

Brad Furlong
904 S. Third
Mt Vernon WA 98273

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GRANT DEED OF CONSERVATION EASEMENT

This Grant Deed of Conservation Easement, by and between AVERY and LISA MARTIN, husband and wife (hereinafter referred to as "Grantor") and the THE SKAGIT LAND TRUST, a Washington non-profit corporation (hereinafter referred to as "Grantee"), is made with reference to the following facts:

1 RECITALS

- 1.1 Grantor is the owner in fee to that certain real property (hereinafter referred to as "Protected Property"), situated on the SW side of Clear Lake, near the top of the hill, south and adjacent to 2086 B Buchanan Street, Clear Lake, in Skagit County, State of Washington, more particularly described in Exhibit "A" and shown on Exhibit "B", both of which are attached and made part hereof by this reference.
- 1.2 The Protected Property is part of a forested hillside area of approximately 120+/- acres, which is relatively intact and large portions of which remain undeveloped. The Protected Property is approximately five and three eighths acres and consists of parcels 5, 6, 15 and 16. (Approximately one acre [parcel 10] of the six and three eighths acres previously owned by Howard Channing, is occupied by one house and a separate unattached building that is used as a shop, and a lawn. This approximate one acre is not part of The Protected Property. It is excluded from this Easement.) Parcels five, six, fifteen and sixteen (approximately five and three eighths acres) are covered by trees and bushes. From current knowledge, the area was last logged in 1905. The trees are a good mix of Douglas fir, cedar, big leaf maple, vine maple, alder and birch. Many species of birds and mammals use this forested area. The Protected Property and the adjoining forested hillside is visible from many areas of the county. See attached Baseline Data sheet for more details.
- 1.3 The Protected Property's ecological, wetland, and forestland values are of great importance to Grantor, Grantee, and the people of Skagit County and the State of Washington. The Protected Property enhances the rural character of Clear Lake and Skagit County and provides a natural wooded setting that can be enjoyed from many areas of the county.
- 1.4 The goals and policies of the Skagit County Zoning Ordinance provide for the conservation of natural resources and value of property and encourage the most suitable and compatible uses of land.
- 1.5 The legislatively declared policies of the State of Washington, in the Revised Code of Washington (hereinafter referred to as "RCW") Chapter 84.34, provide that it is in the best interest of the State to maintain, preserve, conserve and otherwise continue in existence, adequate open-space lands and to assure the use and enjoyment of natural resources, shoreline and scenic beauty for the economic and social well-being of the state and its citizens. The subject property constitutes "open-space land" as defined in such statute.
- 1.6 The Protected Property would also be extremely desirable property for substantial logging because of its dense stand of large trees. In the absence of this Grant Deed of Conservation Easement, the Protected Property could be logged and developed in the future for other uses in a manner which would destroy the forestland character of the Protected Property and its ecological value. Logging of the said property would eliminate habitat for the many forest dwelling wildlife species that live there. This type of habitat has become more valuable in recent years due the many acres of lowland forests being clearcut and converted to development. Logging also would greatly reduce the scenic quality of this area and would affect people in many areas of the county.
- 1.7 Grantor, as the owner of the Protected Property, possesses the affirmative right to identify, preserve, and protect in perpetuity the natural elements and processes and the ecological, forestland, wetland and open-space value of the Protected Property, and desires to transfer such rights to the Grantee.
- 1.8 Grantee is a "non-profit nature conservancy corporation" as defined by RCW 64.04.130 and RCW 84.34.250, and described in Section 170(b)(1)(A)(vi) of the Internal Revenue Code of 1986 (hereinafter referred to as "IRC").

SKAGIT COUNTY WASHINGTON
Real Estate Excise Tax
PAID

JAN 21 1994

Amount Paid \$ -0-
By: Skagit County Treasurer
Deputy

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2 **CONVEYANCE AND CONSIDERATION**

- 2.1 For the reasons stated above, and in consideration of the mutual covenants contained herein, the Grantor does hereby convey to Grantee a perpetual Conservation Easement, in gross, consisting of the rights in the Protected Property hereinafter enumerated, subject only to the restrictions set forth herein.
- 2.2 This conveyance is a conveyance of an interest in real property under the provisions of RCW 64.04.130, and is made as an absolute, unconditional, unqualified, and completed gift subject only to mutual covenants and restrictions hereinafter set forth, and for no other consideration whatsoever.

3 **PURPOSE**

- 3.1 It is the exclusive purpose of this Conservation Easement to preserve and protect the scenic, open-space, natural and forested character of the Protected Property, and to preserve wildflowers, wetlands and the natural forest of the Protected Property. To this end, Grantor and Grantee agree that the Baseline Data consisting of maps, photographs, and other documentation on file at the offices of Grantee and already provided to Grantee by Grantor provide, collectively, an accurate representation of the Protected Property at the time of this Grant and are hereby incorporated by this reference. Grantor and Grantee further agree that within twelve (12) months of the execution hereof, a collection of additional Baseline Data shall be compiled by Grantee, attached hereto as an exhibit, and incorporated herein by this reference. The Baseline Data shall be relied upon by the Grantor and the Grantee as the descriptive base to establish the present condition and guide in the future uses of the Protected Property. Failure to timely compile the additional Baseline Data shall not affect the enforceability or validity of any other provision hereof.
- 3.2 Grantor intends that the Protected Property shall not be converted nor directed to any uses other than those provided herein.
- 3.3 Preservation of the Protected Property will enhance the general public's visual access to natural, undeveloped environments. Limited public access to any portion of the land subject to this Conservation Easement shall be permitted only in accordance with Section 5.9 below. Nothing contained herein, however, shall be construed as affording the general public access to any portion of the land subject to this Conservation Easement.

4 **GRANTEE'S RIGHTS**

- 4.1 The rights conveyed to Grantee by this Conservation Easement are the following:
- 4.1.1 The Grantee shall have the right to identify, to preserve, and protect in perpetuity, and to maintain the open-space, natural and forest land character of the Protected Property for the maintenance of habitat for wildlife and for the scenic benefit and enjoyment of the general public;
- 4.1.2 The Grantee shall enter upon the Protected Property annually, at a mutually agreeable time and upon prior written notice to the Grantor, for the purpose of making a general inspection to assure compliance with this Conservation Easement;
- 4.1.3 The Grantee and other persons approved by the Grantor, may enter upon the Protected Property, upon prior arrangement with Grantor, for educational, scientific and biological purposes to observe and study the Protected Property;
- 4.1.4 The Grantee shall enter upon the Protected Property, upon reasonable notice, at such other times as are necessary if there is reason to believe that a violation of the Easement is occurring, for the purposes of enforcing the provisions of this Conservation Easement;
- 4.1.5 The Grantee shall have the right to enjoin any activity on, or use of, the Protected Property which is inconsistent with this Conservation Easement, including trespasses by members of the public, and undertake or cause to be undertaken the restoration of such areas or features of the Protected Property as may be damaged by activities contrary to the provisions hereof;

- 4.1.6 The Grantor agrees to notify the Grantee, in writing, before exercising any reserved right, the exercise of which may have an adverse impact on the conservation interests associated with the Protected Property;
- 4.2 Enforcement of the terms and conditions of this Conservation Easement shall be at the discretion of the Grantee, in accordance with Section 7 below. Any forbearance on its behalf to exercise its rights hereunder in the event of any breach of this conservation Easement by Grantor, its heirs, successors or assigns, or any other person or entity, shall not be deemed or construed to be a waiver of the Grantee's rights hereunder in the event of any subsequent breach.

5 **PERMITTED USES.** Grantor reserves the right to use the Protected Property for all uses which are consistent with the purposes of this Conservation Easement, including the following uses; however, this is not an exhaustive list of all permitted uses which the Grantor retains which are consistent with the purposes of the Conservation Easement:

- 5.1 To allow foot trails to be built through the wooded area.
- 5.1.1 These trails are not to extend more than 2,500 feet in total length and the foot path shall not be more than 2 feet wide. Brush only is to be cleared, no trees are to be cut to make these trails (a section of a windfall tree may be removed to keep trail open). No gravel is to be brought in to line these trails. Small boardwalks may be used to bridge wet areas.
- 5.1.2 To discourage the use of vehicles, the following construction methods of trails are suggested; entrances not to be readily seen from public roadways, trails shall be constructed with twists and bends, esp. the first parts, trails shall not be connected with a network of trails on neighboring properties unless those trails are also for human foot use only.
- 5.1.3 Due to the difficulty of enforcement, if vehicle use becomes a problem, gates and or pedestrian posts shall be installed to prohibit vehicular access.
- 5.1.4 Except for entrances, trails shall be 30 feet or more from the property line.
- 5.2 To remove or trim dangerous trees effecting the trails or neighbors to prevent damage or injury.
- 5.3 To manage the forest and any wetlands of the Protected Property to protect wildlife habitat and the open space character of the Protected Property.
- 5.4 To allow Avery and/or Lisa Martin to build a single lane driveway of standard size through the northwest corner of the Protected Property. This driveway may be built within a corridor that shall not extend south more than 370 feet from the north border and east no more than 50 feet from the west border of the Protected Property. This driveway may be of any surface composition with an appropriate subsurface and all necessary drainage facilities. The corridor may be used to install normal residential utilities. Refer to Exhibit C for more details regarding this corridor.
- 5.5 To allow persons or groups approved by the Grantor (owner of the property) to enter upon the Protected Property upon prior arrangement with Grantor for educational, scientific and biological purposes to observe and study the Protected Property in a manner consistent with this Conservation Easement. This easement does not give unauthorized or unrestricted public access to the Protected Property. However, this easement does allow ingress and egress by the residents and guests.
- 5.6 To allow monitoring by The Skagit Land Trust. The Land Trust shall make contact with Grantor prior to monitoring.
- 5.7 The intent of this Conservation Easement, with its restrictions and approved uses, is to maintain the property in such a manner that the scenic quality, open space and forested habitat that this property currently provides will remain in perpetuity.

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PROHIBITED USES. The following uses and practices on the Protected Property are inconsistent with the purposes of this Conservation Easement and shall be prohibited; however, this is not an exhaustive recital of all those uses and practices which are prohibited as inconsistent with the purpose of the Conservation Easement:

- 6.1 The change, disturbance, alteration, or impairment of the Protected Property, except as provided herein, and necessary to maintain the forest land, natural, wetland and open space values of the Protected Property.
- 6.2 The construction or placement of any new structures or buildings on the Protected Property.
- 6.3 The division, subdivision or de facto subdivision of the Protected Property.
- 6.4 The construction or placement of commercial signs, billboards, or other advertising material on the Protected Property.
- 6.5 The draining or filling of wetlands.
- 6.6 The filling, dredging, mining, drilling or removal of topsoil, sand, gravel, rock, minerals or other materials.
- 6.7 The construction of any additional roads, trails or paths for vehicular use except as noted in 5.4 above.
- 6.8 The operation of motorcycles, dune buggies, or other types of noisy motorized vehicles for recreational purposes or the operation of other excessive noise pollution, except for use of normal equipment necessary for proper maintenance (e.g., chainsaws and similar devices).
- 6.9 The dumping of used vehicles, old machinery, or other unsightly or offensive material.
- 6.10 The removal or destruction of trees or brush except as provided in Section 5 above, including clearcutting, "selective" cutting, or any form of commercial logging or gathering of wood.
- 6.11 The cutting of snags or overmature trees, unless dangerously close to neighbors, access roads or paths, except as provided in Section 5 above. It is recognized that dead and dying trees provide food and shelter for a variety of species.
- 6.12 The exploration for or extraction of minerals, hydrocarbons, soils, or other similar materials, on or below the surface of the Protected Property.
- 6.13 Commercial overnight camping.
- 6.14 Any other outdoor commercial activities.
- 6.15 The keeping of herbivore livestock (cattle, horses, llamas, goats, sheep, etc.).
- 6.16 All local, State and Federal laws must be adhered to.

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REMEDIES

- 7.1 Should any person or entity, including the Grantor, its heirs, successors or assigns, undertake any activity in violation of the terms of this Conservation Easement, The Grantee shall have the right to force the restoration of that portion of the Protected Property affected by such activity to the condition that existed prior to the undertaking of such unauthorized activity. In such case, the costs of such restoration and the Grantee's expenses, including Grantee's attorney's fees, shall be borne by that person or entity against whom a judgement is entered, or in the event that the Grantee secures redress without initiating or completing a judicial proceeding, by that person or entity who is otherwise determined to be responsible for the unauthorized activity.
- 7.2 Should any person or entity, other than the Grantor, its heirs, successors or assigns, undertake any activity in violation of the terms of this Conservation Easement, and should the Grantee elect not to exercise the remedy provided for in Section 7.1 above, the Grantor, or in the event ownership of the Protected Property becomes vested in more than one heir, successor, or assign of the Grantor, one or more such heir, successor or assign, shall have the right to force the restoration of that portion of the Protected Property affected by such undertaking to the condition that existed prior to the undertaking of such unauthorized activity. In such case, the costs of such restoration and the expenses, including attorneys' fees, of the Grantor or such heir, successor, or assign that forces the restoration shall be borne by that person or entity against whom a judgment is entered, or in the event that the

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Grantor or such heir, successor, or assign forcing the restoration secures redress without initiating or completing a judicial proceeding, by that person or entity who is otherwise determined to be responsible for the unauthorized activity.

- 7.3 Should the ownership of the Protected Property become vested in more than one heir, successor or assign of the Grantor, and should one or more such heir, successor, or assign undertake any activity in violation of the terms of this Conservation Easement, any other such heir, successor or assign shall have the right to force the restoration of that portion of the Protected Property affected by such undertaking to the condition that existed prior to the undertaking of such unauthorized activity, in the event the Grantee elects not to exercise the remedy provided for in Section 7.1. In such case, the costs of such restoration and the expenses, including attorney's fees, of the heir, successor or assign that forces the restoration shall be borne by those heirs, successors or assigns against whom a judgement is entered, or in the event that the heir, successor or assign forcing the restoration secures redress without a completed judicial proceeding, by those heirs, successors or assigns who are otherwise determined to be responsible for the unauthorized activity.

- 8 **SUCCESSION.** The benefits of this Conservation Easement shall be in gross and assignable but only to a qualified organization within the meaning of Section 170(h)(3) of the IRC which is organized or operated primarily or substantially for one of the conservation purposes specified in Section 170(h)(4)(A) of the IRC. Any assignment of benefits by the Grantee (or successors) must require the transferee to carry out the purposes of this Conservation Easement. The Grantee shall notify the Grantor, in writing, at the Grantor's last known address, in advance of such assignment. If at any time it becomes impossible for the Grantee to ensure compliance with the covenants contained herein and the Grantee has not named a successor or successor organization, or the Grantee shall cease to exist, then its rights and duties hereunder shall become vested in and fall upon the following-named entities provided that such entities accept this Conservation Easement and are then organizations meeting the requirements of Section 170(h)(3) of the IRC (or its successor statute), in the following order:

- (1) The San Juan Preservation Trust, a San Juan Island non-profit corporation, having its principal office at P.O. Box 327, Lopez Island, WA 98261;
- (2) Such other non-governmental entity as may have been formed for purposes similar to the Skagit Land Trust, constituting a "qualified organization" within the meaning of the Internal Revenue Code of 1986, as amended.

9 **TAXES AND EXPENSES**

- 9.1 Grantor agrees to pay any and all real property taxes and/or assessments levied by competent authority on the Protected Property.
- 9.2 Grantor shall bear all the costs of maintenance of the Protected Property, and does hereby indemnify the Grantee therefrom.

10 **PROPORTIONATE VALUE; EMINENT DOMAIN**

- 10.1 The Grantor and the Grantee agree that the donation of the Conservation Easement gives rise, for the purpose of this paragraph, to a property right immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that the Conservation Easement, determined at the time of the gift, bears to the value of the Protected Property at that time. That proportionate value of the Grantee's property rights shall remain constant. If a change in conditions surrounding the Protected Property makes impossible or impracticable the continued use of the Protected Property for conservation purposes, and gives rise to extinguishment of this Conservation Easement by judicial proceedings, the Grantee, on a subsequent sale, exchange or involuntary conversion of the Protected Property, must be entitled to a portion of the proceeds at least equal to that proportionate value of the Conservation Easement, unless the laws of the State of Washington provide the Grantor is entitled to the full proceeds from the conversion without regards to the terms of this Conservation Easement. The Grantee shall use its

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share of the proceeds in a manner consistent with the conservation purposes set forth herein.

- 10.2 If ever all or part of the Protected Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor and the Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking; all expenses incurred by the Grantor and the Grantee in this action shall be paid out of the recovered proceeds.

- 11 **HOLD HARMLESS.** Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the obligations specified in paragraphs 9.1 and 9.2; and (3) the existence or administration of this Easement.

- 12 **COVENANTS.** It is the express intent of the Grantor and Grantee that the provisions of this Conservation Easement shall run with and burden title to the Protected Property in perpetuity, and shall be binding upon and inure to the benefit of the heirs, successors, and assigns of the parties hereto.

- 13 **"GRANTOR" - "GRANTEE".** The terms "Grantor" and "Grantee", wherever used herein, and any pronouns used in place thereof, shall be held to mean and include, respectively the above named Grantor, and heirs, successors, personal representatives, and assigns of said Grantor, and each of them, and the above-named Grantee, its successors and assigns.

- 14 **SEVERABILITY.** In the event that any provision of this grant or the application thereof to any person or circumstance shall be determined to be invalid or unenforceable, the remainder of the provisions hereof, and the application of such provisions to persons or circumstances other than those as to which it is determined to be invalid, shall not be affected thereby.

- 15 **SUBSEQUENT TRANSFERS.** Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Protected Property, including without limitation, a leasehold interest. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or its enforceability in any way.

- 16 **NOTICES.** All notices required or permitted to be given under the terms of this Conservation Easement shall be in writing and addressed as set forth as follows:

- 16.1 All notices to be given to Grantor shall be addressed as follows:

Avery and Lisa Martin
2086-D Buchanan Ave
Mt. Vernon, WA 98273

Telephone: 206-856-5166

- 16.2 All notices to be given to the Grantee shall be addressed as follows:

Skagit Land Trust
P.O. Box 1017
Mt Vernon, WA 98273

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Either Grantor or Grantee may, by proper notice to the other, designate another address for the giving of notices. All notices shall be deemed given on the third day following the day the notice is mailed in accordance with this Section 16.

IN WITNESS WHEREOF, the undersigned has executed this instrument this 21 day of January, 1994.

Avery N. Martin
(name) Grantor

Lisa H. Martin
(name) Grantor

State of Washington
County of Skagit

} ss.

On this day personally appeared before me Avery N. Martin
and Lisa H. Martin, to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 21 day of January, 1994.

Doreen Kuhuski
Notary Public in and for said State
Residing at Mount Vernon
Doreen Kuhuski

THE SKAGIT LAND TRUST does hereby accept the above Conservation Easement.

THE SKAGIT LAND TRUST

Dated: 1/21/94 By Keith L. Wiggers
President, Skagit Land Trust
Keith L. Wiggers

SUBSCRIBED AND SWORN TO before me this 21 day of January, 1994

Doreen Kuhuski
Notary Public for the State
Washington, residing at:
Mount Vernon
Doreen Kuhuski

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SKAGIT LAND TRUST

CONSERVATION EASEMENT BASELINE DATA REPORT

Donor Information:

Name Avery and Lisa Martin
 Address 2086-D Buchanan Ave.
2
 City Mt. Vernon State WA Zip 98273
 Phone (Day) 856-5166 (Evening) _____

Parcel 5, 6, 15 and 16
 Section 11
 Township 34 N
 Range 4 E

Skagit Land Trust (Donee) Contact:

Name Keith Wiggers
 Donor Referred To Skagit Land Trust By Howard Channing

Phone 757-0772

Property Information:

Acres 5 3/8 +/- Number of Buildings zero Descriptions Attached Yes No
 Percent Wetland Minimal Percent Forest 100% Percent Farmland 0.09% Percent Other 3864-006-016-0009
 Percent Buildings and Grounds _____ County Zoning Rural Tax ID 3864-006-006-0000
 Type of Ownership Fee simple Mortgage Yes No

Special Feature(s) Of Property The property is 100% forested with
no roads or trails through it. It was last logged in approximately
1905. There is a good mixture of large trees. These consist
of Douglas fir, cedar, big leaf maple, vine maple, alder and birch.
It is part of a forested hillside that is visible from many areas
of the county.

Condition Of Property The property has dense woods/dense enough that most
under brush has been shaded out. It is pristine, with little sign
of recent human disturbance.

In compliance with Section 1.170A-14(g)(5) of the federal tax regulations, this natural resources inventory is an accurate representation of the property at the time of easement donation.

Lisa A. Martin
 Donor
1/21/94
 Date

Keith A. Wiggers - President
 Skagit Land Trust (Donee)
1/21/94
 Date

Attachments: Aerial Photos/Map On-Site Photographs Appraisal
Assessor Printout Title Search/Insurance Vegetation Inventory

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EXHIBIT "A"

Legal Description

Those portions of "BINGHAM ACREAGE, SKAGIT COUNTY, WASHINGTON", as per plat recorded in Volume 4 of Plats, page 24, records of Skagit County, Washington, described as follows:

Lots 5, 6 and 15, Block 6 and that portion of Lot 16 in Block 6, described as follows:

Beginning at the Northeast corner of said Lot 16; thence West 159.5 feet; thence in a Southerly direction to a point on the South line of said Lot 16, which is 163 feet West of the Southeast corner thereof; thence East to the Southeast corner of said Lot; thence North to the point of beginning.

TOGETHER WITH that portion of the vacated road adjacent to said premises which upon vacation reverted to said premises by operation of law.

Situate in the County of Skagit, State of Washington.

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COUNTY

34 R. 4

CREAGE

EXHIBIT

B

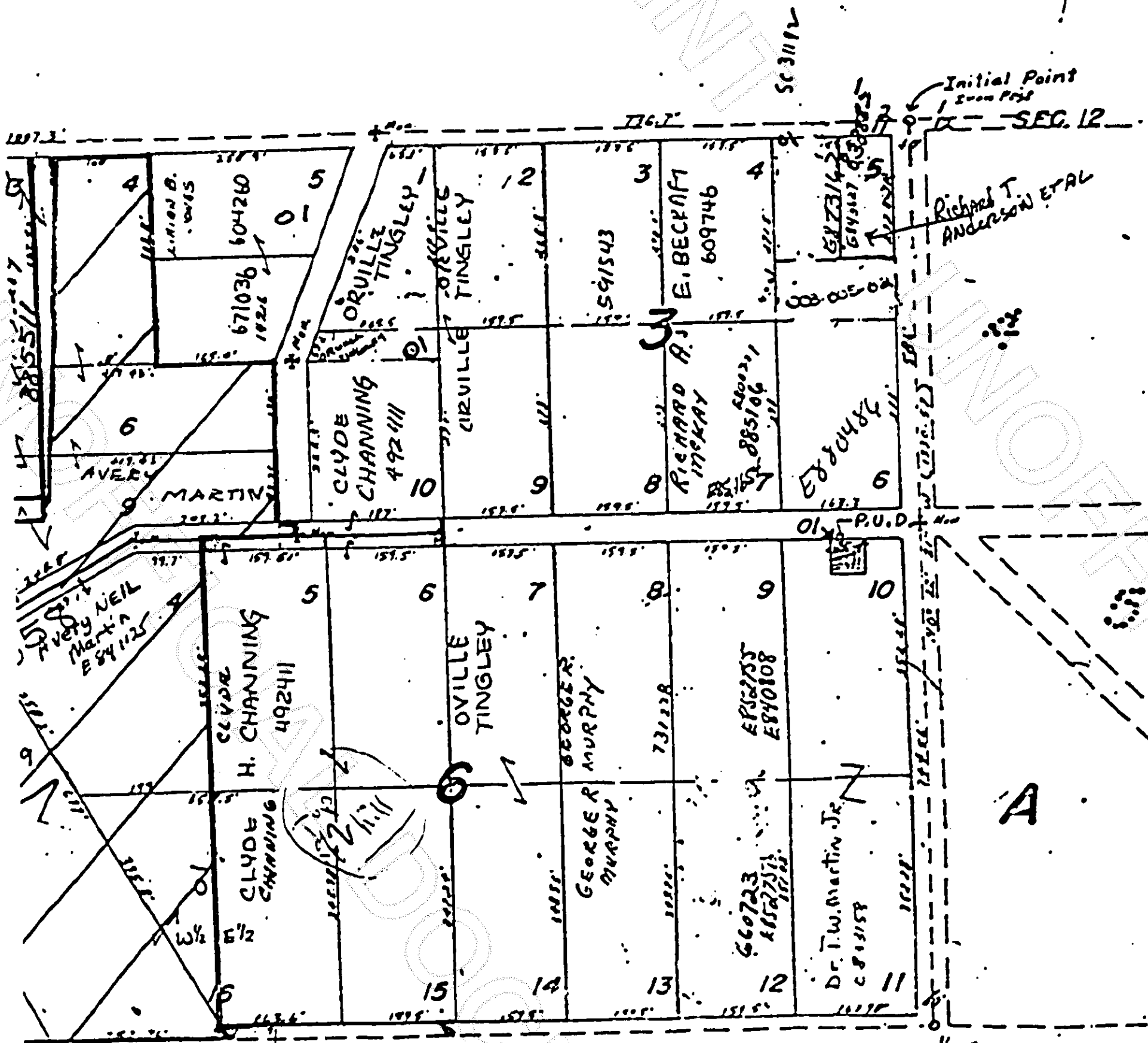
SCALE 1"=200'

REV. 2-65 N.B.
REV. 8-69 M.C.

NORTH

PLAT - 3864

ST
RU



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EXHIBIT "C"

The purpose of this exhibit is to explain more fully the purpose and possible need for a corridor through the northwest corner of the Protected Property.

By allowing access through the northwest corner of the Protected Property, it will be possible to correct certain road and drainage problems that currently exist. This will also allow for more natural maintenance of existing mature trees.

The access shall be for the use of Avery and Lisa Martin, or their successors, assigns or heirs, for purposes of access to a single residential parcel located adjacent to the Protected Property.

RECORDED
REQUEST OF

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JERRY MCINTURFF
SKAGIT COUNTY AUDITOR

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