

1 states The Tribes have land use regulatory authority over all properties located within the
2 Reservation's boundaries. (*Id.*)¹ This regulatory ordinance appears as a special exception to
3 coverage on Homeowners' title. (*See* Dkt. Nos. 1 at 4, 13, 23, 33.) In addition, the Tulalip Tribal
4 Code contains a real estate excise tax provision that requires payment of 1% of the sale price of
5 any transfer of real property within the boundaries of the Tulalip Reservation. (Dkt. No. 1 at 4–
6 5.)² This excise tax is also listed as a special exception on Homeowners' title. (*See* Dkt. Nos. 5,
7 14, 23, 34.) Homeowners allege that the regulatory ordinance and real excise tax place a cloud
8 on their title and render it unmarketable. (Dkt. Nos. 1 at 4–5; 7 at 10.)

9 Homeowners ask the Court to: (1) declare The Tribes are without right to regulate or
10 levy tax on Homeowners' property; (2) permanently enjoin The Tribes from excising a tax
11 against Homeowners' property; and (3) quiet title to Homeowners' title free and clear of any
12 encumbrances arising from the regulatory ordinance or real estate excise tax. (Dkt. No. 1 at 5–6.)

13 **II. DISCUSSION**

14 The Tribes argue that Homeowners' claims should be dismissed for three reasons. First,
15 The Tribes assert the Court lacks subject matter jurisdiction because Homeowners are barred
16 from bringing the lawsuit under the doctrine of tribal sovereign immunity. (Dkt. No. 6 at 3.)
17 Second, it argues that Homeowners' claims are barred by res judicata because the Snohomish
18 County Superior Court previously dismissed the identical claims with prejudice. (*Id.*) Third, The
19 Tribes assert that Homeowners' claims do not represent an Article III case or controversy
20 because they are not ripe (*Id.*) As discussed below, the Court finds that Homeowners' claims are
21 unripe and therefore does not address the issues of tribal sovereign immunity and res judicata.

22 **A. The Rule 12(b)(1) Standard and Ripeness**

23 Under Federal Rule of Civil Procedure 12(b)(1), a complaint must be dismissed if the
24 court lacks subject matter jurisdiction. In reviewing a Rule 12(b)(1) motion, the Court assumes

25 ¹ Memorandum of Ordinance No. 9904090798, Snohomish County, Washington.

26 ² Tulalip Tribal Code, Chapter. 12.20, *et seq.* (Dkt. No. 1 at 5.)

1 all material allegations in the complaint are true. *Thornhill Publ'g Co. v. General Tel. Elec.*, 594
2 F.2d 730, 733 (9th Cir. 1979). The party asserting federal subject matter jurisdiction bears the
3 burden of proving its existence. *See Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377
4 (1994). Ripeness is properly raised on a Rule 12(b)(1) motion because it deals with the district
5 court's subject matter jurisdiction. *St. Clair v. City of Chico*, 880 F.2d 199, 201 (9th Cir.1989).

6 Article III of the Constitution, allows federal courts to hear only actual "cases" and
7 "controversies." *See Allen v. Wright*, 468 U.S. 737, 750 (1984). The ripeness doctrine derives
8 from the case and controversy requirement and allows district courts to dispose of matters that
9 are premature for review because the plaintiff's purported injury is too speculative and may
10 never occur. *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010)
11 (citation omitted). The question of whether a case is ripe requires courts "to evaluate both the
12 fitness of the issues for judicial decision and the hardship to the parties of withholding court
13 consideration." *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967).

14 **B. The Homeowners' Claims are not Ripe**

15 Homeowners' case is not fit for judicial determination and the parties would suffer no
16 immediate hardship from the Court withholding decision. The Tribes have not attempted to
17 enforce the regulatory ordinance or real estate tax against Homeowners. There is no evidence the
18 parties have attempted to adjudicate the dispute through The Tribes' court system or
19 administrative process. Homeowners ask the Court to interpret tribal law and declare, in the
20 abstract, that the ordinances do not apply to their property and cannot be enforced against them
21 in the future. (Dkt. No. 1 at 4.) District courts are cautioned not to resolve issues "involving
22 contingent future events that may or may not occur as anticipated, or indeed may not occur at
23 all." *Clinton v. Acequia, Inc.*, 94 F.3d 568, 572 (9th Cir.1996). Homeowners assert the
24 ordinances have rendered their title unmarketable, but that concept represents an injury
25 contingent on multiple future events: first, a real estate transaction, and second a contract that
26 would require marketable title in order to close the transaction. (Dkt. No. 7 at 10) (citing *Dave*

1 *Robbins Const., LLC v. First Am. Title Co.*, 249 P.3d 625, 627 (Wash. Ct. App. 2010)).

2 Homeowners have not alleged either event has occurred.

3 The Court perceives no hardship to the Homeowners from withholding a decision
4 because the facts do not demonstrate they would suffer immediate harm. Homeowners do not
5 allege that the ordinances have prevented them from developing or conveying their property.
6 They do not allege that there is a pending transaction, or even an anticipated future transaction,
7 that would implicate either of the ordinances. Regarding the excise tax, Homeowners allege “on
8 information and belief escrow companies are treating the claimed tax as an enforceable lien
9 requiring payment of the tax as a condition to closing transactions involving non-native fee
10 owned properties within the original boundaries of the Tulalip Reservation.” (Dkt. No. 1 at 5.)
11 But there is no allegation that Homeowners have plans to sell or convey their property or that an
12 escrow company has treated the tax as an enforceable lien on their property.

13 The Court will not issue a declaratory judgment because Homeowners’ complaint does
14 not demonstrate “that there is a substantial controversy, between parties having adverse legal
15 interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.”
16 *United States v. Braren*, 338 F.3d 971, 975 (9th Cir. 2003) (internal quotations omitted).

17 **III. CONCLUSION**

18 For the foregoing reasons, The Tribe’s motion to dismiss (Dkt. No. 6) is GRANTED.
19 Homeowners’ claims are DISMISSED without prejudice.

20 DATED this 2nd day of November 2017.

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24 John C. Coughenour
25 UNITED STATES DISTRICT JUDGE
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