

After Recording Return to:
Padraic Burke
P.O. Box 11615
Bainbridge Isalnd, Wa., 98110

DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT is made this day of December, 2000 by Dane Armstrong and Jacquelyn Armstrong, husband and wife; and John Rickett and Nancy Rickett, husband and wife, collectively, "Grantor"), in favor of the Northwest Institute for Historic Preservation, a Washington Corporation, which carries a (501)©(3) designation from the Internal Revenue Service and having an address of P.O. Box 4054, Seattle, Wa., ("Grantee").

Skagit County TAX ID#s: 340417-0-013-0102 340417-3-012-0203

SKAGIT COUNTY WASHINGTON

Real Estate Excise Tax

PAID

MAY 1 7 2001

Amount Paid \$ Ø
Skagit County Treasurer

SHORT LEGAL DESCRIPTION:

PORTIONS OF THE SW ONE QUARTER OF SW ONE QUARTER OF SECTION 17; Twn 34; Rng 4. All in Mount Vernon, Skagit County, Washington.

I. BACKGROUND AND INTENTION

- A. Grantor is the owner of certain real property in Skagit County, Washington, more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Property").
- B. The Property has salmon bearing stream, <u>scenic</u>, <u>natural</u>, <u>wetlands</u> and <u>wetland buffers</u> and <u>open space</u> values (collectively, "Conservation Values") of great importance to Grantor, Grantee and the people of Skagit County and the State of Washington.
- C. The specific Conservation Values of the Property are documented in <u>Exhibit B</u>, attached hereto and incorporated by this reference ("Baseline Documentation"), which consists of maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant.

- D. Grantor intends that the Conservation Values be preserved and maintained by the continuation of land use patterns in use as stream, open space, wetlands, wetland buffers and wildlife habitat existing at the time of this grant, in a manner that will not significantly impair or interfere with those values.
- E. Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values in perpetuity, and to transfer any unused development rights appurtenant to the Property except as expressly reserved in this Easement.

TERMS OF EASEMENT

- A. Grant of Easement. For the reasons stated above and in consideration of the mutual covenants contained herein, Grantor hereby conveys to Grantee a conservation easement over the Property of the nature and character and to the extent set forth in this Deed of Conservation Easement (the "Easement"). This conveyance is a conveyance of an interest in real property pursuant to the laws of Washington and, in particular, RCW 84.24.200-250 and RCW 64.04.130, and is made as an absolute, unconditional, unqualified and completed gift subject only to the mutual covenants and restrictions hereinafter set forth, and for no other consideration whatsoever. This Easement and the rights, restrictions and covenants contained herein shall be perpetual and run with the land.
- B. **Purpose.** It is the purpose of this Easement to assure that the Property will be retained forever in its current scenic, natural, stream, wetland and wetland buffer and open space, character and to prevent any use of the Property that will substantially impair or interfere with the Conservation Values of the Property. Grantor intends that this Easement will restrict the use of the Property to such activities as are consistent with the purpose of this Easement.
- C. **Rights of Grantee**. To accomplish the purpose of this Easement the following rights are hereby conveyed to Grantee;
 - C.1. To preserve and protect the Conservation Values:
 - C.2. To enter upon the Property at reasonable times to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that the Grantee shall provide reasonable notice to Grantor before entering upon the Property, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property;
 - C.3. To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

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- D. Prohibited Activities and Uses. Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, except to the extent such uses are expressly reserved by Grantor in Section D.18, the following activities on and uses of the Property are inconsistent with the purpose of this Easement and are expressly prohibited
 - Residential Development. Any residential development of the Property. D.1.

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- D.2. **Commercial Development**. Any commercial or industrial use of or activity on the Property.
- D.3. Construction and Improvements. The placement or construction of any buildings, structures, roads, parking lots or other improvements of any kind on the Property.
- D.4. Surface Alteration. Any alteration of the surface of the land, including, without limitation, the excavation or removal of soil, sand, gravel, rock, peat, or sod, except as reserved in Section D18.
- D.5. Soil and Water. Any use or activity that causes or is likely to cause soil degradation, erosion, or pollution of any surface or sub-surface waters, or degradation of grass turf.
- D.6. Wetlands and Stream Buffer. The draining, filling, dredging or diking of the stream or wetland areas, or the cultivation or other disturbance of the soil within fifty (50) feet of the thread of any watercourse, except as reserved in D.18.
- D.7. Ponds and WaterCourses. The alteration of any ponds except as reserved in Section D.18.
- D.8. **Timber Harvesting**. The cutting down, or other destruction or removal of live trees, except as necessary, in accordance with generally accepted forestry conservation practices, to control or prevent hazard, disease or fire, and except as reserved in **Section D. 18.**
- D.9. Commercial Feedlots. The establishment or maintenance of any commercial feedlot, which is defined for the purposes of this Easement as a confined area or facility within which the land is not grazed or cropped at least annually and which is used to receive livestock that has been raised off the Property for feeding and fattening for market.
- D.10. Waste Dumps. The dumping or other disposal of toxic or hazardous substances as defined in any applicable federal, state or local laws, regulations or ordinances, or any other wastes, refuse or debris except for animal manure used for fertilizing gardens, orchards or fields.
- D.11. Utility Systems. Left intentionally blank.

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- D.12. **Signs and Billboards**. The placement of any signs or billboards, except those signs, whose placement, number and design do not significantly diminish the scenic character of the Property.
- D.13. **Mineral Development**. The exploration for minerals, including sand and gravel, or hydrocarbons, or development or extraction thereof by any method.
- D.14. **Hunting and Fishing**. Hunting, trapping, or otherwise catching or killing wild animals or fish for sport or commercial reasons.
- D.15 **Motorized Vehicles**. The operation of any motorized vehicles including automobiles, trucks, motorcycles, all terrain vehicles, dune buggies, recreational vehicles, motor homes and go-carts, except for getting to and from any existing businesses adjacent to the Property or using motorized vehicles in maintaining or improving the property, without limitation.
- D.16. Chemicals. The application of non-organic pesticides, herbicides, fertilizer or other chemical substances.
- D.17. Wells. Drilling for or operating water wells except for water to be used exclusively on the Property or as an effort to enhance and improve wetlands.
- D.18. Reserved Rights. Grantor reserves the right to use the Property for all uses that are not inconsistent with the purpose of the Easement. Notwithstanding the activities and uses expressly prohibited in Section D, the following activities are consistent with the purpose of this Easement and the right to carry out such activities and uses on the Property is expressly reserved by Grantor:

The right to maintain and improve the Property associated with the businesses adjacent to the Property. Grantor, in its sole discretion and judgement, also reserves the right to address and improve the water drainage on the property due to any off-site developments that may divert and burden the property with more surface run-off water than has existed in the recent past.

E. **Development Rights**. Grantor hereby grants to Grantee all unused development rights [except as specifically reserved herein. See Section D.1. and D.18.] that are now or hereafter allocated to, implied, reserved or inherent in the Property. These rights are transferred to Grantee and may be used by Grantee to further the environmental interests of Grantee as Grantee, in its sole discretion, determines those interests to be.

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Notice of Certain Permitted Actions; Grantee's Approval; Arbitration.

- Where Grantor is required to notify Grantee before undertaking certain permitted F.1. activities, the purpose is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Easement. Whenever such notice is required, Grantor shall notify Grantee in writing not less than sixty (60) days before the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.
- Grantee's Approval. Where Grantee's approval of any action is required hereunder, F.2. Grantee shall grant or withhold its approval in writing within sixty (60) days after receipt of Grantor's written request therefor. Grantee's approval may be withheld if the proposed action is expressly prohibited or upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement.
- **Arbitration**. If a dispute arises between the parties concerning whether any proposed F.3. use or activity would be consistent with the purpose of this Easement, Grantor agrees not to proceed with the use or activity pending resolution of the dispute. In the event the parties cannot resolve the dispute, either party may refer the dispute to mandatory arbitration pursuant to RCW 7.06, Superior Court Mandatory Arbitration Rules (MA) and any applicable Skagit County Local Rules.
- Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of this G. Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured. If Grantor fails to cure the violation within thirty (30) days after receipt of the notice from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fail to begin curing such violation within the thirty (30) day period, or fail to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including damages for the loss of any Conservation Values, and to require the restoration of the Property to the condition that existed before the injury. Without limiting Grantor's liability for a violation of the Easement, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
 - Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of this G.1Easement against Grantor, including, without limitation, costs of suit and attorneys fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor. If Grantor prevails in any action to enforce the

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- terms of this Easement, Grantor's costs of suit, including, without limitation, attorneys' fees, shall be borne by Grantee.
- Grantee's Discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance, delay or omission by Grantee in the exercise of its rights or remedies under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement, nor impair or be deemed a waiver of any of Grantee's rights or remedies under this Easement.
- G.3 Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel or prescription.
- G.4 Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes.
- H. **Public Access**. No right of physical access by the general public to any portion of the Property is conveyed by this Easement, except for the owners of businesses adjacent to the Property who may, at their sole discretion, grant public access to or over the Property.



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- Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property, including the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor other than mortgages or other financing mechanism for purchase of the Property.
- I.1 Taxes. Grantor shall pay before delinquency all taxes, assessments, fees and charges of any kind levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantee is authorized but in no event obligated to make or advance any payment of taxes, upon three (3) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate. If Grantee does make any such payment of taxes, Grantor shall reimburse Grantee with interest until paid at a rate of six percent (6%) per annum, on demand. Grantor hereby grants and conveys to Grantee a mortgage lien on the Property to secure such reimbursement. Grantee may record a notice of any such advance.
- I.2 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 the 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 Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the breach of any covenant herein by Grantor; and (3) the existence or administration of this Easement.

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- **Extinguishment.** If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property after such termination or extinguishment, shall be determined, unless otherwise provided by Washington law at the time, as provided in Section 11.1.
- J.1 **Proceeds.** This Easement constitutes a real property interest immediately vested in Grantee. The parties stipulate that at any time hereafter the Easement has a fair market value determined by multiplying the then fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of the Easement at the time of this grant to the value of the Property, unencumbered by the Easement at the time of this grant. The values at the time of this grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Internal Revenue Code of 1954, as amended. For the purposes of this section, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement at the time of this grant shall remain constant.
- J.2 Condemnation. If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law.
- K. Assignment; Executory Limitation. This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code, as amended (or any successor provision then applicable), and the applicable regulations promulgated under that section, and authorized to acquire and hold conservation easements under RCW 84.34.250, as amended. As a condition of such transfer, Grantee shall require that the conservation purposes of this grant continue to be carried out by the transferee. If Grantee shall cease to exist or to be a qualified organization under Section 170(h) of the Internal Revenue Code, as amended, and a prior assignment as provided above has not been made, then Grantee's rights and obligations under this Easement shall be deemed assigned to and become vested in a qualified organization as a court of competent jurisdiction shall direct pursuant to the applicable Washington law and with due regard to the requirements for an assignment described above.
- L. **Estoppel Certificates**. Upon request by Grantor, Grantees shall within thirty (30) days after request therefor, execute and deliver to grantors any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement as may be requested by Grantor.

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M. **Notices**. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

Dane Armstrong

To Grantees:

Northwest Institute for Historic Preservation

P.O. Box 4054

Seattle, Wa., 98104

or to such other address as either party from time to time shall designate by written notice to the other.

N. General Provisions

- N.1 Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Washington.
- N.2 **Liberal Construction**. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement, the policy and purpose of RCW 84.34.200-250 and RCW 64.04.130, as amended, and the purposes of the Northwest Institute for Historic Preservation as stated in its Articles of Incorporation. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- N.3 Severability. If any provision of this Easement, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of that provision to persons or circumstances other than those which it is found to be invalid, shall not be affected by that invalidity.
- N.4 Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged into this instrument.
- N.5 **Joint and Several Obligation**. If Grantor includes more than one person or entity, the obligations imposed by this Easement upon Grantor and each of them, shall be joint and several.
- N.6 Successors. This Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, personal representatives, successors and assigns.

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- N.7 **Termination of Rights and Obligations**. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property.
- N.8 Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- N.9 **Recordation**. Grantee shall record this instrument in timely fashion in the official records of Skagit County, Washington and may re-record it at any time as may be required to preserve its rights in this Easement.
- N.10 Amendment. This Easement may be amended only in writing signed by all owners of the Property and Grantee or its successors and assigns, provided, however, that no amendment may adversely affect the qualification of this Easement or the status of Grantee under any applicable laws, including RCW 84.34.200-250 and RCW 64.04.130, as amended, or Section 170(h) of the Internal Revenue Code, as amended, nor affect the Easement's perpetual duration. Any amendment shall be recorded in the official records of Skagit County, Washington.
- O. **Counterparts**. This Easement may be executed in any number of counterparts for the convenience of the parties, all of which, when taken together and after execution by all parties hereto, shall constitute one and the same instrument.

Deed of Conservation Easement November 17, 1994

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EXECUTED as of the date and year first above written.

Dane Armstrong and Jacquelyn J. Ar	mstrong
Den Illange	In allen
John W. Rickett and Nancy Rickett	
BANE Arms Tury	ho
COANE Arms Tury	
Then 216-m	inf2
GRANTEE:	
GRAITIEE.	
Northwest Justitute for Historic	Preservation
By: (harles) K	3de

Acknowledgments

STATE OF Washington

COUNTY OF

) ss

I certify that I know or have satisfactory evidence that Dane Armstrong is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

(Seal of Chippiesion Etg. 18

Notary Public in and for the State of

Washington, residing at

My appointment expires

Notary Acknowledgement for Grantee Signature

STATE OF WASHINGTON

) ss

COUNTY OF KING

I certify that I know or have satisfactory evidence that Charles K. Ede is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: March

2001.

(Seal or stamp)

Notary Public in and for the State of

Washington, residing at

My appointment expires

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EXHIBIT A (LEGAL DESCRIPTION)

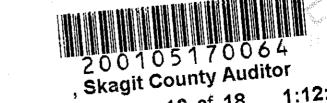


OLD ACCT 340417-0-013-0002 KS SKETCH NOTES PORTION OF THE SW1/4 SW1/4 OF SEC 17, TWP 34, RNG 4
DESCRIBED AS FOLLOWS: BEGINNING AT THE MORTHEAST CORMER OF SAID SUBDIVISION;
THENCE SOUTH D-03-58 WEST ALONG THE EAST LIME THEREOF, 88,51 FEET; THENCE SOUTH S4-25-58 WEST, 483,17 FEET; PROPERTY REMARKS APPRAISAL: 0 IMPROVEMĖNT; LAND: REDUCED ACCESS UNIMP MARROW 75% SALES HISTORY DATE PRICE AF# TYPE 02/17/99 9903260137 9810080070 QC. 10/07/98 949984 Į.J 05/19/98 850000 %8052201 PERMIT NO. TYPE AMT ISSUED % CCM **IMPROVE** MTHD QUAL TYPE DESCRIPTION UNIT REPL SEGMT. BLD CLASS CLASS DIMENSION AREA PRICE CO:

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DESCRIPTION

RIVERSIDE MILLWOR OFFICE BUILDING

IMPROVE

SEGMT.

II

TYPE

LAND LAND VAL MKT MTHD UNITS TAXABLE DESCRIPTION TYPE TABLE RATES 3.00 ADJ 75;ACCESS 3.00 ADJ 40;ACCESS 2496009 EARED 111 SFT MI

MTHD/ QUAL BLD CLASS CLASS

Total

8.146

UNIT

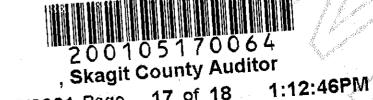
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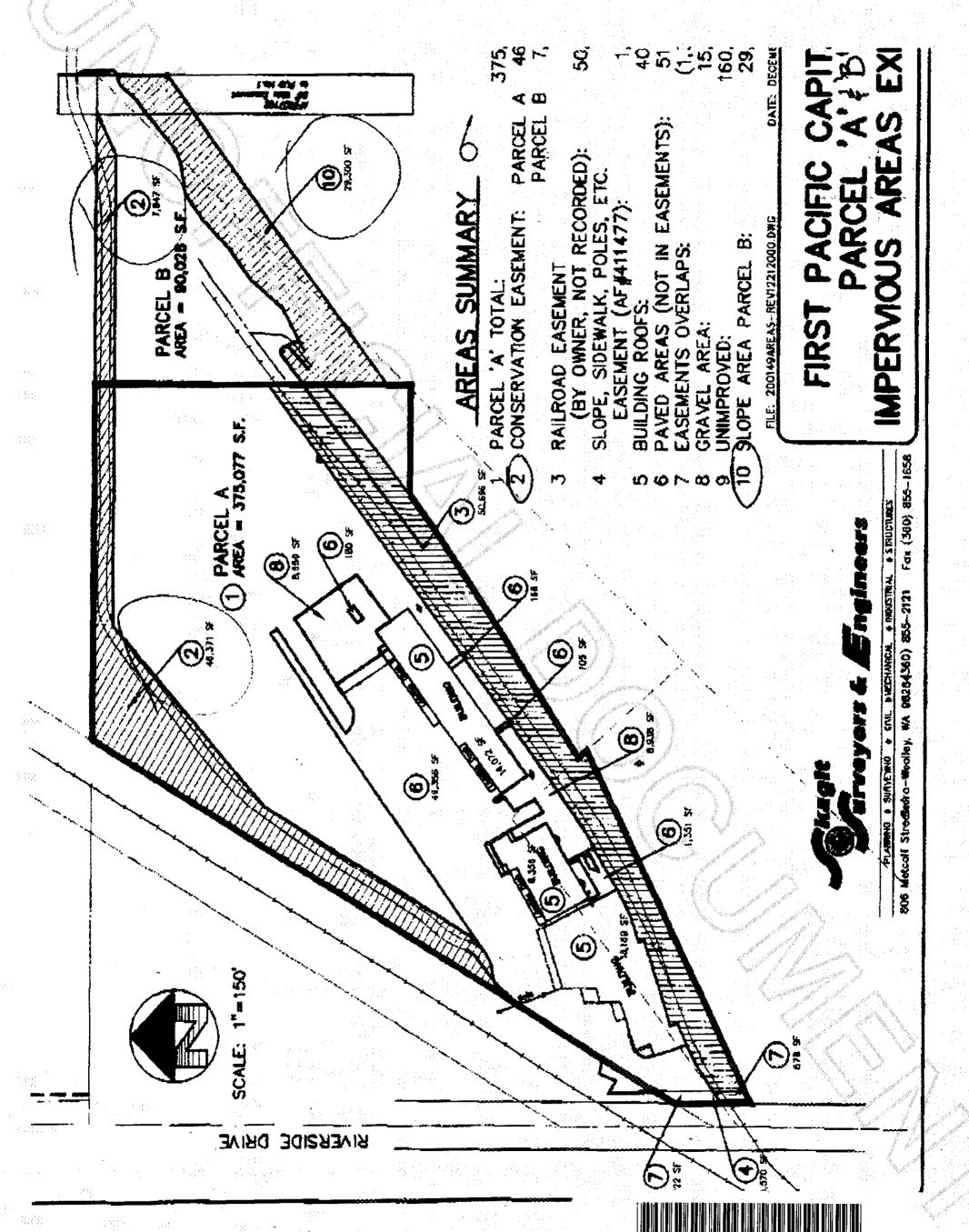
AREA

35200

DIMENSION



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