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IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

CITY OF SNOQUALMIE, a municipal corporation,

Petitioner,

vs.

KING COUNTY, a Washington municipal corporation; KING COUNTY EXECUTIVE DOW CONSTANTINE, an individual, in his official capacity; KING COUNTY ASSESSOR LLOYD HARA, an individual, in his official capacity; and THE STATE OF WASHINGTON, by and through the DEPARTMENT OF REVENUE;

Respondents.

NO.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND FOR VIOLATION OF THE PUBLIC RECORDS ACT

Plaintiffs City of Snoqualmie hereby complains and states as follows:

I. PARTIES

1.1. The City of Snoqualmie is a Washington municipal corporation. Two federally-recognized Indian Tribes, the Muckleshoot Indian Tribe and the Snoqualmie Indian Tribe, own property located within the corporate boundaries of the City.

1.2. King County is a Washington municipal corporation operating as a charter county under Title 36 RCW.

1.3. Defendant Dow Constantine is the elected Executive of King County,

1 Washington.

2 1.4. Defendant Lloyd Hara is the elected Assessor of King County, Washington.  
3 Defendant Hara exercises authority pursuant to Chapter 36.21 RCW.

4 1.5. Defendant Department of Revenue is an executive branch agency of the State of  
5 Washington, organized and operating pursuant to RCW 43.17.010 and Chapter 82.01 RCW.

6 II. JURISDICTION AND VENUE

7 2.1 This Court has jurisdiction pursuant to RCW and 2.08.010 and Chapters 7.24 and  
8 7.40 RCW.

9 2.2 Venue is proper in this Court pursuant to: (a) RCW 4.12.020(2), because  
10 Defendants Constantine and Hara do business in King County, Washington and this action  
11 concerns actions performed by them by virtue of their offices; (b) RCW 36.01.050, because it  
12 involves an action against King County; and (c) RCW 4.92.010, because plaintiff has its principal  
13 place of business in King County, Washington, and property that is the subject of this action is  
14 located in King County.  
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16 III. FACTS

17 3.1. Plaintiff City of Snoqualmie is a general purpose municipal corporation operating  
18 pursuant to Chapter 35A RCW. The City directly provides police, fire, emergency medical  
19 transport (“EMT”), water, sewer, stormwater, parks, planning, public works, roads and streets,  
20 and other general purpose municipal services. The City also provides by contract municipal  
21 court, municipal prosecution and public defense services; human services (food bank and  
22 community center) and solid waste collection. The primary sources of municipal revenue to pay  
23 for these services (other than utility services) are property tax and sales tax revenues. By way of  
24 example, in the years 2013 and 2014, nearly 50% of the City of Snoqualmie’s approximately \$11  
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1 million general fund budget was funded by property tax revenues.

2 3.2. The City of Snoqualmie is authorized to impose a property tax pursuant to RCW  
3 35A.84.010 and the statutes enumerated therein. Annually, the Snoqualmie City Council adopts  
4 an ordinance levying the regular property tax, pursuant to Chapter 84.52 RCW. By law, the  
5 City's regular property tax levy amount may generally be increased annually, but only to an  
6 amount strictly limited by statute. The limit on the City's property tax levy is calculated by  
7 multiplying a "limit factor" by the amount of regular property taxes levied in the highest of the  
8 three preceding years, plus an additional dollar amount from new construction, improvements to  
9 property, and any increase in the assessed value of state-assessed for the preceding year. Pursuant  
10 to RCW 84.55.005(2)(c), the "limit factor" for the City of Snoqualmie is the lesser of one hundred  
11 one percent or one hundred percent plus inflation, with "inflation" statutorily-defined according  
12 to the implicit price deflator. The effect of these statutory limitations, generally summarized, is  
13 that the amount of the City's regular property tax levy may not increase by more than 1% plus  
14 increases from new construction and property improvements. Once taxes are levied, the City  
15 receives its pro rata share of the property tax collected by the county treasurer pursuant to RCW  
16 84.56.230.  
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18 3.3. Pursuant to RCW 84.40.010, all real property within the State that is subject to  
19 taxation must be listed and assessed every year, based on its value on the first day of January of  
20 each year. That portion of a property's assessed valuation attributable to new improvements  
21 whose value was not part of the previous year's assessment is treated as "new construction." The  
22 County Assessor derives a tax "rate" for existing developed property as well as "new  
23 construction" by dividing the City's regular property tax levy amount in a given year by the total  
24 assessed valuation of property within the City, and then extending that amount to the tax roll for  
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1 each property, per RCW 84.52.080(1). For purposes of computation of the City's total levy  
2 amount, the dollar amount of new property tax attributable to "new construction" within the City  
3 of Snoqualmie is added to the projected 1% regular property tax increase available for the City  
4 to levy. If property on which new construction is built is exempt from taxation, however, the  
5 City's regular property tax levy amount is not increased by any tax attributable to that new  
6 construction. The City loses that amount of property tax not only in the first year after the new  
7 construction is built, but in each successive year, because the base levy amount against which the  
8 1% "limit factor" is multiplied is lower than it would otherwise be if the value of new construction  
9 is added.

10 3.4. Pursuant to RCW 84.36.010, prior to 2014 the property within the City of  
11 Snoqualmie that was owned by a foreign national government was exempt from the requirement  
12 to pay regular property tax only if the property was used by the foreign national government used  
13 exclusively as an office or residence for a consul or other official representative of the foreign  
14 national government, and if the consul or other official representative is a citizen of that foreign  
15 nation. Similarly, pursuant to RCW 84.36.010, prior to 2014 all property within the City of  
16 Snoqualmie that was owned by a federally recognized Indian tribe that was not otherwise exempt  
17 from taxation as Indian reservation or federal trust land was nevertheless exempt from the  
18 requirement to pay regular property tax only if the property was owned exclusively by the  
19 federally recognized Indian tribe and was used exclusively for essential government services,  
20 defined to include "services such as tribal administration, public facilities, fire, police, public  
21 health, education, sewer, water, environmental and land use, transportation, and utility services."  
22 In other words, property owned by foreign governments and Indian tribes was exempt from  
23 property taxes only if the property was used for governmental purposes.  
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1           3.5.    In 2014, the Washington State Legislature and Governor Inslee signed into law  
2 House Bill 1287. According to both the House and Senate Bill Reports, the law’s purpose was  
3 to subject “federally recognized Indian tribes to the same conditions as state and local  
4 governments for property owned exclusively by the tribe.” HB 1287 went much further,  
5 however. Sections 1(1) and (2) of the bill state that its purpose is to grant a “tax preference”  
6 “intended to create jobs and improve the economic health of tribal communities.” To accomplish  
7 this broader purpose, Section 5 of the bill amends RCW 84.36.010 to provide Indian tribes a “tax  
8 preference,” by exempting from the state’s property tax “all property belonging exclusively to  
9 any federally recognized Indian tribe, if (a) the tribe is located in the state, and (b) the property is  
10 used exclusively for essential government services . . . .” In addition, HB 1287 expanded RCW  
11 84.36.010(2)(b)’s pre-existing definition of “essential government services” to include not just  
12 “tribal administration, public facilities, fire, police, [and] public health,” but also “economic  
13 development” defined broadly to include “commercial activities” such as “those that facilitate the  
14 creation or retention of businesses or jobs, or that improve the standard of living or economic  
15 health of tribal communities.” Rather than merely subjecting tribes to “the same conditions as  
16 state and local governments,” HB 1287 provides a substantial economic windfall to Indian tribes.  
17 That is because Washington State and its municipal governments are with limited exceptions not  
18 statutorily authorized to engage in general economic development or commercial activities, and  
19 other non-tribal entities and individuals that are authorized to engage in economic development  
20 and commercial activities are required to pay property tax.

22           3.6.    HB 1287 has a significant adverse effect on the City of Snoqualmie and its non-  
23 tribal taxpayers. The Muckleshoot Indian Tribe is the owner of the Salish Lodge at Snoqualmie  
24 Falls. In 2014, the Salish Lodge will generate approximately \$93,500 in City property tax  
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1 revenues – an amount equal to 1.6% of the City’s total 2014 property tax levy (\$5,662,327).  
2 Because the City’s regular property tax is statutorily-required to be levied by a dollar amount, the  
3 effect of HB 1287’s tribal property tax exemption is to shift the dollar amount of the existing  
4 Salish Lodge property tax obligation, (\$93,500 in 2014, and more in succeeding years) to other  
5 property taxpayers, resulting in an approximately \$20/year property tax increase for the average  
6 home in Snoqualmie just for the amount of the Salish’s property tax typically paid to the City.  
7 When the Salish Lodge’s entire property tax obligation (payable to all taxing districts) is shifted  
8 to other taxpayers, the effect is approximately \$30/year or more in additional property taxes for  
9 the average home in Snoqualmie.

10 3.7. The other effect of a property tax exemption for the Salish Lodge is that it drives  
11 up the City’s effective property tax levy rate. The property tax levy rate for 2014 in Snoqualmie  
12 is \$2.98/\$1,000. The maximum levy rate for the City of Snoqualmie set by RCW 27.12.390 and  
13 RCW 84.52.043 is \$3.10/\$1,000 if the City’s levy rate is viewed in isolation, and \$5.90/\$1,000  
14 when the City’s levy rate is considered together with the levy rates of the county, road districts,  
15 cities, towns, port districts, public utility districts, metropolitan park districts, flood control  
16 districts, fire protection districts, and other junior taxing districts. Increasing the levy rate  
17 decreases the City’s available property tax levy capacity, because exempting the Salish Lodge  
18 and/or other tribally-owned property spreads those properties’ property tax assessments over  
19 other properties, thereby increasing the tax rate per thousand dollars of assessed value further  
20 towards the \$3.10/\$1,000 and \$5.90/\$1,000 maximums imposed by RCW 27.12.390 and  
21 84.52.043.  
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23 3.8. In addition to the existing Salish Lodge at Snoqualmie Falls, the Muckleshoot  
24 Tribe also owns 60 acres immediately north of the Falls, and has certain entitlements via a  
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1 development agreement for a new hotel/conference center and 175 new single-family homes. If  
2 not exempt from the property tax under the City's 2014 regular property tax levy, the proposed  
3 new hotel and residential expansion of the Salish Lodge would generate approximately \$428,000  
4 in new construction property tax. The 175 new homes, if valued at \$340,000 each, would yield  
5 \$60 million in assessed value and an additional \$174,000 per year in property taxes to the City,  
6 for a total of \$602,000 ( $\$428,000 + \$174,000 = \$602,000$ ). This \$602,000 in new property value  
7 would also increase at a rate of 1% per year assuming the City annually increases its regular  
8 property tax levy by the statutory "limit factor." The new property tax revenue and future 1%  
9 increases attributable to the new hotel/conference center and new homes will *not* be shifted to  
10 other taxpayers, however, because under a companion bill (SSB 5444, codified as RCW  
11 84.40.175), publicly-owned real property that is exempt from taxation under RCW 84.36.010 is  
12 not required to be assessed, and Section 3 of HB 1287 redefined "publicly owned real or personal  
13 property" to include "real or personal property owned by a federally recognized Indian tribe in  
14 the state and exempt from tax under RCW 84.36.010." Therefore, the Muckleshoot Tribe's Salish  
15 Lodge expansion will never be assessed, and the potential property tax from it will simply never  
16 flow to the City. Instead, because of the property tax exemption granted by HB 1287, this new  
17 tax revenue would be permanently lost to the City, the Snoqualmie Valley School District, the  
18 Public Hospital District, and other governmental entities that depend on property taxes to fund  
19 their governmental operations.  
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21 3.9. While exempting tribally-owned property from payment of property taxes, HB  
22 1287 does require that private individuals and entities who hold leases of non-trust, tribally-  
23 owned property are subject to the requirement to pay leasehold excise tax. Section 2 of HB 1287  
24 contains the legislative finding that "eliminating the property tax on property owned exclusively  
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1 by federally recognized Indian tribes within the state requires that the leasehold excise tax also  
2 be applied to leasehold interests on tribally owned property.”

3 3.10. Some tribally-owned properties do not have any private leasehold interests in  
4 them, however. For example, on information and belief, the Muckleshoot Tribe has not granted  
5 any leasehold interest or other agreement granting possession and use of the Salish Lodge.  
6 Instead, the Muckleshoot Tribe owns the Salish Lodge in fee simple, and utilizes a management  
7 company (Columbia Hospitality) to provide professional services overseeing daily operation of  
8 the Lodge.

9 3.11. To offset municipal governments’ loss of property tax revenue from tribally-  
10 owned properties, Section 8 of HB 1287 does require that for properties located off of a  
11 reservation that are used exclusively for economic development, a tribe wishing to claim a  
12 property tax exemption must pay a “payment in lieu of tax,” or PILT. HB 1287 does not specify  
13 the rate or amount of that payment, however, instead purports to delegate the legal authority to  
14 determine the rate or amount to the tribe seeking the exemption, who must negotiate the rate in  
15 good faith with the county in which the property is located. If the tribe and county cannot agree,  
16 HB 1287 purports to delegate the authority to set the PILT to the Washington State Department  
17 of Revenue (“DOR”), an executive-branch administrative agency. HB 1287 contains no  
18 standards or directions by which the tribe, county or DOR are to determine the PILT rate or  
19 amount, except the vague limitation in Section 8, subsection (2) that the PILT amount may not  
20 exceed the amount of leasehold excise tax that would otherwise be owed if there were a leasehold  
21 interest in the property. This statement provides no substantive direction, however, because the  
22 amount of leasehold excise tax that is due is 12.84% of the amount of “taxable rent,” per RCW  
23 82.29A.030. “Taxable rent” is defined under RCW 82.29A.020 as “contract rent,” where the  
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1 terms of the lease or agreement are established by competitive bidding, negotiated in accordance  
2 with statutory requirements, or otherwise set under such circumstances demonstrating that the  
3 amount set was the maximum attainable by the lessor. Where there is no leasehold interest in a  
4 tribally-owned property, there is no "taxable rent" as that term is defined in RCW 82.29A.020,  
5 and therefore the amount that would be owed by a leasehold interest is zero. Even if a comparable  
6 amount of taxable rent could somehow be ascertained, HB 1287 nevertheless lacks any guidance  
7 concerning how the PILT rate or amount is to be established, given that the bill's analogy to the  
8 amount of leasehold excise tax functions only as a "ceiling" or maximum, rather than substantive  
9 direction as to amount or rate below that "ceiling" is legally appropriate. As DOR itself has  
10 stated, in its "Frequently Asked Questions" guidance document, "The tribe that owns the property  
11 and the county in which the property is located must determine the PILT amount through good  
12 faith negotiations. *There is no restriction on what method to use when the amount is set by the*  
13 *parties through good faith negotiations. . . . The new law (EHB 1287, Section 8) provides only*  
14 *one limitation on the amount of PILT that can be established; that is, the PILT amount may not*  
15 *exceed the leasehold excise tax amount that would otherwise be owed by a taxable leasehold*  
16 *interest in the property."* A copy of DOR's "Frequently Asked Questions; Implementation of  
17 ESHB 1287" is attached hereto as Exhibit A and incorporated herein by reference.

19 3.12. In August and September, 2014, representatives of the King County Executive's  
20 office entered into negotiations with representatives of the Muckleshoot Tribe concerning the  
21 amount of a PILT to be paid by the Muckleshoot Tribe for the Salish Lodge located in  
22 Snoqualmie. There is no lease between the Muckleshoot Tribe and any third party for the Salish  
23 Lodge property. Therefore, King County and Muckleshoot Tribe representatives determined the  
24 amount of PILT owed expressed as a percentage of the property tax currently paid on the property.  
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1 On October 12, 2014, Defendant Constantine decided to agree on behalf of Defendant King  
2 County that the PILT for the Salish Lodge should be 25% of its previously-owed regular property  
3 tax amount, despite the absence of any lease or leasehold on the Salish Lodge property. A copy  
4 of the October 12, 2014 King County – Muckleshoot Tribe PILT agreement is attached hereto as  
5 Exhibit B and incorporated herein by reference.

6 3.13. If the King County / Muckleshoot agreement on the PILT is applied to the Salish  
7 Lodge's 2014 property tax bill, the City of Snoqualmie would receive only approximately  
8 \$68,500, based on 2014 valuations, which would be a loss of approximately \$25,000 from the  
9 property tax revenue the City would otherwise have received from the Salish Lodge in 2014. The  
10 amount of loss would increase annually by at least 1%, compounded, which is the amount that  
11 the City's regular property tax levy is increased annually. And, future losses could be even  
12 greater than \$25,000 compounded by 1% annually, if the Salish Lodge's assessed value increases  
13 more on an annual basis than other surrounding properties.  
14

15 3.14. On information and belief, on or about October 1, 2014, the Muckleshoot Tribe  
16 applied to the Department of Revenue for a property tax exemption for the Salish Lodge property.  
17 The City has submitted a request pursuant to Chapter 42.56 RCW to DOR for a copy of the  
18 Muckleshoot Tribe's property tax application for the Salish Lodge, but DOR has improperly  
19 withheld the application from the City on the grounds that the application involves so-called  
20 "sensitive information."

#### 21 IV. CAUSES OF ACTION

##### 22 4.1. First Cause of Action: Declaratory Judgment.

23 4.1.1 Chapter 7.24 RCW authorizes a superior court to declare the rights, status and  
24 other legal relations, and to determine any question of the construction or validity of a statute  
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1 when any person claims an interest therein.

2 4.1.2. Pursuant to RCW 7.24.130, the City of Snoqualmie is a “person” within the  
3 meaning of Chapter 7.24 RCW.

4 4.1.3. There is no plain, speedy or adequate relief available at law by which the City of  
5 Snoqualmie may obtain a determination of the validity of HB 1287.

6 4.1.4. This Court is authorized pursuant to Chapter 7.24 RCW to issue a determination  
7 concerning the constitutionality of HB 1287.

8 4.1.5. The payment in lieu of tax (“PILT”) imposed by Section 8 of HB 1287 is a tax,  
9 within the meaning of Washington law, imposed upon property owned exclusively by a federally  
10 recognized Indian tribe that is used for economic development purposes.

11 4.1.6. Pursuant to Article VII, Sections 1, 2 and 9, the Washington Constitution vests the  
12 power to impose a tax solely in the State Legislature, municipal corporations and other duly  
13 authorized taxing districts.

14 4.1.7 HB 1287 violates the Washington Constitution’s taxing provisions for several  
15 reasons, including but not limited to the following:

16 4.1.7.1. By delegating the authority to determine the PILT rate and/or amount to  
17 federally-recognized Indian tribes, who are “sovereign nations” and/or “domestic dependent  
18 nations” for purposes of federal law, HB 1287 violates Article VII, Section 1 (“The power of  
19 taxation shall never be suspended, surrendered or contracted away.”).

20 4.1.7.2. By delegating the authority to determine the PILT rate to the Department  
21 of Revenue in the absence of agreement between a federally-recognized Indian tribe and a county,  
22 HB 1287 violates Article VII, Sections 1, 2 and 9, because the Department of Revenue is an  
23 administrative, executive branch agency that lacks authority to determine and impose a tax.  
24  
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1                   4.1.7.3. By allowing the PILT rate/amount to vary depending upon the  
2 rate/amount determined via individual tribe-county negotiations or by the Department of Revenue  
3 on a case-by-case basis, HB 1287 violates the uniformity requirements in Article VII, Section 1  
4 (“All taxes shall be uniform upon the same class of property within the territorial limits of the  
5 authority levying the tax”) and/or Section 9 (“all municipal corporations may be vested with  
6 authority to assess and collect taxes and such taxes shall be uniform in respect to persons and  
7 property within the jurisdiction of the body levying the same.”).

8                   4.1.7.4. By allowing a property tax exemption for properties owned by a  
9 federally-recognized Indian tribe prior to March 1, 2014, but not for properties owned by said  
10 tribes after March 1, 2014, HB 1287 violates the uniformity requirements in Article VII, Section  
11 1 (“All taxes shall be uniform upon the same class of property within the territorial limits of the  
12 authority levying the tax”) and/or Section 9 (“all municipal corporations may be vested with  
13 authority to assess and collect taxes and such taxes shall be uniform in respect to persons and  
14 property within the jurisdiction of the body levying the same.”).

15                   4.1.8. Even if delegations of taxing authority set forth in Section 8 of HB 1287 were  
16 otherwise legally permissible, any lawful delegation of taxing power must be accompanied by  
17 non-arbitrary administrative safeguards. HB 1287 lacks such required safeguards, because it  
18 defers the PILT rate/amount to a tribe-county agreement, or to a determination by the DOR,  
19 without reference in either case to any non-arbitrary administrative safeguards, regardless of how  
20 low of a tax rate or amount that might be determined. As DOR itself has stated, “*There is no*  
21 *restriction on what method to use* when the [PILT] amount is set by the parties through good faith  
22 negotiations.”  
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1 4.1.9. Plaintiffs are entitled to a declaratory judgment in their favor and against  
2 Defendants, declaring that HB 1287 is unconstitutional and unlawful for each of the reasons, or  
3 any of them, stated in paragraphs 4.1.1 – 4.1.8 above.

4 4.2. Second Cause of Action: Injunctive Relief.

5 4.2.1. Chapter 7.40 RCW authorizes the superior court to enter an injunction restraining  
6 the commission or continuance of any act which, if continued during the litigation, would produce  
7 great injury to the plaintiff; would violate the plaintiff's rights; or as part of any final order or  
8 judgment.

9 4.2.2. While RCW 7.40.080 requires that, as a condition of the entry of an injunction,  
10 the party seeking the same must post a bond conditioned to pay all damages and costs which may  
11 accrue by reason of the injunction or restraining order, RCW 4.96.050 states that "No bond is  
12 required of any local governmental entity for any purpose in any case in any of the courts of the  
13 state of Washington and all local governmental entities shall be, on proper showing, entitled to  
14 any orders, injunctions, and writs of whatever nature without bond, notwithstanding the  
15 provisions of any existing statute requiring that bonds be furnished by private parties."  
16

17 4.2.3. The City of Snoqualmie is entitled to a temporary and/or preliminary injunction  
18 prior to trial and a permanent injunction as part of any final order or judgment, without any  
19 requirement to post a bond or other security, as follows:

20 4.2.3.1 The City is entitled to a temporary and/or preliminary injunction prior to  
21 trial against Defendants Constantine and Hara, restraining them from: (a) entering into,  
22 implementing or enforcing any agreement on behalf of King County with a federally-recognized  
23 Indian tribe and determining the amount of any payment in lieu of tax to be paid under HB 1287  
24 for property owned by said tribe within the City of Snoqualmie; and/or (b) granting, confirming,  
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1 recognizing or certifying any property tax exemption under RCW 84.36.010 for any property  
2 owned by a federally-recognized Indian tribe within the City of Snoqualmie and used for  
3 economic development purposes where such property is not located on the tribe's reservation  
4 and/or is not owned by the Bureau of Indian Affairs and held in trust for the tribe.

5 4.2.3.2. The City is entitled to a temporary and/or preliminary injunction prior to  
6 trial against Defendant Washington State Department of Revenue, restraining it from: (a)  
7 determining the rate of any payment in lieu of tax to be imposed pursuant to HB 1287 upon any  
8 property owned by a federally-recognized Indian tribe and located within the City of Snoqualmie;  
9 and/or (b) approving any application for a property tax revenue under Section 9 of HB 1287 or  
10 otherwise granting, confirming, or certifying any property tax exemption under RCW 84.36.010  
11 for any property owned by a federally-recognized Indian tribe within the City of Snoqualmie and  
12 used for economic development purposes, where such property is not located on the tribe's  
13 reservation and/or is not owned by the Bureau of Indian Affairs and held in trust for the tribe.  
14

15 4.2.3.3. Following a hearing or trial on the merits, the City is entitled to a  
16 permanent injunction against Defendants Constantine and Hara, restraining them from: (a)  
17 entering into any agreement with a federally-recognized Indian tribe and determining the amount  
18 of any payment in lieu of tax to be paid under HB 1287 for property owned by said tribe within  
19 the City of Snoqualmie; and/or (b) granting, confirming, recognizing or certifying any property  
20 tax exemption under RCW 84.36.010 for any property owned by a federally-recognized Indian  
21 tribe within the City of Snoqualmie and used for economic development purposes, where such  
22 property is not located on the tribe's reservation and/or is not owned by the Bureau of Indian  
23 Affairs and held in trust for the tribe.  
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1                   4.2.3.4. Following a hearing or trial on the merits, the City is entitled to a  
2 permanent injunction against Defendant Washington State Department of Revenue, restraining it  
3 from: (a) determining the rate of any payment in lieu of tax to be imposed pursuant to HB 1287  
4 upon any property owned by a federally-recognized Indian tribe and located within the City of  
5 Snoqualmie; and/or (b) approving any application for a property tax revenue under Section 9 of  
6 HB 1287 or otherwise granting, confirming, or certifying any property tax exemption under RCW  
7 84.36.010 for any property owned by a federally-recognized Indian tribe within the City of  
8 Snoqualmie and used for economic development purposes, where such property is not located on  
9 the tribe's reservation and/or is not owned by the Bureau of Indian Affairs and held in trust for  
10 the tribe.

11                   4.3.    Third Cause of Action: Violation of the Public Records Act.

12                   4.3.1. RCW 42.56.550 authorizes any person who believes an agency has not provided  
13 a reasonable estimate for the time necessary to produce public records, or who has been denied  
14 an opportunity to inspect or copy a public record by a public agency, to commence an action in  
15 superior court to compel the agency to demonstrate that the time estimated was reasonable and  
16 to show cause why its refusal to permit inspection or copying of the record was in accordance  
17 with a statute that exempts or prohibits disclosure in whole or in part of specific information or  
18 records.  
19

20                   4.3.2. The City of Snoqualmie submitted a request for public records to the Washington  
21 Department of Revenue for, inter alia, a copy of the Muckleshoot Tribe's application for a  
22 property tax exemption for economic development activity on the Salish Lodge property. The  
23 City made clear to DOR's public records staff that the Department should produce records in  
24 installments and that the City desired a copy of the Salish Lodge property application as soon as  
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1 possible. Department staff informed the City that they had provided a copy of the application to  
2 DOR's records staff for production to the City early during the week of October 20. DOR public  
3 records staff declined to make the record available, choosing instead to withhold it until  
4 November 8, 2014 because they deemed it to involve "sensitive information." DOR's public  
5 records staff also provided a wholly unjustified and unreasonable estimate ("several months,  
6 possible into February of 2015") for production of any responsive records sought by another  
7 category of the City's request.

8 4.3.3. The City is entitled to an order pursuant to RCW 42.56.550 compelling immediate  
9 disclosure of the Muckleshoot Tribe property tax exemption application for the Salish Lodge  
10 property, to penalties and attorneys' fees for the Department's wrongful withholding and  
11 provision of unreasonable estimates for production of the application and other records sought  
12 by the City's request.

13  
14 V. PRAYER FOR RELIEF

15 5.1. Plaintiffs restate and re-allege each of the allegations of Paragraphs 1.1 – 4.2.3  
16 above.

17 5.2. Plaintiffs respectfully request that the Court grant the following relief in favor of  
18 Plaintiffs and against Defendants, as follows:

19 5.2.1. A declaratory judgment declaring that HB 1287 is unconstitutional,  
20 unlawful, invalid and void, for the reasons (or any of them) stated in Paragraphs 4.1.7 and 4.1.8  
21 above;

22 5.2.2. A temporary and/or preliminary injunction prior to trial, and a permanent  
23 injunction as part of any final order or judgment in this matter, enjoining and restraining  
24 defendants as set forth in Paragraph 4.2.3 above;  
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5.2.3. As against defendant Washington Department of Revenue, an order pursuant to RCW 42.56.550 imposing penalties for an unreasonable estimate of time for production and/or wrongful withholding, and compelling disclosure of a copy of the Muckleshoot Tribe's property tax application for the Salish Lodge property;

5.2.4. An award of costs and, as allowed by applicable law including but not limited to RCW 42.56.550, reasonable expenses and attorneys' fees incurred in this action; and

5.2.5. Such other relief as this Court may deem just and equitable.

DATED this 27 day of October, 2014.

CITY OF SNOQUALMIE



Bob C. Sterbank, WSBA No. 19514  
City Attorney  
Attorney for City of Snoqualmie

EXHIBIT "A"

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*Frequently Asked Questions*

**Implementation of ESHB 1287: Subjecting federally recognized Indian tribes to the same conditions as state and local governments for property owned exclusively by the tribe**

Leasehold Excise Tax (LET)

**1. How are persons who rent or lease tribally owned exempt property impacted by the new law?**

- A. When the tribally owned real or personal property (parcel) is exempt from property tax, the parcel's occupant (the tribe's tenant or lessee) may be subject to leasehold excise tax (LET). The Department of Revenue (Department) will contact the tenant/lessee to determine their responsibility to pay the LET. Persons/lessees that would qualify for an exemption from property tax if they owned the property in fee may also qualify for an exemption from LET. When determining the amount of LET due, the tax rate of 0.1284 is applied to the contract rent amount. Tenants/lessees of tribally owned exempt property will report and pay LET directly to the Department.

For leased *exempt* economic development property owned by the tribe and located inside the reservation, non-Indian tenants/lessees may be subject to LET. If that property is located outside the reservation, tribe, tribal member and non-Indian tenants/lessees may be subject to LET.

For leased economic development property subject to property tax (*not exempt*), the lease is not subject to LET.

**2. Current contracts are based on the property being subject to property tax, can the contract rent amount be adjusted to specifically address the change in taxation?**

- A. Under WAC 458-29A-200, the amount of taxable rent is ordinarily the amount of contract rent paid by a lessee for a taxable leasehold interest. Subsection (6)(b) of this rule discusses the criteria that the Department considers to determine if a different taxable rent calculation should be established on the basis that the contract rent is below what a fair market rental value should be. Under subsection (6)(c) of the rule, the Department will not establish a taxable rent if one of the following four situations apply:
- (i) The leasehold interest has been established or renegotiated through competitive bidding;
  - (ii) The rent was set or renegotiated according to statutory requirements;
  - (iii) Public records demonstrate that the rent was the maximum attainable; or
  - (iv) A lease properly established or renegotiated in compliance with (6)(c)(i), (ii), or (iii) has been in effect for ten years or less without renegotiation.

In sum, the LET may be a factor when a tribal lessor negotiates or renegotiates an appropriate contract rent with a new or existing lessee.

**3. What are the options for remitting the LET for either the lessor or lessee?**

- A. The lessee is the taxpayer; however, the lessor and lessee may make arrangements for the lessor to remit the tax on behalf of the lessee. The Department will mail tax returns to the address the tenant provides as their mailing address, which may be an address in care of the lessor. However, the tax account will be established under the taxpayer's name and the responsibility for filing and paying the tax remains with the taxpayer. If you would like to discuss another option please contact the Department directly to discuss your proposal.

**Implementation of ESHB 1287: Subjecting federally recognized Indian tribes to the same conditions as state and local governments for property owned exclusively by the tribe**

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Payments in lieu of leasehold excise tax (PILT)

- 4. If a tribe's economic development property is exempt from property tax and there is no taxable leasehold interest, how does the tribal owner compensate local taxing districts for local services?**
- A. If the exempt tribally owned economic development property is located off the reservation, a payment in lieu of leasehold excise tax (PILT) is made by the tribal owner to the county in which the property is located. The tribe pays the PILT directly to the county. The county distributes the PILT to the cities and other local taxing districts in the same proportion that each city or local taxing district would have shared if a leasehold excise tax had been levied.
- 5. Who calculates the PILT amount?**
- A. The tribe that owns the property and the county in which the property is located must determine the PILT amount through good faith negotiations. There is no restriction on what method to use when the amount is set by the parties through good faith negotiations.
- 6. Who do I contact at the county to find out more information about the PILT negotiation process?**
- A. Because each county is likely to implement its own PILT negotiation process, the Washington State Association of Counties (WSAC) recommends initially contacting the Chair of the County Commission/Council or the County Clerks of the Board-Council to find out more information.

A link to WSAC's searchable member directory is provided below to assist the tribes with contact information: <http://wacounties.org/wsac/memberdirectory.htm>

- 7. What happens if a tribe and a county cannot agree on a PILT amount?**
- A. If a tribe and a county are unable to agree on a PILT amount through good faith negotiations, they may request the Department's Special Programs Division determine the PILT amount. Requests must be received by August 31<sup>st</sup> in the year the property tax exemption application is made:

State of Washington  
Department of Revenue  
Special Programs Division, Leasehold Excise Tax  
PO Box 47477  
Olympia WA 98504-7477

Call 360-534-1503, option 4 with any questions.

- 8. What information must be included in the request to the Department to determine the PILT amount?**
- A. The following information must be included in the request to the Department:
- Contact information for the tribe and county—names, titles, addresses, phone numbers, fax numbers, and email addresses.
    - These contacts must be the individuals who have been authorized to negotiate the PILT and have signing authority for the agreement.
  - A copy of each parcel's most recent property tax statement.
  - A spreadsheet that includes the following for each parcel:

**Implementation of ESHB 1287: Subjecting federally recognized Indian tribes to the same conditions as state and local governments for property owned exclusively by the tribe**

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- The parcel number, location code, and tax code area (assigned by the county assessor);
  - The final PILT amounts proposed by the tribe and county, respectively;
  - The contract rent amount for the property if the tribe were to lease it to an "arms length" tenant;
  - The county's estimated fair market lease value (by month or year) for the property as if it were leased;
  - A statement from the county and tribe on the basis for the proposed PILT amounts and other values;
  - A full description of the property, including an estimate of revenues, expenses, or other factual information that the parties believe are relevant to establishing a "taxable rent" calculation; and
  - If a business that is registered with the Department is located on the property, provide the business name and tax reporting number.
- A list of all agreed upon terms of a PILT agreement such as:
    - Frequency of payments
    - To whom payments be made payable;
    - Where to send the payments;
    - Length of time the PILT agreement will be in effect;
    - Any other details as necessary.

**9. What will the Department consider when asked to determine the PILT amount?**

- A. The new law (EHB 1287, Section 8) provides only one limitation on the amount of PILT that can be established; that is, the PILT amount may not exceed the leasehold excise tax amount that would otherwise be owed by a taxable leasehold interest in the property.

When calculating the maximum PILT threshold, the following information may be useful:

**The last property tax assessment** amounts for the included parcels.

**Leasehold excise tax (LET):** The amount of LET due is calculated by multiplying the tax rate by the annual amount of contract rent. If the contract rent is not a market value, a taxable rent calculation is established and used in the calculation of the tax due.

**Leasehold excise tax rates:** The tax rate imposed statewide for leasehold excise tax is 12.84% of the taxable rent. The local portion of the leasehold excise tax is 6.0%. Because the PILT is paid directly to the county for distributions to the county, cities, and other local taxing districts in the same proportion that each local taxing district would have shared if a leasehold excise tax had been levied, the Department has determined that only the local portion of the tax rate (6.0%) applies to calculate the maximum threshold of a PILT amount.

**Determining a taxable rent:** When the Department establishes a taxable rent for the LET, it uses the guidelines adopted in WAC 458-29A-200(6)(a):

- (i) Consideration shall be given to rent being paid to other lessors by lessees of similar property for similar purposes over similar periods of time; or
- (ii) Consideration shall be given to what would be considered a fair rate of return on the market value of the property leased less reasonable deductions for any restrictions on use, special operating requirements or provisions for concurrent use by the lessor, another person or the general public.

**10. When distributing PILT to the cities and other local taxing districts, how will the county determine amounts to be distributed when it is based on leasehold excise tax distribution?**

**Implementation of ESHB 1287: Subjecting federally recognized Indian tribes to the same conditions as state and local governments for property owned exclusively by the tribe**

- A. The county treasurer must distribute all such money collected solely to the local taxing districts (Tax Code Areas or TCA's), including cities, in the same proportion that each local taxing district would have shared if a leasehold excise tax had been levied.

To find cities that impose a LET, see the back of the leasehold excise tax return located at DOR's website: [http://dor.wa.gov/content/FindTaxesAndRates/OtherTaxes/tax\\_leasehold.aspx](http://dor.wa.gov/content/FindTaxesAndRates/OtherTaxes/tax_leasehold.aspx). Tax code areas are assigned by to each parcel by the county assessor's office.

**11. Is there a simple way to determine how tribally owned fee land is taxed or not taxed?**

- A. Yes, the following matrix outlines the treatment of tribal property owned in fee on or off a reservation.

<b>Tribal Property Owned in Fee</b>	<b>Inside Reservation</b>	<b>Outside Reservation</b>
<b>Non-Economic Development Property</b> ★ <i>Property owned by the Tribe and used to provide an essential government service <u>other than</u> economic development.</i>	Eligible for Exemption	Eligible for Exemption
<b>Economic Development Property</b> ★ <i>Property owned by the tribe on or before March 1, 2014 and <u>occupied by the Tribe</u> for economic development purposes.</i>	Eligible for Exemption * Annual Renewal Required	Eligible for Exemption *PILT agreement is a requirement for exemption *Annual Renewal Required
<b>Economic Development Property</b> ★ <i>Property owned by the Tribe on or before March 1, 2014 and <u>occupied by a tenant</u> for economic development purposes.</i>	Eligible for Exemption *Upon exemption, non-tribal tenant is subject to LET *Annual Renewal Required	Eligible for Exemption *Upon exemption, both tribal and non-tribal tenants are subject to LET *Annual Renewal Required
<b>Economic Development Property</b> ★ <i>Property acquired by the Tribe after March 1, 2014 and occupied for economic development purposes</i>	Not Eligible for Exemption	Not Eligible for Exemption

**Department of Revenue Special Programs for more information:  
360-534-1503**

For information on Property tax exemptions for tribal property used for essential government services, contact the Property Tax Division at (360) 534-1400.

For more information about leasehold excise tax applicability to leasehold interests of tribally owned property, contact the Special Programs Division at (360) 534-1503, Option 4.

EXHIBIT "B"

**MEMORANDUM OF UNDERSTANDING  
BY AND BETWEEN  
KING COUNTY  
and  
THE MUCKLESHOOT INDIAN TRIBE**

This Memorandum of Understanding (hereinafter "MOU") is entered into by and between King County (the "County") and the Muckleshoot Tribe (the "Tribe");

In consideration of the recitals set forth below and the mutual promises and covenants contained in this Agreement, the County and the Tribe (collectively "the Parties") agree as follows:

**Part 1. RECITALS**

1.1 This MOU is the outcome of a good faith negotiation between the Parties for the purpose of determining a 2015 payment in lieu of leasehold excise tax (hereinafter "PILT") for the Salish Lodge;

1.2 The 2014 Washington State Legislature amended RCW 84.36.010 to recognize "economic development" as an essential government services for the purpose of qualifying tribally owned property for property tax-exempt status. To qualify property used for economic development, a tribe must have owned the property prior to March 1, 2014;

1.3 The Tribe has expressed an interest in applying for a property tax exemption for the Salish Lodge property, effective in 2015. The Tribe is the sole member of Salish Lodge LLC, the owner of the Salish Lodge;

1.4 Before the Tribe may apply to the State Department of Revenue (DOR) for a property tax exemption for tax year 2015, under the revised law, the County and the Tribe are required to enter into good faith negotiations to determine a payment in lieu of leasehold excise tax (PILT) ;and

1.5. The Salish Lodge property is currently identified by real property tax account number 302408-9064-02 and personal property tax account number 4200-03048352.

**PART 2. AGREEMENT**

2.1. King County and the Tribe have agreed on a methodology and amount of the PILT for 2015. The amount of the PILT will be 25 percent of the 2014 property taxes billed for the Salish Lodge, including both real and personal property.

2.2. The table below sets forth the calculation for the 2015 PILT for the Salish Lodge.

Salish Lodge LLC	
2014 Real Property Tax Billed (account # 302408-9064-02)	\$393,948
2014 Personal Property Tax Billed (account # 4200-03048352)	\$18,578
Total 2014 Property Tax Billed	\$412,526
2015 PILT (25% of 2014 property tax billed)	\$103,132



2.3 This MOU is effective September 5, 2014 and is intended to be a one year PILT agreement for the Salish Lodge starting and ending in 2015.

2.4 The Parties agree that any future PILT agreements will be negotiated separately from this MOU.

2.5 If the DOR approves the Tribe's 2015 application for property tax exemption, the Tribe agrees to pay the full amount of the 2015 PILT to King County by April 30, 2015. Payment shall be made to King County Treasury, 500 Fifth Avenue, Rm. 600, Seattle, WA 98104.

2.6 Consistent with state law, the County will distribute the payment to the local taxing districts, including the City of Snoqualmie, in the same proportion that each district would have shared if a leasehold excise tax had been levied.

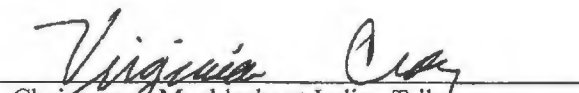
2.7 It is expressly understood and agreed by the Tribe and the County that the parties intend that this MOU to create a legally binding and enforceable obligation upon the part of both Parties.

2.8 Each signatory below warrants that they are lawfully authorized to sign this MOU on behalf of the County and Tribe, respectively.

AGREED to and Signed the date set forth below our signatures

  
King County Executive

10-12-14  
Date

  
Chairperson, Muckleshoot Indian Tribe

9-26-14  
Date



**MUCKLESHOOT INDIAN TRIBE**  
OFFICE OF THE TRIBAL ATTORNEY  
39015 - 172ND Avenue S.E. • Auburn, Washington 98092-9763  
Phone: (253) 939-3311 • FAX: (253) 876-3181



September 30, 2014

Diane Carlson  
King County Executive Office  
Chinook Building  
Suite 800  
401 5<sup>th</sup> Avenue  
Seattle, WA 98104

Re: Muckleshoot Tribe King County PILT MOU on Salish Lodge

Dear Diane,

Enclosed are two originals of a Memorandum of Understanding between King County and the Muckleshoot Indian Tribe concerning the Payment in Lieu of Taxes ("PILT") for 2015 property taxes for the Salish Lodge & Spa signed by Virginia Cross, Chairperson of the Tribe. Please have both originals signed and return one original to me. Thank you for your assistance on this.

Sincerely,

Robert L. Otsea, Jr.  
Chief Legal Counsel

Encs.