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UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF WASHINGTON

PAUL GRONDAL, a Washington) NO. 09-CV-00018-JLQ
 resident; and THE MILL BAY)
 MEMBERS ASSOCIATION, INC., a) JOINT CERTIFICATION OF
 Washington Non-Profit Corporation,) STATUS CONFERENCE
) July 14, 2011
 Plaintiffs,)
)
 vs.)
)
 UNITED STATES OF AMERICA;)
 UNITED STATES DEPARTMENT OF)
 THE INTERIOR; THE BUREAU OF)
 INDIAN AFFAIRS, and FRANCIS)
 ABRAHAM, CATHERINE GARRISON,)
 MAUREEN MARCELLAY, MIKE)
 PALMER, JAMES ABRAHAM, NAOMI)
 DICK, ANNIE WAPATO, ENID)
 MARCHAND, GARY REYES, PAUL)
 WAPATO, JR., LYNN BENSON,)
 DARLENE HYLAND, RANDY)
 MARCELLAY, FRANCIS REYES,)
 LYDIA W. ARMEECHER, MARY JO)
 GARRISON, MARLENE MARCELLAY,)

1 LUCINDA O'DELL, MOSE SAM,)
 2 SHERMAN T. WAPATO, SANDRA)
 3 COVINGTON, GABRIEL)
 4 MARCELLAY, LINDA MILLS, LINDA)
 5 SAINT, JEFF M. CONDON, DENA)
 6 JACKSON, MIKE MARCELLAY,)
 7 VIVIAN PIERRE, SONIA)
 8 VANWOERKOM, WAPATO)
 9 HERITAGE, LLC, LEONARD)
 10 WAPATO, JR, DERRICK D. ZUNIE, II,)
 11 DEBORAH L. BACKWELL, JUDY)
 12 ZUNIE, JACQUELINE WHITE PLUME,)
 13 DENISE N. ZUNIE and)
 14 CONFEDERATED TRIBES OF THE)
 COLVILLE RESERVATION, Allottees of)
 MA-8 (known as Moses Allotment 8),)
 Defendants.)

15 Pursuant to the Court's order filed April 19, 2011, the parties in this case file
 16 this updated Joint Status Certificate because the mediation between Wapato Heritage,
 17 LLC ("Wapato Heritage") and the Confederated Tribes of the Colville Reservation
 18 ("Colville Tribes") concluded without resolution of this case and the Ninth Circuit has
 19 made a final determination of Wapato Heritage's appeal of Judge Whaley's decision in
 20 *Wapato Heritage, LLC v. United States*. For these reasons, counsel scheduled a
 21 teleconference with all represented parties for Thursday, July 14, 2011, at 10:30 a.m.

1 Those who participated in the drafting of the following status conference report were
2 James M. Danielson and Kristin M. Ferrera for the Mill Bay Members Association,
3 Inc.; Pamela J. DeRusha for the Federal Defendants; Timothy W. Woolsey and Dana
4 Cleveland for the Colville Tribes; and R. Bruce Johnston and Dale M. Foreman for
5 Wapato Heritage.
6

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8 1. The Colville Tribes and Wapato Heritage attempted to further mediate
9 their disputes on June 21, 2011, but were unsuccessful in reaching a resolution. No
10 further mediation sessions are anticipated or scheduled at this time.
11

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13 2. Wapato Heritage filed a Petition for *en banc* rehearing of the Ninth
14 Circuit decision in *Wapato Heritage, LLC v. United States*, and counsel for Mill Bay
15 filed an *amicus curiae* brief in support of that petition. The Ninth Circuit denied
16 rehearing.
17

18
19 3. The parties anticipate certain dispositive motions are necessary for the
20 Court to decide prior to moving forward with discovery. The parties anticipate filing
21 the following motions prior to establishing a revised discovery schedule:
22

23 a. Plaintiffs anticipate filing the following motions:
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- 1 (i) For an order determining whether MA-8 is restricted trust land or
2 fee simple absolute. This determination affects all other aspects of
3 the litigation. Defendant Wapato Heritage anticipates joining that
4 motion.
5
6
7 (ii) For an order further clarifying the effect Judge Whaley’s decision
8 in *Wapato Heritage, LLC v. United States* has on this case and, in
9 light of the Ninth Circuit’s most recent decision in the appeal of
10 that case, whether Judge Whaley’s decision only determined the
11 BIA was not the “lessor” under the lease and did not address the
12 capacity of the BIA acting as the agent of the MA-8 landowners in
13 matters relating to the Master Lease. Defendant Wapato Heritage
14 anticipates joining in that motion.
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17 (iii) For default judgment against the defaulted defendants to reduce to
18 declaratory judgment Plaintiffs’ claims against those defendants.
19
20
21 (iv) For declaratory judgment that Bill Evans, as a landowner, bound
22 his co-landowners as tenants in common in contract to the
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1 agreements with Plaintiffs. Defendant Wapato Heritage anticipates
2 joining in that motion.
3

4 (v) For an order determining which claims, if any, must be determined
5 in state court as a part of the Honorable Judge John Bridges'
6 continuing jurisdiction over the settlement agreement and under the
7 Washington State Camping Resorts Act.
8

9
10 (vi) For an order determining which MA-8 landowners, if any,
11 consented to the Federal Defendants filing this ejectment action.
12

13 b. Defendant Wapato Heritage anticipates filing a motion regarding MA-8 as
14 land wrongfully withheld by the United States, either in this case or
15 perhaps in a related case.
16

17 c. Federal Defendants anticipate filing the following motions:

18 (i) Renewing their motion for ejectment and trespass and damages
19 against Plaintiffs.
20

21 (ii) For an order dismissing trust landowners as unnecessary parties.
22

23 (iii) For an order dismissing some or all of the remaining claims and
24 cross-claims against Federal Defendants and the trust landowners.
25

1 (iv) For an order dismissing Wapato Heritage's counterclaims.

2 d. Colville Tribes is considering filing a motion to dismiss for lack of
3 subject matter jurisdiction as to the Colville Tribes.
4

5 4. Plaintiffs and Defendant Wapato Heritage anticipate that the Chelan
6 County Superior Court decision disinheriting Bill Evans' daughter, Sandra Evans,
7 from her interest in MA-10, may impact issues in this case because the disinheritance
8 may affect the Colville Tribe's remainder interest in MA-8 and MA-10. The Federal
9 Defendants and the Colville Tribes do not believe the State Court action has any
10 impact on this current litigation and any remaining issues.
11

12 5. The parties discussed developing a discovery plan but recommend that
13 one not be established until the Court decides the motions which will be filed
14 regarding the trust status of MA-8, certain jurisdictional issues, the effect of Judge
15 Whaley's decision in *Wapato Heritage LLC v. U.S.*, and the renewed trespass motion.
16 It is anticipated these motions will be filed in October 2011, with oral argument, if any,
17 to occur sometime between February and March 2012.
18

19 6. The parties will continue to explore the possibility of just, efficient and
20 economical determination of the case as discovery progresses.
21
22

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CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system:

Party	Attorney	Email
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Confederated Tribes of the Colville Reservation	Timothy W. Woolsey Dana Cleveland	timothy.woolsey@colvilletribes.com dana.cleveland@colvilletribes.com
United States of America; United States Department of The Interior; Bureau of Indian Affairs	Pamela Jean DeRusha	USAWAE.PDeRushaECF@usdoj.gov
The Mill Bay Members Association, Inc.	Franklin L. Smith	Frank@Flyonsmith.com
Paul Wapato, Gary Reyes, and Fran Reyes	Joseph C. Finley	jos.finley@yahoo.com

Notice of this filing is being sent this date via United States Postal Service First Class Mail to the parties below at the addresses indicated below.

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DATED at Wenatchee, Washington this 29th day of July, 2011.

s/KRISTIN M. FERRERA

WSBA No. 40508

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JOINT CERTIFICATION OF STATUS

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