

LT 30815
LAND TITLE CO. OF ISLAND COUNTY

86003749

FILED FOR RECORD AT 2:50 PM
April 8 1986 at request of
Land Title Company of Island County
HARRY H. FERRIER, AUDITOR
ISLAND COUNTY, WASH.

SCENIC EASEMENT DEED

86003749

THIS EASEMENT, by and between PENN COVE ASSOCIATES, A WASHINGTON LIMITED PARTNERSHIP REPRESENTED BY ITS GENERAL PARTNERS, SAMUEL BERCH and SHIRLEY A. BERCH (husband and wife), STANLEY E. BORESON and BARBARA J. BORESON (husband and wife), F. J. BODE' and LOLA BODE' (husband and wife), V & L PROPERTY MANAGEMENT, INC. (BY FRED LIKENS, C.P.A., PRESIDENT), KENNETH HARTVIGSON and ELEANOR M. HARTVIGSON (husband and wife), KARL KALDESTAD and MAE KALDESTAD (husband and wife), W. JAMES MUSSER and VALERIE MUSSER (husband and wife), and CHARLES REISDORFF and MARIE REISDORFF (husband and wife), as hereinafter called Grantors, and the UNITED STATES OF AMERICA, hereinafter called the United States:

WHEREAS, Public Law 95-625 (92 Stat. 3508), as amended, provided for the establishment of Ebey's Landing National Historical Reserve; and

WHEREAS, Grantors are the owners of certain land which is within the boundary of Ebey's Landing National Historical Reserve; and

WHEREAS, the United States, acting through the Secretary of the Interior in accordance with Public Law 95-625 (92 Stat. 3508), desires to protect the scenic, cultural, and other similar values of Ebey's Landing National Historical Reserve and its immediate environment and to prevent any developments that would tend to mar or detract from these values;

NOW THEREFORE, in consideration of the premises, and the sum of THREE HUNDRED TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$325,000.00) to them paid by the United States, the receipt of which is hereby acknowledged, the Grantors by these presents GRANT and CONVEY and CONFIRM in perpetuity, subject to the considerations hereinafter set forth, unto the United States and its assigns, an estate, interest and scenic easement in said hereinafter described real property of the nature and to the extent hereinafter described and do covenant on behalf of themselves, their heirs, successors and assigns (said covenant to run with said land) with the United States and its assigns to do and refrain from doing, severally and collectively upon the said hereinafter described lands, the various acts hereinafter mentioned; it being hereby agreed and expressed that the doing of and the refraining from doing said acts, and each thereof, upon the said lands are and will be for the benefit of the United States through the preservation of the scenic and other values of Ebey's Landing National Historical Reserve, in accordance with Public Law 95-625.

The lands herein referred to and to which the provisions of this instrument apply, are situated in the County of Island, State of Washington, described as follows:

National Park Service Tract 103-01 identified on Map Exhibit "A-1", filed for record this 8th day of April 1986 at 2:42 PM, in Book 6 of Surveys at Page 130 under Auditor's File No. 86003748

The land hereinabove described contains 82 acres, more or less.

Subject to existing easements for public roads and highways, public utilities, railroads, and pipelines.

The restrictions hereby imposed upon the land, the acts which the Grantor covenants to do or refrains from doing upon the land, and the rights in and to the land granted to the United States and its assigns by the Grantor, are as follows:

Said restrictions are shown on Exhibit "B" which is attached hereto and by reference made a part hereof.

TO HAVE AND TO HOLD the hereindescribed scenic easement and rights unto the United States and its assigns forever.

The Grantors, for themselves, their heirs, successors and assigns do hereby covenant with the said United States and its assigns that they are lawfully seized of an indefeasible estate in fee simple in the hereindescribed lands; that they have the right to sell and convey the estate, interest and scenic easement herein conveyed; and that they will warrant and defend unto the United States and its assigns, forever, the quiet and peaceable use and enjoyment of the herein granted easement against the lawful claims and demands of all persons whomsoever.

The Grantors covenant for themselves, their heirs, successors and assigns that the provisions of this easement shall be included in subsequent conveyance of any interest in the lands herein described.

The interest in the land is being acquired by the DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE.

IN WITNESS WHEREOF, the said Grantors have hereunto set their hand this 17TH day of March, 1986.

Sam Berch
SAMUEL BERCH

Shirley A. Berch
SHIRLEY A. BERCH

By F. J. Bode
F. J. BODE, ATTORNEY IN FACT

By F. J. Bode
F. J. BODE, ATTORNEY IN FACT

Kenneth Hartvigson
KENNETH HARTVIGSON

Eleanor M. Hartvigson
ELEANOR M. HARTVIGSON

By F. J. Bode
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Stanley E. Boreson
STANLEY E. BORESON

Barbara J. Boreson
BARBARA J. BORESON

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By F. J. Bode
F. J. BODE, ATTORNEY IN FACT

Lola Bode
LOLA BODE

By F. J. Bode
F. J. BODE, ATTORNEY IN FACT

Karl Kaldestad
KARL KALDESTAD

Mae Kaldestad
MAE KALDESTAD

By F. J. Bode
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W. James Musser
W. JAMES MUSSER

Valerie Musser
VALERIE MUSSER

By F. J. Bode
F. J. BODE, ATTORNEY IN FACT

Charles Reisdorff
CHARLES REISDORFF

Marie Reisdorff
MARIE REISDORFF

By F. J. Bode
F. J. BODE, ATTORNEY IN FACT

V & L PROPERTY MANAGEMENT, INC.
Fred Likens
FRED LIKENS, C.P.A., PRESIDENT

W. James Musser
W. JAMES MUSSER, Attorney in Fact for
Samuel Berch and Shirley A. Berch,
Kenneth Hartvigson and Eleanor M. Hartvigson,
Barbara J. Boreson, Lola Bode, Mae Kaldestad,
Valerie Musser, and Marie Reisdorff

Tract 103-01
Ebey's Landing National
Historical Reserve

2023B

FILED RECORDED
APR 8 2 50 PM '86
OF RECORD COUNTY

REGISTRAR
CLERK

EXHIBIT "B"

Penn Cove Associates
Scenic Easement Provisions
Ebey's Landing National Historical Reserve

Tract 103-01

Pursuant to authority granted to the Secretary of the Interior in Public Law 95-625 (92 Stat. 3508), as amended, a perpetual estate, interest and easement to preserve the scenic quality of the real estate of the nature and character hereinafter expressed to be and to constitute an easement upon said real estate, which estate, interest, and easement will result from the restrictions hereby imposed upon the use of said property. To that end and for the purpose of accomplishing the intent of the parties hereto, said Grantors covenant on behalf of themselves, their heirs, successors and assigns, to do and refrain from doing, severally and collectively, the various acts hereinafter mentioned, it being hereby agreed and expressed that the doing and the refraining from said acts, and each thereof, upon said property, is and will be for the benefit of the United States of America, its successors and assigns, and Ebey's Landing National Historical Reserve as described in Public Law 95-625 (92 Stat. 3508), as amended now or in the future, and will help preserve the scenic value of the said land.

This grant of scenic easement on behalf of the United States is only for the purpose of preserving and protecting the scenic value of the said lands, and does not grant the general public any right of ingress or egress over or across said lands, or any other rights of usage.

This grant of scenic easement covers only those lands or portions thereof described as Tracts 6, 7, 8, 9, 14, 16, 17, 18, and 19 as said Tracts are shown on that Record of Survey recorded under Auditor's File No. 417712 in Book 5 of Surveys at Page 412, Records of Island County, Washington. Said Tracts are more particularly described in that "Declaration of Segregation" filed under Auditor's File No. 418707, Vol. 523, Pages 819 through 841, Records of Island County, Washington. These Tracts have been reidentified on Map Exhibit "A-1" as referenced in the aforementioned Scenic Easement Deed and all or portions thereof are marked or identified by "Zones". This grant does not convey the United States any right, title, or interest in any other lands or property rights which may now or hereafter become vested in the Grantors, their heirs, successors and assigns.

In construing this grant of scenic easement, it is understood that the purpose and intent is to preserve the rural and scenic nature and character of the landscape known as Grasser's Hill by maintaining an esthetic viewshed consisting of a pattern of hedgerows, open fields, and areas of natural vegetation created by former agricultural use. The most important point from which to assess the impacts of development is from a Viewpoint "X" as shown on Map Exhibit "A-1". Also, to a lesser degree, the visual impacts as viewed from points along SR-20 and Madrona Way should be considered when evaluating landscape plans on proposed construction, which may be visible from said alternate points.

This intent will be satisfied by:

1. Restricting the construction of any structures or the removal of significant vegetation, such as trees, hedgerows, and wild irises, from the face of the hill.
2. Setting limits to the height and visual impact of structures built along the edges of the hillside so that the hillside still retains an agricultural rather than suburban character.
 - A. Structures on the crest of the hill should not break up the horizon line when viewed from Viewpoint "X".
 - B. The hard, angular architectural elements of structures on the side of the hill should be screened with vegetation so as not to distract from the esthetic viewshed of the open hillside.

The restrictions hereby imposed upon the use of said property of the Grantors within the various Zones and the acts which said Grantors so covenant to do and refrain from doing upon said property in connection therewith, are and shall be as follows:

1. The restrictions imposed in this paragraph shall apply only to those lands identified as "Zone A".

- A. The said lands shall not be used for any purpose other than for farming or grazing and installation of underground utilities, except where aboveground utilities exist at the time of signing of agreement.
 - B. Septic system drainfields or dry wells, stormwater drainage facilities, water wells, small well and pump facilities, irrigation lines and facilities, bridle paths, hiking trails, and outdoor recreational uses by the Grantors are authorized where their presence, design, or construction will not permanently create an apparent change in visual character of the site due to abrupt changes in topography.
 - C. The topography may be modified to some extent provided the visual appearance from Viewpoint "X" is maintained.
 - D. Post and wire fencing along the exterior boundaries of said Tracts as they exist at the signing of this document is authorized. Other types of fencing or cross fencing must be authorized 'n writing by the Secretary of the Interior or his designated representative
 - E. The provisions of this paragraph shall not preclude practices necessary for the control or removal of noxious, hazardous or undesirable weeds.
 - F. Said lands shall be maintained and kept in the same general condition, state, and character as exists at the time of signing this document, except for the modifications provided for above and except as authorized in writing by the Secretary of the Interior or his designated representative.
2. None of the Zones may be used for feeder pig operations, hog finishing operations, or cattle feed lot operations. Nor should farming or grazing use allowed in Paragraph One (1) preclude the property from being adapted to the production of new or different agricultural or horticultural crops, or to new or different methods of animal husbandry consistent with changing local or regional farming practices and customs; such adaptation or change shall not be subject to authorization by the Secretary of the Interior or his designated representative as long as the same is consistent with the goals and purposes of this easement.
 3. Mobile homes, travel trailers, tent trailers, campers, self-propelled recreational vehicles and like structures or vehicles shall not be located or used within Zone A or D of the easement for any purpose. These structures or vehicles may be used or stored in Zone F as long as the use complies with paragraph 11 of this easement. Also, such structures or vehicles may be transported upon approved roads. Travel trailers, tent trailers, campers, and self-propelled recreational vehicles may be stored in Zones C and E provided they are screened from view from Viewpoint "X". This paragraph shall not preclude the use of vehicles for the transport of horses, cattle, or other livestock.
 4. The dumping of trash or other garbage on the land or the keeping thereon of junked or wrecked vehicles, junked farm equipment, or similar items is prohibited. The restrictions imposed by this paragraph shall apply to all Zones.
 5. The provisions of this easement shall be included in subsequent conveyance(s) of any interest in the lands or portions thereof affected by this easement.
 6. It is the understanding and agreement of the Grantors that this grant of perpetual easement rights to the United States, its successors and assigns shall include a nonexclusive right of access over and across existing private roadways which the Grantors presently utilize for access, or any reasonable replacement or substitute therefor, to the property covered herein, and upon reasonable notice to the Grantors, or their heirs, successors and assigns, the right of the Secretary of the Interior or his designated representative to enter upon the properties covered herein for the purposes of inspecting, accomplishing, and/or enforcing the rights and restrictions herein agreed to and granted; provided, however, that the United States shall not be obligated in any manner to perform any act or take any affirmative action to accomplish the purposes stated herein and shall not be obligated in any manner to assume or pay any costs incurred therefore.

7. There shall be no construction of new roadways or changing the course of existing roads on the property covered hereby except as may be authorized by the Secretary of the Interior or his designated representative. Improvement, maintenance, and repair of the existing roadways are authorized. Also, the Grantors, their successors and assigns, may construct new driveways over and across that portion of Zone A within Tract 14 in order to access Zone C of said Tract 14. Said driveways, if constructed, shall be screened by vegetative plantings and/or topographical land form to be obscured from Viewpoint "X". The Grantor shall submit a plan, including a landscape plan, to the Secretary or his designated representative, for approval prior to initiating construction on said driveways.

8. No advertising signs or billboards shall be displayed or placed upon the lands within any Zone, except as follows:

A. Signs not larger than four square feet advertising home occupations or products, the sale or lease of the lands, or prohibiting hunting or trespass on the land provided they are not visible from Viewpoint "X".

B. Seasonal signs not larger than four feet square which advertise the sale of produce, crops, animals, or animal products grown on the land which are then in season.

9. Whenever these restrictions require that plans or requests be approved by the Secretary of the Interior or his designated representative, such approval shall be deemed given if the Secretary or his representative shall fail to act upon the plans or request within 60 days of their submission to the Secretary or his representative by the Grantors or their successors or assigns. Furthermore, whenever such approval is required, it shall not be arbitrarily or capriciously delayed or denied. The words "act upon" as used above shall mean the issuance and transmittal of a written decision either approving, approving with conditions, or disapproving with specified cause, the plans, proposals, or requests submitted. In addition, any such decisions of the Secretary or his designated representative shall include a specific disclosure to the applicant(s) of any and all subsequent recourse, including time deadlines, available to appeal and/or request reconsideration of the decision rendered.

10. Permitted development in Zone "D" will include preservation and reconstruction restoration of the existing historic farmsite, including the farmhouse, outbuildings, and construction of a barn which may be used as a multiple-use community structure. After a period of 8 years from the initiation of any such structural development, large plantings will obscure hard-edged lines and planes of structures visible from Viewpoint "X". Such plantings need not be similar to native vegetation or the background existing at the time of this easement. Prior to initiating any such development the Grantor shall submit a proposed plan, including a landscape plan, to the Secretary of the Interior or his designated representative for approval.

11. Prior to the erection or location of any building or structure within Zone F (Portions of Tracts 7, 8, 9, and 14), or the modifications of the hedgerows along the southeasterly boundary of Zone F, the Grantor shall obtain approval and submit a plot plan and/or landscape plan as appropriate to the Secretary of the Interior or his designee. Any such plan should demonstrate that:

A. buildings or structures located within Zone F shall be restricted in height so they are not visible from Viewpoint "X".

B. construction should be of nonreflective materials and the color should be natural earth tones that blend with the native vegetation in the area.

C. the visual appearance of the hedgerow from Viewpoint "X" will be maintained but may be modified to some extent to enhance Zone F for residential purposes.

12. The use of the Zone C portion of Tracts 6 and 14 shall be limited to no more than two single-family residences each (and commonly associated accessory structures). That portion of Tract 19 identified as Zone "B" shall be limited to one single-family residence (and commonly associated accessory structures). Those portions of Tracts 16 and 17 identified as Zone E shall be limited to residential or agricultural use. Prior to the initiation of construction of any such residences or accessory structure(s), the Grantors or their heirs, successors and assigns, should submit a plot plan and landscape plan to the Secretary of the Interior or his designated representative for approval in writing. Such plan will assure that:

- A. the structure(s) will be constructed with nonreflective materials (except windows) and be natural earth tone colors that will not distract from the esthetic viewshed of the open hillside.
- B. after a period of 8 years from the initiation of any such structural development, the hard, angular architectural lines and planes of structures will be screened with large plantings so they do not distract from the esthetic viewshed of the open hillside. Such plantings need not be similar to native vegetation or the background existing at the time of this easement.

13. Within Tract 19, the Grantor specifically reserves the right to construct a single lane vehicular bridge over and across the ravine in order to provide access to the western portion of the Tract. Said bridge shall be located and constructed so as to minimize the visual impact from Viewpoint "X". The grantor shall submit a plan to the Secretary of Interior or his designated representative for approval prior to initiating construction on said bridge.

14. Within Tract 6, the Grantor will not remove any trees larger than four inches in diameter within a 50-foot wide strip of land lying west of and adjacent to the centerline of the existing ravine. Trees larger than four inches may be removed with the specific written permission of the Secretary of Interior or his designated representative.