



After Recording Return To:
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DOCUMENT TITLE:

**FIRST AMENDED AND RESTATED CHUCKANUT COMMUNITY FOREST
CONSERVATION EASEMENT**

REFERENCE NUMBER(S) OF PREVIOUSLY RECORDED DOCUMENTS:
EASEMENT: 2140100259

GRANTOR:

CITY OF BELLINGHAM

GRANTEE:

CHUCKANUT COMMUNITY FOREST PARK DISTRICT

ABBREVIATED LEGAL DESCRIPTION:

Ptn of S ½ SW ¼ Sec 12 TWP 37 N Rge 3 E

Lot B, as delineated on Chuckanut Trust Lot Line Adjustment

Lots 1-24, Block 1, Map of Diffenbachers Addition to Fairhaven

Full legal description at page 14

ASSESSOR'S TAX PARCEL NUMBERS:

370212 359328 0000

370212 364207 0000

370212 478165 0000

370212 447323 0000

370212 477313 0000

**FIRST AMENDED AND RESTATED CHUCKANUT COMMUNITY FOREST
CONSERVATION EASEMENT**

I. PARTIES.

This Grant of the First Amended and Restated Chuckanut Community Forest Conservation Easement (“Conservation Easement” or “Easement”) is made by the City of Bellingham, a municipal corporation organized under the laws of the State of Washington (“Grantor” or “City”), to the Chuckanut Community Forest Park District, a municipal corporation organized under the laws of the State of Washington (“Grantee” or “Park District”).

II. FACTS, OBJECTIVES AND PURPOSES.

Grantor owns real property in Whatcom County, Washington, referred to hereafter as the "Property", the legal description of which is attached as Exhibit A. A sketch map of the Property is attached as Exhibit B.

The City purchased the Property from Washington Federal Savings Bank for \$8.2 million using greenways funds, park impact fees, and a Greenways Endowment Fund Loan ("Loan") of \$3,232,021.60. On January 3, 2014, the City granted the Chuckanut Community Forest Conservation Easement (“Original Conservation Easement”, AFN 2140100259) to the Park District in consideration for: (1) the Park District paying off the Loan and accrued interest on the Loan; and (2) the Park District formally dissolving in accordance with RCW 35.61.310, effective no later than one year from the date the City petitions the Park District to dissolve. On January 3, 2014, the City and the Park District also entered into an "Interlocal Agreement" specifying the terms for the Park District's payment of the Loan, dissolution in accordance with RCW 35.61.310 after repayment of the Loan, and potential termination of the Conservation Easement. The Park District paid off the Loan in early 2022, and the City filed a petition for dissolution of the Park District pursuant to RCW 35.61.310 on September 16, 2022 in accordance with the terms of the Conservation Easement and the Interlocal Agreement.

The City and the Park District have agreed to replace the Original Conservation Easement with this Conservation Easement. Immediately after executing this Conservation Easement, the Park District shall assign their interest as Grantee in the Conservation Easement to the Whatcom Land Trust (“Land Trust”). The Land Trust agrees to accept the assignment, and the City concurs with the assignment of the Conservation Easement to the Land Trust amendments reflected in this amended Conservation Easement. Also, by no later than September 21, 2023, the Park District shall formally dissolve in accordance with RCW 35.61.310.

The intent of the Grantor and Grantee and the purpose of this Conservation Easement is to continue to assure that the natural features, functions and values of the Property are

protected in perpetuity including the existing wetlands, forest, wildlife habitat, wildlife habitat corridors, and other features of ecological significance; while also allowing for the recreational, educational, and scientific uses, named in Section IV. The Grantor shall manage the Property as a low intensity nature park, and the uses allowed pursuant to Section IV and any associated improvements shall be sited, designed, maintained, and operated so as to reduce and limit impacts to the natural environment.

The approximately eighty-two (82) acre Property, named the Hundred Acre Wood, is located on the south side of the City of Bellingham and has also been known as Chuckanut Community Forest or Chuckanut Ridge. The Property is mostly forested and contains wetlands, steep slopes, and a variety of plant species. The Property also provides wildlife habitat and habitat corridors for a number of species and was listed as one of the City's "significant habitats" in the City of Bellingham Wildlife and Habitat Assessment and Wildlife Habitat Plan, December 1995. The following documents contain additional relevant information about the Property: (1) Baseline Documentation Report prepared by Ann Eissinger, approved by the Grantor on May 16, 2017; and (2) Stewardship Plan prepared by Herrera Environmental Consultants, Inc., dated August 10, 2022

III. GRANT OF CONSERVATION EASEMENT.

Grantor hereby conveys to Grantee, its successors and assigns, in perpetuity, except as limited in Section X. below, a Conservation Easement ("Easement") pursuant to RCW 84.34.210, over the Property. The Easement consists of mutual rights and obligations and is subject to the reservation of rights set forth below. Rights, obligations and reservations all operate as covenants running with the land in perpetuity. This Conservation Easement replaces the Original Conservation Easement, which the Grantor and Grantee hereby terminate.

IV. PERMITTED USES, PRACTICES AND RIGHTS RESERVED BY GRANTOR.

The Grantor shall have the right to do or permit the following on the Property:

1. Allow nature oriented, non-motorized public recreational, scientific, and educational uses and construction of appropriate facilities to enhance the nature oriented public recreational or educational/research uses such as:
 - a. Facilities for motor vehicle parking on the Property located, if possible, near perimeter boundaries;
 - b. trails (including, but not limited to, walking, dog walking, bicycling, and disabled accessible trails) and associated boardwalks, and

bridges and also including all maintenance, repair, expansion, improvement, and decommissioning of trails;

- c. benches;
- d. plaques for recognition, memorial, or educational purposes;
- e. directional, informational, or educational signs;
- f. outdoor classrooms; and
- g. native plant identification gardens.

Provided that: If any of the uses, activities, or facilities listed in Section IV. 1. take place in or impact a critical area or its buffer as defined in the City's Critical Areas Ordinance (CAO) and as hereafter amended (Bellingham Municipal Code ("BMC") Chapter 16.55), such use, activity, or facility shall comply with the City's CAO, as amended. This requirement does not apply to already existing trails, but it does apply to the maintenance, repair, expansion, improvement, and decommissioning of such trails. Grantor will notify Grantee in writing of any intended such uses, activities, or facilities that require a State Environmental Policy Act (SEPA) threshold determination or a Critical Areas Ordinance permit and provide Grantee copies of any SEPA threshold determinations or CAO permits as soon as possible but in no case less than 30 days before initiating any such use, activity, or facility. Grantor will also timely provide Grantee with any available confirmation of completion of the permitted action in compliance with SEPA and/or CAO requirements.

2. With reasonable prior written notice to Grantee, remove trees that are invasive, diseased or present a safety hazard to people or property. However, the Grantor may remove trees without prior notice to Grantee if the trees present an immediate safety hazard.
3. Make modest clearings to create viewpoints.
4. Plant native trees and vegetation and conduct other activity to enhance and protect water quality, critical areas, and wildlife habitat.
5. Control invasive, non-native species by means that do not harm water quality, critical areas or wildlife habitat.

6. Operate motor vehicles for the maintenance and development of the Property consistent with the permitted uses listed herein.
7. Maintain, repair, expand, improve, decommission, and retain trails on Property, consistent with the intent of this Easement.
8. Undertake other activities necessary to protect public health or safety on the Property. Any such activity shall be conducted so that interference with the ecological values of the Property is avoided, or if avoidance is not possible, minimized to the maximum extent possible.

V. RESTRICTIONS ON USE.

Grantor may prohibit uses on the Property independent of this Easement. **Except as provided above**, the Grantor shall not on the Property do or permit any of the following:

1. Harvest, cut or remove trees or other vegetation except as allowed pursuant to Section IV, consistent with the purposes identified in this Conservation Easement.
2. Build or place roads or buildings of any type.
3. Explore for or extract minerals, hydrocarbons or other materials, except as expressly authorized pursuant to mineral, oil, or gas reservations or leases recorded prior to and continuing in existence on the date of this Easement.
4. Trapping or hunting of animals except to deal with a local public health emergency.
5. Excavate or grade the Property or otherwise materially alter the landscape or topography except as necessary for one of the permitted uses, practices and rights identified in Section IV above.
6. Subdivide the Property in any manner.
7. Make residential, commercial, or industrial use of the Property.
8. Operate motor vehicles, except as is necessary for the development and management of the Property as allowed in Section IV; provided further that, an existing driveway serving a single family residence on an adjoining parcel pursuant to a License Agreement recorded at Whatcom County Auditor File No.893239 which may encroach on the southerly tip of Parcel C on Exhibit B and may continue so long as its use remains limited to providing ingress and egress to said single family residence only and so long as its width and length are not expanded.

9. Store derelict vehicles or waste of any kind.
10. Build or maintain fires.
11. Allow overnight camping except in association with educational activities.
12. Provide athletic facilities or ball fields of any kind.
13. Establish off-leash dog areas.
14. Grant other easements.
15. Use or apply pesticides or herbicides on the Property including for activities allowed under Section IV; except if such use is the only reasonably feasible means to control invasive, non-native species and then only if such use can be accomplished without harming water quality or critical areas. Before any pesticide or herbicide use is allowed, the necessary risks from use shall be evaluated using best available science to determine if such use will cause adverse impacts to water quality or critical areas.
16. Use of the Property contrary to the purposes of this Easement.

VI. RIGHTS AND RESPONSIBILITIES OF GRANTEE.

Grantor grants and Grantee accepts the right and shared responsibility to preserve and protect in perpetuity the natural features, functions and values of the Property including the existing wetlands, forest, and wildlife habitat consistent with the terms of this Easement. In connection with such rights and responsibilities:

1. Grantor grants to Grantee the right to enter the Property, to observe and monitor compliance with the terms of this Easement.
2. Should Grantor, its successors or assigns, undertake any activity on the Property in violation of this Easement, or should Grantor permit an activity on the Property in violation of this Easement, Grantee shall have the right to enjoin and abate any such activity. In addition, Grantee shall have the right to recover damages from Grantor or to compel the restoration by Grantor of that portion of the Property affected by such activity to the condition that existed prior to the undertaking of such unauthorized activity. In the event Grantee commences a legal action against the Grantor or otherwise seeks to enforce the terms of this Easement against the Grantor, the prevailing party in any such matter shall be entitled to an award of damages, including, if applicable, costs of restoration, expenses and costs of suit, including attorneys' fees and expert witness fees.

3. Any forbearance by Grantor or Grantee to exercise any rights under this Easement in the event of a breach shall not be deemed to be a waiver of Grantor's or Grantee's rights hereunder.
4. Grantee shall indemnify, appear and defend, and hold harmless Grantor from all claims, lawsuits and liabilities of any kind, including attorney's fees and costs, arising from any negligent act or omission by Grantee in connection with its performance under this Agreement; except to the extent such claim, lawsuit, or liability arises from the negligence of the Grantor.

VII. BASELINE DATA.

In order to establish the condition of the Property so as to be able to properly monitor future uses and assure compliance with the terms of this Agreement, Grantor and Grantee approved an updated Baseline Documentation Report of the Property on July 2023, which contains an inventory of the Property's relevant features and conditions known as baseline data. The baseline data shall be used to establish the condition of the Property as of the date of its preparation and document off-site references made for comparison in Section V.

VIII. GRANTOR'S RESPONSIBILITIES.

1. Grantor agrees to bear all costs of ownership, operation, improvements, administration, upkeep, management and maintenance of the Property and shall indemnify, appear and defend, and hold harmless the Grantee from all claims, lawsuits and liabilities of any kind, including attorney's fees and costs, arising from any act or omission of Grantor in connection with its ownership, management, maintenance, or administration of the Property, or in connection with public use of the Property, or for any negligent act or omission in connection with its performance of this Agreement; except to the extent such claim, lawsuit, or liability arises from the negligence of the Grantee.
2. Grantor shall pay all real property taxes and assessments levied on the Property.
3. Any construction on the Property that goes beyond maintenance shall be identified in the current master plan for the Property and shall be consistent with this Easement.
4. Uses and facilities on the Property shall be located, designed and constructed so as to avoid or where necessary minimize the impact on critical areas and wildlife habitat.
5. Trail details such as decommissioning, re-routing, or upgrading existing trails, creating new trails, and maintaining trails shall be accomplished in a manner

consistent with the Critical Areas Ordinance and Bellingham Park and Recreation Department adopted standards.

6. Grantor shall take reasonable steps to direct and confine public access to defined and maintained trail surfaces and designated areas and to prevent damage to ground cover, understory vegetation and disturbance of wildlife from off-trail public use.
7. Grantor shall post signage on the Property stating that all dogs on the Property must be leashed and remain on the trails, and users must properly dispose of all their dog's waste. Failure of Grantor to enforce this Section VIII. 7 shall not constitute a violation of this Conservation Easement.

IX. TERM OF CONSERVATION EASEMENT.

This Easement shall run with the Property in perpetuity and shall bind the Grantor and Grantee, their successors and assigns forever. However, the City may elect to terminate the Conservation Easement if the Park District does not assign its interest in the Conservation Easement to the Land Trust and formally dissolve in accordance with RCW 35.61.310 by September 21, 2023. Upon receiving notice to terminate the Conservation Easement from the City, the Grantee, either the Park District or the Land Trust, if the Park District has assigned its interest in the Conservation Easement to the Land Trust, shall timely execute and record an appropriate deed reconveying the Conservation Easement to the City. If the Grantee fails to take such action after notice from the City, the City may file a quiet title action in Whatcom County Superior Court to establish that the Conservation Easement is terminated under the terms of the Conservation Easement and Interlocal Agreement. The prevailing party in any such quiet title action shall be entitled to an award of reasonable attorneys' fees and costs. The City's right to terminate the Conservation Easement shall end if the Park District assigns its interest in the Conservation Easement to the Land Trust and formally dissolves in accordance with RCW 35.61.310 by September 21, 2023.

X. ASSIGNMENT OF GRANTEE'S INTERESTS.

The Grantee may assign its interests in this Easement to a "qualified" organization within the meaning of Section 170(h) of the Internal Revenue Code of 1954, as amended, and RCW 64.04.130 and RCW 84.34.250. Should the Grantee cease to exist, this Easement would be assigned to such an organization. Grantee shall give the Grantor 30-days advance written notice of its intent to assign its interests in this Easement to a "qualified" organization, including the name of the organization.

XI. PROPERTY INTEREST.

Grantor and Grantee agree that this Easement gives rise to a property right immediately vested in the Grantee, which right has a fair market value that is equal to the proportionate value that the Easement bears to the value of the Property as a whole, upon the date of the execution of the Easement.

If all the purposes of this Easement become impossible to accomplish because of a change of circumstances, this Easement can be extinguished only by judicial proceedings, and on subsequent disposal of the Property, the Grantee is entitled to a portion of the proceeds equal to the proportionate value of the Conservation Easement. In the event of condemnation of the Property in whole or in part, Grantee shall be entitled to compensation proportionate to the loss of conservation values caused by the condemnation.

XII. DISPUTE RESOLUTION.

1. If Grantee has good reason to believe that Grantor has undertaken or is about to undertake an activity in violation of the terms of this Easement, and that activity would have a significant, irremediable impact on the conservation attributes of the Property this Easement is intended to protect, Grantee will make an effort, reasonable under the circumstances, to consult with Grantor in an attempt to deter the activity in question and reach a satisfactory resolution of the situation. If Grantee is not able to reach a satisfactory resolution of the situation, Grantee may seek judicial injunctive relief to prevent any further such activity, and/or to compel the restoration of the Property to the condition that existed prior to the undertaking of the activity in question. Any forbearance by Grantee to exercise any rights under this Easement in the event of a breach shall not be deemed to be a waiver of Grantee's rights under this Easement.

2. Except in the case of imminent or ongoing activity described above in subsection 1 above, if a dispute arises between the parties concerning whether a proposed activity is consistent with the terms of this Easement, the parties agree not to proceed with the proposed use or activity pending resolution of the dispute. To resolve the dispute, the parties agree to proceed as follows. First, Grantor and Grantee will discuss the dispute in an effort to reach a mutually agreeable resolution. Second, if the parties are not able to resolve the dispute in this manner, they will seek to resolve the dispute utilizing a disinterested, mutually agreed upon mediator and share any associated costs equally. Third, if the dispute is not resolved by mediation, either party may request of the other party in writing that the dispute be submitted to binding arbitration in accord with the Washington Uniform Arbitration Act (RCW 7.04A). If arbitration is pursued, the prevailing party shall be entitled to an award against the non-prevailing party for all costs and expenses related to such arbitration, including, the prevailing party's attorney fees. If the arbitrator determines that there is no clearly prevailing party, each party will bear its own expenses and the parties will split equally the fees and expenses of the arbitrator.

XIII. MISCELLANEOUS.

1. The terms Grantor and Grantee, wherever used in this Easement, shall include the above-named Grantor and its successors and assigns, and the above-named Grantee and its successors and assigns.
2. In the event that any of the provisions contained in this Easement are declared invalid or unenforceable in the future, all remaining provisions shall remain in effect.
3. Notice to Grantee prior to assignment of the Conservation Easement shall be to the Park District; and after said assignment to the Land Trust:

Secretary of the Board
Chuckanut Community
Forest Park District
P.O. Box 4283
Bellingham, WA 98227

Executive Director
Whatcom Land Trust
412 N. Commercial St.
Bellingham, WA 98225

Notice to Grantor shall be to the Director of Parks for Grantor, who until further notice shall be:

Bellingham Parks Director
210 Lottie St.
Bellingham, WA 98225


Copy to: City Attorney
210 Lottie St.
Bellingham, WA 98225

4. The entire agreement of the parties is set forth in this Easement and the Interlocal Agreement entered into between the parties on January 3, 2014. No alteration or variation of this instrument shall be valid or binding unless it is in writing and properly executed and acknowledged by both parties. The interpretation and the performance of this Easement shall be governed by the laws of the State of Washington.
5. This Easement shall be liberally construed in favor of the grant to effectuate the objectives and purposes of this Easement particularly as set forth in Section II and the policy and purpose of RCW 64.04.130 and Chapter 84.34 RCW. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the objectives and purposes of this Easement that would render the provision valid should be favored over any interpretation that would render it invalid.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Conservation Easement this 18 day of July, 2023.


GRANTOR:

CITY OF BELLINGHAM




Seth Fleetwood
Mayor

Department Approval:



Nicole Oliver
Department of Parks and Recreation
Approved As To Form:



Alan Marriner
City Attorney


Attest:



Andy Asbjornsen
Finance Director

GRANTEE:

CHUCKANUT COMMUNITY FOREST PARK DISTRICT



Frank James
President

STATE OF WASHINGTON)
) ss:
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that Seth Fleetwood is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the Mayor of the City of Bellingham to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATE: 7/18/23



Tracy Lewis
NOTARY PUBLIC
Printed Name: Tracy Lewis
My Commission Expires: 10/20/26

STATE OF WASHINGTON)
) ss:
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that Andy Asbjornsen is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the Finance Director of the City of Bellingham to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATE: 7/18/23

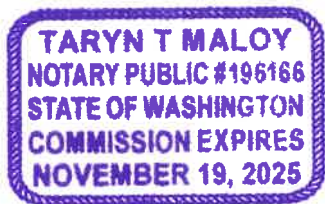


Kelley Goetz
NOTARY PUBLIC
Printed Name: Kelley Goetz
My Commission Expires: 6/21/26

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that Frank James is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated he was authorized to execute the instrument, and acknowledged it as the President of the Chuckanut Community Forest Park District to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATE: June 13, 2023



Taryn T Maloy
NOTARY PUBLIC
Print Name: Taryn T Maloy
My Commission Expires: 11.19.2025

EXHIBIT A

PARCEL A (370212 359328 0000):

The south half of the southwest quarter of the northeast quarter of Section 12, Township 37 North, Range 2 East of W.M., except that right-of-way lying along the easterly line thereof, commonly referred to as 20th Street.

PARCEL B (370212 364207 0000):

That part of the northwest quarter of the southeast quarter, and that part of the southwest quarter of the southeast quarter of Section 12, Township 37 North, Range 2 East of W.M., lying northerly of Chuckanut Drive.

PARCEL C (370212 478165 0000):

Lot B, as delineated on Chuckanut Trust Lot Line Adjustment, according to the plat thereof, recorded under Auditor's File No. 961219101, records of Whatcom County, Washington.

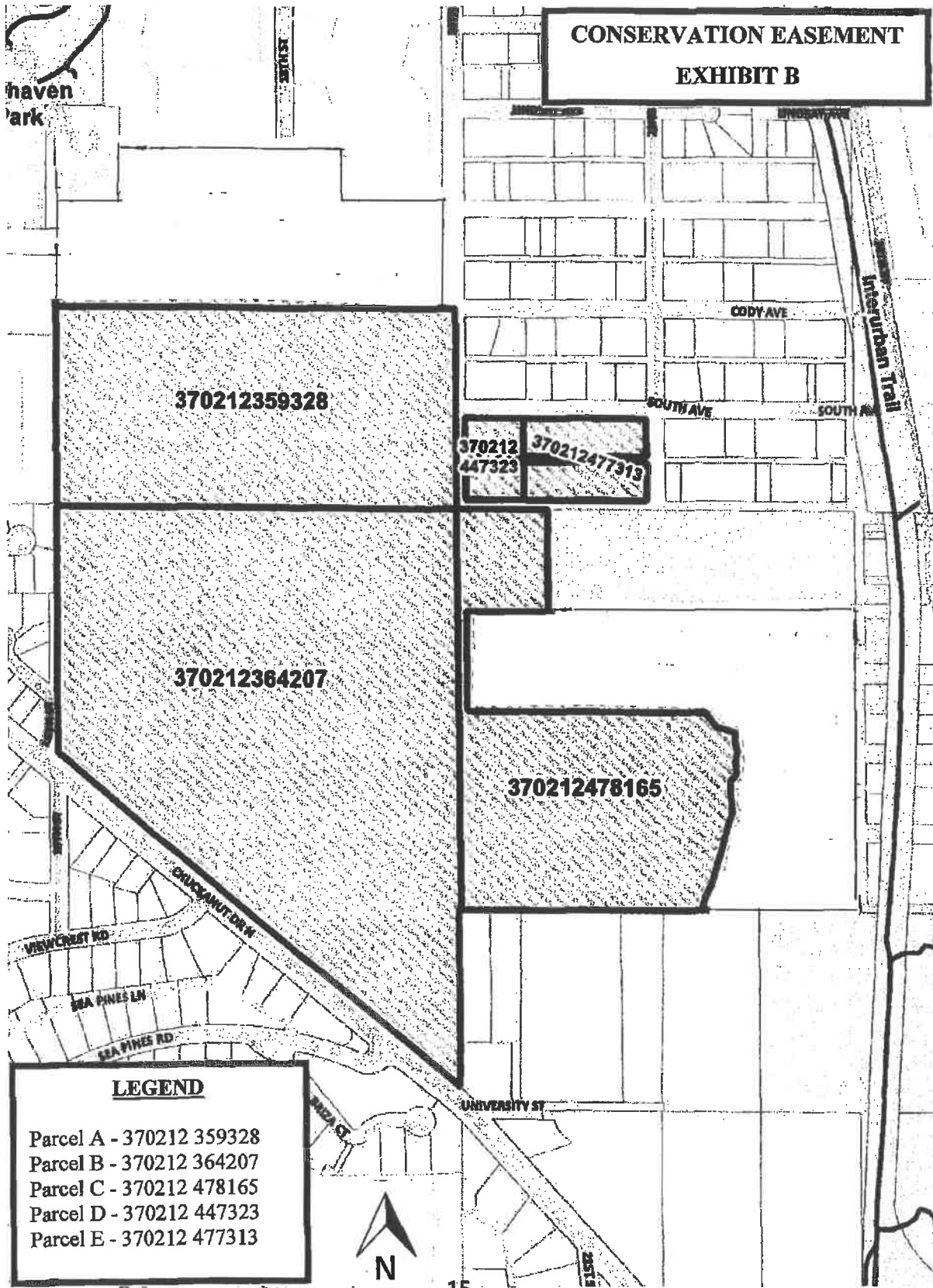
PARCEL D (370212 447323 0000):

Lots 1 through 4 and Lots 21 through 24, inclusive, Block 1, Map of Diffenbachers Addition to Fairhaven, now a part of the consolidated City of Bellingham, Whatcom County, Washington, according to the plat thereof, recorded in Volume 1 of Plats, Page 51, records of Whatcom County, Washington.

PARCEL E (370212 477313 0000):

Lots 5 through 20, inclusive, Block 1, Map of Diffenbachers Addition to Fairhaven, now a part of the consolidated City of Bellingham, Whatcom County, Washington, according to the plat thereof, recorded in Volume 1 of Plats, Page 51, records of Whatcom County, Washington.

**CONSERVATION EASEMENT
EXHIBIT B**



LEGEND

- Parcel A - 370212 359328
- Parcel B - 370212 364207
- Parcel C - 370212 478165
- Parcel D - 370212 447323
- Parcel E - 370212 477313