

When recorded return to:

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



200203070104  
Skagit County Auditor  
3/7/2002 Page 1 of 16 11:46AM

Grantor: City of Anacortes  
Grantee: Skagit Land Trust

Brief Legal Description: *(full legal description located in Exhibit A)*

(Approximately 20 acres located in) portions of Section 6, Township 34N, Range 2E,

SKAGIT COUNTY WASHINGTON  
Real Estate Excise Tax  
PAID

Assessor's Tax Identification / Parcel Number: 340206-0-001-0001 /P20027

MAR 07 2002

**DEED OF CONSERVATION EASEMENT**

Amount Paid \$ 0  
By: Skagit County Treasurer Deputy

THIS GRANT DEED OF CONSERVATION EASEMENT is made this 6<sup>th</sup> day of March, 2002 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 Summary" Exhibit C), 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 Summary for Whistle Lake/Fidalgo Ridge Management Unit



UNOFFICIAL DOCUMENT

Andrea Xaver  
Skagit Land Trust, Grantee  
by Andrea Xaver  
Andrea Xaver  
its President

STATE OF WASHINGTON )  
                                  ) ss.  
COUNTY OF SKAGIT )

On this 6th day of March, 2002 before me, the undersigned, a Notary Public in and for the state of Washington, duly commissioned and sworn, personally appeared Andrea Xaver, to me known to be the President of Skagit Land Trust, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they/he/she is/are authorized to execute the said instrument,

Witness my hand and official seal hereto affixed the say and year first above written.



Cherril L. Kahns  
Notary Public in and for the state of  
Washington, residing at 10770 Mt. Vernon  
My commission expires: 10-19-02  
Printed Name Cherril L. Kahns



**EXHIBIT A (Page 1 of 1)**

**LEGAL DESCRIPTION OF PROPERTY SUBJECT TO EASEMENT**

(ACFL CE #9/ Approximately 20 acres in Whistle Lake/Fidalgo Ridge Management Unit)

The South Half of the Southwest Quarter of the Southeast Quarter, Section 6, Township 34 North, Range 2 East of the Willamette Meridian;

Situate in Skagit County, Washington.

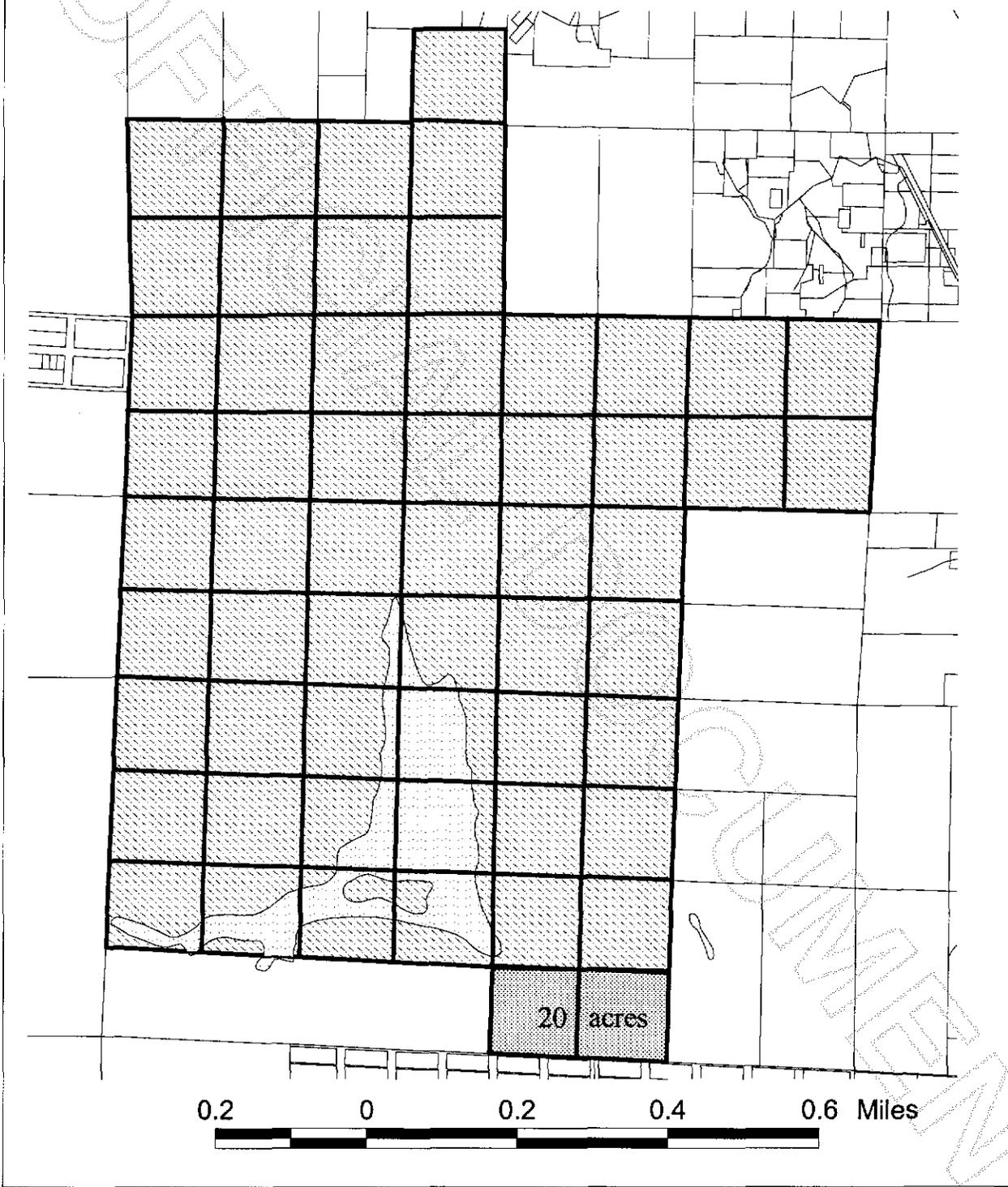


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EXHIBIT B (Page 1 of 1)

Site Map for approximately 20 acres  
Whistle Lake/Fidalgo Ridge Management Unit  
Section 6, Township 34N, Range 2E  
Parcel # 20027



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EXHIBIT C (Page 1 of 5)  
ACFL Conservation Easement #9

CONSERVATION EASEMENT BASELINE SUMMARY

Whistle Lake/Fidalgo Ridge Management Unit

**Grantor Information:**

Name: City of Anacortes Section 6, Township 34N, Range 2E and  
Address: P.O. Box 547 Section 31, Township 35N, Range 2E  
City: Anacortes, WA 98221 Parcels: P33390 and P20027  
Phone: (360) 293-1900 (Whistle Lake/Fidalgo Ridge Management Unit and  
Contact: Gary Robinson a portion of Mt. Erie Conservancy Management Unit)  
Anacortes Parks and Recreation Department  
(360) 293-1918

**Skagit Land Trust (Grantee) Contact:**

Name(s): Gene Murphy or Martha Bray Phone: (360) 293-4153 / (360) 428-7878  
Grantor referred to Skagit Land Trust by: Friends of the Forest

**Property Information:**

Acres 610\* Number of Buildings 0 Descriptions Attached Yes XX No  
Acres Wetland 20 Acres Open Water 50 Acres Forest 540  
Acres Buildings and Grounds 0 County Zoning Public Use  
Type of Ownership FEE Mortgage Yes X No Mtg. Holder \_\_\_\_\_

*\* Note: This baseline report describes a 610-acre area of the Anacortes Community Forest Lands (ACFL) for the ACFL Conservation Easement Program. Recorded conservation easements referencing this report may cover only a portion of this 610-acre area. Refer to Exhibits A and B within individual easement documents for location of specific areas covered.*

*Soil types: Aside from the open water of Whistle Lake, the soils in this baseline area are Whistle-Fidalgo-Rock outcrop complex, with 30 to 65% slopes. This soil is mostly gravelly loam, intermingled with rock outcrops. The gravelly loam components are deep and moderately well drained. Although there are approximately 20 acres of wetlands in this area, their soils have not been mapped distinctly from those of the surrounding forest.*

*County Critical Areas: Geohazard (steep slope); Freshwater shore*



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**EXHIBIT C (Page 2 of 5)**  
**ACFL Conservation Easement #9**

*State Priority Habitats and Species:* Cavity-nesting birds: Pileated Woodpecker, Wood Duck, Barrow's Goldeneye, Common Goldeneye, Bufflehead, and Hooded Merganser; Bald Eagle; Osprey (Heart Lake and Lake Erie); Marbled Murrelet; Peregrine Falcon habitat (nearby on Mt. Erie); Freshwater Wetland; Riparian; Snags and Logs; and Urban Natural Open Space.

**Special Features of Property:** The baseline area is located in the Anacortes Community Forest Lands (ACFL) south of Whistle Lake Road and east of Mount Erie in Anacortes (see attached map of baseline area). It includes the area defined by the Whistle Lake Management Unit and the northeastern part of the Mount Erie Conservancy Management Unit in the Anacortes Community Forest Lands Management Plan. The boundaries of the area described here were chosen to coincide with the easement program's 10-acre grid overlaying the Forest Lands.

The area includes the open water of Whistle Lake, providing recreational opportunities for visitors to the lake, as well as habitat for osprey, ducks and fish. The area also includes several small wetlands in the northeastern portion.

Almost 90% of the baseline area is forested with Douglas-fir and western red cedar, with patches of red alder and willows along the shore of Whistle Lake. Most trees in the coniferous forest appear to be less than 60 years old, although there are a few very large downed Douglas-fir that are serving as nurse logs and creating moist microhabitats. The forest canopy is sufficient in some places that Pacific yew trees are thriving and reproducing. There are also many prominent snags that may serve as roosting trees for birds of prey and nesting trees for cavity-nesting songbirds. Osprey are nesting on nearby Heart Lake and Lake Erie and may feed on Whistle Lake. Ravens have been observed in the vicinity and may also utilize the forest in this area. Understory plant species include salal, oceanspray, Indian plum, wild rose, Oregon grape, red huckleberry, salmonberry, sword, licorice, oak and bracken ferns. The baseline area is less than 1 mile from salt water (Fidalgo and Similk Bays) and from Lake Campbell and Mount Erie. These waters and the cliffs of Mount Erie make the area appropriate habitat for bald eagles, osprey, and peregrine falcons. The area also contains habitat for black-tailed deer, coyote, small mammals, songbirds, woodpeckers, and owls.

The Anacortes Community Forest Lands are open to the public for recreation and educational purposes. This area is accessed via numerous ACFL trails.



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**EXHIBIT C (Page 3 of 5)**  
**ACFL Conservation Easement #9**

**Condition of Property:** The area covered by this baseline summary is located in the Whistle Lake/Fidalgo Ridge Management Unit and the northeastern portion of the Mount Erie Conservancy Management Unit of the Anacortes Community Forest Lands Management Plan (see attached map of baseline area). There are many popular trails within this area and the trails are used in all seasons. This is one of the most popular areas of the Anacortes Community Forest trail system. Whistle Lake is very busy with visitors in the summer, especially on weekends. However, on weekdays the rest of the year it is not unusual to visit the lake without seeing anyone else. The summer visitors can be in large family groups and can create a lot of noise at the lakeshore. There is at least one location on the north shore of Whistle Lake, where heavy use has trampled all the understory vegetation, resulting in an area of bare ground between trees. Otherwise, the lakeshore and trails are in good condition. Motorized use of the trails is prohibited on approximately 200 acres (the southern third) of the baseline area, including the trails around Whistle Lake.

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. Consequently, the trees in the baseline area vary in age from 30 years to 80 years, with a few older trees scattered throughout.

The City of Anacortes and Skagit Land Trust are not aware of any hazardous substances or the release or disposal of such in the easement area, and no signs of such were observed.

**History:** On August 2, 1919 the city of Anacortes purchased the property from Douglas Allmond's Washington Power, Light and Water Company. Until the mid-1970s Whistle Lake was the municipal water source for Anacortes. A pump house was located on the protected property on the lakeshore. From the pump house pipes ran north and east to Anacortes.

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. Sean Marshall  
City of Anacortes, Grantor  
by H. Sean Marshall  
its Mayor  
date: 3/6/02

Andrea James  
Skagit Land Trust, Grantee  
by Andrea James  
its President  
date: 3-6-2002



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**EXHIBIT C (Page 4 of 5)**  
**ACFL Conservation Easement #9**

Additional information in Skagit Land Trust files: USGS Quad Map; Assessor Map; Assessor Printout; Photopoint Collection; Vegetation Inventory

Baseline summary prepared by Brenda Cunningham, February 2001

References used to prepare this report:

*Anacortes Community Forest Lands Management Plan*; City of Anacortes (May 1991)

*Management Recommendations for Washington's Priority Habitats and Species*; WADFW (May 1991)

*Soil Survey of Skagit County Area, Washington*; USDA, SCS (Sept. 1989)



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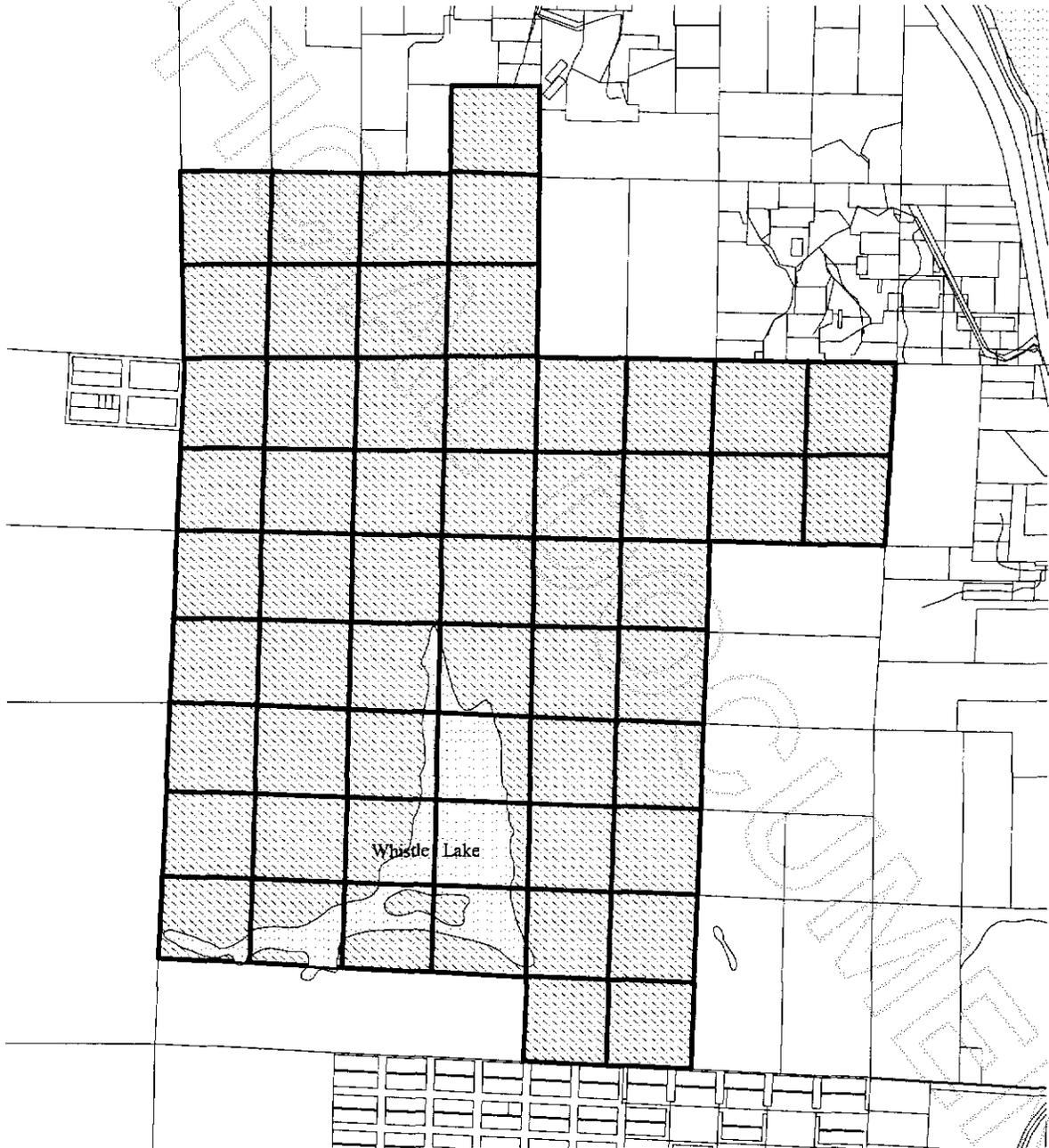
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Site Map for Baseline Summary for Conservation Easements  
in Whistle Lake/Fidalgo Ridge Management Unit  
of Anacortes Community Forest Lands



Approximately 610 acres  
Section 6, Township 34N, Range 2E and Section 31, Township 35N, Range 2E  
Parcels # P33390 and P20027



 Baseline Area for Conservation Easements held by Skagit Land Trust



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