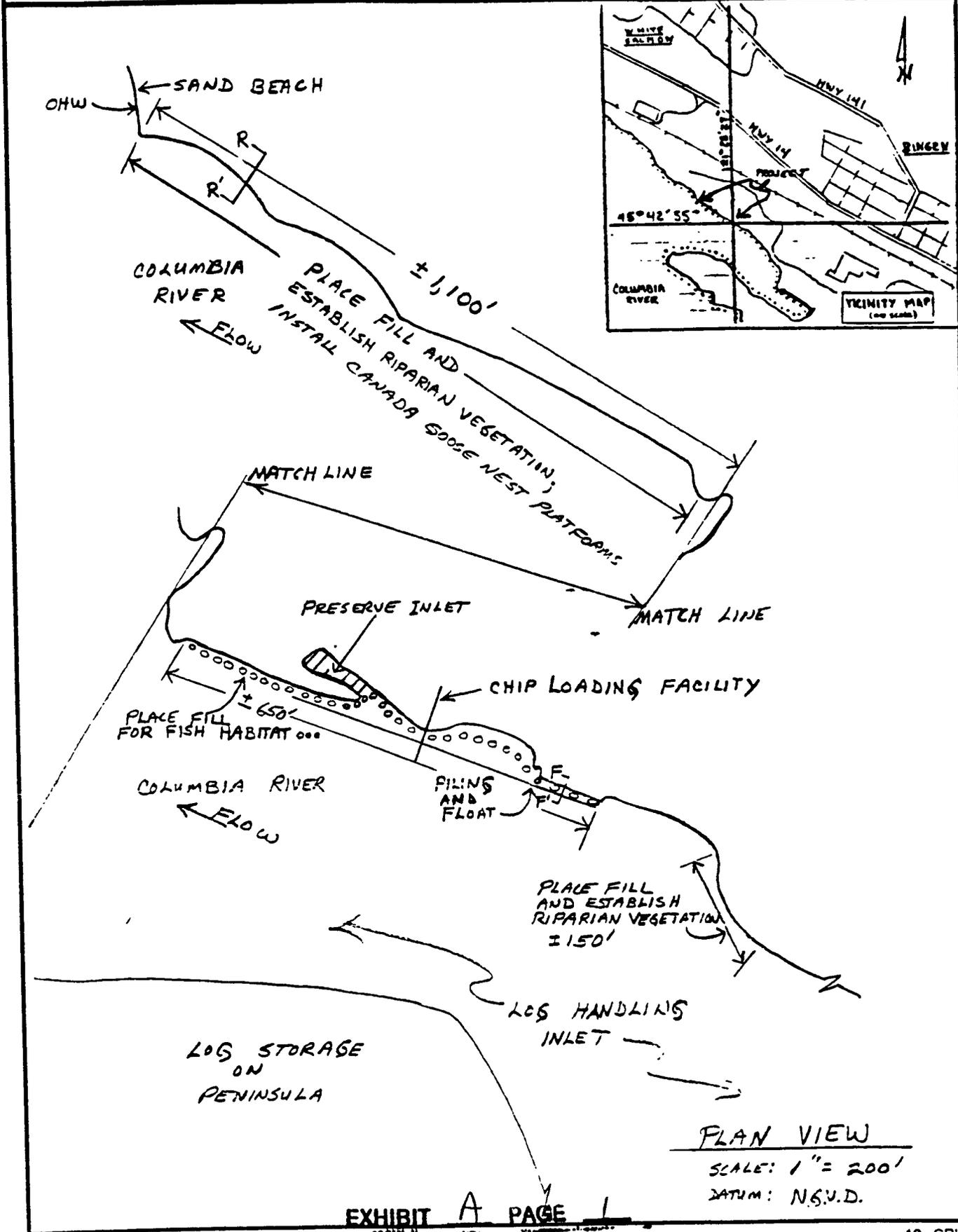
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CHECKED BY:

DATE: 23 MAY 89  
REVISED 30 AUG 89  
SHT. 1 OF 3

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PART:



PROJECT:

MITIGATION

COMPUTED BY:

R. MARTIN

DATE: 23 MAY 88

REVISED 30 APR 89

SHT. 2 OF 3

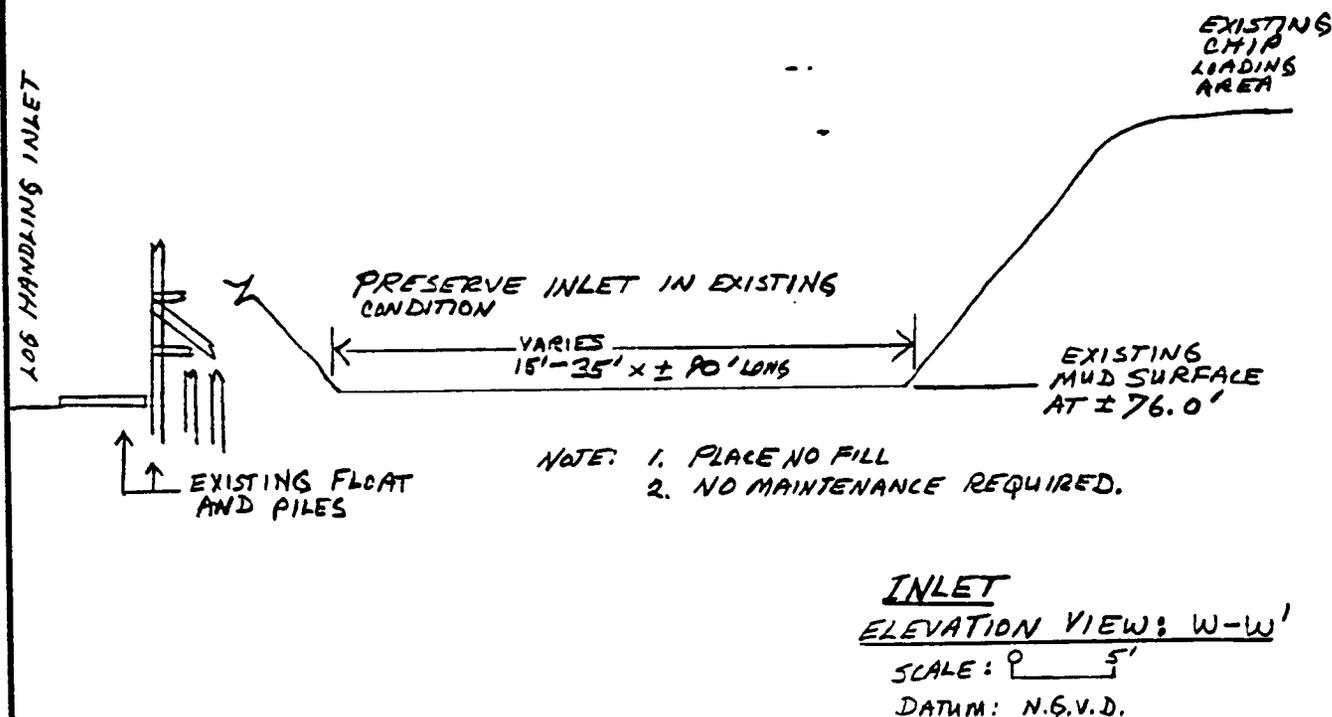
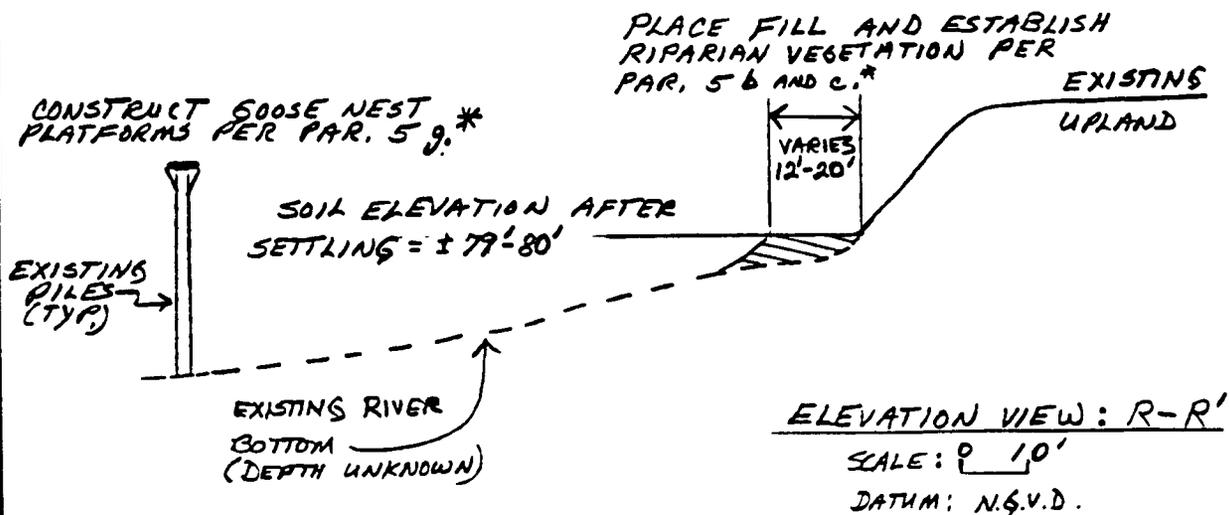
SUBJECT:

SDS LUMBER

071-0YB-2-009558

CHECKED BY:

PART:



\* MITIGATION AGREEMENT BETWEEN SDS LUMBER AND WASHINGTON STATE DEPARTMENTS OF WILDLIFE AND FISHERIES.





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PROJECT:

MITIGATION

COMPUTED BY:

R. MARTIN

DATE: 23 MAY 89

REVISED 30 AUG 89

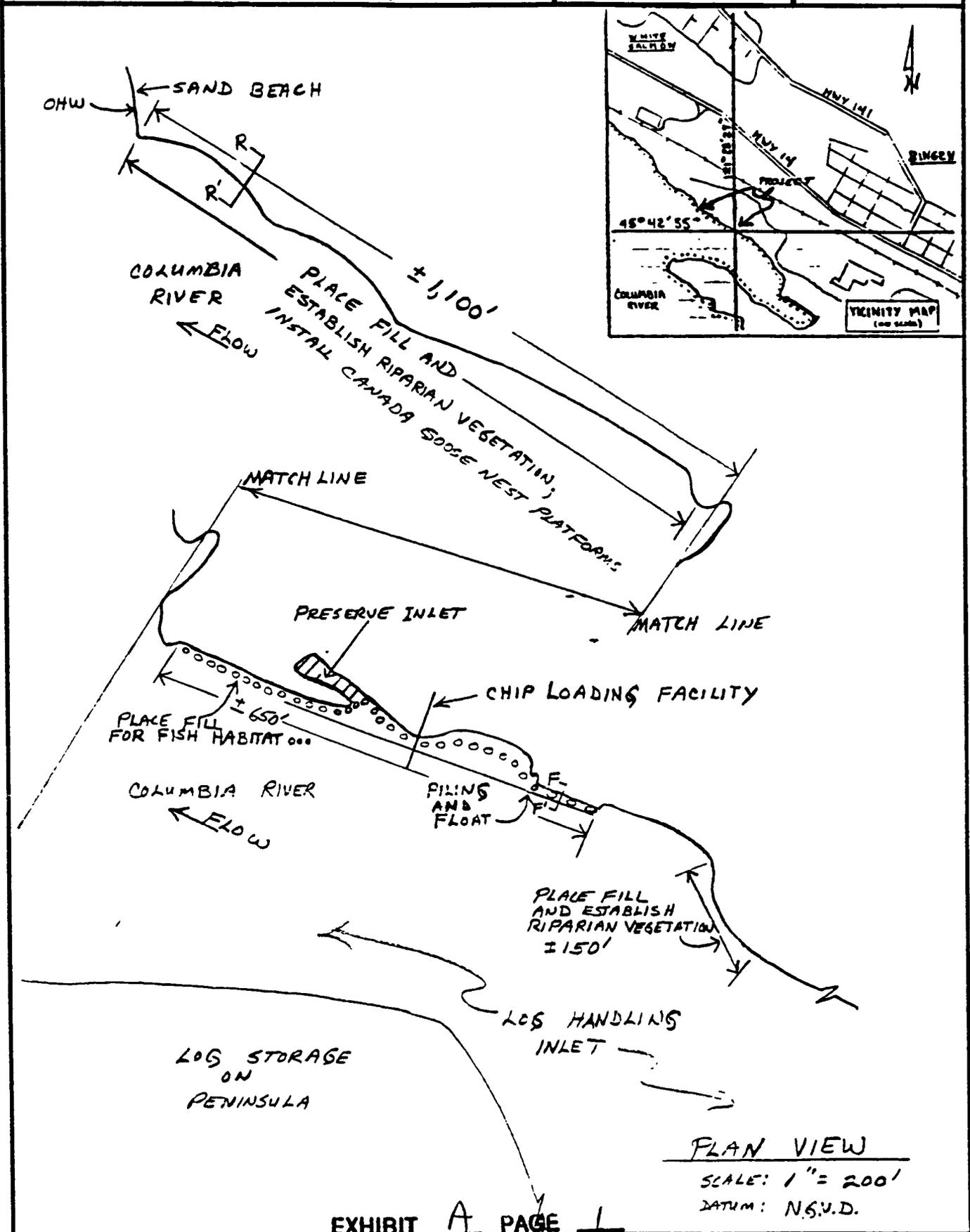
SHT. 1 OF 3

SUBJECT:

SDS LUMBER  
071-0YB-2-009558

CHECKED BY:

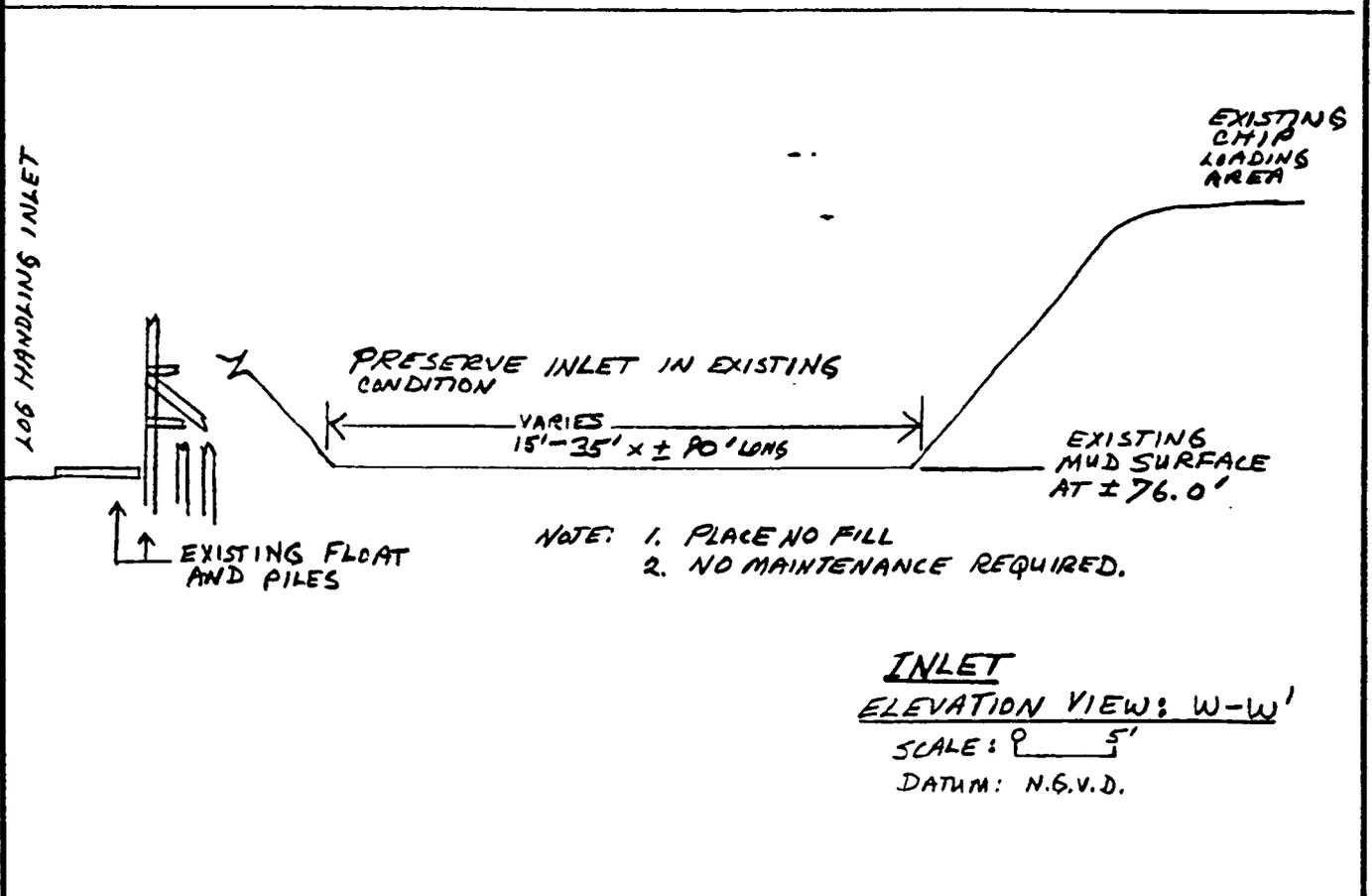
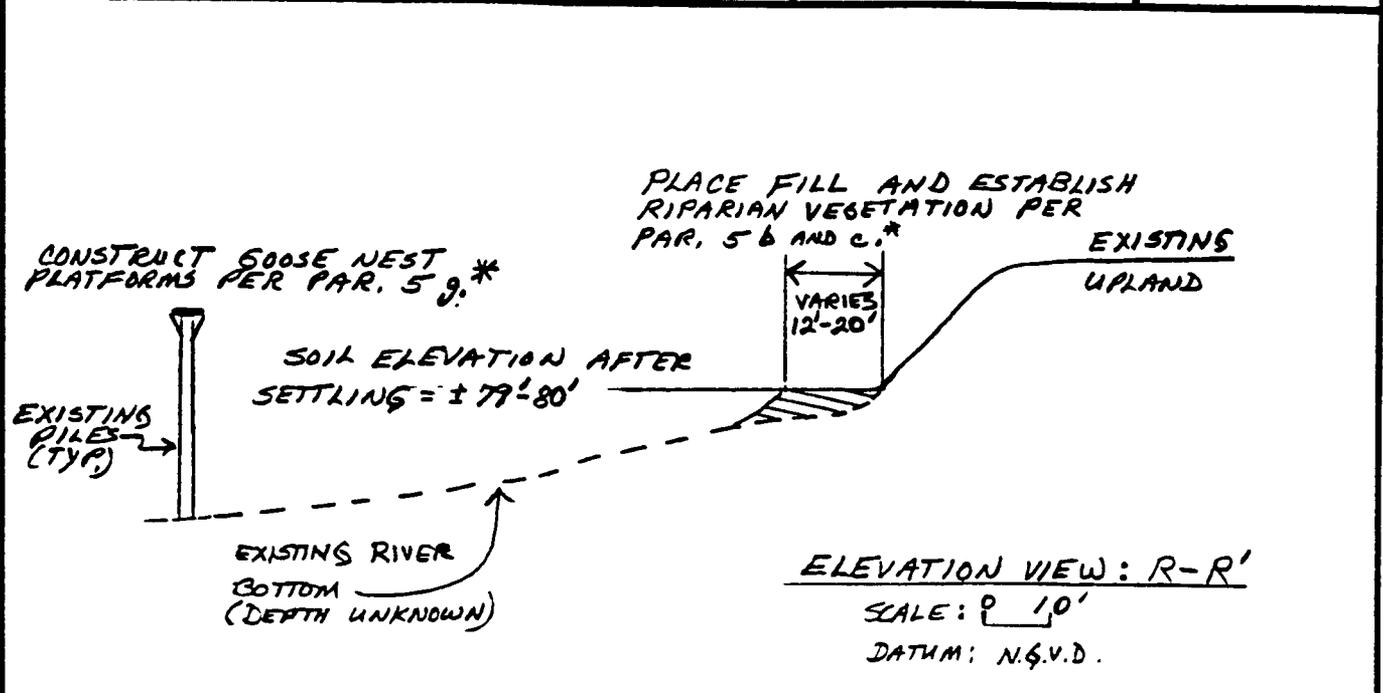
PART:



PLAN VIEW  
SCALE: 1" = 200'  
DATUM: N.S.V.D.

EXHIBIT A PAGE 1

<b>PROJECT:</b> MITIGATION	<b>COMPUTED BY:</b> R. MARTIN	<b>DATE:</b> 23 MAY 88 REVISED 30 APR 89 SHT. 2 OF 3
<b>SUBJECT:</b> SDS LUMBER 071-0YB-2-009558	<b>CHECKED BY:</b>	<b>PART:</b>



\* MITIGATION AGREEMENT BETWEEN SDS LUMBER AND WASHINGTON STATE DEPARTMENTS OF WILDLIFE AND FISHERIES.

PROJECT:

MITIGATION

COMPUTED BY:

R. MARTIN

DATE: 23 MAY 89

REVISED 30 AUG 89

SHT. 3 OF 3

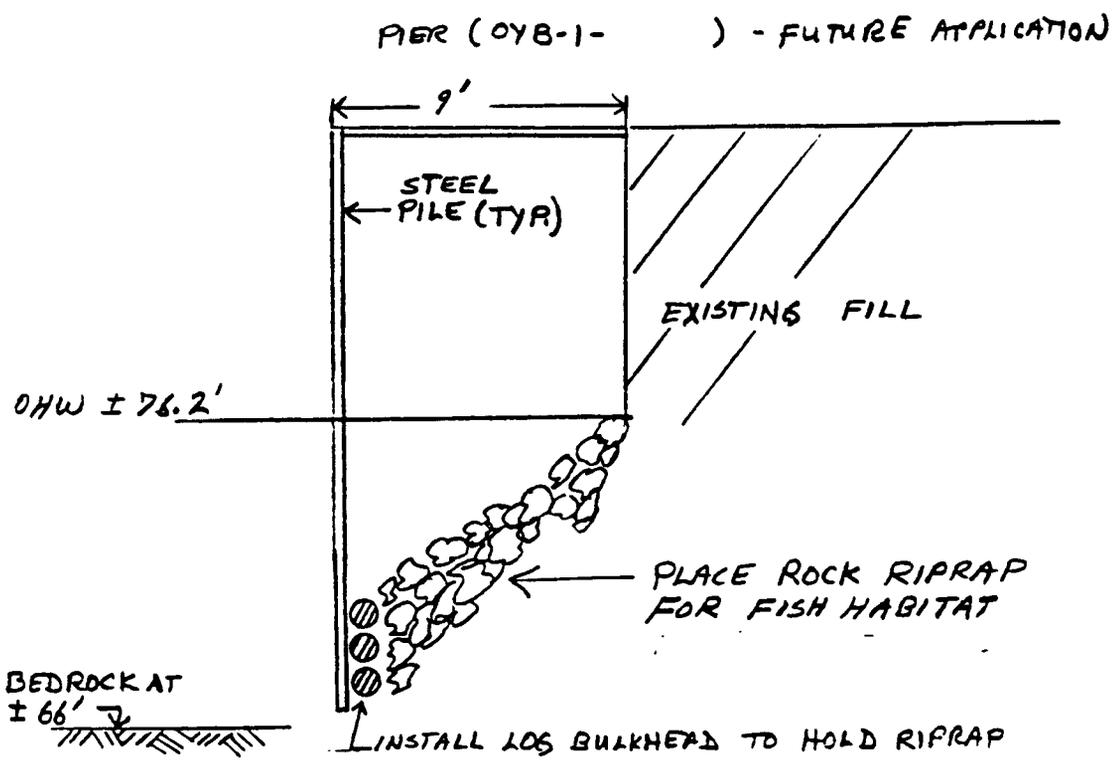
SUBJECT:

SDS LUMBER

071-0YB-2-009558

CHECKED BY:

PART:



PIER (0YB-1- ) - FUTURE APPLICATION

9'

STEEL PILE (TYR)

EXISTING FILL

OHW ± 76.2'

PLACE ROCK RIPRAP FOR FISH HABITAT

BEDROCK AT ± 66'

INSTALL LOS BULKHEAD TO HOLD RIPRAP

ELEVATION VIEW: F-F'

SCALE: 0 5'

DATUM: N.G.V.D.