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3 Eastern District of Washington
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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF WASHINGTON

9 PAUL GRONDAL, a Washington
10 resident; and THE MILL BAY
11 MEMBERS ASSOCIATION, INC., a
12 Washington Non-Profit Corporation,

11 Plaintiffs,

12 vs.

13 UNITED STATES OF AMERICA, et
14 al,

15 Defendants.

No. 09-CV-00018-RMP

DECLARATION OF JOSEPH P.
DERRIG

16
17 I, Joseph P. Derrig, make the following declaration in lieu of affidavit
18 pursuant to 28 U.S.C. § 1746 to the best of my knowledge and belief.

19
20 1. I am an Assistant United States Attorney for the Eastern District of
21 Washington assigned to defend the above-captioned lawsuit.

22 2. Attached hereto as **Exhibit A** is a true and accurate copy of “MILL
23 BAY EXPANDED MEMBERSHIP RULES AND REGULATIONS” with
24 highlighted added for the convenience of the Court.

25 3. Attached hereto as **Exhibit B** is a true and accurate copy of the
26 Wayback Machine (internet archive) capture of Mill Bay RV Resort’s website on
27 February 18, 2018 with highlighted added for the convenience of the Court
28

1 showing that “as of October 25th” no sites are occupied and the “Park is closed for
2 the season.”

3 4. Attached hereto as **Exhibit C** is a true and accurate copy of the
4 Wayback Machine (internet archive) capture of Mill Bay RV Resort’s website on
5 April 23, 2019 compared to a capture of Mill Bay RV Resort’s website on
6 November 23, 2019 with highlighting in the original.

7 5. Attached hereto as **Exhibit D** is a true and accurate copy of selected
8 Mill Bay Member’s Association Board Meeting Minutes posted on Mill Bay’s
9 website with highlighted added for the convenience of the Court.

10 6. Attached hereto as **Exhibit E** is a true and accurate copy of a letter
11 from the United States Attorney’s Office to counsel for Mill Bay and Wapato
12 Heritage, LLC sent July 29, 2020.

13
14 DATED this 29th day of July, 2020.

15
16
17 s/ Joseph P. Derrig
18 Joseph P. Derrig
19 Assistant United States Attorney
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CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Franklin L. Smith:	frank@flyonsmith.com
R. Bruce Johnston:	bruce@rbrucejohnston.com
Dana Cleveland:	dana.cleveland@colvilletribes.com
Dale M. Foreman:	dale@daleforeman.com
Sally W. Harmeling:	sallyh@jdsalaw.com
Brian C. Gruber:	bgruber@ziontchestnut.com
Nathan J. Arnold:	nathan@caoteam.com
Robert R. Siderius:	bobs@sdsalaw.com
Joseph Q. Ridgeway:	josephr@jdsalaw.com
Brian W. Chestnut:	bchestnut@ziontchestnut.com
Tyler D. Hotchkiss:	tyler@fhbzlaw.com
Manis Borde:	mborde@bordelaw.com
Emanuel F Jacobowitz	manny@caoteam.com
Jacob M Knutson	jacobk@jdsalaw.com

and hereby certify that I will serve the week of July 29 due to COVID-19 restrictions by United States Postal Service mail the document to the following non-CM/ECF participants:

Catherine Garrison 3434 S 144th St Apt 124 Tukwila, WA 98168-4061	James Abraham 2727 Virginia Avenue Everett, WA 98201	Maureen Marcellay 7910 NE 61st Cir Vancouver, WA 98662
Darlene Hyland 16713 S E Fisher Drive Vancouver, WA 98683	Jeff M Condon PO Box 3561 Omak, WA 98841	Micheal F Marcellay P O Box 594 Brewster, WA 98812-0594
Deborah A Backwell 24375 SE Keegan Rd Eagle Creek, OR 97022	Judy Zunie P O Box 3341 Omak, WA 98841	Mike Marcellay P O Box 594 Brewster, WA 98812

1 2 3	Enid T Wippel P O Box 101 Nespelem, WA 99155	Linda Saint P O Box 3614 Omak, WA 98841-3614	Mike Palmer P O Box 466 Nespelem, WA 99155
4 5 6	Francis Abraham 11103 E Empire Avenue Spokane Valley, WA 99206	Lynn Benson P O Box 746 Omak, WA 98841	Paul Wapato, Jr 2312 Forest Estates Drive Spokane, WA 99223
7 8 9	Francis Reyes P O Box 215 Elmer City, WA 99124	Marlene Marcellay 1300 S E 116th Court Vancouver, WA 98683	Randy Marcellay P O Box 3287 Omak, WA 98841
10 11 12	Gabriel Marcellay P O Box 76 Wellpinit, WA 99040	Mary Jo Garrison P O Box 1922 Seattle, WA 98111	Sandra Covington P O Box 1152 Omak, WA 98841
13 14 15 16		Sonia Vanwoerkon 810 19th Street Lewiston, ID 83501	Timothy Ward Woolsey Colville Tribes Office of Reservation Attorney PO Box 150 Nespelem, WA 99155

s/ Joseph P. Derrig
Joseph P. Derrig
Assistant United States Attorney



Mill Bay RV Park
dba Mill Bay Member's Association

Member Rules & Regulations
August 10, 2005 – Guest fees adjusted January 1, 2015

MILL BAY EXPANDED MEMBERSHIP RULES AND REGULATIONS

The following rules and regulations for the use of Mill Bay facilities, services and land have been adopted to insure the safety and welfare of all members and guests. Knowledge of and compliance with these rules and regulations is expected of all members. The Board of Directors and anyone they designate shall have the authority to enforce these rules.

RV's or camping units acceptable for use at Expanded Sites: Motor homes, travel trailers, fifth wheel trailers, tents, tent trailers, pick-up campers, conversion vans, none of which can exceed 42 feet in length or 8.5 feet in width plus the width of customary slide-outs on either side. Any permanent, non-mobile living structures including "park models" and manufactured homes are specifically prohibited.

Expanded membership sites are to be used only by members and their guests. In no event can these sites be used as rental property. A maximum of 2 camping units are permitted per campsite. Additional tents are permissible on a temporary basis if they do not block view sight lines of the rear sites. Maximum number of guests per site is 10. Members are responsible for the behavior of their guests.

Guests of expanded members who bring an RV can use "clubhouse" sites on a space available basis. A **\$35.00 daily charge** will be made for guests or additional family members using separate clubhouse parking lot campsites. There is no charge for guests camping in a members camping rig.

Transportation vehicles, guest vehicles, boats, personal watercraft, etc. should not block sight lines and if necessary can be parked in designated parking areas.

The green belt areas and beach and facilities are open to all members at all times. Private gatherings are permitted only when approved in advance by the Board or their designee and must not interfere with members' use of the facilities.

Members are responsible for the conduct of their family members and guests. Family members under 18 must be accompanied by their parent member. Members and guests will obey the 5 mile per hour speed limit throughout the park.

All facilities are used by members and their guests at their own risk. Mill Bay is not responsible for loss or damage to property of members or their guests.

Any member who willfully or negligently defaces, damages or destroys property or equipment of Mill Bay, or of any other member or guest, will be held liable for those damages.

"Quiet time" is from 10:00 PM until 8:00 AM. There should be no noise that disturbs the rest of fellow members.

In the event of an emergency, the Board or its designee is authorized to move any member's RV equipment or vehicle without notice or liability to evacuate the area, or to take any reasonable action to protect the health and safety of the members.

Vehicle waste storage tanks must be plugged when not in use. No waste water may be drained onto the ground.

Littering is not permitted. Dumpsters are provided for all debris and garbage generated while using Mill Bay facilities only. Dumpsters are not to be used for disposing of garbage brought in from outside the park.

Members are responsible to maintain clean and orderly sites.

No solicitation of goods or services of any kind is permitted on Mill Bay property.

Any employees hired by Mill bay management are subject to supervision by Mill Bay management only.

No permanent occupancy shall be permitted. Expanded members may occupy a campsite for up to 83 days during each stay. They must then vacate the campsite for a period of 7 days before they may again occupy their campsite. Overnight sleeping is not permitted in any of the Mill Bay buildings.

Any landscaping, concrete patios and RV pads shall be placed in such a manner to preserve lake view sight-lines of any sites behind. Members must submit a plan in writing to management who must give approval prior to construction of any improvement.

Natural vegetation must not be cut or destroyed nor should trees be cut for firewood.

Campfires are allowed only in designated fireplaces or barbecue pits within campsites. Hazardous fire conditions may require a prohibition of fires within the park. Fires are prohibited on the beach.

No hunting is permitted on Mill Bay property. If a member uses Mill Bay for accommodations while hunting, all firearms must remain unloaded in the park.

Pets are the sole responsibility of their owner and must be kept on a leash at all times or kept within the confines of the owner's lot. Pets may not enter any buildings. Noisy or vicious pets are not allowed. If an animal is determined to be a nuisance, the pet will not be allowed on Mill Bay property. All pet droppings must be cleaned up by the pet owner. Only domestic pets are allowed. No horses or other livestock are permitted.

Any motorcycles or scooter used within the park must obey all park rules including speed limits. Standard noise limits for these vehicles also apply. Any such vehicles used in an unsafe manner will be prohibited in the park.

The Park Manager and/or the Camp Host, as applicable, are not subject to supervision or individual control by members. Specific supervision of Mill Bay's Park Manager and/or Camp Host is vested in the Mill Bay Members Association Board of Directors.

THE BREACH OF ANY OF THESE RULES MAY RESULT IN THE CANCELLATION OF YOUR MEMBERSHIP.

Exhibit A

http://www.millbayrvresort.com/sites-occupied.html DEC FEB MAR
 20 captures 18
 8 May 2016 - 23 Nov 2019 2016 2018 2019 About this capture

MILL BAY RV RESORT (/web/20180218054620/http://www.millbayrvresort.com/). Follow us on FACEBOOK (<https://web.archive.org/web/20180218054620/https://www.facebook.com/millbayrvresort>)

- [HOME \(/web/20180218054620/http://www.millbayrvresort.com/\)](/web/20180218054620/http://www.millbayrvresort.com/)
- [Memberships \(/web/20180218054620/http://www.millbayrvresort.com/memberships.html\)](/web/20180218054620/http://www.millbayrvresort.com/memberships.html)
- [Board Members \(/web/20180218054620/http://www.millbayrvresort.com/board-members.html\)](/web/20180218054620/http://www.millbayrvresort.com/board-members.html)
- [History \(/web/20180218054620/http://www.millbayrvresort.com/history.html\)](/web/20180218054620/http://www.millbayrvresort.com/history.html)
- [Legal Issues \(/web/20180218054620/http://www.millbayrvresort.com/legal-issues.html\)](/web/20180218054620/http://www.millbayrvresort.com/legal-issues.html)
- [Park Photos \(/web/20180218054620/http://www.millbayrvresort.com/park-photos.html\)](/web/20180218054620/http://www.millbayrvresort.com/park-photos.html)
- [Fun Pics \(/web/20180218054620/http://www.millbayrvresort.com/fun-pics.html\)](/web/20180218054620/http://www.millbayrvresort.com/fun-pics.html)
- [Links \(/web/20180218054620/http://www.millbayrvresort.com/links.html\)](/web/20180218054620/http://www.millbayrvresort.com/links.html)
- [Rules & Regulations \(/web/20180218054620/http://www.millbayrvresort.com/rules--regulations.html\)](/web/20180218054620/http://www.millbayrvresort.com/rules--regulations.html)
- [CONTACT US \(/web/20180218054620/http://www.millbayrvresort.com/contact-us.html\)](/web/20180218054620/http://www.millbayrvresort.com/contact-us.html)

as of
October 25th



0 of 37 sites
are occupied

Park is closed for the season



Explore more than 451 billion web pages saved over time

DONATE

Enter a URL or words related to a site's home page

Compare any two captures of http://www.millbayrvresort.com/sites-occupied.html from our collection of 20 dating from Sun, 08 May 2016 to Sat, 23 Nov 2019.

Please select a capture

2019 (7) ▾ April (1) ▾
 Tue, 23 Apr 2019 14:03:04 GMT ▾

Open in new window

Please select a capture

Sat, 23 Nov 2019 20:05:04 GMT ▾
 November (1) ▾ 2019 (7) ▾

Open in new window

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- [Park Photos](#)
- [Fun Pics](#)
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3 of 37 sites are occupied

PARK IS CLOSED

Buy back and sites for guests OK

When needed,

a limited number of overflow areas available that have power, water & possibly cable TV

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0 of 38 sites are occupied

When needed,

a limited number of overflow areas are available that have power, water & possibly cable TV

In our 17 year history, we have never had

to turn away a member.

Yellow indicates content deletion. Blue indicates content addition.

[FAQ](#) | [Contact Us](#) | [Terms of Service \(Dec 31, 2014\)](#)

The Wayback Machine is an initiative of the Internet Archive, a 501(c)(3) non-profit, building a digital library of Internet sites and other cultural artifacts in digital form. Other projects include Open Library & archive-it.org.

Your use of the Wayback Machine is subject to the Internet Archive's Terms of Use.

Mill Bay Members Information Meeting - Saturday, May 27, 2017 – 11:00 AM

Board members present: Van Botts, Doug Gibbs, Bob Arrell, Frank Smith, Frank Vertrees, Ron Johnson,

Welcome & Recognition

- Memorial Day recognition of Veterans – Please stand to be recognized.
- Recognition of new board member Bob Arrell who has been appointed to fill the term of Dick Swier – who had given notice to resign.
- Recognition of past president Dick Swier with presentation of gift for his years of service
- Introduction of four (4) new members this year (Brian & Ramona Bontemps, Dan & Sylvia Logan, Alan Ellison & Karen Lee and Bill & Elsa Byrd.
- Recognition of hard working caretakers: Mike Koehn, Dan Rice & Jerry Schwan with gift for service above and beyond their normal caretaker responsibilities as it relates to digging ditches for the new Local Tel TV & internet service.
- Recognition and appreciation for Frankie Fitzgarrel for cleaning up the clubhouse for our meeting
- Recognition and appreciation for Teresa Botts for set up and coordinating the annual BBQ

Finance Report – Van Botts, Treasurer

- Our financial status remains satisfactory with \$139,000 in cash compared to \$138,000 last year at this time.

Legal Report – Frank Smith

- There is really nothing to report – we still don't know what the ramifications are if this litigation is proven to be or not to be trust land. We are at a standstill – which is good for us. – Suggestion - If you have acquaintances (legislators, elected officials, etc) that you can talk with – feel free to discuss.

Audience Question: What happens if the judge retires or passes away before a final determination? Answer: All the material, testimony and facts have been well documented. Any replacement would have all the information to continue.

Members are reminded that we have two (2) AED life saving devices. They are located at each bath house. The units are easy to use and automatically walk any user through the process of use. Denny Rask & Greg Osborne have volunteered to teach a short class on the use of the devices for those members that want.

Website & Facebook – Doug Gibbs, Secretary

- If members are interested in keeping up with the happenings here at the park, they can check out our website at www.millbayrvresort.com – Members can see “How many sites are occupied” – “memberships for sale” – “pictures around the park” “items for sale” and other stuff. We also have a Facebook page – Mill Bay Resort - where members can also see what's going on at the park.

Question from member - TV concerns – when will the new TV & Internet system be up and running? Answer: soon we hope. We had a couple of mishaps that set us back a bit.

Question from member – having Pedestal problems – How are we handling repairs. Pedestals are being replaced on a as needed basis. We purchase 2 or 3 per year with the goal of replacing all old pedestals.

Question from member – What is the status of swim platforms – Frank Smith advised that we will ask Jerry Schwan to build two new ones.

Question from member - Is Local Tel approx same price as WAVE? Answer: Yes

Question from member – Asking for a bit of discretion regarding hosting RV guests in late October when no other members are in the park.

Request from member – For safety of our members, could we please install life rings and/or reach poles on both docs. Answer: Yes

Reminder: Members please don't use a BBQ on plastic tables – multiple tables are being ruined by heat from BBQ's

Meeting adjourned at 12:00 PM

Mill Bay Board Meeting – 09/09/17

Members present: Frank Smith, Frank Vertrees, Doug Gibbs, Van Botts, & Bob Arrell
Caretakers: Elaine Koehn, Mike Koehn, Bob Fitzjarrald & Dan Rice

Camp host/caretakers

Elaine - Pool tile repair – Mike will ask Rod to give us a bid on managing painting & tile work for the pool. Will report costs back by January meeting.

Mike will get bid for taking out the poplars when the crew comes to trim sites #3 & #5. Also Bob Arrell will ask his son in law to bid as well.

Buy back – last year’s guideline – can we discontinue guideline – motion to take out of rules – motion to remove by Bob Arrell & Van Botts - passed

Mike – Wi-Fi internet is nearly done – Monday the LocalTel Company will install the final wires and hardware to 7 access points in the transient side of the park and hopefully finalize the project. Much praise was shared by the Board for all the “extra” above and beyond job that Mike, Dan, Jerry, Bob and many others have accomplished.

Mike Koehn suggests that the rate for mowing should be increased to \$100 per mow. Motion by Arrell, second by Smith to raise it to \$100 starting today. Passed

Mike was given approval to purchase an inexpensive generator for the gator and remote job sites. (\$100-\$200).

Mike/Doug to order microphone/amplifier for Sheila Fode to use on the 4th of July festivities.

Bacon power pedestal – Board approved having Steve find an electrician for repair of the faulty pedestal and give invoice to Board for payment.

The subject of moving the utilities & pedestal for Majack site to overflow area has been determined to cost too much.

Dan/Bob - Kubota maintenance – blades need to be changed more often – Jim St Clair would do servicing in exchange for annual dues. Motion Botts, 2nd by Vertrees – approved.

Mowers need repair – sometimes they start sometimes not (will ask St Clair to look at). New filters helped – but - one tank just doesn’t work.

Park closing (water) – last week of October (27, 28 & 29) – looking for volunteers to help, especially on the regular side.

Thistles in the grass are becoming a problem and will be dealt with in the spring.

Financials (Botts)

We are doing well compared to last year \$130,565 cash versus \$118,430 last year.

Legal (Smith)

Nothing new to report

Mill Bay Members Association Board Meeting - 01/17/2018

Attendance: Bob Arrell, Vann Botts, Dick Swier, Frank Smith, Frank Vertrees, Ron Johnson

Legal Status

No change in legal status. We should be safe for another season.

Budget:

Assets (Cash/savings/CD) 118K compared to last year at same time 106K. Good shape budget wise, shouldn't need any assessments barring any new legal news that might cause expense.

Motion made by Ron J to purchase Sod cutter, Vann seconded the motion and all voted in favor. Approximately \$500.00 to \$600.00.

Agreed on by the Board to allow on a trial basis the opportunity for members to post RV rentals for members. Posted in same area as posts are made for RV for sale.

Projects identified to work on this year: Looking for volunteers.

- 1) Poplars behind swimming pool: Take out what we can safely in early April (Jerry?) and hire professional to remove the others that might be considered in need of removal.
- 2) Mark Pilings in Lake Chelan: April 1stish. Buy reflectors and stakes mark, so that no one hits them with their boat. Frank Smith and Ron J to Coordinate.
- 3) Identify all individual site water valves on **expanded side** and mark (maybe with paint), so that in the fall when we blow out the lines we can find easily. Frank Smith, Frank Vertrees and Ron J to Coordinate.
- 4) Repair pool: tile grout etc. Vann and Mike Koehn to look into.
- 5) Bathrooms on both regular and expanded side. General maintenance and paint. Frank, Frank and Ron on expanded side to organize and on regular side Vann, Bob and Doug to organize.
- 6) Playground near pool in need of cleanup, repairs and possible replacement of equipment.

Identified dates to have cable service for the park turned on and off. Cable Services to be shut off October 31st each year. Cable services to be turned on by March 15th every year.

Meeting Adjourned.



U.S. Department of Justice

United States Attorney's Office (EDWA)

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July 28, 2020

Sally W. Harmeling
Jeffers, Danielson, Son & Aylward, P.S.
2600 Chester Kimm Road
Wenatchee, Washington 98801

Nathan J. Arnold
Cloutier Arnold Jacobowitz PLLC
2701 First Avenue, Suite 200
Seattle, WA 98121

Re: Grondal et al v. United States of America et al
Cause No. 2:09-cv-00018-RMP

Dear Ms. Harmeling and Mr. Arnold:

This letter serves to address Mill Bay vacating MA-8 in a peaceful manner in light of the 2009 termination of the Master Lease and the Federal Court's recent order authorizing the removal of Mill Bay RV Park.

The United States intends to take the steps necessary to comply with the Court's order consistent with its obligations to protect trust property; however, we would like to do so in an orderly manner and with compassion toward any complications the COVID pandemic may present. Since we have not heard from you since the Court's order with a plan to vacate, we are providing the following instructions that meet those aims discussed above. Please let us know at your earliest convenience whether you clients will voluntarily comply with the instructions below.

By no later than August 30, 2020, please provide us an itemization of all personal property that Mill Bay/WHL proposes to leave on the property so that we may consult with the landowners and decide which items must be removed pursuant to Section 9 of the Master Lease. After receiving the list of property, Lessor may designate additional personal property that must be removed per Section 9 of the Master Lease. We will endeavor to get you the Lessor's response, if any, expeditiously so that all identified personal property can be removed no later than September 30, 2020.

By September 30, 2020, please have your clients remove "all trailers, motor vehicles, temporary construction shacks, earth moving, grading equipment, construction equipment of any kind or nature" as was required per Section 9 of Master Lease upon termination of that lease.

If you have any questions about which property should be removed or should not be removed please contact our office and will put you in contact with someone locally to assist you. Also, please remind your clients that there are several places of cultural significance on MA-8

Exhibit E

Ms. Harmeling and Mr. Arnold

July 28, 2020

Page -2-

and that these areas need to be preserved. The unlawful damaging, destruction or removal of the same may violate federal civil and criminal laws.

We appreciate your prompt attention to this letter. If you should have any concerns about the deadlines above or would like to discuss a timely, orderly resolution of what little may remain in this case, please kindly let me know.

Respectfully and sincerely yours,

William D. Hyslop
United States Attorney - EDWA



Joseph P. Derrig
Assistant United States Attorney

cc: Franklin L. Smith
R. Bruce Johnston
Dana Cleveland
Dale M. Foreman
Brian C. Gruber
Robert R. Siderius
Joseph Q. Ridgeway
Brian W. Chestnut
Tyler D. Hotchkiss
Manis Borde
Emanuel F Jacobowitz
Jacob M Knutson