

11-21-2012

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15<sup>00</sup>

*Brett & Dauger*

1646265

AUG 3 2 09 PM '89

VOL 113 REC 217  
REGISTERED  
S.F. 11/21/88  
WITNESSED

### NESSET CONSERVATION EASEMENT

#### I. GRANT OF CONSERVATION EASEMENT

This Conservation Easement is made July 31, 1989, between THOMAS NESSET and INGEBORG NESSET, brother and sister (the "Grantors") and the WHATCOM COUNTY LAND TRUST, a Washington nonprofit corporation (the "Trust").

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#### II. FACTS AND OBJECTIVES

Grantors are owners of real property in Whatcom County which is legally described by attached Exhibit A.

The Trust is a publicly supported, nonprofit corporation, organized to preserve the ecological, wildlife, scenic, agricultural, recreational, and open space value of land. It qualifies under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt nonprofit organization.

The Nessel Property is a beautiful, secluded, 106 acres located on the upper reaches of the South Fork of the Nooksack River. The portion of the Property nearest the river is cleared and has historically been used as a farm. Beyond this is a ridge containing approximately 40 acres of mature coniferous forest. In addition to the river frontage, the Property contains a salmon spawning stream. Deer, eagles and other wildlife frequent the Nessel Property, with eagles gathering in large numbers during the fall salmon spawn. The Nesses live in the original homestead residence which was constructed from large, dovetailed cedar timbers. The old barn and outbuildings contain numerous pieces of antique farming and logging equipment. Tom and Ingeborg Nessel have resided here since childhood, engaging in farming and selective logging. The Property is of substantial ecological, aesthetic and recreational value to the people of Whatcom County. It is the intent of the Grantors and the Trust, through this Conservation Easement, to preserve the natural scenic beauty of the Nessel Property, to protect it as a relatively natural habitat for wildlife and plants, to conserve the significant aesthetic and ecological values and characteristics of the Property for public benefit, to protect the integrity of the land, and to preserve the possibility of the land being used in the future as a public park.

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### III. GRANT OF CONSERVATION EASEMENT

Grantors hereby convey to the Trust, its successors and assigns, in perpetuity, a Conservation Easement pursuant to Revised Code of Washington 84.34.210 over the Property described in Exhibit A attached hereto. The Conservation Easement consists of mutual rights and obligations, and is subject to the reservation of rights set forth below. Rights, obligations and reservations operate as covenants running with the land in perpetuity.

### IV. PERMITTED USES, PRACTICES AND RIGHTS RESERVED BY GRANTORS

Grantors reserve from the grant of Conservation Easement the following rights:

1. To use the Property as the site for one (1) single family residence.
2. To continue historical modes and levels of farming, including pasturing, grazing, feeding and care of livestock and raising of fruits and vegetables on the land cleared at the time this Conservation Easement is signed. Farming will be conducted in a manner so as not to impair the water quality of the South Fork of the Nooksack River or of the salmon spawning stream on the Property, and in a manner consistent with sound agricultural and ecological principles.
3. To maintain and repair existing structures, fences and other improvements on the Property. In the event of destruction or deterioration, structures and other improvements existing at the time of this Conservation Easement may be replaced with structures and improvements of similar size, function, capacity and location.
4. To construct additional structures and fences as needed to maintain agricultural operations on the Property, provided that building plans for any new structure shall be approved by the Trust before construction begins. The Trust shall approve such new structures only if they are necessary for agricultural use, and if in design and appearance they are consistent with the environmental and historical character of the Property.
5. To engage in selective logging subject to the following limitations:
  - (a) Deciduous trees may be cut for use as firewood on the Property, or with consent of the Trust for purposes of managing the coniferous forest.

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- (b) Logging of coniferous species shall be severely limited and can only be carried out if done in strict adherence to a forest management plan submitted to and approved by the Trust. Such plan must demonstrate that the logging is carried out in an ecologically sound manner, that it results in negligible destruction of habitat and the integrity of forest floor, that there will not be a significant deterioration of the value of the Property as an example of mature coniferous forest, and that the logging will not result in aesthetic and environmental damage. The plan should consider each forest and soil type and should set a policy for dealing with diseased, dead and downed trees and for replanting. The goal of the plan is to develop a stand approximating as closely as possible an old growth forest. Discretion to reject any logging plan and to deny consent for any and all logging of conifers is completely within the discretion of the Trust. PROVIDED, that Tom and Ingeborg Nessel reserve the right to cut trees as may be necessary to provide for their care and welfare during their lifetime.
6. To use the Property for purposes of a public park should the Property be acquired by the Whatcom County Parks Department or any other public entity. Any park plan or subsequent alterations of the park plan or park use must be consistent with the terms and intent of this Conservation Easement, and must be approved by the Trust. The terms of any park plan approved by the Trust will be treated as provisions of this Conservation Easement and may be enforced as such by the Trust. Park use must be consistent with the historical and ecological quality of the Property. Additional buildings, installations and facilities necessary for park use are permitted only with the prior approval of the Trust. Use of the Property as a park is permitted only on the following conditions:
- (a) The park will bear the Nessel name.
  - (b) The primary themes of the park will be education and historical and ecological preservation.
  - (c) Public access for the park will be from the north, and public vehicular traffic and parking will be prohibited south of the Nessel home, with a reasonable buffer left between the homesite and any parking area.
  - (d) To the extent feasible, the original home, barn, outbuildings and equipment will be restored to their original condition and used for educational and museum-like purposes.
  - (e) To the extent feasible, the farm will have an educational function such as demonstrating traditional farming, pioneering, and perhaps selective logging skills.

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- (f) The eagles, fish, and other wildlife will be protected and the integrity of the land respected.
  - (g) Recreational use of the park will be controlled so as to minimize the impact on surrounding property owners and the natural environment, including the South Fork of the Nooksack River. Recreational access to the River will be controlled to minimize litter (such as through a "no throw-away beverage container" policy), trespassing, damage to fisheries, and ecological degradation.
  - (h) A buffer zone of grazing land and/or native trees will be maintained along the southern border of the park.
7. In the event that the original homestead dwelling ceases to be used as a residence, a new single family residence may be constructed, with the approval by the Trust of the location, design and building plans.

#### V. RESTRICTIONS ON USE

Except as provided above, and as may be necessary to carry out those rights reserved, the Grantors, their successors and assigns, shall not on the Property subject to this Conservation Easement do or permit the following activities:

1. Subdivide the Property in any manner.
2. Erect or permit placement of any building, structure or improvement.
3. Remove live trees or other native vegetation.
4. Excavate or grade the Property or otherwise materially alter the landscape or topography, except as is necessary to repair, maintain or replace the rip rap on the River.
5. Explore for or extract minerals, hydrocarbons, soil, or other materials.
6. Hunt or trap.
7. Camp or make other overnight recreational use or use by motorized recreational vehicles.
8. Reside on the Premises or allow others to reside on the premises anywhere except in the one (1) permitted single family dwelling.

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9. Use the land for commercial purposes, other than the off-site sale of agricultural products produced on the land.
10. Use herbicides or pesticides, except with the consent of the Trust.
11. Otherwise use the Property inconsistent with the reservation of rights and purposes of the Conservation Easement.

#### VI. RIGHTS AND RESPONSIBILITIES OF THE TRUST

Grantors grant, and the Trust accepts, the right and responsibility to preserve and protect in perpetuity the aesthetic, habitat and ecological values of the Nessel Property consistent with the terms of this Conservation Easement. In connection with such rights and responsibilities:

1. Grantors grant to the Trust the right to enter the Nessel Property on reasonable notice to observe and enforce compliance with the terms of this Conservation Easement.
2. Should Grantors, their successors, or assigns, undertake any activity in violation of this Conservation Easement, the Trust shall have the right to compel the restoration of that portion of the Nessel Property affected by such activity to the condition that existed prior to the undertaking of such unauthorized activity. In such case, the cost of restoration and the Trust's expenses and costs of suit, including attorneys' fees, shall be borne by Grantors or those of their successors or assigns against whom judgment is entered, or, in the event that the Trust secures satisfaction without a completed judicial proceeding, Grantors or those of its successors or assigns who are otherwise determined to be responsible for the unauthorized activity.
3. Any forbearance by the Trust to exercise any rights under this Conservation Easement in the event of a breach shall not be deemed to be a waiver of the Trust's rights under this Conservation Easement.

#### VII. BASELINE DATA

The Trust acknowledges by acceptance of this Conservation Easement that Grantors' historical and present uses of the Property are compatible with the purposes of this Conservation Easement. In order to establish the present condition of the Property's scenic and ecological resources so as to be able to properly monitor future uses of the Property and assure compliance with the terms of this Conservation Easement, the Trust shall, at its earliest possible convenience, prepare or cause to be prepared an inventory of the Property's relevant features and conditions,

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known as Baseline Data. The Baseline Data shall be used to establish the condition of the Property as of the date of this Easement. In the event of a controversy arising with respect to the nature and extent of the Grantors' historical and present use of the Property, the Baseline Data shall be determinative. Exhibit B is a detailed site plan of the Nasset Property and constitutes part of the Baseline Data.

#### VIII. GRANTORS' RESPONSIBILITIES

Grantors agree to bear all costs of operation, upkeep and maintenance of the Property and to indemnify the Trust therefrom; in addition, Grantors agree to pay all real property taxes and assessments levied on the Property.

#### IX. ASSIGNMENT OF TRUST'S INTERESTS

The Trust may assign its interest in this Conservation Easement to a "qualified" organization within the meaning of Section 170(h) of the Internal Revenue Code of 1954, as amended, so long as that organization has a concern for ecological and aesthetic considerations consistent with the terms of this Conservation Easement. Should the Trust cease to exist, this Conservation Easement would be assigned to such an organization.

#### X. GRANT IN PERPETUITY

This Conservation Easement shall run with the Property in perpetuity and shall bind the Grantors, their successors and assigns forever.

#### XI. MISCELLANEOUS

1. Wherever used in this Conservation Easement, the term "Grantors" shall include the above-named Grantors and their heirs, personal representatives, executors, successors and assigns, and the term "the Trust" shall include the Whatcom County Land Trust and its successors and assigns.
2. In the event that any of the provisions contained in this Conservation Easement are declared invalid or unenforceable in the future, all other provisions remain in effect.
3. Grantors shall notify the Trust of the sale of the Property.

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- 4. Grantors shall advise the Trust in writing thirty (30) days prior to filing an application for any governmental permits necessary for work or construction on the Property.
- 5. Grantors agree that reference to this Conservation Easement will be made in any subsequent deed or other legal instrument transferring any interest in the Property, and that they will attach a copy of this Conservation Easement.

IN WITNESS WHEREOF, Grantors have executed this Conservation Easement this 31 day of July, 1989.

GRANTORS:

WHATCOM COUNTY LAND TRUST:

Tom Nesset  
THOMAS NESSET

By: [Signature]  
Its: Vice-President WCLT

Ingeborg Nesset  
INGEBORG NESSET

STATE OF WASHINGTON )  
                                  ) ss.  
COUNTY OF WHATCOM )

On this day 31 day of July, 1989, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared THOMAS NESSET and INGEBORG NESSET, to me known to be the individuals described in the foregoing Grant of Conservation Easement, and acknowledged that they signed said instrument as their free and voluntary act and deed, for the uses and purposes therein mentioned.

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WITNESS my hand and official seal hereto affixed the day and year first above written.

Kacie Chapman  
NOTARY PUBLIC  
My commission expires: 4/10/91



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EXHIBIT A

Government Lots 1 and 5, less wash, in Section 21, Township 37 North, Range 5 E. W. M. and the Southwest quarter of the Northwest quarter, less wash, in Section 22, Township 37 North, Range 5 E. W. M. together with any after acquired title which Grantors may acquire.

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Mode: INQUIRY

Real Property

Auto Roll: OFF

Parcel # 370522 067337 0000

Tax Yr 90

Taxpayer # NESS 3800 NESSETT, L T

T/P Chg Date 3/05/86

Title Owner # NESS 3800 NESSETT, L T

T/P Chg By WMS

Contract Owner #

Loan #

Plat/Condo Type Code

Blk Lot

Unit Dock

Description SW NW

Chg Date 3/23/88

Chg By PKD

Chg Rs FL

Tax Code 7065 507 C1 Land Use 8700 CLASS FOREST

Zoning Code GP GENERAL PROTECT Tax Stat TX TAXABLE Reval B

Chg Rs Fire Pt Ac 4000 40.00 Total Acres 4000 40.00

Improved Land Unimproved Land Timberlands Land Improvements Total

Acres Value Acres Value Acres Value A V A V A V

4000 3605 3605 3605

F/M

New/C D/AV Mob Home AV Sub Cd Int%

Sr Cit Cd Reg Exmpt Exc Exmpt Reg Exmpt O/R

Lien CF Date 10175 AF # 75 1185664 As-Tx Yr 75 76 App # Agr #

Inquiry

Tax Receivable  
Real Property

Auto Roll: OFF

Date 082389

Parcel # 370522 067337 0000 - 00

NESSETT, L T

NESS3800 6176 SAXON RD

Tax Code 7065

Levy 11.94523

ACME, WA 98220

AV \$ 3,605

Yr	Tax	F/P	Penalty	Interest	Total	Op	Date
89	43.06	11.60					
89	21.53	5.80			27.33	Due	10/31/89
88	43.16	12.40					
87	46.46	12.00					
86	43.73	10.80					

2

Mode: INQUIRY

Real Property

Auto Roll: OFF

Parcel # 370521 494353 0000 Tax Yr 90  
 Taxpayer # NESS 3800 NESSETT, L T T/P Chg Date 3/05/85  
 Title Owner # NESS 3800 NESSETT, L T T/P Chg By EBM  
 Contract Owner # Loan #  
 Plat/Condo Type Code Blk Lot Unit Dock  
 Description GOVT LOTS 1-5-EXC 1 AC RCW 84.36.381-389  
 Chg Date 4/07/87  
 Chg By RR  
 Chg Rs RV

Tax Code 7035 507 F16 C1 Land Use 8390 OSAG OTHER  
 Zoning Code GP GENERAL PROTECT Tax Stat TX TAXABLE Reval B  
 Chg Rs Fire Pt Ac 5200 52.00 Total Acres 6500 65.00  
 Improved Land Unimproved Land Timberlands Land Improvements Total  
 Acres Value Acres Value Acres Value A V A V A V  
 1300 4290 5200 11400 15690 15690  
 F/M 13000 34180 47180 47180  
 New/C O/AV Mob Home AV Sub Cd Int%  
 Sr Cit Cd Reg Exmpt Exc Exmpt Reg Exmpt O/R  
 Lien DSF Date AF # 85 1503348 As-Tx Yr 85 86 App # 5 Agr # 2553

Inquiry

Tax Receivable  
Real Property

Auto Roll: OFF

Date 082389

Parcel # 370521 494353 0000 - 00 NESSETT, L T  
 NESS3800 6176 SAXON RD  
 Tax Code 7035 Levy 13.47809 ACME, WA 98220  
 AV \$ 15,690

Yr	Tax	F/P	Penalty	Interest	Total Op	Date
89	211.48	15.08				
89	105.74	7.54			113.28	Due 10/31/89
88	203.01	16.12				
87	188.73	15.60				
86	157.57	14.04				

2A

Mode: INQUIRY

Real Property

Auto Roll: OFF

Parcel # 370521 494353 0001 Tax Yr 90  
 Taxpayer # NESS 3800 NESSETT, L T T/P Chg Date 3/05/85  
 Title Owner # NESS 3800 NESSETT, L T T/P Chg By EBM  
 Contract Owner # Loan #  
 Plat/Condo Type Code Blk Lot Unit Dock  
 Description 1 AC RCW 84.36.381-389  
 Chg Date 6/26/89  
 Chg By MJB  
 Chg Rs RV

Tax Code 7035 507 F16 C1 Land Use 8390 OSAG OTHER  
 Zoning Code GP GENERAL PROTECT Tax Stat TX TAXABLE Reval B  
 Chg Rs Fire Pt Ac Total Acres 100 1.00  
 Improved Land Unimproved Land Timberlands Land Improvements Total  
 Acres Value Acres Value Acres Value A V A V A V  
 100 7300 7300 15630 22930  
 F/M 7300 7300 15630 22930  
 New/C 0/AV Mob Home AV Sub Cd Int%  
 Sr Cit Cd A Reg Exmpt 22930 Exc Exmpt 22930 Reg Exmpt 0/R  
 Lien OSF Date AF # 85 1503348 As-Tx Yr 85 86 App # 5 Agr # 2553

Inquiry

Tax Receivable  
Real Property

Auto Roll: OFF

Date 082389

Parcel # 370521 494353 0001 - 00 NESSETT, L T  
 NESS3800 6176 SAXON RD  
 Tax Code 7035 Levy 13.47809 ACME, WA 98220  
 AV # 22,930

Yr	Tax	F/P	Penalty	Interest	Total	Op	Date
89					0.00	Due	10/31/89
88					0.00	Due	4/30/88
87	4.03						
86	3.85						

2B