



201510090098

Skagit County Auditor

\$78.00

10/9/2015 Page

1 of

6 3:38PM

Document Title:

Settlement Agreement Between Mike and Linda Nemnich and Skagit County re: PL14-0529.

Reference Number : C20150427

Grantor(s):

additional grantor names on page ____

- 1. Mike Nemnich
- 2. Linda Nemnich

Grantee(s):

additional grantee names on page ____

- 1. Skagit County
- 2.

Abbreviated legal description:

full legal on page(s) ____

O/S#90 AF#781712 1974 PARCEL 6 LOCATED IN A PORTION OF GOVERNMENT LOT 4 OF SECTION 18 TOWNSHIP 36, RANGE 4 AND THAT PORTION OF GOVERNMENT LOT 1 AND THE NE1/4 NW1/4 OF SECTION 19 TOWNSHIP 36 RANGE 4 DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE SOUTH LINE OF GOVERNMENT LOT 4 OF SAID SECTION 18 WHICH LIES SOUTH 86-50-58 EAST, 436.54 FEET FROM THE SW CORNER THEREOF; THENCE NORTH 06-29-49 WEST, 327.78 FEET; THENCE NORTH 81-01-50 EAST, 432.32 FEET; THENCE NORTH 60-30-10 EAST, 203.23 FEET; THENCE SOUTH 56-54-25 EAST, 518.35 FEET TO A POINT ON THE EAST LINE OF SAID GOVERNMENT LOT 4 WHICH IS 265 FEET NORTH OF THE SE CORNER THEREOF; THENCE SOUTH 01-05-51 WEST ALONG SAID EAST LINE, 265 FEET TO THE SE CORNER OF SAID GOVERNMENT LOT 4; THENCE SOUTH 34-25-05 EAST, 317.78 FEET; THENCE SOUTH 09-31-36 WEST, 415.02 FEET; THENCE NORTH 80-28-24 WEST, 371.16 FEET; THENCE NORTH 13-28-27 WEST, 338.38 FEET; THENCE NORTH 88-59-07 WEST, 623.28 FEET; THENCE NORTH 06-29-49- WEST, 323.51 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION. A PORTION OF A SURVEY AF#200212030085

Assessor Parcel / Tax ID Number:

additional tax parcel number(s) on page ____

P49371, P119069, P124101, P124102

**SETTLEMENT AGREEMENT BETWEEN MIKE AND LINDA NEMNICH AND SKAGIT COUNTY
RELATING TO APPEAL PL14-0529.**

This Agreement is made and entered into this 25 day of September, 2015, by and between Mike and Linda Nemnich ("Nemnichs") and SKAGIT COUNTY ("the County"), collectively "the Parties."

BACKGROUND

WHEREAS the Nemnichs are owners of property at 18077 Fox Hollow Lane, Bow, WA, in Skagit County ("Property").

WHEREAS between 2001 and 2005, a series of Protected Critical Areas (PCA) easements were recorded on the Property title delineating wetlands and their buffers, and placing restrictions on activities that may occur within the PCA easement areas.

WHEREAS the PCAs were recorded in consideration of obtaining development permits on the Property.

WHEREAS the 2005 PCA (AF#200512070082) provides that "[n]o clearing, grading, filling, logging or removal of woody material, building, construction or road construction of any kind, planting of nonnative vegetation or grazing of livestock is allowed within the PCA areas except as specifically permitted by Skagit County on a case-by-case basis consistent with SCC 14.24."

WHEREAS the Nemnichs would like to graze livestock and harvest hay within the areas designated by the PCAs as wetlands and their buffers.

WHEREAS in May 2012, John Schuh from the Skagit Conservation District prepared a Nutrient Management Plan relating to maintaining livestock on the Property.

WHEREAS also in 2012, the Nemnichs inquired with the County regarding how they could have the PCA easements on their property removed.

WHEREAS the Nemnichs hired a wetland consultant to evaluate their property and prepare a report regarding the presence of wetlands.

WHEREAS the Nemnichs' consultant concluded that there were not wetlands on site in a June 2013 Wetlands Study.

WHEREAS the County evaluated the Nemnichs' Wetlands Study and issued a decision on December 5, 2014, denying the Nemnichs' request to reopen and either modify or remove the PCAs.

WHEREAS on December 19, 2014, the Nemnichs timely appealed the County's decision to the Hearing Examiner (PL14-0529).

WHEREAS in the interest of coming to a mutually agreeable solution, the parties entered into settlement negotiations and the Hearing Examiner agreed to hold the appeal in abeyance until a later date.

TERMS AND CONDITIONS

Now, therefore, in consideration of the mutual promises and covenants contained herein:

1. The Nemnichs agree to implement the attached Conditions of Livestock Pasturing and Hay Harvesting within the PCAs ("Attachment 1").
2. Upon execution of this agreement, the Nemnichs agree to withdraw their appeal against the County, PL14-0529.
3. If the conditions set forth in Attachment 1 are complied with, the County agrees not to pursue enforcement actions against the Nemnichs for livestock pasturing and hay harvesting within the delineated PCAs.
4. The County agrees that Attachment 1 modifies the terms of the existing PCAs and this Agreement and Attachment 1 will be recorded to reflect such modification.
5. Nothing in this agreement provides the approval or authority to violate any federal, state or local regulations. If there is a violation identified related to the activities allowed in this agreement, the relevant agency may pursue enforcement, even if it means the Nemnichs must cease or alter the specified activities.
6. **Understanding of Agreement.** The Parties acknowledge that they have read this Agreement and understand its contents, that they have had the opportunity to have this Agreement reviewed by an attorney of their choice, and that they have either consulted with an attorney or voluntarily chosen not to consult with an attorney before signing this Agreement.
7. **Applicable Law.** This Agreement shall be deemed to have been made in the State of Washington and shall be governed by the laws of the State of Washington without regard to the laws pertaining to choice of law. Jurisdiction and venue for this Agreement lie exclusively in Skagit County, Washington.
8. **Waiver.** No waiver of any provision of this Agreement shall be valid unless it is in writing and signed by the party against whom such claim or waiver is sought to be enforced, nor shall failure to enforce any right hereunder constitute a continuing waiver of the same or a waiver of any other right hereunder.
9. **Entire Agreement.** This Agreement supersedes all prior understandings and agreements between the Parties and may not be amended orally, but only by a written document signed by the Parties hereto.

Attachment 1: Conditions of Livestock Pasturing and Hay Harvesting Within the PCAs

Pursuant to the Nutrient Management Plan prepared by Skagit Conservation District for Mike and Linda Nemnich in May 2012, as well as recommendations of Skagit County staff based on site characteristics, livestock pasturing and hay harvesting may occur within the designated and recorded PCAs on the property under the following conditions:

Access control

- Livestock may only be allowed access to areas within the PCA when the soils are not frozen or saturated. Saturated is defined as “wet in the top 12 inches.”
- Livestock may only be allowed access to areas within the PCAs when the grass is a minimum of 6 inches in height.
- Livestock must be removed from areas within the PCAs where the grass is less than 3 inches in height.
- Livestock must be kept in the existing winter confinement area generally from October through April depending on the soil and forage conditions in the pasture fields. The criteria of saturated soils and height of grass will control the precise time that the cows and calves are allowed to forage. If acceptable soil and forage conditions in the fields are met earlier or later (e.g. March or November), then livestock may have access at that time.
- Weeds, blackberries, etc. may be sprayed as needed.

Nutrient Management

- Nutrient Management is set forth in the Nutrient Management Plan specifically as set out on pages three and four on the Plan.
- Property owners will apply manure using “Best Management Practices” supplemented by the Nutrient Management Plan.

Waste Utilization

- In addition to those conditions set forth under “Nutrient Management” above, the following manure application restrictions also apply:
 - Fields 1 and 2: Manure application must not take place in December and January.
 - Field 3: Manure application must not take place from November through March.
 - Fields 4 and 5: Manure application must not take place from November through April.
 - Fields 2, 3, 4, and 5: Manure applications must not take place within 35 feet of a surface waterway (including drainage ditches) when the soils are frozen or saturated or when measurable (greater than ¼ inch) rainfall is expected within 3 days of a planned application.

Waste Storage Facility

- Manure is collected and stored on an uncovered concrete slab. If the slab is not sufficient to accommodate the manure, then the slab(s) will be increased in size to accommodate the volume of manure within a reasonable time.

Hay Harvesting

- Grass is cut as needed between June and October, or when conditions are as follows: The soil is not saturated and the grass is on average 6 inches or longer.
- The grass must not be cut shorter than 3 inches.

IN WITNESS WHEREOF, the Parties have executed and entered into this Agreement as of the day and year first above written.

Mike Nemnich

Linda Nemnich

Mike Nemnich
Signature

9-25-15
Date

Linda Nemnich
Signature

9-25-15
Date

STATE OF WASHINGTON)

) ss.

COUNTY OF SKAGIT

MIKE NEMNICH

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

Given under my hand and official seal this 25th day of SEPT, 2015.



Tawnee Clearbrook

Print Name: TAWNEE CLEARBROOK

NOTARY PUBLIC in and for the State of Washington

Residing at: MOUNT VERNON

My Commission Expires: 11-10-17

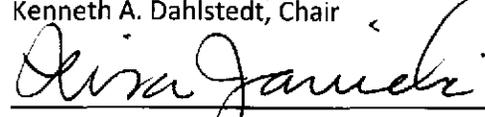
DATED this 25th day of SEPT, 2015.

DATED this 5 day of October, 2015.

**BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**



Kenneth A. Dahlstedt, Chair

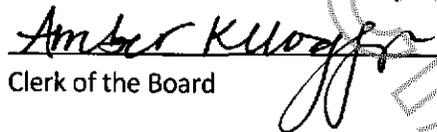


Lisa Janicki, Commissioner



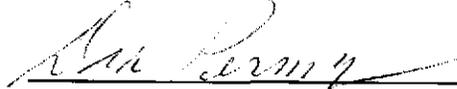
Ron Wesen, Commissioner

Attest:



Clerk of the Board

Approved as to content:



Department Head

Approved as to form:



Civil Deputy Prosecuting Attorney