

When recorded return to:

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



199910270067

Kathy Hill, Skagit County Auditor
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Grantor: City of Anacortes

Grantee: Skagit Land Trust

Legal Description:

Abbreviated form: approximately 20 acres within Government Lot 4 located in Section 1, Township 34N, Range 1E. *Full legal description in Exhibit A.*

Assessor's Tax Identification / Parcel Numbers: P18998 / 340101-0-004-0004

DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT is made this ____ day of September 1999, by The City of Anacortes, a Washington Municipal Corporation, having an address at P.O. Box 547, Anacortes, WA 98221. ("Grantor"), in favor of The Skagit Land Trust a non profit Washington corporation, having an address at P.O. Box 1017, Mount Vernon, WA 98273 ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the sole owners in fee simple of certain real property in Skagit County, Washington, more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Property"); and

WHEREAS, the property possesses natural, scenic and recreational values, in particular natural forest lands, all of which are hereafter know as "conservation values" of great importance to Grantor and the people of the City of Anacortes, and

WHEREAS, the specific conservation values of the Property are documented on file at the offices of Grantor and incorporated by this reference ("Baseline Documentation" Exhibit B), which consists of reports, 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; and

WHEREAS, Grantor intends that the conservation values of the Property be preserved and maintained by the continuation of land use patterns that do not significantly impair or interfere with the above "conservation values"; and

WHEREAS, Grantor further intends, as owners of the Property, to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity; and

WHEREAS, Grantee is a publicly supported, tax-exempt nonprofit organization, qualified under Section 501(c)(3) and 170(h) of the Internal Revenue Code, whose primary purpose is the preservation, protection, and enhancement of land in its natural, scenic, forested condition; and

WHEREAS, Grantee agrees by accepting this grant to honor the intentions of Grantors stated herein and to preserve and protect in perpetuity the conservation values of the Property for the benefit of this generation and the generations to come; and

WHEREAS, Grantor recognizes that the preservation of conservation values within the property will provide substantial benefits to Grantor and the public in general and that such benefits together with monetary payment to be made are adequate consideration in exchange for the grant of easement contained herein;

NOW, THEREFORE, the following deed memorializes the agreement which has been reached between the parties. The Grantor, the City of Anacortes, a Washington municipal corporation, for consideration as set forth herein and subject to conditions, agreements and provisions set forth hereinafter, hereby voluntarily grants and conveys to Grantee, the Skagit Land Trust, a Washington not-for-profit corporation, a non-exclusive perpetual easement to run with the land upon the real property legally described in Exhibit A hereto. This easement is subject to the following terms and conditions:



Anacortes Community Forest Lands

Conservation Easement

1. **Purpose.** It is the purpose of this Easement to assure that the Property will be retained forever predominantly in its natural, scenic, forested condition and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property. Grantor intends that this Easement will confine the use of the Property to such activities, (including, without limitation, those involving public recreation) as are consistent with the purpose of this Easement.

2. **Rights of Grantee.** To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:

- a) To preserve and protect the conservation values of the Property,
- b) To enter upon the Property at reasonable times in order to monitor Grantors' compliance with and otherwise enforce the terms of this Easement; and
- c) 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 an inconsistent activity or use, pursuant to paragraph 6. Should complete restoration be impossible, Grantee shall require appropriate mitigation.

3. **Prohibited Uses.** Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the foregoing, the following uses are expressly prohibited.

- a) Conversion or use of the property for timber harvesting, mining, or any commercial venture shall be prohibited.
- b) Sale, lease or other transfer of the protected property.

4. **Reserved Rights.** Grantors reserve to themselves, and to their personal representatives, heirs, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited by Section 3 or otherwise herein and are not inconsistent with the purpose of this Easement. Without limiting the foregoing, the following rights are expressly reserved.

- a) Use of portions of the property for public utilities, such as water reservoirs, or service roads to those public utilities.



- b) In those areas where the City has previously operated pump stations, water storage facilities, and pipelines, those activities may continue and such facilities may be maintained as long as necessary for public utility purposes. Parcels of the ACFL to which this conservation easement is applied may include any of these recreational or utility facilities, and their maintenance and improvement shall not be hindered by such application. In addition, any paved street or road in use at the date of this program's adoption shall be exempt from any restrictions and adjacent property may be altered as necessary to maintain the safe operation of vehicles on such streets.
- c) Facilities which allow and support such recreational and educational uses, such as service roads, parking lots, trailheads, trails, bridges, signs, interpretive displays, interpretive buildings, viewing platforms, boardwalks, sanitary facilities and picnic sites may be developed, maintained and improved as needed.
- d) All uses as prescribed for by the ACFL Management Plan of 1991. The City Council, as elected representative of the people who are owners of the property, with recommendation from the ACFL Forest Board, will continue to manage the Anacortes Community Forest Lands in accord with its then current, adopted ACFL Management Plan. Special care will be taken to manage areas where easements are sold in accord with recorded Conservation Easements.
- e) To undertake other activities necessary to protect public health or safety on the Protected Property or adjacent property, or which are actively required by and subject to compulsion of any governmental agency with authority to require such activity, provided that any such activity shall be conducted in a manner that protects the Conservation Values of the Protected Property to the greatest practicable extent, taking into account all the surrounding circumstances.

5. **Dispute Resolution.** If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this easement, the parties shall meet together to discuss the dispute and attempt resolution. Thereafter, either party may request a hearing before the Anacortes City Council. Upon receiving the request for a hearing, the City Council shall schedule a public hearing to be held not less than 20 (twenty) nor more than 60 (sixty) days from receipt by them of the request for the hearing. Notice of the hearing shall be provided by direct mailing to each of the parties as well as publication in the official city newspaper not less than 7 (seven) days prior to the hearing date. If the resultant decision of the Anacortes City Council is not satisfactory to the other party, such party may bring an action in Skagit County Superior Court which shall review the matter de novo and which shall have full jurisdiction to grant relief consistent with Section 6 hereof. The Superior Court shall award to the prevailing party its reasonable attorney fees and costs. Nothing herein contained shall prevent the parties from agreeing to submit this matter to mediation and/or arbitration.



6. **Grantee's Remedies.**

- (a) If Grantee determines that Grantors are in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantors 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.
- (b) If Grantors fail to cure the violation within sixty (60) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a sixty (60) day period, fail to begin curing such violation within the sixty (60) 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, exparte 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 scenic, aesthetic, or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantors' liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- (c) If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee may pursue its remedies under this paragraph without prior notice to Grantors or without waiting for the period provided for cure to expire. Grantee's rights under this paragraph, both prohibitive and mandatory, are in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

6.1 **Costs of Enforcement.** Any cost incurred by Grantee in enforcing the terms of this Easement against Grantors, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantors' violation of the terms of this Easement shall be borne by Grantors. If Grantors prevail in any action to enforce the terms of this Easement, Grantors' costs of suit, including, without limitation, attorneys' fees, shall be borne by Grantee.



6.2 **Grantee's Discretion.** Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantors 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 or of any Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.

6.3 **Acts Beyond Grantors' Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantors for any injury to or change in the Property resulting from causes beyond Grantors' control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes, or from injury caused by private parties in violation of Grantor's adopted management plan and codes. Grantor will diligently prosecute violators.

7. **Access.** No additional rights of access by the general public to any portion of the property are conveyed by this Easement nor is any new limit on the access implied.

8. **Costs and Liabilities.** Grantors retain 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. Grantors shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantors.

9. **Extinguishment.** If circumstances arise in the future such as 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. The Court shall award grantee the fair market value of the easement. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this grant.

9.1 **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.

9.2 **Amendment for Supplementary.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantors and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1954, as amended and any amendment shall be consistent with the purpose of this Easement, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Skagit County, Washington.



10. **Assignment.** This Easement is transferable (with the Grantors approval, which will not be unreasonably withheld), 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 provision then applicable, and the applicable regulations promulgated thereunder and authorized to acquire and hold conservation easements under Washington State Law (or any successor provision then applicable). As a condition of such transfer, Grantee shall require that the conservation purposes that this grant is intended to advance continue to be carried out.

10.1 **Executory Limitation.** If Grantee shall cease to exist or to be a qualified organization under Section 170(h) of the Internal Revenue Code of 1954, as amended, or to be authorized to acquire and hold conservation easements under Washington Law, and a prior assignment is not made pursuant to paragraph 10, then Grantee's rights and obligations under this Easement shall become immediately vested in (designated back-up grantee). If (designated backup grantee) is no longer in existence at the time the Grantee ceases to exist or is no longer qualified, then the rights and obligations under this Easement shall vest in such 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 pursuant to Paragraph 10.

11. **Notices.** Any notice, demand, request, consent approval, or communication that either party desires or is served personally or sent by first class mail, postage prepaid, addressed as follows-

To Grantor: City of Anacortes
P.O. Box 547
Anacortes, WA 98221

To Grantee: Skagit Land Trust
P.O. Box 1017
Mount Vernon, WA 98273

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

12. **Recordation.** Grantee shall record this instrument in a 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 the Easements.

13. **General Provision.**

a) **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of Washington.



- b) Severability. If any provision of the Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provision of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
- c) Entire Agreement. This instrument sets for 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 herein. (No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Paragraph 9.3)
- d) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- e) Joint Obligation. The obligations imposed by this Easement upon Grantors shall be joint and several.
- f) Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.
- g) 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, except that liability for acts or omissions occurring prior to transfer shall survive transfer
- h) 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.
- i) Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties, each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

SCHEDULE OF EXHIBITS

- A. Legal Description of Property Subject to Easement.
- B. Site Map
- C. Baseline Documentation



TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF Grantors and Grantee have set their hands on the day and year first above written.

H. Dean Maxwell

City of Anacortes, Grantor

by H. DEAN Maxwell

its MAYOR

Jerry Haegeler
Skagit Land Trust
Skagit Land Trust, Grantee

by Jerry Haegeler

its President

SKAGIT COUNTY WASHINGTON

Real Estate Excise Tax

OCT 27 1999

Amount Paid \$ 0-
Skagit Co. Treasurer
By [Signature] Deputy

State of Washington)
County of Skagit) ss.

On this day personally appeared before me, Jerry Haegeler and H. Dean Maxwell 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.

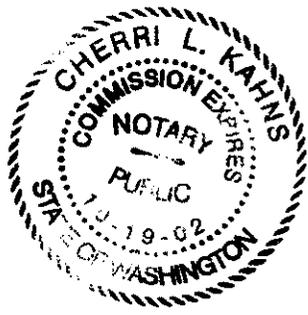
Given under my hand and official seal this 13th day of October, 1999.

Cherri L. Kahns
Notary Public in and for said State of Washington

Cherri L. Kahns
Printed Name

Residing at: Mount Vernon
WA

My commission expires: 10-19-02



"EXHIBIT A"

Legal Description of Property Subject to Easement

Tract 4 (approx. 10 acres):

The Southeast $\frac{1}{4}$ of Government Lot 4 of Section 1, Township 34 North, Range 1 East, W.M., EXCEPT those portions thereof lying within the road rights-of-way commonly known as Heart Lake Road and the Mt. Erie Road, also known as the Ray Auld Drive.

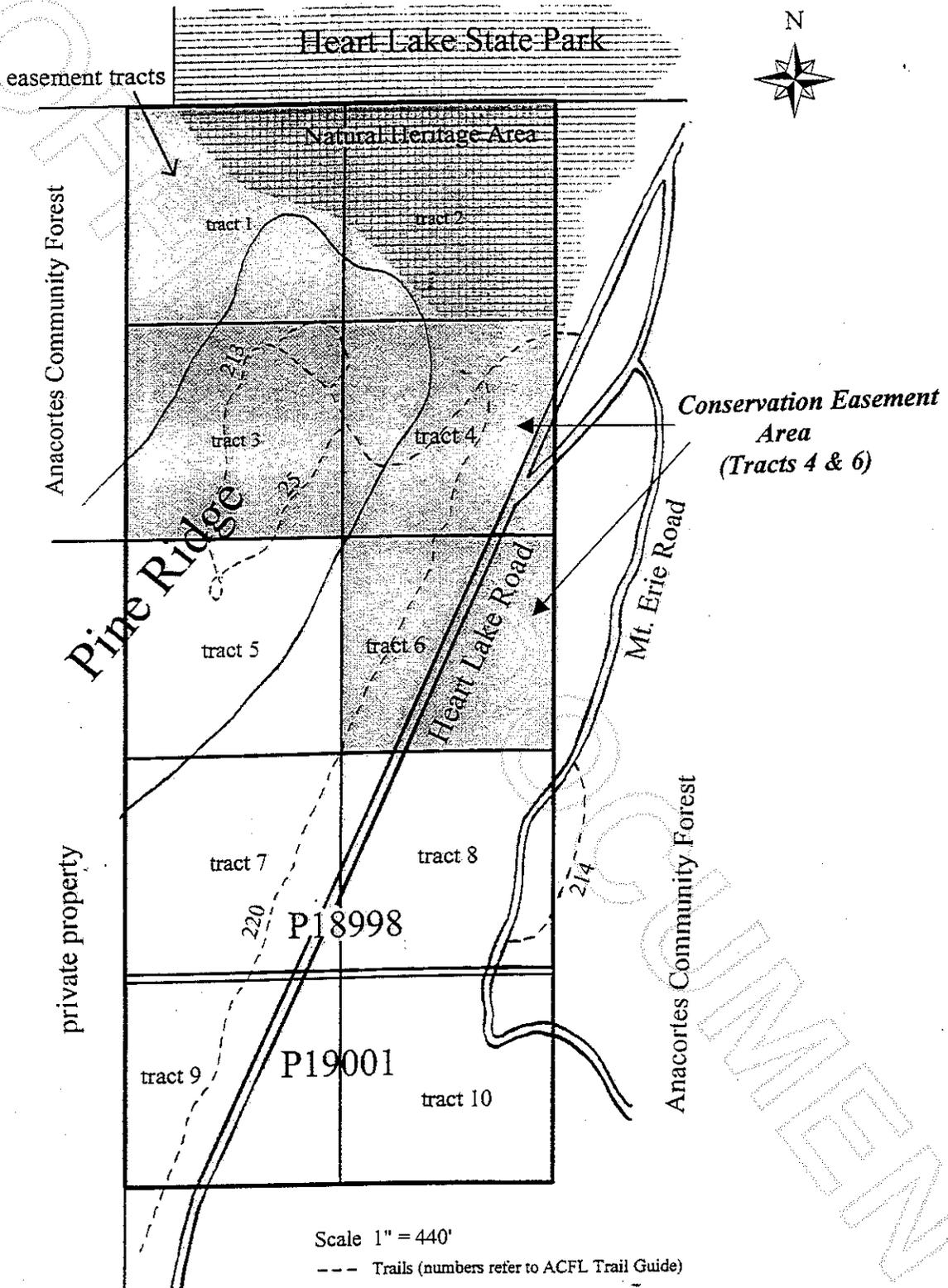
Tract 6 (approx. 10 acres):

The Northeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 1, Township 34 North, Range 1 East, W.M., EXCEPT that portion thereof lying within the road right-of-way commonly known as the Heart Lake Road and ALSO EXCEPT that portion thereof, if any, lying within the road right of-way commonly known as the Mt. Erie Road, also know as the Ray Auld Drive.



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'EXHIBIT B' Site Map ACFL #3 / approx. 20 acres in 2 tracts
(other shaded tracts indicate tracts covered by ACFL CE #1)



nearly level for several hundred meters, then climbs steeply up the slope of Sugarloaf Mountain. The land to the west and north of the road climbs gradually up to a feature called Pine Ridge, then drops steeply to the western boundary. At the northern boundary, the property contains approximately 20 acres of old-growth Douglas-fir/western hemlock forest. This stand, together with 60 acres on the adjacent state parklands is a designated Natural Heritage Area with the Washington Department of Natural Resources. Low-elevation old-growth forests, such as this, are very rare in western Washington. Much of these areas were logged first because of their accessibility. Osprey are nesting on nearby Heart and Erie lakes. They have nested on the easement property; however, the present status of the nest is unknown. Pine Ridge supports a community of lodgepole pine, Pacific madrone, and wildflowers. Views from the ridge are of Mt. Erie and Sugarloaf Mountain. Other tree species on the property include grand fir, big-leaf maple, western red cedar, and red alder. The understory species include salal, snowberry, oceanspray, red huckleberry, thimbleberry, sword and bracken ferns. The property is less than 1.5 km from salt water and less than 0.5 km from Lake Erie. These waters make the area appropriate habitat for bald eagles and osprey. The property also contains habitat for black-tailed deer, coyote, small mammals, songbirds, woodpeckers, and owls.

Condition of Property: Much of the property has been logged since it was acquired by the city of Anacortes in the 1920s. Logging has occurred on this property as recently as the 1970s. The exception to this is the 20 acres at the north edge that has been designated as part of a Natural Heritage Area. Consequently, the trees on the easement property vary in age from 30 years to old growth of more than two hundred years. Most of the young trees are Douglas-fir, grand fir, western hemlock, western red cedar, and red alder. The old growth stand is composed of Douglas-fir and western hemlock.

The land adjacent to Heart Lake Road is impacted by illegal dumping of garbage; however, community volunteers and city staff periodically remove much of the rubbish. Several hiking/horse riding/mountain biking trails cross the property (trail numbers 25,213, 214, and 220 on map). These are narrow and have little impact on the condition of the property. One of these trails, running parallel to Heart Lake Road, is part of a proposed cross-island trail and is the only trail on the easement property that allows horse use. Additional trail construction is planned by the city, and new use designations are currently under consideration for existing trails.

Adjacent land along most of the western boundary is privately owned and may be developed in the future. The remainder of the adjacent property to the west, as well as the property adjacent to the eastern and southern boundaries, is part of the Anacortes Community Forest. The northern boundary is the south end of Heart Lake State Park.

History: No commercial logging has occurred since 1970s. In the 1920s the city of Anacortes purchased from a private utility. The land within 200 feet of Heart Lake Road has not been logged since the city acquired it, the result of a restriction imposed by the former property owner.

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~~BX 1953P30355~~



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 conservation easement donation.

H. Dean Maxwell
City of Anacortes, Grantor

Eugene T. Murphy
Skagit Land Trust, Grantee

by H. DEAN MAXWELL

by Eugene T. Murphy

its MAYOR

its SECRETARY

date: 3/23/99

date: 3/23/99

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

Baseline document prepared by Brenda Cunningham, February 1999. Site visit on January 21, 1999 with Bob Vaux and Tracy Powell.

Vegetation Inventory for Anacortes Community Forest Lands

Conducted January 21, 1999 by Brenda Cunningham of SLT and Bob Vaux and Tracy Powell of ACFL

Douglas-fir	<i>Pseudotsuga menziesii</i>
Western hemlock	<i>Tsuga heterophylla</i>
Western red cedar	<i>Thuja plicata</i>
Big-leaf maple	<i>Acer macrophyllum</i>
Red alder	<i>Alnus rubra</i>
Grand fir	<i>Abies grandis</i>
Pacific madrone	<i>Arbutus menziesii</i>
Rose	<i>Rosa sp.</i>
Snowberry	<i>Symphoricarpos albus</i>
Salal	<i>Gaultheria shallon</i>
Kinnikinnick	<i>Arctostaphylos uva-ursi</i>
Red huckleberry	<i>Vaccinium parvifolium</i>
Honeysuckle	<i>Lonicera ciliosa</i>
Oregon grape	<i>Mahonia sp.</i>
Thimbleberry	<i>Rubus parviflorus</i>
Salmonberry	<i>Rubus spectabilis</i>
Sword fern	<i>Polystichum munitum</i>
Bracken fern	<i>Pteridium aquilinum</i>

This inventory is by no means complete, but rather an overview of the dominant plant species. Although there are many herbaceous species on this property, they are not represented on this list.



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