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COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

WENDELL LONG, an individual,

Appellant,

v.

SNOQUALMIE GAMING COMMISSION, a political subdivision of the
Snoqualmie Indian Tribe,

Respondent.

RESPONDENT'S BRIEF

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I. INTRODUCTION

Plaintiff-Appellant Wendell Long (“Long”) inappropriately brought this action to force Defendant-Appellee Snoqualmie Gaming Commission (“Commission”) to rescind its prior revocation of his Tribal gaming license under a Settlement Agreement to which the Commission was not a party, which did not waive the Commission’s immunity, and which as a matter of law did not and could not require the Commission to take affirmative steps to rescind a prior final determination to revoke the license. The King County Superior Court, Judge Ramsdell presiding, properly dismissed Long’s unfounded action on each of the two alternative grounds advanced by the Commission: (1) under Superior Court Civil Rule (“CR”) 12(b)(1) for lack of subject matter jurisdiction due to the lack of a waiver of the Commission’s sovereign immunity from suit; and (2) under CR 12(b)(6) for failure to state a claim on which relief could be granted. The Court did not abuse its discretion in granting the Commission’s motion to stay discovery pending a ruling on the motion to dismiss, and denying Long’s motion for reconsideration.

Long’s brief on appeal sets up and attacks a straw man argument regarding the Commission’s immunity, misstates the determination of the Snoqualmie Tribal Court on a key question of Tribal law, and ultimately fails to demonstrate that the King County Superior Court erred under

either of the alternate grounds for dismissal. Under the relevant standards for appeal (*de novo* for the decision on the motion to dismiss, abuse of discretion for the denial of discovery and reconsideration), the Court should affirm the decision below.

II. STATEMENT OF THE CASE

A. Long's employment and termination by the Tribe, and related litigation

The Snoqualmie Tribe ("Tribe") is a federally recognized Indian tribe. CP 2 ¶ 5; *see also* Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 82 Fed. Reg. 4915 (January 17, 2017). On or about March 27, 2015, the Tribe entered into an Employment Agreement with Plaintiff Wendell Long to serve as CEO of its casino. Appendix (hereinafter "APP") 81-85; CP 129-33. In October 2015, the Tribe terminated Long's employment. CP 213.

In December 2015, the Tribe filed suit against Long in King County Superior Court claiming breach of fiduciary duty, conversion, and unjust enrichment arising out of Long's employment by the Tribe. CP 134-50. Long answered and raised counterclaims of this own. CP 151-74. The Commission was not a party to that suit. CP 126 ¶¶ 4, 5.

The Tribe and Long eventually settled that litigation, memorialized in the Settlement Agreement on January 4, 2017. APP 87-89; CP 96-98.

Recital A in the Settlement Agreement referenced the employment suit between Long and the Tribe, and no other litigation. APP 87; CP 96. In paragraph 2 of the Settlement Agreement, the Tribe and Long agreed to waive all claims against each other. APP 87, CP 96 ¶ 2. Paragraph 11 of the Settlement Agreement includes a waiver of the *Tribe's* immunity from suit to enforce that agreement. APP 89; CP 98 ¶11. That waiver does not mention or refer to the Commission, and the Commission was not a party signatory to that Agreement.

B. The Snoqualmie Gaming Commission

The Indian Gaming Regulatory Act (“IGRA”) requires tribes and states to enter gaming compacts authorizing class III (casino-style) gaming on tribal lands. 25 U.S.C. §§2710(b)(3); APP 1. The Tribe’s Compact with Washington requires the Tribe to establish an independent “Tribal Gaming Agency” to regulate the Tribe’s gaming activities, with the exclusive authority to issue, deny, or revoke Tribal gaming licenses for casino employees. Compact §VI; APP 76-79.¹

¹ The complete 2002 gaming compact between the Tribe and Washington is available at [http://www.wsgc.wa.gov/tribal/docs/Compacts/Snoqualmie\(5\)/5-2002%20Compact.pdf](http://www.wsgc.wa.gov/tribal/docs/Compacts/Snoqualmie(5)/5-2002%20Compact.pdf) (last accessed Nov. 18, 2017). The 2008 compact amendments which amended the compact provisions cited herein is available at [www.wsgc.wa.gov/tribal/docs/Compacts/Snoqualmie\(5\)/5-2008%20Amendment%20\(2nd%20Facility\).pdf](http://www.wsgc.wa.gov/tribal/docs/Compacts/Snoqualmie(5)/5-2008%20Amendment%20(2nd%20Facility).pdf) (last accessed Nov. 18, 2017). Compact Sections V and VI, as amended, are available at APP 70-79.

Under the Snoqualmie Gaming Act, the Commission is the “Tribal Gaming Agency” charged with regulation of gaming, including licensing authority, under the Compact. APP 17; CP 189 §7.01. The Commission is an “independent governmental subdivision” of the Tribe. *Id.* The Commission has “the authority and responsibility to regulate Gaming Activities within the Tribe’s Indian Lands.” APP 18; CP 190 § 7.03. Among the Commission’s central regulatory tasks is the exclusive authority to issue Tribal gaming licenses the casino’s employees, vendors, and contractors. APP 17, 29-37; CP 189, 201-209 §§ 7.02, 9, 10, 11. A gaming license is a “privilege” subject to suspension and revocation by the Commission, APP 36; CP 208 § 11.11(C), which has the sole and exclusive authority to make such decisions. APP 17, 29-37; CP 189, 201-209 §§ 7.02, 9, 10, 11.

Both the Compact and the Snoqualmie Gaming Act had to be approved by the United States under IGRA. 25 U.S.C. § 2710(d)(1); APP 2.

C. Commission’s actions regarding Long’s license, and litigation in Tribal Court

In the exercise of its authority pursuant to tribal law, the Commission issued Long a gaming license in May 2015. CP 243. In January 2016, subsequent to Long’s termination but before his license

expired, the Commission voted to suspend Long's license pursuant to the Snoqualmie Gaming Act, pending a revocation hearing. CP 241.

Long responded by filing suit in Snoqualmie Tribal Court in February 2016, seeking to enjoin the Commission from exercising its licensing suspension and revocation authority over his license. CP 219. The Commission moved to dismiss for lack of subject matter jurisdiction, arguing that Long had pointed to no waiver of the Commission's sovereign immunity. At oral argument on the Commission's motion, the dispositive point of contention was whether the Employment Agreement between Long and the Tribe, which contained a waiver of the "Tribe's" immunity from suit (in language very similar to that in the waiver at issue here, APP 83; CP 131 ¶ 11), also waived the Commission's immunity from suit. APP 61, 65-68; CP 226, 236-39. Long contended that the generic waiver of the "Tribe's" immunity in the Employment Agreement extended to the Commission, because the Commission was an agency of the Tribe. APP 61, 65-68; CP 226, 236-39. The Commission asserted that, as a matter of federal and Tribal law, any waiver of the Commission's immunity had to be express and unequivocal as to the Commission, and that the waiver of the "Tribe's" immunity in the Employment Agreement did not suffice. APP 62, 65-68; CP 231, 236-39. The Tribal Court rejected Long's argument and agreed with the Commission that a waiver

of the Commission's immunity had to be "specific" to the Commission (*Long I* transcript excerpts, APP 65-69; CP 236-40), and dismissed the case. APP 56-57; CP 219-20 (*"Long I"* decision).

The Commission then provided Long with an opportunity for a hearing (including advance notice of the evidence and witnesses against him), in which he was represented by counsel, put on his own witnesses and other evidence, and cross-examined witnesses and challenged the evidence against him. CP 241. The Commission ultimately determined that Long had violated the standards for holding a license under the Gaming Act, and revoked Long's license on April 13, 2016. CP 546, 551 ¶ 7. Pursuant to the express waiver of the Commission's sovereign immunity in Section 2.10 of the Commission's Hearing Regulations, APP 52-54; CP 261-63, Long filed suit in the Snoqualmie Tribal Court challenging the revocation. CP 264. On August 8, 2016, the Tribal Court issued its decision on the cross motions for summary judgment. CP 264-74 (*"Long II"*). The Tribal Court upheld the Commission's findings that Long had disclosed confidential information without the requisite authorization and that he had directed the casino's CFO to pay him a bonus which had not received the requisite authorization, CP 268, but it ruled that the Commission had failed to adequately explain the connection between these factual findings and its ultimate conclusion that the honesty

and integrity provisions of the Snoqualmie Gaming Act were violated. CP 271-72. The Tribal Court therefore remanded back to the Commission “for further proceedings to either vacate its decision to revoke Long’s license or enter findings that logically support its conclusions” that the unauthorized releases and bonus were dishonest and lacked integrity. CP 274.

On September 21, 2016, the Commission issued its Final Decision on Remand. CP 241. That decision explained the connection between the factual findings and the Commission’s ultimate conclusion that Long’s actions were dishonest and lacked integrity, and affirmed the revocation of Long’s license. *Id.* On December 6, 2016, Long filed a new complaint in Tribal Court challenging the Commission’s affirmation of its revocation decision. CP 276 (“*Long III*”). In an unreported decision entered on November 13, 2017, the Tribal Court granted summary judgment to the Commission, denied summary judgment to Long, and affirmed the Commission’s prior revocation of Long’s license.

D. Long sues the Commission under the Settlement Agreement

On January 4, 2017, after the Commission’s Decision on Remand and after Long had sued the Commission in Tribal Court, Long entered into the Settlement Agreement with the Tribe, in which the parties agreed

to release any and all claims against each other. APP 87-89; CP 96-98.

The Settlement Agreement specifically referenced the employment litigation, but made no mention of the revocation of Long's license or *Long III*. APP 87; CP 96 Recital A. Neither the Commission nor its counsel were part of the mediation leading to the settlement, and neither the Commission nor its counsel signed off on the Settlement Agreement. APP 87-89; CP 96-98, 126 ¶ 5. The Settlement Agreement does not mention Long's license or the Commission's prior revocation of same, and does not require rescission of any prior determinations or activities by any party. APP 87-89; CP 96-98. The Commission and its counsel did not even learn of the existence of the Settlement Agreement until Long's counsel (Hunter Abell) informed the undersigned of the Settlement Agreement on or about January 11, 2017, when Mr. Abell asserted that the agreement somehow required the Commission to rescind its prior revocation of Long's gaming license. CP 126-27 ¶ 5.

On or about January 31, 2017, Long served the Commission with the complaint in the present action, which alleges that the sovereign immunity waiver of the Settlement Agreement extends to the Commission, and that the prior administrative action of the Commission revoking Long's gaming license on April 13, 2016 is a violation of the Agreement and must be rescinded. CP 1-98.

In the court below, the Commission moved to dismiss under CR 12(b)(1) on the grounds that the Commission was immune from suit and the Tribe's waiver of sovereign immunity in the Settlement Agreement did not extend to the Commission, and in the alternative under CR 12(b)(6), on the grounds that the Commission was not pursuing a "claim" or "cause of action" against Long, because it had revoked his license prior to the Settlement Agreement, and was pursuing no action against him (the defense of Long's appeal not being a "claim" or "cause of action"). CP 103-24.

The Court below properly granted the Commission's motion on each of the two alternative grounds, with the judge adding his own handwritten notation to the proposed order prepared by counsel stating: "if the Commission is deemed a party to the settlement as Plaintiff asserts and his license was revoked prior to the settlement, Plaintiff appears to have released his 'claim' for license reinstatement by virtue of the Settlement Agreement." CP 753.

Long moved for reconsideration, CP 755, which the court denied without requesting an opposition. CP 766. Long thereupon filed this appeal.

Before ruling on the motion to dismiss, the court below also granted the Commission's motion to stay discovery pending resolution of its motion to dismiss. CP 354, 493.

Long did not move for leave to amend his complaint in the court below.

III. SUMMARY OF ARGUMENT

The dismissal should be affirmed. Under applicable law governing waivers of tribal sovereign immunity, the waiver of the *Tribe's* sovereign immunity in the Settlement Agreement cannot be construed to encompass claims against the Commission, which is a non-party to the Agreement and an independent governmental subdivision charged with the regulation of gaming. Tribal law is clear – and confirmed in a case brought by Long himself against the Commission – a generic waiver of the *Tribe's* immunity does not apply to the Commission; that to be effective a waiver of immunity has to be “specific” to the Commission. APP 65-69; CP 236-40 (*Long I* transcript excerpts); APP 56-57; CP 219-20 (*Long I* decision).

In the alternative, even if the waiver in the Settlement Agreement were somehow construed to extend to the Commission, and if the Settlement Agreement were construed to bar any claims or causes of action by or against the Commission, the suit alleges no cause of action upon which relief may be granted. The Commission took final action to

revoke Long's license well before the execution (and effective date) of the Settlement Agreement. CP 241-50. Long has not alleged that the Commission is pursuing any claim or action against him, only that it is defending Long's appeal of the license revocation, which is not a claim at all, but the defense of a prior determination *against* a claim. Moreover, the Settlement Agreement cannot, as a matter of law, be construed to require the Commission to take any action with regard to Long's license unless the Commission itself was a party. Gaming Act § 7.03, APP 18; CP 190, Compact § V, APP 70-76.

This Court should also deny Long's alternative arguments that he be provided discovery and the opportunity to amend his complaint. Sovereign immunity protects an immune entity from all the burdens of litigation, including discovery, and the Court below did not abuse its discretion (the applicable standard of review) in denying discovery – particularly where, as here, the undisputed facts require dismissal as a matter of law. No amount of discovery and no possible amendment to the complaint would change the language of the waiver in the Settlement Agreement, would change the fact that the Commission is not a signatory party, or would change the fact that the Commission's revocation of Long's license occurred prior to the Settlement Agreement, and that the Commission is not pursuing any action against Long.

IV. ARGUMENT

A. The dismissal must be upheld pursuant to CR 12(b)(1) because the Commission's sovereign immunity has not been waived as to this suit

1. Standard of review

The existence of subject matter jurisdiction over a party asserting sovereign tribal immunity is a question of law, which this Court reviews *de novo*. *Foxworthy v. Puyallup Tribe of Indians Ass'n*, 141 Wash. App. 221, 225, 169 P.3d 53, 55 (2007), *as amended* (Oct. 30, 2007) (citing *Wright v. Colville Tribal Enter. Corp.*, 159 Wash.2d 108, 111, 147 P.3d 1275, 1278 (2006)).

2. Sovereign immunity bars claims against tribes and their agencies unless expressly and unequivocally waived pursuant to tribal law, and such waivers cannot be implied

Under longstanding federal common law, a federally-recognized Indian tribe is immune from suit in state and federal court absent an express and unequivocal waiver or abrogation. *Wright*, 159 Wash. 2d at 112, 147 P.3d at 1278 (citing *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58, 98 S.Ct. 1670, 56 L.Ed.2d 106 (1978); *Okla. Tax Comm'n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 509, 111 S.Ct. 905, 112 L.Ed.2d 1112 (1991)). As stated in *Foxworthy*, “Courts have long recognized that ‘tribal immunity is a matter of federal law and is not subject to diminution by the States.’” *Foxworthy*, 141 Wash. App. at 226,

169 P.3d at 55 (quoting *Kiowa Tribe of Okla. v. Mfg. Techs.*, 523 U.S. 751, 756, 118 S.Ct. 1700, 140 L.Ed.2d 981 (1998)). *See also id.* 226, 169 P.3d at 55 (2007) (“Federal common law created the doctrine of tribal sovereign immunity.”). *Accord, Auto. United Trades Org. v. State*, 175 Wash. 2d 214, 226, 285 P.3d 52, 57 (2012) (“Whether tribal sovereign immunity applies is a question of federal law.”).

Tribal sovereign immunity extends to “tribal agencies and instrumentalities as extensions of tribal government....” *Wright*, 159 Wash. 2d at 113, 147 P.3d at 1279 (quoting *Local IV–302 Int’l Woodworkers Union v. Menominee Tribal Enters.*, 595 F.Supp. 859, 862 (E.D.Wis.1984)); *Allen v. Gold Country Casino*, 464 F.3d 1044, 1049 (9th Cir. 2006) (suits against Indian tribes and their agencies are barred by sovereign immunity absent an express and unequivocal waiver). *See also Chance v. Coquille Indian Tribe*, 327 Or. 318, 321, 963 P. 2d 638, 639 (1998) (“tribal immunity extends to agencies ... that a tribe creates pursuant to the tribe’s powers of self-government”).

Where tribal sovereign immunity applies, state courts lack subject matter jurisdiction over claims against the tribal entity. *Foxworthy*, 141 Wash. App. at 225, 169 P.3d at 55; *N. Sea Prod., Ltd. v. Clipper Seafoods Co.*, 92 Wash. 2d 236, 238, 595 P.2d 938, 940 (1979). Where, as here, defendant tribe or tribal entity asserts its immunity as a bar to this suit, the

burden of proof to demonstrate subject matter jurisdiction, and therefore the effectiveness and validity of a purported waiver, lies on the plaintiff. *Outsource Servs. Mgmt., LLC v. Nooksack Bus. Corp.*, 172 Wash. App. 799, 806–07, 292 P.3d 147, 151 (2013), *aff'd*, 181 Wash. 2d 272, 333 P.3d 380 (2014) (footnotes omitted). *See also Wright*, 159 Wash. 2d at 118–20, 147 P.3d at 1281–82 (Madsen, J., concurring). Consistent with its factual challenge to subject matter jurisdiction, the Commission submitted evidence in support of its CR 12(b)(1) motion to dismiss. *Outsource*, 172 Wash.App. at 806–07, 292 P.3d 147 at 151. That evidence was composed almost exclusively of documents setting out the relevant Tribal law, including court decisions, hearing transcripts, the Tribal Constitution and Code, and the Commission’s Hearing Regulations.² CP 125-294.

A tribe can waive its sovereign immunity, but several rules apply to such waivers. First, “a waiver of [tribal] sovereign immunity will not be implied, but must be unequivocally expressed.” *Anderson & Middleton Lumber Co. v. Quinault Indian Nation*, 130 Wash. 2d 862, 876, 929 P.2d 379, 386 (1996) (citing *N. Sea Prod., Ltd. v. Clipper Seafoods Co.*, 92 Wash. 2d at 24, 595 P.2d at 941); *see also Auto. United Trades Org.*, 175 Wash. 2d at 226, 285 P.3d at 57. *Foxworthy*, 141 Wash. App. at 227, 169

² The only item that was arguably not a document of Tribal law was Long’s Employment Agreement, which was at the center of the motion to dismiss in *Long I*.

P.3d at 56. Second, any purported waiver must be “interpreted liberally in favor of the Tribe and restrictively against the claimant.” *Maryland Casualty Co. v. Citizens Nat. Bank of West Hollywood*, 361 F.2d 517, 521 (5th Cir. 1966); *Ramey Construction Co., Inc. v. Apache Tribe of the Mescalero Reservation*, 673 F.2d 315, 320 (10th Cir. 1982) (“a waiver of [tribal] sovereign immunity is to be strictly construed”). Third, “an Indian tribe *may* cabin the extent of its waiver. The greater power to remain utterly immune from suit encompasses the lesser power to consent to suit only on a particular claim or in a particular forum or by a particular party.” *Auto. United Trades Org.*, 175 Wash. 2d at 227, 285 P.3d at 57.

Finally, because “the tribes themselves generally determine whether they will waive their sovereign immunity,” *Foxworthy*, 141 Wash. App. at 227, 169 P.3d at 56, a waiver must be executed consistent with the requirements of and according to Tribal law. *See Sharber v. Spirit Mountain Gaming Inc.*, 343 F.3d 974, 976 (9th Cir. 2003) (“Determining whether the tribe has waived immunity, ... requires ‘a careful study of the application of tribal laws, and tribal court decisions.’”); *Chance*, 327 Or. at 325, 963 P. 2d at 641–42 (rejecting claim that an employment contract waived a tribal entity’s sovereign immunity because the alleged waiver did not comport with procedures and standards for such waiver under tribal law).

Long ignores most of these rules in his brief, relying instead on the Settlement Agreement’s Washington choice of law provision and Washington law construing contracts to construe the waiver. Long Brf. at 19-23. But Washington law on tribal immunity *is* the federal common law, which must be applied here. *Auto. United Trades Org.*, 175 Wash. 2d at 226, 285 P.3d at 57 (tribal immunity “a question of federal law”); *accord Wright*, 159 Wash. 2d at 112, 147 P.3d at 1278 (“Under federal law, tribal sovereign immunity comprehensively protects recognized American Indian tribes from suit”). Long’s attempt to use contract law principles to find an implied waiver seeks a “diminution” of tribal immunity, which is prohibited. *Foxworthy*, 141 Wash. App. at 226, 169 P.3d at 55. *See infra* at 25-28. Long provides no case law to support applying rules governing the construction of contracts in lieu of rules governing waivers of sovereign immunity.

3. The purported waiver of the Commission’s immunity is ineffective because it does not conform to Tribal law requirements

Long’s Complaint asserts that the waiver of the Tribe’s sovereign immunity in the Settlement Agreement applies to the Commission. CP 2 ¶ 4, APP 89; CP 98 ¶11. That assertion must fail, because the purported waiver does not conform to the requirements of Tribal law for a waiver of the *Commission’s* immunity. And the Snoqualmie Tribal Court—in a

challenge involving a nearly identical argument by Mr. Long regarding a purported waiver of the Commission’s immunity from suit in his Employment Agreement—has already ruled that such a generic waiver is not sufficient to waive the Commission’s immunity under Tribal law. Since the Tribe’s law, and Tribal Court interpretation of that law, require an express waiver of the Commission’s immunity, and since there is no such express waiver here, the Commission remains immune from this action.

The Constitution of the Snoqualmie Tribe of Indians (“Snoqualmie Constitution”) states: “The Snoqualmie Indian Tribe is immune from suit except to the extent that the Tribal Council expressly and unambiguously waives its sovereign immunity.” Const. Art. I, § 3, APP 3; CP 584. The Snoqualmie Tribal Council has made clear that suits against it and its instrumentalities and agencies are barred by the Tribes’ sovereign immunity, unless authorized by the Tribal Council “in accordance with Tribal law.” Snoqualmie Judiciary Act § 10.0, APP 4; CP 613.

The Commission was created by the Snoqualmie Gaming Act “as an independent governmental subdivision of the Tribe.” APP 17; CP 189 § 7.01. The Gaming Act reserves the Commission’s immunity from suit and requires that any waiver of the Commission’s immunity be express: “The Commission ... possesses all rights, privileges and immunities of the

Tribe, including, without limitation, sovereign immunity from suit absent *express* consent from the Tribal Council....” APP 17-18; CP 189-90 § 7.02 (emphasis added). Thus, although the Tribal Council has the authority to waive the Commission’s immunity, due to the Commission’s independent structure and role, as a matter of Tribal law any Tribal Council waiver of the Commission’s immunity *must be express as to the Commission*. Through the Snoqualmie Gaming Act and applicable hearing regulations, the Tribal Council has in fact expressly waived the Commission’s immunity from suit for two types of matters: appeals of decisions regarding patron disputes, Gaming Act, § 12.06, APP 38; CP 210, and appeals of final decisions revoking gaming licenses. Hearing Regulations § 2.10, APP 52; CP 261 (authorizing suit against the Commission “for the sole purpose of an appeal to the Snoqualmie Tribal Court only from a final decision to revoke a tribal gaming license...”).

Long and his attorney are well aware of the requirement under Tribal law that the Commission’s immunity must be specifically and expressly waived, since they argued and lost on a nearly identical assertion as they are making here regarding the Commission’s immunity in Tribal Court. In *Long I*, Long filed suit in Tribal Court to enjoin the Commission from suspending his gaming license and considering revocation of that license. Long’s basis for asserting that the Tribal Court had jurisdiction

despite the Commission's immunity from suit was the Employment Agreement entered by Long and the Tribe on March 27, 2015, which contains the following sovereign immunity waiver language:

The Tribe hereby grants a limited waiver of sovereign immunity to Employee for the express and limited purpose of adjudicating a dispute arising out of the terms of this Agreement in the Snoqualmie Tribal Court.

APP 83; CP 131 ¶ 11. The Commission moved to dismiss the suit on the grounds that this waiver of sovereign immunity by the Tribe did not extend to the Commission because it was not express and specific to the Commission, as required due to its independent structure and function under Tribal Law. APP 56-57; CP 219-20. At oral argument on the motion to dismiss, Long's counsel, Hunter Abell (the same attorney bringing this action), strenuously argued that the Commission was a part of the Tribe, that a waiver by the Tribal Council extended to the Commission, and that the references to the "Tribe's" immunity being waived extended to the Commission. APP 65; CP 236 lines 22-23 ("[T]he Gaming Act specifically addresses waiver of sovereign immunity. First of all, it states that the [Commission] is a political sub-entity of the Tribe, and that the Tribe may waive sovereign immunity for the [Commission.]," APP 66-69; CP 237-40. The Commission argued that as an independent governmental subdivision, with unique statutory responsibilities, it was

not covered by the general waiver of the “Tribe’s” immunity waiver in the Employment Agreement. APP 67; CP 238 lines 10-14, APP 62-64; CP 231-33, APP 65-69; 236-40. The Tribal Court ultimately agreed with the Commission, explaining that the Gaming Act “... imposes on [Long] the burden of specifically bringing in the Gaming Commission [in the contractual waiver of sovereign immunity], and I don’t think that’s an unreasonable burden upon him, in light of the fact that he knows that he’s got this license.” APP 68; CP 239, line 6.

The Court entered an Order and Judgment in that case on March 22, 2016, dismissing the case because there was no waiver of the Commission’s sovereign immunity, and the Court therefore lacked subject matter jurisdiction over the case. APP 56-57; CP 219-20. The Order stated: “The Snoqualmie Gaming Commission has sovereign immunity from suit, unless such immunity is waived by the Snoqualmie Tribal Council.” APP 57; CP 220 ¶ 2. It further stated that it found no waiver applicable to the case. *Id.* That opinion is the law of the Tribe.

The waiver language in the Settlement Agreement relied upon by Long here, like that rejected by the Tribal Court in *Long I*, does not expressly and specifically waive the Commission’s immunity. It contains language regarding waiver only of the “Tribe’s” immunity, just like that of the Employment Agreement. The sovereign immunity waiver provision in

the Settlement Agreement waives the “Tribe’s” immunity as to “[a]ny dispute arising out of, or related to, this Agreement,” APP 89; CP 98 ¶ 11, which involved settling claims in a lawsuit that did not involve the Commission and did not involve the Commission’s regulatory authority or licensing action, or, indeed, the Commission or its counsel. APP 87; CP 96, Recital A (referencing the case brought by the Tribe against Long in state court).

Long’s attempt to distinguish the result in *Long I* based on the supposedly “limited” nature of the waiver at issue there, Long Brf. at 24-25, is misplaced. Although that waiver was limited as to purpose, it also, like the waiver at issue here, broadly referenced the “Tribe” as the entity whose immunity was waived. APP 83; CP 131 ¶ 11. Long’s selective excerpts of counsel’s statements from the *Long I* oral argument omit the relevant statements by the judge, which represent the Tribal Court’s analysis and holding on the issue of immunity. In her statements, the judge repeatedly articulated that a purported waiver of the Commission’s authority must be “specific” to the Commission to be effective. APP 65; CP 236, line 24 (“Judge: The problem is, Mr. Abell, I don’t see a specific waiver in this contract.”); APP 66; CP 237, lines 22-23 (“Judge: Well, no, I think it imposes on [Long] the burden of specifically bringing in the Gaming Commission [in the contractual waiver of sovereign immunity],

and I don't think that's an unreasonable burden upon him, in light of the fact that he knows that he's got this license."); APP 68; CP 239, line 6 ("Judge: No, I mean it could say, the contract could say, that the Tribe is waiving sovereign immunity on behalf of the Tribe and the Gaming Commission.").

Long's further argument that waiver extends to the Commission due to the "coextensive nature" of the Tribe's and the Commission's sovereign immunity, Long Brf. at 28, is also contrary to *Long I*, as the nature of the Commission's sovereign immunity has not changed since that decision. Long Brf. 28. Further, this argument is illogical; that the Commission shares the Tribe's sovereign immunity does not mean in any way that the Tribe cannot waive its immunity without waiving the Commission's immunity. *See Auto. United Trades Org.*, 175 Wash. 2d at 227, 285 P.3d at 57 ("an Indian tribe *may* cabin the extent of its waiver. The greater power to remain utterly immune from suit encompasses the lesser power to consent to suit only on a particular claim or in a particular forum or by a particular party."). The Tribe has, by Tribal Ordinance and as confirmed by *Long I*, categorically cabined waivers relative to the Commission by requiring a specific and express waiver of the Commission's immunity to be effective. *See discussion supra* 16-20.

Long in fact acknowledges that a tribal waiver of immunity would not apply to a separately incorporated tribal entity, Long Brf. at 27, yet he fails to explain why the same analysis would not apply to the Commission. The Commission, like a tribal corporation, is separately chartered by the Tribal Gaming Act as an independent governmental subdivision of the Tribe. APP 17; CP 189. Further, like a tribal corporate entity's board of directors, the Commission has its own governing body (the appointed Commissioners). *Id.*

Moreover, the cases that Long cites to support his "coextensive nature" argument do not support his point. In *Ninigret Dev. Corp. v. Narragansett Indian Wetuomuck Hous. Auth.*, 207 F.3d 21 (1st Cir. 2000), after stating that the Tribal Housing Authority "as an arm of the Tribe, enjoys the full extent of the Tribe's sovereign immunity," *id.* at 29, the Court nonetheless went on to ask whether *the Housing Authority* had waived its immunity, as authorized to do by ordinance, and determined that it had done so in a contract. *Id.* at 31. That case does not stand for the proposition that a tribe's general waiver extended to the tribe's entity.

Long also seeks to rely on *Sebnem Pura v. Quinault Housing Authority*, Quinault Court of Apps., Case No. CV 12-2-002 (2013), (available at <http://www.quinaulttribalcourt.org/appeals.php> (last visited Nov. 18, 2017)). However, in that case the court ruled that the waiver of

the “Tribe’s” sovereign immunity extended to a former Housing Authority employee’s suit against the Tribal Housing Authority where the waiver was in her employment contract *with the Housing Authority*, and the Housing Authority was authorized by tribal law to waive its immunity. *Id.* at 9. The *Sebnem Pura* case has no relevance to question of whether the Settlement Agreement between Long and the Tribe (to which the Commission was not a party) waives the Commission’s immunity, where Tribal law requires a specific waiver as to that immunity.

Long was on notice, based on his prior arguments and the rejection of those arguments as a matter of Tribal law in *Long I*, as well as by the clear language of the Gaming Act, that if he wanted to obtain a waiver of the Commission’s immunity in the context of a dispute with the Tribe over his employment, such waiver would have to expressly and unequivocally indicate that it encompassed the Commission in the exercise of its independent regulatory authority. The Settlement Agreement contains no such express and unequivocal waiver of the Commission’s immunity. Such a purported waiver of the Commission’s immunity is inconsistent with Tribal law and must therefore be rejected.

Long’s other attempts to distinguish the Employment Agreement by its term, forum, fees, applicable law, or “policy implications,” Long Brf. at 37, are irrelevant to the scope of the waiver. If Long wanted an

immunity waiver to apply to the Commission, Tribal law required that he negotiate for a specific waiver naming the Commission, a requirement of which he was well aware.³ He did not do so.

4. The rules of contract interpretation cited by Long do not render the waiver applicable to the Commission

As argued above, the Washington rules of contract interpretation cited by Long must yield to the rules governing waivers of immunity. By relying on the rules of contract interpretation, Long is inappropriately seeking a waiver by implication, a position the Court below properly rejected.

Moreover, even if the rules of contract interpretation could supersede the well-established law requiring express waivers and prohibiting waivers by implication, those rules would not lead to construing the waiver in the Settlement Agreement to extend to a suit against the Commission.

After invoking various rules of contract interpretation, and arguing that they apply due to the choice of law provision, Long Brf. 19-23, Long

³ Long's "policy" argument – that affirming dismissal will require anyone dealing with a tribe to have to spell out a waiver of immunity for each and every tribal sub-entity it may deal with, Long Brf. at 37-39 – misstates the Commission's argument, which is only that under Snoqualmie Tribal law, a waiver must be express and specific *as to the Commission* to be effective, due to the Commission's unique structure and function under federal, State and Tribal law. Moreover, Long and his counsel, due to their participation in *Long I*, would have been well aware of that requirement.

fails to explain how most of those rules should be applied to this case. Rather, Long relies chiefly on only one of those rules—the general rule of construction against rendering contract clauses superfluous. He argues that if the waiver in Paragraph 11 of the Settlement Agreement is construed so that it does not extend to claims asserted by the Commission, such construction would render the release of claims by “entities or agencies” of the Tribe in Paragraph 2 a nullity. This argument fails for several reasons.

First, the release in Paragraph 2 may be enforced as to entities or agencies of the Tribe that, unlike the Commission, do not require an express and specific waiver as to the entity under Snoqualmie Tribal law. Second, as discussed below in support of affirmance for failure to state a claim, the Commission was not asserting any claim against Long at the time of execution of the Settlement Agreement, *see infra* at 31-37, so construing this provision not to extend to suits against the Commission does not narrow the provision. Finally, whatever the scope of Paragraph 2, the waiver of immunity in Paragraph 11 still authorizes Long to sue the Tribe for any alleged breach of the Settlement Agreement, so clearly Paragraph 11 is not rendered a nullity and the Settlement Agreement accomplishes its main goal of settling the employment litigation between Long and the Tribe.

Indeed, if anything, Paragraph 2 indicates that the parties to the Settlement Agreement (both of whom were represented by counsel) knew how to frame language broadly to include agencies in the waiver of claims, but chose not to use such language in the sovereign immunity waiver of paragraph 11. Washington common law recognizes the maxim of statutory construction, “*expressio unius est exclusio alterius*,” which declares that, when a contract (or statute) specifically designates things or classes of things on which it operates, the inference arises in law that all things or classes of things omitted from it were intentionally omitted by the contracting parties (or the legislature). *Port Blakely Mill Co. v. Springfield Fire & Marine Ins. Co.*, 59 Wash. 501, 512, 110 P. 36, 40 (Wash. 1910); *State v. Swanson*, 116 Wash. App. 67, 75, 65 P.3d 343, 348 (2003). If and to the extent that rules of contract construction apply to the construction of the waiver in the Settlement Agreement, this rule would require a construction that the parties must have intended a different scope to paragraphs 2 (release of claims) and 11 (waiver) because they used different language in the two.

Long, of course, knows well that the Commission enjoys sovereign immunity, and that its immunity has been waived only as to two limited circumstances, and only into Tribal Court. His current lawsuit in the Tribal Court (*Long III*) is premised on the specific waiver of the

Commission's immunity in Section 2.10 of the Commission's Hearing Regulations. APP 52-54; CP 261-63. Long also knows, from his past actions in Tribal Court, that any waiver of the Commission's sovereign immunity as an independent Tribal regulatory body must be *specific and express as to the Commission* and must be narrowly construed. *See* discussion *supra* at 18-24. In negotiating the Settlement Agreement with the Tribe to settle a case arising out of his employment with the Tribal Casino, Long chose to negotiate only for a waiver of the "Tribe's" immunity, rather than to negotiate for an express and specific waiver of the Commission's sovereign immunity.

5. The independence of the Commission is a matter of law

Long's argument that the waiver extends to the Commission because the Commission is "anything but" an independent agency, Long Brf. at 30, misses the mark. The Commission's independence is a matter of statutory Tribal law, the Snoqualmie Gaming Act, which required approval by the United States. APP 2; 25 U.S.C. § 2710(d)(1). Long points to no legal authority changing that provision of Tribal law, which would necessitate amendment of the Act (and, thus, an additional approval by the United States). While Long points to the Tribe's retention of checks and balances over the Commission (budget approval, limited

authority to remove Commissioners for cause), these do not render the Commission's legally independent status a "fiction."

More importantly, these various assertions do not remove the requirement of a specific immunity waiver. Long's assertions (via a submitted declaration of former Commission employee Bo Yath) about the actions of a prior Tribal Council are irrelevant; those alleged actions took place prior to November 2014, CP 618 ¶ 1, 620 ¶ 5, and prior to the adoption (and federal approval) in 2015 of the current Snoqualmie Gaming Act. APP 6-7; CP 178-89. Moreover, even accepting *arguendo* Yath's statements that the Commission (during his tenure) carried out "the Tribal Council's directions on licensing and regulatory issues," CP 619, ¶ 2, such assertion still indicates a recognition by the Council that the Commission must take such action as an independent entity in its own name. Further, as Long himself acknowledged in the briefing below, at all times relevant here, appointed Commissioners have been serving. CP 501, lines 2-4.

Finally, Long's assertions that the Commission's licensing action involved similar factual allegations as the case brought by the Tribe, and his unsubstantiated allegations that the Tribe shared information or in some undefined way "coordinated" with the Commission, Long Brf. at 13, are irrelevant to the specific waiver requirement, and are not in any way

relevant to the construction of the waiver. The Commission's separate and exclusive licensing power authorizes it to look at Long's actions to make a determination as to licensure separate and independent of any employment action or employment-related litigation, and that is what the Commission did.⁴

For the above reasons, the action is barred by the Commission's sovereign immunity, and must be dismissed for lack of subject matter jurisdiction.

**B. The dismissal must be upheld, in the alternative,
pursuant to CR 12(b)(6) because Long's Complaint fails
to state a claim**

1. Standard of review

"This court reviews de novo an order granting a motion to dismiss under CR 12(b)(6)." *Jackson v. Quality Loan Serv. Corp.*, 186 Wash. App. 838, 843, 347 P.3d 487, 490, *review denied sub nom. Jackson v. Quality Loan Serv. Corp. of Washington*, 184 Wash. 2d 1011, 360 P.3d 817 (2015).

⁴ Doing so is directly analogous, for example, to a state bar disciplinary board revoking an attorney's license to practice law for misappropriating funds from a client's trust account even though such misappropriation may also give rise to a separate contract action between the attorney and client.

2. Standard for dismissal for failure to state a claim

Dismissal under CR 12(b)(6) for failure to state a claim upon which relief can be granted is appropriate “where the plaintiff cannot prove any set of facts consistent with the complaint that would entitle the plaintiff to relief.” *Id.* “All facts alleged in the plaintiff’s complaint are presumed true. However, the complaint’s legal conclusions are not required to be accepted on appeal.” *Id. Accord San Juan Cty. v. No New Gas Tax*, 160 Wash. 2d 141, 164, 157 P.3d 831, 842 (2007).

3. The Complaint fails to state a claim because it alleges that Long’s license was revoked before the effective date of the Settlement Agreement

Long alleges that he was employed by the Tribal Casino, that he was separated from that employment, that litigation arose between himself and the Tribe in King County Superior Court, and that that litigation was settled through the Settlement Agreement. CP 4-5 ¶¶ 11, 12, 13, 18. Long also alleges that he has entered into the Settlement Agreement with the Tribe, in which the Parties, “on behalf of themselves, and all persons, spouses, entities or agencies claiming thereby” released “all claims, known and unknown, asserted and unasserted, that any Party may have against any Party.” CP 5 ¶ 18 (quoting the Settlement Agreement). The Settlement Agreement is itself attached as an exhibit to the Complaint, CP 5-6 (citing and quoting the Settlement Agreement, as Exhibit D), CP 95-

98, and is therefore made a part of the Complaint. Superior Court CR 10(c); APP 2. The Settlement Agreement bears signatures dated January 4, 2017, and states that its effective date is January 4, 2017. APP 87, 89; CP 96, 98.

Further, Long alleges that the Commission is the agency of the Tribe that regulates gaming at the Tribal casino, that his gaming license was revoked by the Commission in May 2016, that following his appeal to the Tribal Court and remand the Commission “re-revoked” his license in “late” 2016, and that he then appealed that revocation to the Snoqualmie Tribal Court. CP 2, 4, 5 ¶¶ 7, 14, 17. Long alleges (implicitly) that the Commission is an “agency” of the Tribe encompassed within the meaning of the word “Party” in the Settlement Agreement. CP 3, 6 ¶¶ 8, 19, 20. He asserts the legal conclusion that “When Plaintiff advised the [Commission] of the Agreement, the [Commission] refused to honor it.” CP 6 ¶ 19. The Complaint does not allege any facts, however, to support this legal conclusion, and the alleged facts (including the Agreement itself) demonstrate the contrary.

Long’s complaint fails to state a claim for the simple reason that even if the Commission is an “agency” within the meaning of the Settlement Agreement (which we leave for another day, should the Court not affirm dismissal of the suit), Long has not alleged facts to support the

assertion that the Commission is pursuing a claim against him. He has alleged that the Commission “re-revoked” his license in “late” 2016. CP 5 ¶ 17.⁵ Even under these allegations, the Commission’s revocation took place *before* the execution of the Settlement Agreement on January 4, 2017. A settlement agreement like this one, which waives “any and all claims,” means that the parties agree to walk away from any further legal dispute over matters that occurred between them previously, and that unless expressly made part of the terms of such agreement, such a provision does not require the parties to return property or undo any previous action that each alleges might have harmed it. The Settlement Agreement does not require either Party to take any affirmative action to change the status quo.

As a matter of law, the Commission’s regulatory determination to revoke Long’s gaming license *prior to* the Settlement Agreement is not a “claim” within the meaning of the Settlement Agreement, and the Commission’s revocation of Long’s gaming license in April 2016, and its reaffirmation of the same in September 2016, could not be barred by the Settlement Agreement entered long after that date. Nor may the release of

⁵ Long’s own filings in the Tribal Court appeal indicate that the Commission’s Decision on Remand was issued on September 21, 2016. CP 276 ¶ 1 (alleging that the Commission “issued a Final Decision on remand ... on September 21, 2016 that re-revoked Long’s license ...”); *see also* CP 282-92 (Exhibit A to Long’s complaint in Tribal Court, Commission’s Final Decision After Remand).

claims provision in the Settlement Agreement be construed as requiring the Commission to take certain steps regarding *past* actions. Nothing in Paragraph 2 requires the Tribe or any agency thereof to undo any past action, or to take any affirmative action in regard to Long.

Long's argument that "the [Commission's] administrative action against Long is undoubtedly a 'claim,'" Long Brf. at 33, ignores that there is no such administrative action pending. What is pending is Long's Tribal Court case contesting the results of the Commission's licensing determination that predated the Settlement Agreement. In fact, in order to for Long's claim to proceed under the Commission's limited waiver of sovereign immunity into Tribal Court, the Commission's decision to revoke must be a "final" decision. Hearing Regulations § 2.10(A)(2). APP 52; CP 261. There is no "administrative action" proceeding against Long and there has not been since the Commission denied Long's motion to reconsider its Final Decision on remand on November 16, 2016, CP 276 ¶ 1, several weeks before the Settlement Agreement.

While the term "claim" is not defined in the Settlement Agreement, the commonly-accepted legal definitions of "claim" in Black's law dictionary would not cover a previous revocation of a license by an administrative determination:

claim *n.* (13c) **1.** A statement that something yet to be proved is true <claims of torture>. **2.** The assertion of an existing right; any right to payment or to an equitable remedy, even if contingent or provisional <the spouse’s claim to half of the lottery winnings>. **3.** A demand for money, property, or a legal remedy to which one asserts a right; esp., the part of a complaint in a civil action specifying what relief the plaintiff asks for.

CLAIM, Black’s Law Dictionary (10th ed. 2014). The Commission’s previous administrative decision to revoke Long’s gaming license is not a “claim”; it is not an assertion of an existing right to any payment or equitable remedy, nor a demand for money, property, or legal remedy which the Commission is seeking in some other forum. Rather, it is a prior determination by the Commission itself regarding whether Long satisfied the standards to maintain a privilege granted by the Commission.

Long is alleging that the Court must construe the Settlement Agreement and enjoin the “SGC licensing action” because “nothing in the Agreement carved out the SGC licensing action from the purview of the release,” CP 6 § 19, and “the Commission refused to honor it.” CP 6 ¶ 20. Yet, the Complaint does not allege that the Commission is pursuing any action against him; in fact, *it alleges that the Commission’s action was undertaken prior to the Settlement Agreement*, and that it is he who is pursuing an action against the Commission. CP 5 ¶ 17.

On these allegations, dismissal under CR 12(b)(6) for failure to state a claim upon which relief can be granted is appropriate because Long

“cannot prove any set of facts consistent with the complaint that would entitled the plaintiff to relief.” *Jackson*, 186 Wash. App. at 843, 347 P.3d at 490. Simply put, a complaint that alleges the violation of an agreement to release a claim must also allege facts supporting the legal allegation that the defendant is pursuing a claim that it is required to cease pursuing. Absent such factual allegations, Long has simply failed to state a viable claim.

Long’s conclusory assertion that “the Commission refused to honor” the Settlement Agreement, CP 6 ¶ 20, cannot save the complaint from dismissal, as this is a mere legal conclusion and as such is not required to be accepted. *Jackson*, 186 Wash. App. at 843, 347 P.3d at 490; *see Advanced Pain Therapies, LLC v. Hartford Fin. Servs. Grp., Inc.*, No. 3:14-CV-00050-MGL, 2014 WL 4402800, at *2 (D.S.C. Sept. 3, 2014) (conclusory allegations that Defendant breached insurance contract by failing to pay benefits “fails to set forth sufficient facts regarding how the contract was breached. Here, Plaintiff’s breach of contract claim is supported by nothing more than legal conclusions which the Court need not accept as true.”); *Harbor Distrib. Corp. v. GTE Operations Support Inc.*, 176 F. Supp. 3d 204, 215 (E.D.N.Y. 2016) (“[c]onclusory allegations that a defendant breached an agreement are insufficient to support a

breach of contract claim.”) (internal quotations and citation omitted)

(citing numerous cases to this effect).

4. The Complaint also fails to state a claim because its allegation that the Settlement Agreement requires the Commission to take a licensing action without the Commission being a party is contrary to law

Further, the Settlement Agreement may not be construed in any way to constrain or direct the Commission in regard to its regulatory functions. The Commission’s regulatory authority is defined not only by Tribal law, but by federal law and by the Tribe’s compact with the State, as residing exclusively with the Commission. As a matter of Tribal, federal, and State law, therefore, the Settlement Agreement cannot be construed as requiring the Commission to take any specific action with regard to a license unless the Commission is a party signatory to the Agreement.

The Tribe conducts gaming pursuant to the IGRA, the Snoqualmie Gaming Act, and its gaming compact with Washington, required by IGRA. The Compact is itself adopted as Tribal law in the Snoqualmie Gaming Act. APP 13, 17; CP 185, 189 §§ 3.01, 4.

The Commission was created by the Snoqualmie Gaming Act “as an independent governmental subdivision of the Tribe,” APP 17; CP 189 § 7.01, with “the authority and responsibility to regulate Gaming Activities

within the Tribe's Indian Lands." APP 18; CP 190 § 7.03. One of the Commission's chief responsibilities is the licensing of Key Employees and Primary Management Officials, *see* generally APP 30-37; CP 202-09 § 11, which includes the *exclusive* authority to suspend and revoke gaming licenses. APP 35-36; CP 207-08 § 11.09. This responsibility is consistent with the IGRA and with the Tribe's gaming compact. IGRA requires that a tribe operating class III gaming enter into a gaming compact with the state, approved by the Secretary of the Interior. 25 U.S.C. § 2710(d)(1)(C); APP 2. The Tribe's compact provides as follows:

Denial, Suspension, or Revocation of Licenses by Tribal Gaming Agency. The denial, suspension, or revocation of any Tribal gaming license by the Tribal Gaming Agency shall be in accordance with Tribal ordinances and regulations governing such procedures and the grounds for such actions shall be no less stringent than those of Section V.C [governing State Gaming Agency actions on licensing].

Tribal State Compact, *supra* note 1, § V.E; APP 73. Under the Snoqualmie Gaming Act, the Commission is the "Tribal Gaming Agency" charged with regulation of gaming under the Compact. APP 17; CP 189 §7.01.

Only the Commission can take action with regard to a Snoqualmie Gaming license. Since the Commission was not a party to the Settlement Agreement, as a matter of law the Settlement Agreement cannot have

bound the Commission to take any action with regard to a license unless the Commission was a party thereto. The Settlement Agreement does not include the Commission as a party signatory. Thus under applicable law there is not set of facts that can be alleged to support the claim that the Settlement Agreement bound the Commission to take any action with regard to Long's license.

C. The Court did not abuse its discretion by staying discovery pending disposition of the motion to dismiss for lack of jurisdiction and failure to state a claim

Orders staying discovery are reviewed on appeal for abuse of discretion. *Chaffee v. Keller Rohrback LLP*, 200 Wash. App. 66, 77, 401 P.3d 418, 424 (2017) (“We review a trial court’s determination on a motion to stay for an abuse of discretion.... An abuse of discretion occurs when the trial court’s ruling is manifestly unreasonable or is based on untenable grounds or reasons.”). The court below did not abuse its discretion in denying discovery.⁶

It is well-established that sovereign immunity protects an immune entity not only from liability, it also protects that entity from the burdens of litigation generally, including discovery. *See Univ. of Texas at Austin*

⁶ The court initially granted a protective order sought by the Commission staying discovery pending the court’s decision on the Commission’s motion to dismiss. CP 493. After the Court granted the Commission’s motion to dismiss, Long again sought discovery in his motion for reconsideration. CP 757.

v. Vratil, 96 F.3d 1337, 1340 (10th Cir. 1996) (“Eleventh Amendment immunity entitles a state not only to protection from liability, but also from suit, including the burden of discovery, as a party, within the suit.”); *Moss v. U.S. Secret Service*, 572 F.3d 962, 973 (9th Cir. 2009) (“[Q]ualified immunity is meant to give [a sovereign] a right, not merely to avoid standing trial but also to avoid the burdens of such pretrial matters as discovery.”) (internal quotations omitted) (citing *Behrens v. Pelletier*, 516 U.S. 299, 308, 116 S.Ct. 834, 133 L.Ed.2d 773 (1996)); *Miller v. Wright*, No. 3:11-cv-05395, slip. op. at 8 (W.D. Wash. Oct. 6, 2011) (denying Plaintiff’s discovery request of a defendant tribe where a motion to dismiss was pending on sovereign immunity grounds).

The Court below had broad discretion to stay discovery in a case while a dispositive motion involving immunity was pending. *See, e.g., DiMartini v. Ferrin*, 889 F.2d 922, 926 (9th Cir. 1989), *amended*, 906 F.2d 465 (9th Cir. 1990), cert. denied, 501 U.S. 1204, 111 S.Ct. 2796 (Mem), 115 L.Ed.2d 970 (1991) (“The Supreme Court has held that until the threshold issue of immunity is resolved, discovery should not proceed”); *Hachette Distribution, Inc. v. Hudson County News Co., Inc.*, 136 F.R.D. 356, 358 (E.D.N.Y.1991) (“[T]he federal district courts have discretion to impose a stay of discovery pending the determination of dispositive motions by the issuance of a protective order”).

The argument of the Commission's CR 12(b)(1) Motion to Dismiss, and the basis of the Court's ruling on that motion below, is that as a matter of Snoqualmie Tribal law, any waiver of the Commission's immunity must be express and specific to the Commission, and the Settlement Agreement on its face contains no such waiver. No amount of discovery would change the Tribal law leading to this conclusion. There was no need for discovery on whether the Commission is an "agency" or under the control of the Tribe or even somehow "collaborating" with the Tribe regarding Long's license revocation.

Long cites *Wright*, 159 Wash. 2d at 119–21, 147 P.3d at 1282–83, in support of his request for discovery, Long Brf. at 36, but the court in that case held that no remand for further fact-finding was needed because the undisputed facts in the record made clear that the tribal entity was immune from the suit. *Id.* at 121, 147 P.3d at 1283 (noting that plaintiff did not dispute organizational structure of the entity, but rather disputed the significance of various provisions). The relevant and undisputed fact here is that the Settlement Agreement does not contain a specific and express waiver of immunity as to the Commission, and that fact is dispositive as a matter of applicable law.

Further, even assuming *arguendo* that discovery could potentially lead to facts relevant to the sovereign immunity issue, there remains the

ruling by the Court below in the alternative that Long has failed to state a claim for relief – which is based on accepting as true all facts pled. As noted above, the complaint fails to state a claim because the Commission is not pursuing a claim against Long, as its revocation of his license occurred prior to the Settlement Agreement. Discovery would be futile, because it cannot change these facts. Long does not even attempt to argue in his brief that there is any set of facts he could possibly find on discovery on remand that would alter these facts or make it possible for him to state a claim upon which relief may be granted.

D. Long did not move to amend his Complaint below and in any event amendment would be futile

Long now argues in passing that “if the tribal court dismissed based upon CR 12(b)(1),” then he should have been permitted opportunity to amend. Long Brf. at 37. But Long never sought leave to amend in the court below. His implied argument that this case should be remanded to allow him to amend his complaint should be denied for several reasons.

First, in failing to move to amend below, he did not preserve the issue. “An appeals court will not review an issue, theory, argument, or claim of error not presented at the trial court level.” *Rash v. Providence Health & Servs.*, 183 Wash. App. 612, 625, 334 P.3d 1154, 1161 (2014). Although in the Court below Long asserted in his opposition to the motion

to dismiss that motion for leave should be allowed where plaintiff *may be able to state a cause of action* (and not, as he argues in this appeal, for the purpose of overcoming a jurisdictional deficit), CP 519, that statement is insufficient to preserve the issue for appeal as it falls short of actually moving to amend (even if read to extend to his new position on appeal that he should be allowed to amend in an attempt to overcome dismissal for lack of subject matter jurisdiction).

Federal courts have held, under the federal equivalent of CR 15(a), that such a statement is insufficient to preserve the issue for appeal. *See Garman v. Campbell Cty. Sch. Dist. No. 1*, 630 F.3d 977, 986 (10th Cir. 2010) (“Garman did not file a written motion for leave to amend; instead, in her opposition to the motion to dismiss, she merely suggested she should be allowed to amend if the court concluded her pleadings were infirm. This is insufficient.”); *Glenn v. First Nat. Bank in Grand Junction*, 868 F.2d 368, 370 (10th Cir. 1989). These cases are of persuasive precedential value. *Wright*, 159 Wash. 2d at 119 n. 2, 147 P.3d at 1282 n.2 (“Our version of CR 12(b) mirrors its federal counterpart. Accordingly, we may look to federal authorities for guidance in interpreting CR 12(b).”). *See also Tayloe-McCandless v. State*, unpublished opinion, 189 Wash. App. 1035, *5 (2015) (“the trial court did not rule on the motion so there is no ruling for this court to review”).

Second, even assuming the issue were preserved, Long should not be afforded leave to amend his complaint. Denials of a motion to amend a complaint are reviewed on appeal for abuse of discretion, and a trial court may consider whether an amendment would be futile. *Shelton v. Azar, Inc.*, 90 Wash. App. 923, 928, 954 P.2d 352, 354–55 (1998). Here, an amendment would have been futile because Long has not identified, and cannot conceivably identify, a legal theory suggesting a cure to his defective complaint. *Matsyuk v. State Farm Fire & Cas. Co.*, 155 Wash. App. 324, 339, 229 P.3d 893, 901 (2010), *rev'd on other grounds*, 173 Wash. 2d 643, 272 P.3d 802 (2012); *see also Rodriguez v. Loudeye Corp.*, 189 P.3d 168, 177–178, 144 Wash.App. 709, 728–29 (Wash.App. Div. 1, 2008) (“Denying a motion for leave to amend is not an abuse of discretion if the proposed amendment is futile.”).

As discussed above with respect to the futility of discovery, there are no possible set of facts that Long could allege that would support construing the waiver in the Settlement Agreement as applying to the Commission. And even if an amendment to the complaint could cure the jurisdictional problem, it could not cure the failure to state a claim, and Long on appeal does not ask for leave to amend to state a claim upon which relief may be granted.

**E. The Court Below Did Not Abuse Its Discretion In
Denying the Motion for Reconsideration**

Orders denying motions for reconsideration are reviewed on appeal for abuse of discretion. *Landstar Inway Inc. v. Samrow*, 181 Wash. App. 109, 120–21, 325 P.3d 327, 335 (2014); *see also Martini v. Post*, 178 Wash. App. 153, 161, 313 P.3d 473, 478 (2013) (“We review a trial court’s denial of a motion for reconsideration and its decision to consider new or additional evidence presented with the motion to determine if the trial court’s decision is manifestly unreasonable or based on untenable grounds”).

Although Long assigns error to the Court’s denial of his motion for reconsideration, he does not address that motion separately. His motion sought reconsideration of the Court’s decision on the motion to dismiss, and discovery that he argued related to the Commission’s sovereign immunity. CP 755-62. It did not bring to the Court’s attention any new evidence or change in relevant law. The Court’s denial of the motion was correct and should be upheld for the reasons stated above in regard to the decision to dismiss and the denial of discovery.

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//

V. CONCLUSION

The decision of the Superior Court should be AFFIRMED.

DATED this 21st day of November, 2017.

By 
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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that under the laws of the State of Washington that on the 21st day of November, 2017, I caused a true and correct copy of the forgoing documents, Respondent's Brief and Appendix to Brief of Respondent to be delivered to the counsel of record via Washington State Appellate Courts' Electronic Filing and the following via the parties' Service E-Mail Agreement:

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Eleanor Manning, Paralegal
on behalf of Edmund Clay
Goodman, WSBA # 37347

No. 77007-1-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

WENDELL LONG, an individual,

Appellant,

v.

SNOQUALMIE GAMING COMMISSION, a political subdivision of the
Snoqualmie Indian Tribe,

Respondent.

APPENDIX TO BRIEF OF THE RESPONDENT

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A. Indian Gaming Regulatory Act, 25 U.S.C. §2710(b)(3)

(b) Regulation of class II gaming activity; net revenue allocation; audits; contracts

(3)

- (A) Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities. Upon receiving such a request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact.
- (B) Any State and any Indian tribe may enter into a Tribal-State compact governing gaming activities on the Indian lands of the Indian tribe, but such compact shall take effect only when notice of approval by the Secretary of such compact has been published by the Secretary in the Federal Register.
- (C) Any Tribal-State compact negotiated under subparagraph (A) may include provisions relating to—
 - (i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;
 - (ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;
 - (iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;
 - (iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;

- (v) remedies for breach of contract;
- (vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and
- (vii) any other subjects that are directly related to the operation of gaming activities.

B. Indian Gaming Regulatory Act, 25 U.S.C. § 2710(d)(1)

(d) Class III gaming activities; authorization; revocation; Tribal-State compact

- (1) Class III gaming activities shall be lawful on Indian lands only if such activities are—
 - (A) authorized by an ordinance or resolution that—
 - (i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands,
 - (ii) meets the requirements of subsection (b), and
 - (iii) is approved by the Chairman,
 - (B) located in a State that permits such gaming for any purpose by any person, organization, or entity, and
 - (C) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect.

C. Washington Superior Court Rule 10(c)

10(c) Adoption by Reference; Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

D. Washington Superior Court Rule 12(b)

12(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross

claim, or third party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

- (1) lack of jurisdiction over the subject matter;
- (2) lack of jurisdiction over the person;
- (3) improper venue;
- (4) insufficiency of process;
- (5) insufficiency of service of process;
- (6) failure to state a claim upon which relief can be granted;
- (7) failure to join a party under rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the pleader may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56.

E. Constitution of the Snoqualmie Tribe of Indians Art. I, Sec. 3

Section 3. *Sovereign Immunity*. The Snoqualmie Indian Tribe is immune from suit except to the extent that the Tribal Council expressly and unambiguously waives its sovereign immunity.

F. Snoqualmie Judiciary Act § 10.0

Section 10.0 – SOVEREIGN IMMUNITY

The Snoqualmie Tribe, the Snoqualmie Tribal Council, and all Tribal agencies, committees departments, entities or employees of any kind shall be immune from suit for any acts or omissions done during the performance of Tribal duties. Only Tribal Council has the authority to waive this sovereign immunity in accordance with Snoqualmie Tribal law.

G. Snoqualmie Tribe Tribal Gaming Act



SNOQUALMIE INDIAN TRIBE RESOLUTION #12 -2015



Resolution Repealing the Snoqualmie Indian Tribe (2002) Gaming Act and Approving and Adopting the Snoqualmie Indian Tribe Tribal (2015) Gaming Act

WHEREAS, the Snoqualmie Indian Tribe is the sovereign entity recognized as a signatory Tribe to the Point Elliot Treaty of 1855; and

WHEREAS, the Snoqualmie Tribal Council is the governing body of the Snoqualmie Indian Tribe by authority of its Constitution; and

WHEREAS, the Snoqualmie Tribal Council is the duly elected council of the General Membership and is responsible for the protection of the health, safety, and welfare of the members of the Snoqualmie Indian Tribe; and

WHEREAS, the Snoqualmie Tribal Council previously adopted Tribal Council Act 3-02, Act Related to Gaming, Snoqualmie Gaming Act ("2002 Gaming Act") to govern gaming activities taking place on the Tribe's Indian lands; and

WHEREAS, the Snoqualmie Tribal Council desires to adopt a new Gaming Act which shall supersede the (2002) Gaming Act, and all amendments thereto; and

WHEREAS, the Snoqualmie Tribal Council has reviewed the Snoqualmie Gaming Act attached at Exhibit A and upon recommendation from the Snoqualmie Gaming Commission desires that it shall become effective upon approval by the Chairman of the National Indian Gaming Commission; and

NOW, THEREFORE BE IT RESOLVED, the Snoqualmie Tribal Council repeals the (2002) Gaming Act and all tribal gaming ordinances and amendments thereto currently in effect, such repeal being effective only upon receipt of the approval of the attached Snoqualmie (2015) Gaming Act by the Chairman of the National Indian Gaming Commission; and

NOW, THEREFORE BE IT FURTHER RESOLVED, the Snoqualmie Tribal Council adopts and approves the Snoqualmie (2015) Gaming Act attached hereto as Exhibit A, to be effective only upon receipt of the approval of the Snoqualmie (2015) Gaming Act by the Chairman of the National Indian Gaming Commission; and

NOW, THEREFORE BE IT FINALLY RESOLVED, that the Snoqualmie Tribal Council hereby directs the Chairperson to submit the Snoqualmie (2015) Gaming Act to the Chairman of the National Indian Gaming Commission for review and approval, and to take all such action that is necessary to make the Snoqualmie Gaming Act attached at Exhibit A effective pursuant to federal law and directs the Tribal Secretary to codify the same upon receipt of the approval of the Snoqualmie (2015) Gaming Act by the Chairman of the National Indian Gaming Commission.



SNOQUALMIE INDIAN TRIBE RESOLUTION #12 - 2015



Resolution Repealing the Snoqualmie Indian Tribe (2002) Gaming Act and Approving and Adopting the Snoqualmie Indian Tribe Tribal (2015) Gaming Act

CERTIFICATION

Voted on this 22nd day of January, 2015 in Snoqualmie, WA at a duly called meeting of the Snoqualmie Tribal Council with a quorum present and voting:

For 8, Against 0, Abstaining 0.


Carolyn Lubenau, Chairwoman


Ahsa M. Burley, Tribal Secretary

**SNOQUALMIE TRIBE
TRIBAL GAMING ACT**

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**SNOQUALMIE TRIBE
TRIBAL GAMING ACT**

1. Purpose

The Tribal Council of the Snoqualmie Tribe (the "Tribal Council"), empowered by the Tribe's Constitution to enact laws, hereby enacts this Tribal Gaming Act (this "Act") in order to govern and regulate the operation of Class II and Class III Gaming on the Tribe's Indian Lands.

2. Gaming Authorized

All Gaming Activities on the Tribe's Indian Lands are prohibited, except as expressly permitted under this Act and the Regulations. All forms of Class II and Class III Gaming, as defined in the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2701 *et seq.*, are hereby authorized. Unless specifically indicated otherwise, all provisions of this Act shall apply to gaming on the Tribe's Indian Lands.

3. Definitions

Defined terms in this Section 3 shall have the same meanings and effects as their counterpart terms in IGRA and the National Indian Gaming Commission ("NIGC") regulations, 25 C.F.R. § 500 *et seq.*, to the extent such terms are defined in IGRA and the NIGC regulations.

3.01 Applicable Law. "Applicable Law" means IGRA and regulations promulgated thereunder, the Compact, this Act, the Regulations, and all other applicable laws or regulations promulgated under state, federal, or tribal law.

3.02 Applicant. "Applicant" means an individual or entity that applies for the issuance or renewal of a Tribal gaming license.

3.03 CEO. "CEO" means that person or entity designated by the Snoqualmie Entertainment Authority as the Chief Executive Officer of the Gaming Operation.

3.04 Class I Gaming. "Class I Gaming" means: (1) social games played solely for prizes of minimal value or (2) traditional forms of Indian gaming when played by individuals in connection with tribal ceremonies or celebrations.

3.05 Class II Gaming. "Class II Gaming" means:

A. Bingo or lotto (whether or not electronic, computer or other technologic aids are used) when players:

(1) Play for prizes with cards bearing numbers or other designations;

(2) Cover numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined; and

- (3) Win the game by being the first person to cover a designated pattern on such cards;
 - B. If played in the same location as bingo or lotto, pull-tabs, punch boards, tip jars, instant bingo, and other games similar to bingo;
 - C. Non-banking card games that:
 - (1) State law explicitly authorizes, or does not explicitly prohibit, and are played legally anywhere in the State of Washington (the "State"); and
 - (2) Players play in conformity with State laws and regulations (if any) concerning hours, periods of operation, and limitations on wagers and pot sizes; and
 - D. Card games played in the State, if:
 - (1) An Indian tribe actually operates the same card games as played on or before May 1, 1988, as determined by the NIGC Chair; and
 - (2) The pot and wager limits remain the same as on or before May 1, 1988, as determined by the NIGC Chair.
- 3.06 Class III Gaming.** "Class III Gaming" means all forms of gaming that are not Class I or Class II Gaming, including, but not limited to:
- A. Any house banking game, including but not limited to:
 - (1) Card games such as baccarat, chemin de fer, blackjack (21), and pai gow (if played as house-banking games); and
 - (2) Casino games such as roulette, craps, and keno;
 - B. Any slot machines, as defined in 15 U.S.C. § 1171(a)(1), and electronic or electromechanical facsimiles of any game of chance;
 - C. Any sports betting and pari-mutuel wagering, including, but not limited to, wagering on horse racing, dog racing or jai alai; and
 - D. Lotteries.
- 3.07 Close Relative** means a spouse, parent, step-parent, sibling, step-sibling, child, step-child, grand-parent, and grand-child. The term "Close Relative" includes spouses of the foregoing and persons sharing a household with the foregoing.
- 3.08 Compact.** "Compact" means the tribal-state gaming compact for Class III Gaming between the Tribe and the State, and all approved appendices and attachments thereto, each as may be amended from time to time.

- 3.09 Commission.** "Commission" means the Snoqualmie Gaming Commission established pursuant to this Act to perform regulatory oversight and to monitor compliance with Applicable Law.
- 3.10 Commissioner.** "Commissioner" means a Snoqualmie Gaming Commissioner.
- 3.11 Facility License.** "Facility License" means the separate license issued by the Commission to each place, facility or location on Indian Lands where the Tribe elects to allow Class II or Class III Gaming.
- 3.12 Gaming Activity.** "Gaming Activity" or "Gaming Activities" means any Class I, Class II, or Class III Gaming activity authorized by this Act.
- 3.13 Gaming Employee.** "Gaming Employee" means any individual employed in connection with the Gaming Operation or Gaming Facility, whether employed or contracted by the Tribe or by any person or enterprise providing gaming operation and management services to the Tribe, including, but not limited to, Gaming Operation managers and assistant managers; accounting personnel; surveillance and security personnel; cashiers; dealers or croupiers; box men; floormen; pit bosses; shift bosses; cage personnel; collection personnel; gaming consultants; pari-mutuel clerks, management companies and their principals; and any other person whose employment duties require or authorize access to restricted areas of the Gaming Facility not otherwise opened to the public, or to areas designated by the Commission and Washington State Gambling Commission.
- 3.14 Gaming Facility.** "Gaming Facility" or "Facility" means the building or buildings or portions thereof in which Class II or Class III Gaming activities or Gaming Operations occur. The Gaming Facility shall be licensed by the Commission.
- 3.15 Gaming Financier.** "Gaming Financier" means any who extends financing, directly or indirectly to the Gaming Facility or Gaming Operation.
- 3.16 Gaming Operation.** "Gaming Operation" means each economic entity that is licensed by the Tribe, operates the games, receives the revenues, issues the prizes, and pays the expenses. A Gaming Operation may be operated by the Tribe directly, a management contractor or, under certain conditions, another Person.
- 3.17 Gaming Services.** "Gaming Services" means the providing of any goods or services to the Tribe, whether on or off site, directly or indirectly, in connection with the operation of Class II or III Gaming activities in a Gaming Facility, including equipment, maintenance or security services. Gaming Services shall not include professional legal and accounting services.
- 3.18 Gaming Vendor.** "Gaming Vendor" means a manufacturer or supplier of Gaming Services.

- 3.19 Indian Lands.** "Indian Lands" means land within the limits of the Tribe's Indian reservation and land over which the Tribe exercises governmental power that is either: (a) held in trust by the United States for the benefit of any Indian tribe or individual; or (b) held by the Tribe or an individual and subject to restriction by the United States against alienation.
- 3.20 Key Employee.** "Key Employee" means a person who performs one or more of the following functions: bingo caller; counting room supervisor; chief of security; custodian of gaming supplies or cash; floor manager; pit boss; dealer; croupier; approver of credit; or custodian of gambling devices, including persons with access to cash and accounting records within such devices; if not otherwise included, any other Gaming Operation employee whose total cash compensation is in excess of \$50,000 per year, the four most highly compensated persons in the Gaming Operation, and any other person designated by the Commission as a Key Employee.
- 3.21 Licensee.** "Licensee" means a tribally owned Class II or Class III Gaming Operation, a person licensed by the Commission as a Primary Management Official or Key Employee under the provisions of this Act, and any other Person licensed as required by the Compact or otherwise pursuant to the Commission regulation.
- 3.22 Management Contract.** "Management Contract" means any contract, subcontract or collateral agreement between the Tribe and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of the Gaming Operation.
- 3.23 Net Revenues.** "Net Revenues" means gross gaming revenues of the Gaming Operation less: amounts paid out as, or paid for, prizes; and, total gaming-related operating expenses, including all those expenses of the Gaming Operation commonly known as operating expenses and non-operating expenses consistent with professional accounting pronouncements, excluding management fees.
- 3.24 Patron.** "Patron" means any individual who participates as a player in a Gaming Activity within a Gaming Facility.
- 3.25 Person.** "Person" means any corporation, limited liability corporation, partnership, firm, association, society or natural person.
- 3.26 Primary Management Official.** "Primary Management Official" means: (1) the person(s) having management responsibility for a Management Contract; (2) any person who has authority: (a) to hire and fire employees of the Gaming Operation; or (b) to set up working policy for the Gaming Operation; or (c) the chief financial officer or other person who has financial management responsibility; and (3) any other person designated by the Commission as a primary management official.

- 3.27 **Regulation.** "Regulation" means a regulation of the Commission promulgated pursuant to this Act.
- 3.28 **Snoqualmie Tribal Court.** "Snoqualmie Tribal Court" means the court designated by the Tribe as the Snoqualmie Tribal Court.
- 3.29 **Tribal.** "Tribal" means of or pertaining to the Tribe.
- 3.30 **Tribal Lottery System.** "Tribal Lottery System" means the lottery system operated by the Tribe pursuant to the Compact.
- 3.31 **Tribe.** "Tribe" means the Snoqualmie Tribe.

4. **Compact.**

The Compact shall be deemed to be incorporated herein, and in the event of any conflict between a provision of this Act and a provision of the Compact, the provision set forth in the Compact shall be controlling, except in the event that the provision set forth herein or in any Regulation is more stringent. The adoption of the Compact and incorporation herein shall under no circumstances be deemed to affect the operation by the Tribe of any Class II Gaming, or to confer upon the State any jurisdiction over Class II Gaming conducted by the Tribe.

5. **Ownership of Gaming**

The Tribe shall have the sole proprietary interest in and responsibility for the conduct of any Gaming Operation authorized by this Act.

6. **Use of Net Revenues**

- 6.01 **Permitted Uses.** Net Revenues from Tribal Gaming Activities shall be used only for the following purposes: (i) to fund Tribal government operations and programs, (ii) to provide for general welfare of the Tribe and its members, (iii) to promote Tribal economic development, (iv) to donate to charitable organizations, or (v) to help fund operations of local government agencies.
- 6.02 **Per Capita Payments Require Federal Approval.** If the Tribe elects to make per capita payments, it shall authorize such payments only pursuant to a revenue allocation plan approved by the Secretary of the Interior under § 2710(b)(3) of IGRA.

7. **Snoqualmie Gaming Commission**

- 7.01 **Establishment of the Commission.** The Tribe hereby establishes the Commission as an independent governmental subdivision of the Tribe.
- 7.02 **Governmental Attributes of the Commission.** The Commission, as a political subdivision of the Tribe, possesses all the rights, privileges and immunities of the Tribe, including, without limitation, sovereign immunity from suit absent express

consent from the Tribal Council. The individual members of the Commission are officers of the Tribal government and shall be immune from suit when acting within their official capacity to the fullest extent permitted by law.

7.03 Regulatory Authority. The Commission shall have the authority and responsibility to regulate Gaming Activities within the Tribe's Indian Lands. This authority includes the power to regulate the Gaming Operations, Gaming Facility, and to license all persons subject to the Commission's licensing authority under this Act and Regulations. The Commission shall ensure that all Gaming Activities conducted within the Tribe's Indian Lands are conducted in accordance with Applicable Law.

7.04 Importance of Independence of Commission. The Tribe recognizes the importance of an independent gaming commission in maintaining a well-regulated Gaming Operation. The Commission shall be independent of the Tribal Council in all matters within the Commission's purview.

7.05 Commission Budget. Commission funding shall be in an amount adequate for the Commission to properly fulfill all of its regulatory responsibilities under this Act.

A. Annual Budget. Annually the Commission shall prepare a requested budget for approval of the Tribal Council. Funding for all reasonable and necessary costs and expenses of the Commission shall be the obligation of the Tribe.

B. Commission Expenditures. Within the limits of an approved budget, the Commission shall employ and fix the salaries of or contract for services of such employees and professional, technical and operational personnel and consultants as the execution of its duties and the operation of the Commission may require. The Commission may expend its budget for operations and acquire such furnishings, equipment, supplies, stationery, books, motor vehicles and other things as it may deem necessary in carrying out its functions and incur such other expenses, within the limit of funds available to it, as it may deem necessary. The Commission shall have the authority to expend funds within the approved budget without the requirement of further authorization, subject to generally applicable tribal accounting and procurement policies.

7.06 Composition of Commission. The Commission shall be composed of at least three persons (each a "Commissioner," and collectively "Commissioners"), a majority of whom shall be enrolled members of the Tribe. A majority of Commissioners shall not be Close Relatives. Commissioner positions shall be filled by appointment by the Tribal Council. Commissioners shall serve staggered three (3) year terms. To achieve such staggered terms, the initial Chair appointee shall serve an initial term of three (3) years. The second initial appointee shall serve an initial term of two (2) years, and the third initial appointee shall serve for

an initial term of one year. All subsequent appointments shall be for three (3) years. Commissioners may serve successive terms of office without limitation. Notwithstanding the foregoing, and at the discretion of the Tribal Council, a Commissioner may continue to serve as Commissioner, with full authority, after completion of a term until such time as a replacement is appointed by the Tribal Council.

7.07 Commissioner Qualifications and Eligibility Determinations.

- A. Experience and Training. The experience and training of a Commissioner must be of sufficient scope, depth and relevancy to enable him or her to fulfill his or her duties under this Act.
- B. Ineligible Individuals. The following persons are not eligible to serve as a Commissioner:
- (1) Tribal Council members,
 - (2) Employees of a Gaming Operation,
 - (3) Individuals sharing a household with a Primary Management Official or Key Employee,
 - (4) Any person who is employed or otherwise serves in a position with responsibilities that create a conflict of interest or appearance of a conflict of interest with the duties and responsibilities of the Commission, and
 - (5) Individuals previously convicted of any felony, gaming offense or misdemeanor offense of embezzlement, theft or any other money-related or honesty-related misdemeanor offense, such as fraud.
- C. Background Investigations of Commissioner Candidates. The Tribal Council shall cause a criminal history check to be conducted by the Tribe's law enforcement agency or other third party investigative entity (hereinafter, an "Investigator") as it may choose for each Commissioner candidate. All Commissioner candidates shall consent to, and fully cooperate with the background investigation. The background investigation shall include a criminal history check. The Investigator shall prepare a written investigative report and a recommended eligibility determination as to whether a Commissioner candidate is eligible to hold office.
- D. Eligibility Determination. The Tribal Council shall review the Investigator's report and recommendation and shall make an eligibility determination before appointing an individual to the position of Commissioner. A person is not eligible to hold office as a Commissioner if such person:

- (1) Is ineligible pursuant to Section 7.07(B);
- (2) Has knowingly and willfully provided materially important false statements or information or omitted materially important information on his or her background questionnaire; or
- (3) Has been determined to be a person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto.

7.08 Removal for Cause. A Commissioner may be removed from the position of Commissioner for the following reasons:

- A. Gross Neglect of Duty. This includes substantial or repeated failure to exercise authority or discharge responsibilities as required by Applicable Law.
- B. Misconduct. This includes (i) a conviction or a plea of guilty or no contest to any felony, or to a misdemeanor involving dishonesty, (ii) a substantial violation of a Regulation; (iii) a knowing violation of applicable Tribal law that expressly assigns duties or responsibilities to the Commission; or (iv) misconduct in office that threatens the integrity of the Commission or creates an appearance of impropriety of a Commissioner.
- C. Failure to Attend Commission Meetings. Failure to attend four (4) consecutive regularly scheduled meetings of the Commission, or failure to attend six (6) regularly scheduled meetings in a twelve (12) month period.
- D. Ineligibility. The Commissioner becomes ineligible pursuant to Section 7.07(B) or 7.07(D).

7.09 Removal of a Commissioner. If the Tribal Council has reason to believe that cause for removal of a Commissioner exists, the Tribal Council shall cause an investigation to be conducted. If, in the Tribal Council's determination, the investigation confirms the existence of cause for removal, the Tribal Council shall notify the Commissioner of the time and place for a hearing before Tribal Council, which describes the purpose of the hearing and all claims and allegations to be addressed in the hearing. The Commissioner shall be afforded reasonable notice of the hearing and given the right to be heard at the hearing. The Tribal Council may only remove a Commissioner upon a finding of clear and convincing evidence that cause for removal of the Commissioner exists.

7.10 Temporary Commissioner Appointments.

- A. Temporary Appointment Due to Recusal. The Tribal Council may provide for temporary appointments of Commissioners in the event that a majority of all appointed Commissioners are otherwise required to recuse themselves in the manner provided within the Regulations. In such event the appointment of one or more temporary Commissioners shall only be for the limited purpose of participating in the matter within which a Commissioner has been recused and only for the time period necessary to act upon such matter.
- B. Temporary Appointment Due to Departure of Commissioner. The Tribal Council may appoint a temporary Commissioner in the event that a Commissioner resigns, is removed, or otherwise departs the Commission. The replacement Commissioner shall serve for the remainder of the prior Commissioner's term of appointment.
- C. Requirements. A temporarily appointed Commissioner must otherwise satisfy the requirements of this Act.

7.11 Powers and Duties of the Commission.

- A. General. Subject to the provisions of this Act, the Commission shall have the power, duty, and primary responsibility necessary and proper to:
 - (i) carry out the Tribe's regulatory requirements under Applicable Law,
 - (ii) enforce such requirements, (iii) protect the integrity of Gaming Activities, and (iv) prevent the appearance of impropriety.
- B. Licensing. The Commission shall have the power to conduct investigations and determine the eligibility of any Applicant in accordance with this Act and the Regulations. The Commission shall also have the power to limit, revoke, terminate, condition, suspend, or restrict any license and to reprimand, warn or fine a Licensee for violations of this Act or the Regulations.
- C. Rulemaking Authority. The Commission shall have the power to promulgate Regulations implementing, interpreting and otherwise in furtherance of this Act and the purposes thereof, and shall have the power generally to promulgate Regulations relating to gaming on the Tribe's Indian Lands.
 - (1) Standard Regulations. In promulgating Regulations, the Commission shall provide notice of the proposed regulation ("Proposed Rule Notice") as set forth below.
 - (a) The Proposed Rule Notice shall describe the general nature of the proposed regulation and advise how comments on the proposed action will be received by the Commission.

- (b) The Commission shall post the Proposed Rule Notice at a place designated by the Commission within a Tribal government building, or such other place as provided in the Regulations, at least twenty (20) calendar days prior to the Commission meeting at which the Commission is to consider the proposed regulation. On or before the date of posting, the Commission shall separately send the Proposed Rule Notice to the Tribal Council and the CEO of the Gaming Operation.
 - (c) Upon receipt of comments from the Tribal Council, a Gaming Operation or any other Person, the Commission shall consider such comments before taking action to adopt a proposed regulation or amend or repeal a Regulation.
- (2) **Emergency Action.** In the event the Commission determines that an emergency is occurring, the Commission may summarily adopt, amend or repeal any Regulation (an "Emergency Action") in the manner provided in this section.
- (a) To take Emergency Action, the Commission must:
 - (i) Determine the immediate adoption, amendment or repeal of a Regulation is necessary for the immediate preservation of the public peace, health, safety, morals, good order or general welfare; and
 - (ii) Explain in writing the facts and circumstances that caused the emergency.
 - (b) The Commission shall inform the Tribal Council as soon as reasonably possible about the Emergency Action and reasons for the Emergency Action.
 - (c) The Commission shall post notice of the Emergency Action at the Gaming Facility or Tribal administration complex within one day of adoption.
 - (d) Regulations adopted under this subsection shall be effective for a period not to exceed ninety (90) calendar days. Should the Commission desire the Emergency Action to be effective past that date, the Commission must post a Proposed Rule Notice and adopt, amend or repeal such Regulation in the manner provided in Section 7.11(C)(1) above.

D. General Powers of Commission.

- (1) Monitoring of Compliance and Inspection. The Commission shall have the power and duty to monitor all Gaming Operations for compliance with Applicable Law. The Commission shall have the power to require the Executive Director and Commission staff to undertake such investigations, audits and inspections as appropriate, review the results of inspections and take enforcement action.
- (2) Access to Records. The Commission shall have access to all areas of each Gaming Facility and Gaming Operation and to all of their records.
- (3) Audit. The Commission shall ensure that each Gaming Operation causes an independent audit of such Gaming Operation to be conducted annually.
 - (a) Annual audits shall conform to generally accepted auditing standards. All gaming-related contracts that result in the purchase of supplies, services or concessions for more than \$25,000 in any year (except contracts for professional legal and accounting services) shall be specifically included within the scope of the annual audit. Copies of the annual audit of each licensed Gaming Operation, and each audit for supplies, services or concessions of each Gaming Operation, shall be furnished by the Commission to the NIGC within one hundred and twenty (120) calendar days after the end of each fiscal year of the Gaming Operation.
 - (b) The Commission may require additional financial audits of any Gaming Operation and regulatory audits of Gaming Activity. The Commission shall require such audits to occur when necessary to ensure integrity, security, honesty and fairness of a Gaming Operation and all Gaming Activity. The Commission shall take reasonable steps to coordinate the timing of any additional financial audits with the annual audit required above, provided that the Commission may require audits to occur at any other time if necessary to preserve the assets of the Tribe or ensure the integrity, security, honesty and fairness of a Gaming Operation or any Gaming Activity.
- (4) Enforcement Authority. When information received by the Commission through investigations, audit or otherwise indicates a violation of Applicable Law or the terms and conditions of any

license, the Commission may take enforcement action as it deems necessary and appropriate.

E. Additional Powers. The powers of the Commission include the following:

- (1) System for Investigations and Licensing. Implement and administer a system for investigating, licensing (including license issuance, renewal, denial, and revocation, or exemption therefrom), and monitoring Gaming Facilities, employees, vendors, investors, and others connected with Gaming Activities, including any other Person as required under Applicable Law.
- (2) On-site Regulation, Access to Information. Conduct on-site gaming regulation and control; inspect and test internal control systems; audit, examine, and monitor each Gaming Facility; prepare reports and monitor compliance, including the authority to demand access to and inspect, examine, photocopy and audit all papers, books and records related to any Gaming Facility or Gaming Activities.
- (3) Coordination with Other Governmental Entities. Develop necessary documentation and protocols, and establish joint cooperative working relationships with federal, state, and local jurisdictions as necessary and proper to ensure the effective regulation of the Tribe's Gaming Activities. Provide referrals and information to the appropriate law enforcement officials when such information indicates a violation of Tribal, federal or state statutes, ordinances, regulations, codes or resolutions.
- (4) Fingerprints. Obtain and process fingerprints, or designate a law enforcement agency to obtain and process fingerprints.
- (5) Patron Disputes. Resolve disputes between Patrons or players and the Gaming Operation and promulgate associated Regulations.
- (6) Hearings and Appeals. Promulgate Regulations regarding hearings and appeals from Commission actions.
- (7) Hiring of Staff. Hire staff and support services as deemed necessary, subject to an approved Commission budget.
- (8) Reporting. Comply with all applicable reporting requirements established under Applicable Law.
- (9) Fees, Sanctions and Conditions. Establish and impose application fees, license fees, investigative fees, sanctions, fines, and conditions as appropriate.

- (10) Exclusion Policy. Develop an exclusion policy that includes the right to a hearing for an excluded person and requires maintenance of a list of persons barred from each Gaming Facility.
- (11) Game Rules. Approve all game rules and regulations.
- (12) Internal Controls, Security and Surveillance, Technical Standards. Approve Gaming Operation internal controls and surveillance measures, oversee Gaming Operation security, and promulgate technical standards for gaming device operations.
- (13) Licensing and Registration Authority. In addition to the licensing requirements expressly provided in Sections 9, 10 and 11, the Commission may require licensure or registration for any Persons, entities and facilities that the Commission determines is necessary to ensure the integrity of Gaming Activities, eliminate a threat to the public interest, or protect the gaming assets of the Tribe, including individuals and entities that provide goods and services to the Gaming Operation. The circumstances under which such registration or license shall be required shall be set forth by the Commission in one or more Regulations.
- (14) Other Duties. Carry out such other duties with respect to the regulation of Gaming Activities on the Tribe's Indian Lands as required or permitted under Applicable Law, and otherwise as the Tribal Council shall direct. This includes all action required or permitted to be taken by the "Tribal Gaming Agency" as defined in the Compact.

F. Delegation. The Commission may delegate duties and powers to the Executive Director and other staff members, as the Commission determines necessary and appropriate.

G. Commission Meetings and Reports.

- (1) The Commission shall meet in the manner determined by this Act and the Regulations. For purposes of conducting any business, a quorum of the Commission is a majority of all appointed Commissioners and shall be no less than two (2) Commissioners. All decisions of the Commission shall be made by a majority vote at a duly called meeting of the Commission at which a quorum is present.
- (2) The Commission and Tribal Council shall meet regularly to discuss matters of common interest. At least quarterly the Commission shall make reports to the Tribal Council. Such reports shall contain the following information:

- (a) Number and types of licenses issued in the previous quarter;
- (b) Number and types of licenses denied, suspended, restricted, or revoked during the previous quarter and commentary helpful to explain such actions where appropriate, provided that confidential information shall not be disclosed;
- (c) Reports of violations of this Act and the Regulations;
- (d) An overview of Commission expenditures for the prior quarter;
- (e) Any other reports required by the Regulations; and
- (f) All other information that the Commission deems relevant in order to keep Tribal Council adequately informed as to Commission regulatory matters.

8. Executive Director

8.01 Executive Director Appointment and Eligibility.

- A. Appointment by the Commission. The position of Executive Director of the Commission is hereby created. The Commissioners shall appoint the Executive Director, subject to, confirmation by the Tribal Council. Appointment of the Executive Director shall be conducted in accordance with the Tribe's employment policies and procedures.
- B. Limitations on Eligibility. No member of the Tribal Council and no other person holding any tribal elective office is eligible for the appointment of Executive Director.

8.02 Powers and Duties of Executive Director. The Executive Director shall be responsible for the day-to-day operations of the Commission and shall have such powers as are delegated by the Commission from time to time.

8.03 Files and Records of the Commission; Confidentiality of Information.

- A. File Maintenance. The Executive Director shall maintain a file of all applications for licenses under this Act and the Regulations, together with a record of all actions taken with respect to those applications. The Commission and Executive Director may maintain such other files or records as they deem desirable.
- B. Confidentiality of Records. The Executive Director is responsible for and shall ensure that all records and information obtained as a result of a background investigation shall remain confidential and shall not be

disclosed to any persons who are not directly involved in the licensing and employment processes.

C. **Confidential Information.**

- (1) **Treatment of Confidential Information.** The confidential information and data listed in Section 8.03(C)(2) may be revealed in whole or in part only in the course of the necessary administration of this Act or the Regulations. This confidential information may only be disclosed to members of management, human resource personnel and/or others employed by the relevant Gaming Operation on a need-to-know basis, for actions taken in their official capacities. The confidentiality requirements of this Act do not apply to requests for such records or information from any Tribal, federal, or state law enforcement or regulatory agency, or pursuant to a lawful court order, or for the use of such records or information by the Commission and staff in the performance of their official duties.
- (2) **Information and Data that is Confidential.** The following information and data is confidential:
 - (a) Information and data included within any application for license or supporting materials;
 - (b) Information and data required by this Act or the Regulations to be furnished to the Commission or the Executive Director, or which may otherwise be obtained in connection with the review of finances, earnings or revenue of any Applicant or Licensee;
 - (c) Information and data pertaining to any Applicant's criminal record or background which have been furnished to or obtained by the Commission or the Executive Director from any source;
 - (d) Information and data provided to the Commission, Executive Director or any Commission employee by a governmental agency or an informant or otherwise provided on the assurances that the information will be held in confidence and treated as confidential;
 - (e) Information and data pertaining to the identity of any informant;
 - (f) The identity of each person interviewed in the course of a background investigation; and

- (g) Information and data obtained by the Executive Director or the Commission from a supplier relating to the manufacturing of gaming devices or Gaming Services.
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- D. **Retention of Records.** All records retained by the Executive Director or the Commission shall be retained for a period of at least three (3) years, after which such records may be disposed of in the discretion of the Commission. It is a violation of this Act for a person to falsify, destroy, erase or alter any records of any kind or other information relating to the Gaming Operation in a manner other than provided in this Act and the Regulations.

8.04 Background Investigations of the Executive Director and Commission Staff.

- A. **Background Investigation.** The Commission shall ensure that a background investigation is conducted on all prospective Commission staff, including the Executive Director, upon receipt of a completed application for employment at the Commission. The Tribe's law enforcement agency, or such other third-party investigative entity with which the Commission may contract, shall assist the Commission in conducting background investigations. All prospective Commission staff shall consent to, and fully cooperate with the background investigation as provided hereunder and as required by the Commission. The Commission may permit a prospective employee to start work prior to the completion of a background investigation.
- B. **Applicable Standards.** Individuals selected for appointment as Executive Director shall be subject to the same background investigation process and suitability standards that apply to Key Employees. Commission staff shall be subject to such standards as the Commission may determine and promulgate by Regulation.
- C. **Eligibility Determination.** The Commission shall make the final eligibility determination for the Executive Director and Commission staff. A person is not eligible for employment by the Commission is a person who:
- (1) Has been convicted of any felony, gaming offense, or any misdemeanor offense of embezzlement, theft or any other money-related or honesty-related misdemeanor offense, such as fraud; or
 - (2) Has knowingly and willfully provided materially important false statements, or information or omitted materially important information on his or her background questionnaire; or
 - (3) Has been determined to be a person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of

gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, and methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto.

9. Additional License Categories.

- 9.01 Gaming Employee License.** Each Gaming Employee shall be subject to the licensing requirements of the Commission prior to commencement of employment. Gaming Employee licenses shall be renewed annually.
- 9.02 Gaming Vendor License.** Each Gaming Vendor shall be subject to the licensing requirements of the Commission prior to the sale of Gaming Services to the Tribe. Gaming Vendor licenses shall be renewed annually. The Tribe shall not enter into, or continue to make payments pursuant to, any contract or agreement that would require licensing of a Gaming Vendor if the Gaming Vendor has (a) not obtained a license, (b) been denied a license, (c) been deemed unsuitable by the Commission, or (d) allowed its license or suitability determination to expire without renewal.
- 9.03 Gaming Financiers.** Any person or entity that extends financing, directly or indirectly, to the Gaming Facility or Gaming Operation shall be subject to the licensing requirements of the Commission. Licensing requirements of the Commission do not apply to financing provided by a federally regulated commercial lending institution, the Tribe or the federal government. Federally regulated commercial lending institutions are those regulated by the Securities and Exchange Commission, the Office of the Comptroller of Currency, the Federal Deposit Insurance Corporation, the United States Federal Reserve System, the National Credit Union Administration, and/or the Washington State Department of Financial Institutions. Gaming Financier licenses shall be renewed annually. Gaming Financier licensing requirements and exemptions therefrom may be more fully set forth in the Regulations and the Compact.
- 9.04 Nongaming Vendors.** Persons that provide only nongaming goods and related services to the Gaming Operation and are deemed by the Commission not to be Gaming Vendors may be subject to licensure, registration or exempted therefrom in the manner provided by the Regulations.
- 9.05 Vendor Licensing Exemptions.** The following categories are exempt from Commission licensing requirements: (a) Gaming Vendors supplying less than \$25,000 in goods or services annually, and (b) persons and entities supplying only accounting or legal services.
- 9.06 Registration and Exemptions.** The Commission may develop processes for registration and exemption of persons who fall into the categories described in this section to the extent such processes are not inconsistent with Applicable Law

and are in the public interest. The processes for registration and exemption shall be more fully set forth in Regulations.

10. Facility License

10.01 Requirement of Licensure. The Commission is responsible for issuing Facility Licenses to each place, facility or location on the Tribe's Indian Lands where Class II or Class III Gaming is conducted. Each Gaming Facility must hold a license. A Gaming Facility shall be constructed, maintained, and operated in a manner that adequately protects the environment and the health and safety of the public. The Commission shall identify the environmental, health and public safety standards with which the Gaming Facility must comply, and specify the form, conditions and content of a Facility License application.

10.02 License Not Guaranteed. The Commission shall issue a Facility License only if the application includes the required information and documentation, and sufficiently satisfies any additional conditions deemed necessary by the Commission.

11. Licenses for Key Employees and Primary Management Officials

11.01 Application Forms:

- A. Application Form. Every individual seeking employment as a Key Employee or Primary Management Official shall submit an application for licensure on such forms or in such manner as the Commission may require.
- B. Privacy Act Notice. The following notice shall be placed on the license application form for a Key Employee or a Primary Management Official before that form is filled out by any Applicant:

In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. §§ 2701 *et seq.* The purpose of the requested information is to determine the eligibility of individuals to be granted a gaming license. The information will be used by the Tribal gaming regulatory authorities and by the National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed by the Tribe or the NIGC to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a tribe or the NIGC in connection with the issuance, denial, or revocation of a gaming license, or investigations of activities while

associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe being unable to license you for a primary management official or key employee position.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

- C. **False Statement Notice.** The following additional notice shall be placed on the application form for a Key Employee or a Primary Management Official before that form is filled out by any Applicant:

A false statement on any part of your license application may be grounds for denying a license or the suspension or revocation of a license. Also, you may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

11.02 Background Investigations.

- A. **Scope of Background Investigation.** The Commission shall conduct, or cause to be conducted, a background investigation on each Primary Management Official and Key Employee that meets or exceeds the requirements of 25 C.F.R. §§ 556 and 558. The investigation must be sufficient to allow the Commission to make a license eligibility determination under this Act. At a minimum, the applications for a Tribal gaming license shall contain the following information:

- (1) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, and all languages spoken and/or written;
- (2) Currently and for the previous five (5) years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license numbers;
- (3) The names and current addresses of at least three (3) personal references, including one personal reference who was acquainted with the Applicant during each period of residence listed under paragraph A(2) of this subsection;
- (4) Current business and residence telephone numbers, and all cell phone numbers;
- (5) A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;

- (6) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;
- (7) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;
- (8) For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date of disposition, if any;
- (9) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations) within ten (10) years of the date of the application, the name and address of the court involved and the date of disposition, if any;
- (10) For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is within ten (10) years of the date of the application and is not otherwise listed pursuant to paragraphs (A)(8) and (A)(9) of this subsection, the criminal charge, the name and address of the court involved and the date of disposition, if any;
- (11) The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;
- (12) A current photograph;
- (13) Any other information the Commission deems relevant; and
- (14) Fingerprints consistent with procedures adopted by the Commission pursuant to 25 C.F.R. § 522(h).

B. Application File Maintained. When a Primary Management Official or Key Employee is employed by the Tribe, a complete application file, containing all of the information listed in paragraph A of this subsection, shall be maintained by the Commission.

C. Fingerprinting. Fingerprints of Primary Management Officials and Key Employees shall be taken by the Commission. Fingerprints of Primary Management Officials and Key Employees will then be forwarded to the NIGC for processing through the Federal Bureau of Investigation ("FBI") and the National Criminal Information Center to determine the Applicant's criminal history, if any.

- D. Compliance with NIGC Standards. The Commission shall amend the application and investigation procedure for a Gaming License in the event that the Commission receives notice that the application and investigation procedure must be modified to conform to the standards of the NIGC.
- E. Additional Procedures. The Commission may promulgate such practices, procedures and Regulations as it determines are necessary and appropriate to satisfy its background investigation obligations.

11.03 Eligibility Determination.

- A. Before a license is issued to a Primary Management Official or Key Employee, the Commission shall make a finding concerning the eligibility of that person for receiving a gaming license by reviewing the Applicant's prior activities, criminal record, if any, and reputation, habits and associations.
- B. If the Commission, in applying the standards adopted in this Act, determines that licensing the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances the dangers of unsuitable, unfair or illegal practices, methods and/or activities in the conduct of gaming, the Commission shall not license that person in a Key Employee or Primary Management Official position.
- C. Copies of the eligibility determination shall be included with the notice of results that must be submitted to the NIGC before a Primary Management Official or Key Employee may be licensed.

11.04 Temporary Licensure. All Key Employees and Primary Management Officials of the Gaming Operation must have a gaming license. An Applicant who has submitted an application as a Key Employee or Primary Management Official may be given a temporary license for a period of ninety (90) calendar days by the Executive Director. The Executive Director may issue a temporary license upon a determination that the application is complete and, if true, would allow the Applicant to receive a license. No Key Employee or Primary Management Official shall continue to be employed if that Key Employee or Primary Management Official does not have a license within ninety (90) calendar days from the start of employment.

11.05 Investigative Reports. Pursuant to the procedures set forth herein, the Commission shall create and maintain an investigative report for each background investigation of a Key Employee or Primary Management Official. An investigative report shall include all of the following information:

- A. Steps taken in conducting the background investigation;
- B. The results obtained from the background investigation;

- C. The conclusions reached as a result of the background investigation; and
- D. The basis for those conclusions.

11.06 Notice of Background Investigation Results.

- A. Before issuing a license to a Primary Management Official or Key Employee, the Commission shall prepare a notice of results of the Applicant's background investigation to submit to the NIGC. The notice of results must be submitted to the NIGC no later than sixty (60) calendar days after the Applicant begins working for the Tribe.
- B. The notice of results shall include the following:
 - (1) The Applicant's name, date of birth, and social security number;
 - (2) The date on which Applicant began or will begin work as a Key Employee or Primary Management Official;
 - (3) A summary of the information presented in the investigative report, which shall, at a minimum, include: (i) licenses that have previously been denied; (ii) gaming licenses that have been revoked, even if subsequently reinstated; (iii) every known criminal charge brought against the Applicant within the last ten (10) years of the date of the application; and (iv) every felony of which the Applicant has been convicted or any ongoing prosecution of Applicant for a felony; and
 - (4) A copy of the Commission's eligibility determination.

11.07 Granting a Gaming License.

- A. All Primary Management Officials and Key Employees of the Gaming Operation must have a gaming license issued by the Commission, which is responsible for granting and issuing such gaming licenses.
- B. The Commission may license a Primary Management Official or Key Employee Applicant after submitting a notice of results of the Applicant's background investigation to the NIGC.
- C. The Commission shall notify the NIGC of the issuance of a license to a Primary Management Official or Key Employee within thirty (30) calendar days of issuance.
- D. The Tribe shall not employ an individual in a Primary Management Official or Key Employee position who does not have a license after ninety (90) calendar days of beginning work at the Gaming Operation.

- E. The Commission must reconsider a license application for a Primary Management Official or Key Employee if it receives a statement of itemized objections to issuing such a license from the NIGC, and those objections are received within thirty (30) days of the NIGC receiving a notice of results of the Applicant's background investigation. The Commission shall take the NIGC's objections into account when reconsidering a license application.
- F. The Commission will make the final decision whether to issue a license to an Applicant for a Primary Management Official or Key Employee position.
- G. If the Commission has issued a license to a Primary Management Official or Key Employee before receiving the NIGC's statement of objections, notice and a hearing shall be provided to the Licensee as provided in Section 11.09 below.

11.08 Denying a Gaming License.

- A. The Commission shall not license a Primary Management Official or Key Employee if the Commission determines, in applying the standards herein for making a license eligibility determination, that licensing the person:
 - (1) Poses a threat to the public interest;
 - (2) Poses a threat to the effective regulation of gaming; or
 - (3) Creates or enhances the dangers of unsuitable, unfair or illegal practices, methods and/or activities in the conduct of gaming.
- B. When the Commission does not issue a license to an Applicant for a Primary Management Official or Key Employee position, or revokes a previously issued license after reconsideration, it shall:
 - (1) Notify the NIGC; and
 - (2) Forward copies of its eligibility determination and notice of results of the Applicant's background investigation to the NIGC for inclusion in the Indian Gaming Individuals Record System.

11.09 License Suspensions and Revocations.

- A. If, after the issuance of a gaming license, the Tribe or Commission receives notice that the NIGC has reliable information indicating that a Key Employee or a Primary Management Official is not eligible for employment, the Commission shall:
 - (1) Immediately suspend such license;

- (2) Provide the suspended licensee with written notice of the suspension and the proposed revocation; and
 - (3) Provide the suspended licensee with notice of a time and a place for a hearing on the proposed revocation of a license.
- B. After a revocation hearing, the Commission shall decide to revoke or reinstate the suspended gaming license. The Commission shall notify the NIGC of its decision within forty-five (45) calendar days of receiving notification from the NIGC that the Key Employee or Primary Management Official is not eligible for employment.
 - C. Nothing herein shall prohibit the Commission from taking immediate action in emergency situations to protect the health and safety of patrons and employees or assets of the Tribe. Such actions shall immediately be followed by the hearing process.

11.10 Retention of Records. The Commission may promulgate Regulations regarding the retention of records for Applicants and Licensees. With respect to Key Employees and Primary Management Officials, the Commission shall retain applications for licensing, investigative reports, and eligibility determinations for no less than three (3) years from the date of termination of employment.

11.11 Additional Licensee and Applicant Provisions.

- A. Licensing Procedure. The Tribe's Gaming licensing procedure shall be administered through the Commission. The program shall be an investigative licensing process under which all Applicants for gaming licenses are evaluated against the standards set forth in, and subject to, Applicable Law.
- B. Licensing Policy and Requirements. It is the policy of the Tribe that all Gaming Activities be licensed and controlled so as to protect the morals, good order and welfare of Tribal members and other persons on the Tribe's Indian Lands, and to preserve the honesty, fairness and integrity of such Gaming Activities.
- C. Gaming License is a Privilege. Any gaming license issued by the Commission shall be deemed a privilege and is subject to suspension or revocation at any time. No license or license renewal shall be issued that would place the Tribe in violation of Applicable Law. A gaming license or finding of suitability is subject to renewal at least every year. Nothing herein shall create a property interest in the issuance or retention of a license provided for by this Act.
- D. Burden on Applicant. The burden of proving an Applicant's qualifications to receive a license hereunder is at all times on the Applicant. Applicants must accept any risk of adverse public notice, embarrassment or other

action that may result from the application process and expressly waive any claim for damages as a result thereof.

- E. **Applicant Claim of Privilege.** An Applicant may claim any privilege afforded by law in connection with a gaming license application or investigation, but a claim of privilege with respect to any testimony or evidence pertaining thereto may constitute sufficient grounds for denial, suspension or revocation.
- F. **Release of Information.** Persons applying for a license shall agree to release all information necessary in order for the Commission and any applicable federal or state entity to complete their suitability determination. Applicants must update all such information promptly on an on-going basis and furnish such information as may be required by law.

11.12 Standards. All persons engaged by or associated with any Gaming Activity on the Tribe's Indian Lands shall conduct themselves with honesty, integrity, and such decorum and manners as necessary to reflect positively on the Tribe, its members and the Gaming Activities. Any failure to abide by such standards, or any violation of a rule, regulation, law, custom or tradition of the Tribe, the Commission, or the Gaming Operation, or with the terms or conditions of the license, may be grounds for immediate suspension or revocation of any license issued hereunder.

11.13 Effect of Compact. Notwithstanding anything in this Act to the contrary, any licensing procedures required under the Compact shall be implemented as provided therein.

12. Patron Disputes

12.01 Raising Disputes. Any Patron who has any dispute, disagreement, or other grievance regarding the play or operation of any Gaming Activity, including a refusal to pay any alleged winnings from Gaming Activities, may raise such dispute with the following persons and in the following order: (a) a member of the staff of the Gaming Operation, (b) the supervisor in the area in which the dispute arose, (c) the CEO, (d) the Commission; and (e) Snoqualmie Tribal Court.

12.02 Patron Rights Regarding Disputes. At each level, the Patron has the right to explain his or her side of the dispute and present witnesses in connection with any factual allegation. At each level, if the dispute remains unresolved, the Patron shall be given a copy of the procedures set forth in this Section 12 and informed of the right to take the dispute to the next higher level as set forth in section 12.01 of this Section.

12.03 Raising Disputes. Resolution of any dispute by staff of the Gaming Operation shall always involve two or more staff members, one of whom shall have the title of at least supervisor. Disputes, whether resolved or not, shall be the subject of a

detailed report by all staff involved to their supervisors, or, in the case of the CEO, to the Commission.

12.04 Impact On Game Play. In the event of a dispute by a Patron that cannot be resolved by ordinary means by Gaming Operation staff as to the outcome, prize, wager made, or any other aspect of the Patron's participation in a game being played, all relevant data shall be immediately collected, including, but not limited to, all meter readings, memory records, surveillance tapes, and any other reports or information regarding the play in dispute. Following the collection of all relevant data, the Commission shall be notified and requested to (a) make an evaluation of whether or not the dispute involves the integrity of the hardware or software being used and (b) try and resolve the dispute. The CEO shall send a report of disputes to the Commission, and the Commission shall maintain records of those disputes.

12.05 Commission Decisions. All disputes which are submitted to the Commission shall be decided by the Commission based on information provided by the Patron, any witnesses or documents provided by the Patron, the CEO, and any other person who has relevant information to provide. The Commission's decision shall be issued within sixty (60) days of submission, shall be in writing, shall be based on the facts surrounding the dispute, and shall set forth the reasons for the decision.

12.06 Appeal To Snoqualmie Tribal Court.

A. **Tribal Court Review.** If the complainant Patron is dissatisfied with the decision issued by the Commission, he or she may appeal to the Snoqualmie Tribal Court within thirty (30) days of the issuance of the written decision from the Commission. The appeal shall be only on the record and shall not be heard de novo. If the Court finds that the decision of the Commission was issued arbitrarily and capriciously, clearly erroneously, or in violation of the Tribe's Constitution or the constitutional rights of Indians established under the Indian Civil Rights Act, 25 U.S.C. §§ 1301-1303, made upon unlawful procedure or some other clear error of law, the Snoqualmie Tribal Court shall vacate and remand the decision to the Commission to take action consistent with the Snoqualmie Tribal Court's determination. Otherwise, the decision of the Commission shall be upheld unless further appeal is permitted pursuant to Tribal law.

Tribal Court Jurisdiction. The Tribal Court shall have exclusive jurisdiction in Patron actions arising pursuant to and permitted by this Section 12 and the Commission shall be bound by and take action consistent with the Tribal Court's determination. To the extent necessary to ensure the Tribal Court's jurisdiction over Patron actions arising pursuant to and permitted by this Section 12, the approval of this provision, as authorized by Tribal Council Resolution #x, shall constitute a limited, irrevocable waiver of

sovereign immunity or other objections to the authority of the Tribal Court or the laying of venue in the Tribal Court regarding such actions.

- C. **Tribal Lottery System.** Disputes involving the Tribal Lottery System shall be resolved in accordance with this Section and consistent with requirements set forth in the Compact.

13. Agent for Service of Process

The Tribe designates the Tribal Chairperson as the agent for any official determination, order, or notice of violation.

14. Limitations on Gaming

No Commissioner, Commission employee or member of Tribal Council shall engage, or be permitted to engage, either directly or indirectly through another person, in any Gaming Activities on the Tribe's Indian Lands. Such limitation shall not apply in instances where, as pre-approved by the Commission, the individual engages in such activities as a part of an event designed specifically for such individuals or for training purposes.

15. Sovereign Immunity Preserved

Except as provided in the limited circumstance set forth in Section 12.06 of this Act, nothing in this Act shall be construed as a waiver of the sovereign immunity of the Commission, Tribe, or any governmental subdivision or economic enterprise of the Tribe. Any waiver of sovereign immunity is not effective as a matter of law unless approved by resolution of the Tribal Council.

16. Consent to Jurisdiction

Any person who applies for a license under this Act, applies for employment in the Gaming Operation, enters into any gaming related contract or agreement with the Tribe or its governmental subdivisions, participates in any Gaming Activity on the Tribe's lands, shall be deemed to consent to the civil jurisdiction of the Tribe, the Commission, and the Tribal Court. Nothing in this Section shall limit the jurisdiction of the Tribe, the Commission, or the Tribal Court under any circumstances not explicitly contemplated in this Act or the Regulations.

17. Compliance with Federal Law

The Gaming Operation shall comply with all applicable federal laws, including the Bank Secrecy Act, 31 U.S.C. § 5311 *et seq.*

18. Repeal

To the extent that they are inconsistent with this Act, all prior tribal gaming acts of the Tribe are hereby superseded, canceled, and repealed.

19. Effective Date

This Act shall take effect immediately upon its approval by the NIGC Chair.

H. Snoqualmie Gaming Commission - Commission Hearing Regulations

**SNOQUALMIE GAMING COMMISSION OF THE
SNOQUALMIE INDIAN TRIBE**

**37500 SE NORTH BEND WAY
SNOQUALMIE, WA 98065**

COMMISSION HEARING REGULATIONS

Adopted by Resolution No. 01-2016 on February 19, 2016

CHAPTER 1 – GENERAL PROVISIONS

Section 1.1 Authority

These Regulations are promulgated and established by the Snoqualmie Gaming Commission of the Snoqualmie Indian Tribe pursuant to the Commission's authority delegated by the Snoqualmie Tribal Council under the Snoqualmie Tribe Tribal Gaming Act enacted first by Tribal Council Act 3-02, and most recently updated by Snoqualmie Indian Tribe Resolution #12-2015 (Jan. 22, 2015) ("Gaming Act").

Section 1.2 Definitions

Terms used in these Regulations shall have the same meaning given to them in Section 3 of the Gaming Act. The following terms are defined for the reader's reference.

- (A) "Commission" means the Snoqualmie Gaming Commission.
- (B) "Gaming Act" means the Snoqualmie Gaming Act, as amended.
- (C) "Regulations" means these regulations governing hearing processes at the Snoqualmie Gaming Commission.
- (D) "Tribe" means the Snoqualmie Indian Tribe.

Section 1.3 Service of Notice

- (A) Except as otherwise provided in the Gaming Act or these Regulations, notices and other communications will be sent by the Commission to the address of the recipient on file with the Commission by first class United States mail, postage prepaid.
- (B) Unless specifically provided otherwise, notices sent pursuant to paragraph (A) shall be deemed to have been served upon their deposit, postage prepaid, in the United States mail, and the time specified in any such notice shall commence to run from the date of such mailing.
- (C) Nothing in this Section shall preclude the Commission from serving notice by certified mail, return receipt requested, overnight delivery, or hand-delivery.
- (D) Notice by fax or electronic mail will not be accepted.

Section 1.4 Interpretation

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These Regulations are to be interpreted so they do not conflict with the Gaming Act or other Tribal law or regulation.

Section 1.5 Severability

If any provision of these Regulations shall be held invalid by the Snoqualmie Tribal Court, it shall not be construed to invalidate any other provision of these Regulations.

Section 1.6 Availability of Regulations

A copy of these Regulations shall be made available to any member of the public at the Commission offices during regular business hours.

Section 1.7 Inapplicability

These Regulations shall not govern or apply to any patron complaint or charge, which are governed by separate procedures and the process set out in the relevant provisions of the Gaming Act.

Section 1.8 Sovereign Immunity

With the exception of—and only to the extent stated in—Section 2.10 below (Appeals) the Commission does not waive any aspect or portion of its immunity from suit through promulgation of these regulations. The Commission's sovereign immunity is explicitly retained, and no provision herein shall be interpreted to be a waiver, either express or implied. Nothing in these regulations shall be deemed or construed to act as a waiver or limitation of the Snoqualmie Indian Tribe's inherent sovereign immunity or that of its Tribal officials acting within the scope of their official duties.

CHAPTER 2 - HEARINGS

Section 2.1 Hearings

- (A) Hearings shall be conducted:
 - (1) Where required by the Gaming Act;
 - (2) Where required by these Regulations;
 - (3) Upon the Commission's own motion; or
 - (4) Upon the timely request of licensee or other party affected by Commission action.
- (B) A request for a hearing by a person other than the Commission shall be made in writing and shall include the following:
 - (1) The name, address, and telephone number of the person requesting the hearing;
 - (2) A statement of the action or event on which a hearing is requested; and
 - (3) A description of the nature of the claim and the relief sought.

Section 2.2 Notice of Hearing

- (A) The Commission shall set the time and place of the hearing and give written notice to all affected parties. Upon request of an affected party or by motion of the Commission and for good cause shown the Commission may modify the hearing date, time, or place.
- (B) The notice must include the following:
 - (1) The Commission's name, mailing address and telephone number;
 - (2) The names and mailing address of all parties and other persons to whom notice is being given by the Commission;
 - (3) The name, official title, mailing address, and telephone number of any counsel or agent who has been designated to appear for the Commission;
 - (4) The official file or other reference number, and the name of the

proceedings;

- (5) A short and plain statement of the matters asserted or charged;
- (6) Reference to the particular sections of the Act and regulations involved;
- (7) A statement of the date, time, and place of the hearing;
- (8) A statement that a party who fails to attend the hearing may have a final decision and order by default entered against the party;
- (9) A statement that the party may be advised and represented at the hearing by legal counsel or other representative at the party's own expense;
- (10) A statement of the legal authority and jurisdiction under which the hearing is to be held; and
- (11) Such other information the Commission considers appropriate for the conduct of the hearing.

Section 2.3 Communications with the Commission

- (A) All communications with the Commission regarding a matter set for hearing shall be in writing.
- (B) No ex parte material or representation of any kind or any other communication outside the hearing procedure shall be considered by the Commission.

Section 2.4 Representation Before Commission

- (A) Any party may participate in the hearing in person, or if the party is a corporation or other artificial person, by a duly authorized representative.
- (B) Any party may be advised and represented at the hearing by legal counsel or other representative, at the party's own expense.

Section 2.5 Subpoenas and Oaths

- (A) The Commission may issue subpoenas for the appearance of any witnesses and subpoenas for the production of documents and may administer oaths.
- (B) The Commission may seek enforcement of subpoenas in Tribal Court.

Section 2.6 Hearing Procedure

- (A) Unless otherwise determined by the Commission, hearings shall be conducted at the Commission's principal office.
- (B) Procedural Requirements
 - (1) The following procedures will apply to all hearings:
 - (a) The Commission, all parties, and all witnesses will appear at the hearing in person. However, the Commission may conduct all or part of the hearing by telephone, television, or other electronic means, if each participant in the hearing has an opportunity to participate in, to hear, and, if technically feasible and practicable, to see the entire proceeding while it is taking place.
 - (b) The Commission shall cause the hearing to be recorded either by use of a tape recorder or by engaging a reporter to record the hearing and prepare a transcript thereof. If the Commission records the hearing by use of a tape recorder, any party to the hearing, at that party's expense, may cause a reporter approved by the Commission to prepare a transcript from its record, or cause additional recordings to be made during the hearing if the making of the additional recordings does not cause distraction or disruption.
 - (c) Hearings shall be confidential and closed to the public. Any witnesses shall be excluded from the hearing room until they are called to present evidence, and may not remain following their testimony.
 - (d) At the request of an affected party or on its own motion the Commission may establish such other procedural steps not specifically provided for in these Regulations as the Commission may determine are appropriate for the particular matter set for hearing.
 - (2) The Commission shall also afford to all parties the opportunity to respond to any allegations, present evidence and argument, conduct cross examination, and submit rebuttal evidence, subject to limitations in Section 2.7 below, in the hearing, in the following circumstances:
 - (a) When a party has properly notified the Commission that the party will attend the hearing, and the party appears at the

hearing; or

- (b) If the Commission sets over a hearing pursuant to these Regulations, and the party appears at the set over hearing.
- (C) Failure to Notify Commission; Final Decision and Order by Default. If a party fails to notify the Commission that the party will attend the hearing in accordance with these Regulations, and the party fails to attend the hearing, the Commission may enter a final decision and order by default.

Section 2.7 Evidence

- (A) Neither the common law nor any statutory rules of evidence shall apply in Commission hearings under these Regulations; rather, subject to the provisions below, any evidence may be received which is relevant and possesses probative value.
- (B) Documentary Evidence and Witness Lists - Limitation
 - (1) The Commission will compile all documentary evidence the Commission intends to use or reference at the hearing, including a list of any witnesses the Commission may call to present evidence or testimony. The Commission must submit this evidence and witness list to the licensee or party subject to a hearing no less than **two weeks** prior to the hearing.
 - (2) The licensee or party subject to a hearing must, in turn, submit its documentary evidence it intends to use or reference at the hearing, including a witness list, to the Commission not less than **one week** prior to the hearing.
 - (a) Example: If a hearing is scheduled for a Tuesday, the licensee or party must ensure it submits its evidence and list to the Commission by the Tuesday one week prior. If the one-week deadline falls on a holiday, the evidence must be submitted by the business day prior to the holiday.
 - (3) Limitation – If the licensee or the party subject to a hearing does not submit documentary evidence and a witness list by the deadline above, the evidence will not be considered at the hearing. The Commission will not accept evidence after the one-week deadline.
 - (4) Notwithstanding Section 2.3 (Service of Notice) above, the parties may exchange documentary evidence and witness lists electronically provided that the Commission and the party agree to such transmittal prior to the due dates in this section.

- (C) The Commission may exclude evidence that is irrelevant, immaterial or unduly repetitious, or untimely presented, upon its own determination or upon objection made by a party. Any objection to any testimony or item offered as evidence must be made at the time it is offered into evidence. If an objection is made to any testimony or other item offered as evidence, the Commission may provisionally allow that testimony or item in evidence and determine at a later point whether to consider it, or the Commission may decide upon the objection at the point in time when the objection is made. The Commission may, at its discretion, go into Executive Session to discuss among the Commissioners whether or not to sustain the objection.
- (D) The Commission may take official notice of (i) any fact that could be judicially noticed in the Tribal Court; (ii) the record of other proceedings before the Commission; (iii) technical or scientific matters within the Commission's specialized knowledge; and (iv) codes or standards that have been adopted by an agency of the United States, the Tribe or a state, or by a nationally recognized organization or association.

Section 2.8 Final Decision and Order

- (A) Final decision and order by default
 - (1) The Commission may issue a final decision and order by default:
 - (a) When the Commission gives the party notice of hearing pursuant to these Regulations, and the party fails to notify the Commission that the party plans to attend the hearing;
 - (b) When a party notifies the Commission that the party plans to attend the hearing but subsequently withdraws that notice;
 - (c) When a party notifies the Commission that they plan to attend the hearing and the party fails to appear at the hearing;
or
 - (d) When the Commission sets over a hearing on a party's motion and the party fails to appear at the set over hearing.
 - (2) If the party fails to appear at the hearing and, before issuing a final decision and order by default, the Commission finds that the failure of the party to appear was caused by circumstances beyond the party's reasonable control, the Commission may choose not issue a final decision and order by default, but instead schedule a new hearing.

- (3) The Commission may issue a final decision and order by default that is adverse to a party only after evidence is introduced into the record to support such decision and order. The Commission must find that the record, including all materials submitted by the party, contains evidence that persuades the Commission of the existence of facts necessary to support the decision and order.
- (4) The Commission shall render a final decision and order by default within **twenty (20) business days** of the hearing unless the Commission determines there is good cause to extend this period.
- (5) A final decision and order by default shall include:
 - (a) The authority under which the Commission enters a decision and order by default;
 - (b) Findings of fact—A finding must be made on each fact necessary to reach the conclusions of law on which the final decision and order is based;
 - (c) Conclusion(s) of law—applications of the controlling law to the facts found and the legal results arising therefrom;
 - (d) Decision and order—the decision of the Commission and action taken by the Commission as a result of the facts found and the legal conclusions arising therefrom;
 - (e) The effective date of the decision and order;
 - (f) A statement that the party may request, by a written request to the Commission, that the final decision and order by default be set aside within ten (10) business days of receiving the final decision and order by default, but that a final decision and order by default may only be set aside by the Commission if the cause for failure to appear at the hearing was beyond the reasonable control of the party; and
 - (g) A citation to the provision of these regulations that authorize an appeal to Tribal Court.
- (6) The Commission shall cause copies of the final decision and order by default to be delivered to each party.
- (B) In hearings where the party properly notified the Commission and appeared at the hearing, the following apply for a decision and order:

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- (1) The Commission, at its sole discretion, may allow the parties a designated amount of time after conclusion of the hearing for the submission of proposed findings or other arguments or motions.
- (2) The Commission shall render a final decision and order in writing within **twenty (20) business days** of the hearing unless the Commission determines there is good cause to extend this period.
- (3) A final decision and order shall include:
 - (a) Findings of fact – those matters that are either agreed as fact or that, when disputed, are determined by the Commission, on evidence, to be facts over contentions to the contrary. A finding must be made on each fact necessary to reach the conclusions of law on which the final decision and order is based;
 - (b) Conclusion(s) of law—applications of the controlling law to the facts found and the legal results arising therefrom;
 - (c) Decision and order—the decision of the Commission and action taken by the Commission as a result of the facts found and the legal conclusions arising therefrom;
 - (d) The effective date of the decision and order; and
 - (e) A citation of the provision of these regulations that authorize an appeal to Tribal Court.
- (4) The Commission shall cause copies of the final decision and order to be delivered to each party.

Section 2.9 Commission Record

The Commission shall maintain an official record of each hearing. The Commission Record shall be confidential, and access to the Commission Records will be limited, as appropriate, by the Commission. The record shall consist of the following:

- (A) notices of all proceedings;
- (B) any briefs or other document setting forth the parties' positions;
- (C) evidence received or considered;
- (D) a statement of any matters officially noticed;

- (E) proposed findings;
- (F) the recording of the hearing, together with any transcript of all or part of the hearing considered for the final decision;
- (G) the final decision.

Section 2.10 Appeals

The Commission hereby authorizes an express and limited waiver of its immunity from suit for the sole purpose of an appeal to the Snoqualmie Tribal Court only from a final decision to revoke a tribal gaming license reached pursuant to these Regulations, which waiver is subject further to the limitations set out in this Section 2.10. This limited waiver of immunity for the purposes of allowing appeals of final revocation decisions to the Tribal Court shall be construed narrowly, and any appeal outside the scope of this Section 2.10 shall not be deemed to be within the scope of this limited waiver.

- (A) Parameters of Appeal
 - (1) Only a Commission decision revoking a tribal gaming license may be appealed.
 - (2) Only a final Commission decision may be appealed. There shall be no interlocutory appeals.
 - (3) A final Commission decision may only be appealed to the Snoqualmie Tribal Court.
 - (4) The evidentiary record on appeal shall be limited to the Commission Record of the appealed decision, as described in Section 2.9.
 - (5) The Commission's limited waiver of sovereign immunity to the Tribal Court is further conditioned on the Tribal Court conducting the appeal hearing confidentially, and keeping confidential the evidence considered in the appeal and any records of the appeal hearing proceedings. The Tribal Court shall maintain confidential records, which shall not be open to any but the following individuals, except as may be ordered by Resolution of the Commission:
 - a. Members of the Commission in their official capacity.
 - b. The Commission Executive Director.
 - c. The Commission's legal representative.
 - d. The appealing party and his or her legal representative.
 - e. Court personnel.

All these individuals must maintain the confidentiality of the records, except on written mutual agreement between the Commission and the appealing party. In applying this provision, the Tribal Court may apply its practices under Section 9 of the Tribal Indian Child Welfare Code (Tribal Council Act 13.2).

- (6) The waiver for review by the Snoqualmie Tribal Court is limited to a consideration of whether the final Commission decision was arbitrary and capricious, or contains an error of law. This limited waiver does not extend to or allow for any award of damages or attorneys' fee against the Commission.
- (7) The appealing party is responsible for his or her own costs, including attorney's fees, on appeal.

(B) Appeal Procedure

- (1) An appealing party must first provide written notice to the Commission within **five (5) business days** after a final decision that the party will appeal the decision to Tribal Court. The written notice must set out the reasons for the appeal. The first business day following the date of the final decision shall count as the first day of this period. If a party fails to provide notice to the Commission within this period, he or she waives the appeal to Tribal Court and the Commission's limited waiver for such appeal is ineffective, and the final decision shall stand.
- (2) Form and Timing of Appeal
 - (a) The appeal shall be a concise and clear statement of the grounds for the appeal, and may be no longer than five (5) pages.
 - (b) The appeal shall be submitted to the Snoqualmie Tribal Court no later than **ten (10) business days** after the written notice to the Commission has been provided. If a party fails to submit the appeal to the Tribal Court within this period, he or she waives the appeal to Tribal Court and the Commission's limited waiver for such appeal is ineffective, and the final decision shall stand.
 - (c) A true copy of the appeal shall be served on the Commission and any other party as soon as practicable after its filing, but in no case more than **five (5) business days** from its filing. The appealing party must file with the Tribal Court a proof

of service that a copy of appeal has been properly served.

- (d) The appeal shall contain a copy of the final decision as an attachment. No other attachments or exhibits may be submitted. The Commission will provide the Snoqualmie Tribal Court with the Commission Record as described in Section 2.9 upon receipt of service of the appeal.
- (C) The decision of the Snoqualmie Tribal Court on the appeal is final; this limited waiver does not extend to any further appeal beyond the Tribal Court.
- (D) This limited waiver of sovereign immunity for purposes of appeal is further limited to decisions by the Tribal Court that would either affirm the Commission's decision or that remand to the Commission for further proceedings. There is no waiver of the Commission's immunity to any claims for any other kind of relief, including but not limited to damages, injunctive relief, attorney fees, or any other relief.
- (E) The express, limited waiver of sovereign immunity shall only apply to the appeal at hand. The Commission explicitly does not waive its immunity from suit from matters collateral to the appealed decision, matters arising from the same set of facts or controversy as the appealed decision, or matters beyond the revocation of a gaming license.

- I. Order and Judgment, *Long v. Snoqualmie Gaming Commission*,
Snoqualmie Tribal Court No. SNO-CV-0223-2016 (March 22,
2016)

1 Snoqualmie Tribal Court
2 PO Box 969
3 8150 Railroad Ave. #B
4 Snoqualmie, WA 98065
5 Ph 425-888-2567 Fax 425-888-2584

Ann Garcia
03-03-16 A11:59 RCVD

6
7 IN THE SNOQUALMIE TRIBAL COURT
8 FOR THE SNOQUALMIE INDIAN TRIBE
9 SNOQUALMIE, WASHINGTON

10 WENDELL LONG,

11 Petitioner,

12 v.

13 SNOQUALMIE GAMING COMMISSION,
14

15 Respondent.

) NO. SNO-CV-0223-2016
)

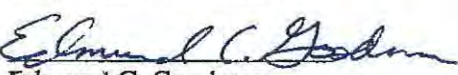
) ORDER AND JUDGMENT
) GRANTING RESPONDENT'S
) MOTION TO DISMISS AND
) DISMISSING THE CASE
)

) ~~PROPOSED~~ *gc*
)
)

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17
18 This matter came before the Snoqualmie Tribal Court on March 3, 2016, on a hearing on
19 Respondent's Motion to Dismiss and Petitioner's Motion for Temporary Restraining Order,
20 Injunctive Relief, and More Definite Statement. Having considered the Respondent's Motion to
21 Dismiss for lack of subject matter jurisdiction, and all other relevant pleadings, the Court makes the
22 following findings:
23

- 24 1. The Snoqualmie Gaming Commission filed a Motion to Dismiss asserting that the Court
25 lacked subject matter jurisdiction over this action.

26 ORDER AND JUDGMENT GRANTING 1
27 RESPONDENT'S MOTION TO DISMISS
28 AND DISMISSING THE CASE [PROPOSED]

1 Respectfully submitted,
2  by SKD
3 Edmund C. Goodman
4 Counsel for Snoqualmie Gaming Commission
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25 ORDER AND JUDGMENT GRANTING 3
26 RESPONDENT'S MOTION TO DISMISS
27 AND DISMISSING THE CASE [PROPOSED]
28

J. Excerpts of Hearing Transcript of March 3, 2016 Motions, *Long v. Snoqualmie Gaming Commission*, Snoqualmie Tribal Court Case No. SNO-CV-0223-2016

(The entire transcript is found at CP 224-240)

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IN THE SNOQUALMIE TRIBAL COURT
FOR THE SNOQUALMIE INDIAN RESERVATION
SNOQUALMIE, WASHINGTON

WENDELL LONG,

Petitioner,

v.

SNOQUALMIE Gaming ActMING
COMMISSION,

Respondent.

NO. SNO-CV-0223-2016

HEARING TRANSCRIPT OF
MARCH 3, 2016 MOTIONS

Pro-Tem Judge Leona Colegrove

Attorney for Petitioner Wendell Long – Hunter M. Abell

Attorney for Respondent Snoqualmie Gaming Commission – Ed Clay Goodman

Judge: Case No. SNO-CV-0223-2016. This is Wendell Long v. the Snoqualmie Gaming Commission. Before we get started, I just want to note it for the record – I was contacted, I want to say, late Tuesday, to see if I could preside over this hearing. And I was kind of the middle of things, and had to take care of some things, and finally got back to Nick's [NIGC?] late Thursday evening, and said that I could. And I didn't realize until I started getting all these filings, that Williams Kastner was actually representing Mr. Long. So I want it noted for the record, that I used to work for Williams Kastner, not when Mr. Abell was associated with Williams Kastner, but since then, Mr. Abell has begun doing judicial work and is a sitting judge, I don't know whether he still is a Court of Appeals judge for the Quinault Tribal Court.

Abell: Yes, Your Honor.

Judge: OK. So he was an Appellate Court justice for the Quinault Tribal Court and I used to be the chief judge at the Quinault Tribal Court, and he is also a sitting Appellate Court judge for the [Ron Valley?] Tribal Court where I am the chief judge at Ron Valley, and I think, are you an Appellate Court judge for the Hoh Tribe?

HEARING TRANSCRIPT OF MARCH 3, 2016 MOTIONS - 1
(SNO-CV-0223-2016)

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, Washington 98101-2380
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5734339.1

1 The only thing I would say that is somewhat unique about this case, is that this case
2 arises in the context of an administrative hearing. Of course, most waivers of sovereign
3 immunity is somebody coming in and saying, "Well, I want to sue for monetary
4 damages," or in Tribal Court, they've got an employment agreement or something that
5 says that they can do so.

6 Judge: But doesn't.... I mean, aren't most waivers, don't they have to be spelled out pretty
7 specifically?

8 Abell: Well, and this, as you've seen in the language that we provided in the brief, we would
9 argue that this is spelled out specifically, that it applies to any dispute arising under the
10 terms of the Agreement, and again, this agreement requires him to obtain and maintain
11 gaming license. So we would argue that there is certainly a requisite clarity, to find a
12 waiver here. I don't think there's any dispute about... I don't think there's any question
13 that this is a dispute, obviously, that's why we're here. I would argue that I don't think
14 there is any question that it is under the agreement, the agreement is fairly clear. I think
15 the only question is, does it arise under the terms of the agreement? And the agreement
16 requires him to obtain and maintain a license. That's the license they're trying to take
17 away. So we would argue that it is clearly laid out. And that a fair plain text reading of
18 the waiver would support that. Additionally, as we've laid out, the tribe could very well
19 have negotiated to exclude any sort of gaming license, from the scope of the waiver, the
20 tribe didn't do that. And so we would argue that a fair plan text reading of the
21 employment agreement would support that sovereignty immunity has been waived. I'm
22 more than prepared to answer any questions that the Court may have on that issue, but
23 at least from the Petitioner's perspective, that is relatively apparent.

24 So what I'd like to do now is transition to the three bases on which Mr. Long is here
25 before the Court today, seeking judicial relief. They are as follows.

The first is that the SGC, in acting to summarily suspend Mr. Long's gaming license in
late January of this year, violated both the terms of the gaming [inaudible – loud noise],
and the terms of the compact. As a result, the summary suspension is *ultra vires*, and
void from the beginning. The second is that the SGC lost subject matter jurisdiction
when Mr. Long voluntarily surrendered his license back in October of 2015, and I'll
address that a little bit more because there's been some kind of late developing evidence
that the SGC has put in on that issue. And then the third is that the due process
violations that occurred in this case and have occurred to this date require judicial relief,
in order to avoid continuing due process of violations as we go forward.

The standard for injunctive relief has four prongs that have been laid out. The first is
the likelihood of success on the merits, and that requires addressing those three theories.
The second is showing irreparable harm. And the last two are really kind of, equity-
based arguments: is it fair to grant the injunctive relief? I'm not going to spend a
whole lot of time on those, because I think both sides can argue about that, but we
would argue that given the nature of the property right, given the circumstances of this
case, it's certainly fair. And then what I would like to do is focus on these first two
prongs. Because I think that's where both sides have spent the majority of their time.

The first question, of course, is, is there a likelihood of success on the merits? And
what I submit, Your Honor, is that there is. The question of whether the SGC acted in

1 And the last thing I would say, Your Honor, is that this case is important not only for
2 Mr. Long, whose, truly, his entire future livelihood is riding on this case and the
3 situation with the SGC. But it's also important for the Tribe. This is the primary
4 economic engine for the Tribe, and it is crucial that if the Tribe is going to do its,
5 apparently, its first license suspension or revocation hearing ever, that it do it right, and
6 do it in a manner that comports with due process. In fact, it's required to do so, under
7 the Snoqualmie Tribal Constitution. And so with that, Your Honor, I'm glad to take
8 any questions you may have. Thank you.

9 Goodman: Thank you, Your Honor. I think the threshold question here before the Court can
10 even consider injunctive relief is the question of whether the Court has subject matter
11 jurisdiction. And plaintiff has the burden of demonstrating that, for it has some matter
12 jurisdiction, where the Court can be pulled into this kind of a dispute. Plaintiff has
13 failed to do that. Plaintiff points to a purported waiver of sovereign immunity to the
14 Commission in an employment agreement that doesn't involve information, doesn't
15 establish any obligations of the Commission to Mr. Long, no rights of Mr. Long vis-à-
16 vis the Commission. So to get to the subject matter jurisdiction to allow the Court to
17 hear the case, that Plaintiff has to go turn the standard doctrines of sovereign immunity
18 and sovereignty waivers on their head, and also ignore the relevant provisions of the
19 Tribal Gaming Code, which is the Gaming Act, which is the body of tribal law that
20 governs this. A governmental agency of an Indian tribe has sovereign immunity, unless
21 that sovereign immunity is clearly and expressly waived. And Mr. Long relies solely
22 for evidence about waiver on the language in this employment agreement for his
23 employment [afficacea?]. Now if we look at the Gaming Act, the Gaming Act at 7.04
24 makes clear that the Commission is an independent body that is independent from the
25 Tribal Council as central to its role in regulating the casinos, and goes on to state that
the Tribal Council shall have no role in any activity that's within the purview of the
Commission. And so Mr. Long would have the Court see an employment agreement
between Mr. Long and the Tribe as somehow bringing the Commission into an area
where the Tribe, by its own law, has said the Commission should be outside and
independent. Now again, the Gaming Act also emphasizes repeatedly the
Commission's sovereign immunity. At 7.02, it states that the Commission's sovereign
immunity can only be waived expressly by the Tribal Council. And again, Section 15
of the Gaming Act states that the Commission has sovereign immunity and it can't be
waived unless it's waived expressly. And it points to the one provision of the Gaming
Act where that sovereign immunity is waived. And interestingly, it's not to review of
suspensions or revocations. It's waived in regards to the terminations regarding patron
disputes. So the Tribe itself has never waived the Commission's sovereign immunity,
except for patron disputes. Yet, Mr. Long would have it that through an employment
contract with a casino that the Commission has regulatory oversight over, but somehow
the Commission is pulled into the limited waiver of sovereign immunity in that
agreement.

In order for that waiver to be triggered, as Mr. Abell has pointed out, the waiver has to,
the lawsuit has to arise under the terms and conditions, the dispute has to arise under the
terms and conditions in the employment agreement. This suit does not arise under
those terms and conditions. As Mr. Abell has pointed out, the claims he has here are
not claims that the Commission is filing in any obligation under the employment
agreement towards Mr. Long, because there are none. He is alleging violations of the
Gaming Act, the Tribal Constitution, and the Civil Rights Act, and this federal and state

1 [EPA?]. We submit that there are no violations, but even if there were, those are not
2 violations that arise under the employment agreement. They are separate sources of law
3 that are being discussed. It's not a dispute over the termination or severance pay or
compensation or any of those, because again, the Commission doesn't have any of
those obligations under the employment agreement.

4 The fact that the employment agreement references the licensing process is irrelevant to
5 the argument to the issue here. Mr. Long, under the terms of the employment
6 agreement, made a representation to the Tribe that he would go through the required
7 process with the Commission to obtain a license. But that obligation to the
8 Commission exists independently of what's in the employment agreement, even if the
9 employment agreement is completely silent on whether Mr. Long was committing to
the Tribe to get a license. He would have to get that license from the Commission
under the terms of the contract, under the terms of the Gaming Act. So there is nothing
in the Gaming Act, in the employment agreement, that establishes an obligation vis-à-
vis the Commission and Mr. Long. That obligation arises solely under the Gaming Act,
and so the dispute does not arise under the employment agreement.

10 Judge: But it is in there.

11 Goodman: There's references to licenses, yes. But that's an obligation of Mr. Long to the
12 Tribe, not to the Gaming Commission. That obligation is in the Gaming Act, and his
13 obligation to the Tribe as an employee is different than his obligation to the
14 Commission as an independent regulatory body. And the Commission can't be brought
15 in to an employment contract when it's supposedly the regulatory body that oversees
16 those very types of agreements and oversees the gaming operation. And in fact, the
17 reading of the employment agreement would conflate the role of the Commission with
18 the role of the Tribe in paring out its casino operations, the role that Gaming Act
19 emphasizes should be, is required to be, distinct and independent. The compact does,
and even the NIGC requires, that the Commission be a separate and independent entity.
So to conflate the two because of this language in the agreement that says there's a
waiver of sovereign immunity to the Tribe in saying, "Well, this is an entity of the
Tribe, so everything's incorporated," is simply problematic for the Commission's
ability to stand as an independent regulatory entity. So it doesn't meet the requirement
that a waiver be clearly and expressly stated. It also doesn't... it's not consistent with
the requirement that, well-established case law, that waivers of governmental sovereign
immunity should be construed narrowly. This is a very broadly read waiver.

20 But most problematic in the reading, and Mr. Abell set this out in his brief last night
21 and just made this point again, is the way in which it reads, how it is structured and the
22 function of a limited waiver works. And it's a dangerous _____ [noise in
23 background] and an irresponsible interpretation. Because he says the Commission
24 should have negotiated an exclusion from the waiver. Now the whole point of a limited
25 waiver of sovereign immunity is that, in an agreement, the Tribe, or the tribal entity
that's involved, says, "We're waiving our sovereign immunity to this entity, or to this
set of assets." The interpretation that is being presented here would say, "Well, unless
you exclude, specifically exclude, assets or entities from that waiver," then everything
in the Tribe is covered by that waiver. And there are literally thousands of contracts
and financing agreements and other agreements with vendors, with banks, with
contractors, throughout the Pacific Northwest, that have limited waivers of sovereign

1 immunity that spell out specifically the assets and entities to whom that waiver applies.
2 And that's the whole point of the limitation. This reading would put that on its head
3 and say, "If the Tribe didn't specifically exclude those assets for waivers," then they are
4 suddenly exposed to that waiver. And so there's all those well-settled expectations that
5 tribes throughout the Northwest would have, that would be upset and would expose the
6 Tribes to liability if they had no idea they are entering into. And I make that point here
7 for the Northwest, because this is a mixed Court and a mixed court system established
8 precedent for tribes throughout the Northwest. So I think that's an important point to
9 note.

10 One thing that's a theme that runs through the briefing is particular the TRO response,
11 is this idea that the Commission is trying to evade judicial review. And that's not the
12 case here. The Commission, under the terms of the Gaming Act, would not have its
13 licensing revocation process subject to judicial review. But the Commission has
14 adopted procedures that provide for a waiver of sovereign immunity at the end of the
15 process. So there is judicial review. It just needs to allow the process to work its way
16 through, and any of the complaints that Mr. Abell and Mr. Long are raising here can be
17 raised in front of the Court at the appropriate time, allowing the administrative agency
18 to do what it is tasked with doing, and not interrupting the process in the middle and
19 establishing its own separate set of procedural requirements from a hodgepodge of
20 different sources.

21 So I submit, Your Honor, that essentially, since Mr. Long is relying solely on the
22 employment agreement as a waiver of sovereign immunity, and that is a limited waiver
23 for a specific purpose of employment. The Commission is not, and never has been, Mr.
24 Long's employer; it's a separate entity, separate regulatory body that oversees that
25 contract and employment under that contract, that that waiver simply does not, and
cannot be read to extend to the Commission. (pause) So, given that there's no subject
matter jurisdiction, we submit that the case needs to be dismissed and there's need for,
or reason for, or ability of the Court to issue a temporary restraining order or
preliminary injunction.

We'll turn to the temporary restraining order arguments, because they've been made
and I think they moved to be addressed, because I don't think any of them really make
the cases that need to be made to issue what is essentially a drastic and extraordinary
remedy. To have the Court come in and stop a regulatory process in midstream and
impose a process of the Plaintiff's fashion, is simply inappropriate and unjustified here.
There are four prongs to establishing a need for a temporary restraining order, and the
burden, again, for that relief, relies on the plaintiff. And none of those prongs have
been met here.

We first turn to the likelihood of success on the merits. Mr. Long repeatedly argues that
he voluntarily surrendered his gaming license, and therefore the Commission has no
jurisdiction over his gaming license, because he turned it in himself. Now, Mr. Long
cites to no law, no tribal law, no federal law, no state law, that supports the fact that a
licensee can avoid a regulatory process by simply turning his license in. And it ignores
the gaming license agent, Tammy Kunday, her declaration, her affidavit that's
submitted, which says that the process for surrendering a license in the Snoqualmie
Gaming Commission is that it must be formally requested in writing, and it must be
formally accepted in writing. And that's the same process, again, that the State of

1 don't reach that irreparability prong. Now, they pointed to the *Mohammed Ali* case,
2 which is an interesting case to point to, because the *Mohammed Ali* case involves a
3 denial of a license to Mohammed Ali that would prevent him from boxing in any
4 jurisdiction, because that license was critical to his ability to box anywhere that he
5 wanted to box. The suspension revocation here concerns only the Snoqualmie Gaming
6 Commission license, which is his ability to carry out gaming activities on the lands of
7 the Snoqualmie Tribe. Not anywhere else. The other harms are purely speculative
8 harms, and several steps have to happen before those alleged harms are realized. One,
9 the question that Mr. Long talks about being asked, which concerns a disciplinary
10 action, has to be asked, he has to provide a specific answer to that question, and the
11 body that's hiring has to make the determination based on how he answers that question
12 that he shouldn't be hired for that position. That's speculative, and speculative harm is
13 not the basis for injunctive relief. So there's not sufficient grounds of injury irreparable
14 immediate injury, to justify the extraordinary and drastic relief of a TRO.

15 Again, I'll turn to the final two prongs briefly. There's harm to the Commission here,
16 because the Commission has been charged by the Tribe with carrying out its regulatory
17 responsibilities, and it's in the midst of carrying those regulatory responsibilities. And
18 the harm to the Commission is in stopping its process in midstream and in replacing it
19 with the process of Mr. Long's devising, which I've noted is from a hodgepodge of
20 different sources, none of which has been statutory legal basis in Snoqualmie tribal law,
21 or any other laws that might apply to the Snoqualmie Tribe. And there is also a harm to
22 the public interest. As Mr. Abell noted, Indian gaming is one of the most highly
23 regulated, most highly overseen industries in the country. And the Commission has to
24 be allowed and able to carry out its regulatory responsibilities in the public interest.
25 Because the Commission is also, its determinations are relied upon by the state Gaming
Commission, by the National Indian Gaming Commission, in carrying out its oversight
on behalf of their constituencies. So the Commission's responsibilities towards a broad
public interest, and to have that responsibility interrupted in midstream, is a deprivation
of the public interest that adheres in the Commission itself.

Judge: Well, I'm just gonna stop you now, because I... honestly, I don't think that I get past
the jurisdictional question. But I will tell you that this doesn't smell right. It doesn't
pass the smell test to me. It looks to me like this, like they're headhunting. It doesn't
sound like SGC independently, outside of the Tribe, all of a sudden found out that, that
a licensing issue. It looks to me like... I don't think I have to tell you what it looks
like. So, in any event, I don't think I get past the jurisdictional issue.

Abell: Your Honor, if I may just briefly rebut Mr. Goodman's arguments...

Judge: You may, Mr. Abell.

Abell: Your Honor, this won't take long. I do want to clarify that the Gaming Act specifically
addresses waiver of sovereign immunity. First of all, it states that the SGC is a political
sub-entity of the Tribe, and that the Tribe may waive sovereign immunity for the SGC.

Judge: The problem is, Mr. Abell, I don't see a specific waiver in this contract. That's the
problem.

1 Abell: _____. It does say that the Tribe waives sovereign immunity, and the Gaming Act
2 says that the SGC is a political sub-entity of the Tribe. My concern would be that Mr.
3 Goodman is confusing the regulatory functions of the Tribe with the ability to waive
4 sovereign immunity. The SGC can't waive its own sovereign immunity. The only
5 entity that can waive sovereign immunity with the SGC is the Tribal Council. The
6 Tribal Council did so. It said it was doing so on behalf of the Tribe. And the Gaming
7 Act says that the SGC is a political sub-entity of the Tribe. If that's not a waiver, then I
8 guess the only thing that could have been articulated there would have been that the
9 Tribe waives sovereign immunity on behalf of the SGC with regard to any sort of claim
10 that arises under the terms of this agreement. But the Gaming Act already clarifies that
11 the SGC is a political sub-entity of the Tribe. The Gaming Act says that the Tribal
12 Council can waive sovereign immunity. And that's exactly what the Tribal Council
13 did. The waiver says that the Tribe waives sovereign immunity.

8 And I do think that the crucial language is that the Gaming Act says the SGC is a
9 political sub-entity of the Tribe. I think that's the crucial aspect here, and that the
10 employment agreement states that the Tribe waives sovereign immunity. I don't think
11 we should confuse the regulatory functions of the SGC, which do need to be
12 independent, with the ability to waive sovereign immunity, which can only be by the
13 Tribal Council, and that's exactly what happened here. Thank you, Your Honor.

11 Goodman: If I may address...

12 Judge: You may.

13 Goodman: Again, that's the exact kind of conflation that we're talking about here. The
14 Gaming Act specifically says that the Commission is to be an independent sub-entity of
15 the Tribe. Yes, it is part of the broad umbrella, but it is supposed to be independent and
16 exercise its regulatory functions independently. If a waiver of sovereign immunity to
17 the Tribe in an employment agreement concerning casinos suddenly somehow, without
18 mentioning the Commission, looped in, that regulatory function is conflated with the
19 casino's economic development function, and that's simply an inappropriate reading,
20 and it's the same problematic reading that I pointed out, that unless you expressly
21 exclude assets or entities, then that waiver is so broad, it's not a limited waiver, and it
22 has potential for damage to agreements elsewhere that tribes have entered into. Thank
23 you.

19 Abell: Your Honor, if I may again, just briefly readdress that. The concern with that, is that
20 that imposes on Mr. Long the burden to articulate in this negotiated way for sovereign
21 immunity, each and every sub-entity of the Tribe that it could possibly apply to.

21 Judge: Well, no, I think it imposes on him the burden of specifically bringing in the Gaming
22 Commission, and I don't think that that's an unreasonable burden upon him, in light of
23 the fact that he knows that he's got this license.

23 Abell: And what I would say in response to that, Your Honor, is that the Gaming Act clarifies
24 that the SGC is a political sub-entity of the Tribe, that will ____ the Tribal Council can
25 waive the sovereign immunity, and that's precisely what happened here, is that the
Tribe has made sovereign immunity limited... This is not an unrestricted waiver. I do
want to clarify that. The waiver of sovereign immunity is limited to disputes arising

1 under the terms of the agreement. This is not going to impact every possible political
2 sub-entity of the Tribe. It's restricted to the terms of the agreement. And so, the
3 concern articulated by Mr. Goodman, that this is going to overturn, you know, who
4 knows how many contracts or anything along those lines, is just not founded. Because
5 the terms of this agreement specifically require Mr. Long to obtain and to maintain a
6 license. And that's what they are trying to take away here. Again, the clarification
7 under the Gaming Act that the SGC is a political sub-entity of the Tribe and the
8 language in the employment agreement says, "the Tribe waives sovereign immunity," I
9 believe is clear. And that that particular language of the Gaming Act is controlled.

6 And again, I do want to articulate that I am concerned there is some confusion here,
7 regarding the regulatory processes of the SGC, which must be independent, and I think
8 frankly have not been independent in this case. But *must* be independent. And the
9 ability to waive sovereign immunity. The SGC can't waive its own sovereign
10 immunity. Only the Tribal Council, and the Tribal Council waives sovereign immunity
11 on behalf of the Tribe. And the SGC again confirmed that the SGC is a political sub-
12 entity of the Tribe. We believe that that controls in this matter.

10 Goodman: Your Honor, not to belabor the question, but it's an independent sub-entity. The
11 Gaming Act makes clear that the Council, and only the Council, can waive its
12 immunity, but it must be expressed. And there's not express waiver to this independent
13 entity. And it's carrying out its regulatory function, and it's the whole point of the
14 waiver that Mr. Long is seeking to expand, is to cover the regulatory function of the
15 Commission. It's to stop the regulatory function of the Commission. And that
16 conflates the two. There's no express waiver that says the Commission's sovereign
17 immunity is waived. And that, I would submit, is required by the Gaming Act, at
18 Section 7.04 and 7.02. Thank you.

15 Judge: Yeah, I mean, isn't that what, that's what you're asking me to do, is waive the Gaming
16 Act's sovereign immunity, their regulatory?

16 Abell: With respect, Your Honor, as far as waiving their sovereign immunity with regard to
17 the regulatory matter, what we are asking is that the Commission's sovereign
18 immunity.... First of all, the Commission only has sovereign immunity to the extent
19 that the Tribe has sovereign immunity.

19 Judge: Mmm-hmm.

20 Abell: And only the Tribal Council can waive sovereign immunity. And the Tribal Council
21 waived sovereign immunity on behalf of the Tribe. The concern about conflating the
22 roles of the Tribal Council and the SGC are not present here because, once again, the
23 SGC can't waive its sovereign immunity, only the Tribal Council can.

23 Judge: Right.

24 Abell: There's a clear distinction there. But as far as it impacting the SGC in its regulatory
25 capacity, the concern here is that these issues that are raised by Mr. Long articulate that
the SGC acted in an ultravirus matter, in other words, they acted outside the scope of
the authority granted to it by the Tribal Council. In other words, it doesn't have the
authority to do what it did. So we are not arguing for a sort of conflated action on

1 behalf of the Tribal Council and the SGC, what we arguing is that the SGC acted
2 beyond the scope of its authority to begin with. But the bigger picture here, once again,
3 is that the Gaming Act is very clear that the SGC is a political sub-entity of the Tribe,
4 both sides were aware of that, or presumably were aware of that, when negotiating this
5 agreement for sovereign immunity, and it's, the Gaming Act is clear that only the Tribal
6 Council can waive sovereign immunity on behalf of the SGC. My concern here is that
7 if you take the argument posed by Mr. Goodman, is that no waiver of sovereign
8 immunity by the Tribal Council or the SGC can ever be enforced because of this
9 concern about conflating the functions ---

10 Judge: No, I mean it could say, the contract could say, that the Tribe is waiving sovereign
11 immunity on behalf the Tribe and the Gaming Commission.

12 Abell: But... and again, Your Honor, I don't want to belabor the point. The Gaming Act
13 already says that. The Gaming Act says that the SGC is a political sub-entity of *the*
14 *Tribe*. And the employment agreement is very clear. It says, "*The Tribe* waives
15 sovereign immunity."

16 Judge: Yeah. I know. But... How do you get past the well-established law that says, waivers
17 have to be specific?

18 Abell: Yes, Your Honor. First of all, of course, that is side-side language that says that first of
19 all, there is no magic words that we require for sovereign immunity that's been
20 articulated in several circuits. But that also that the waiver must be done with requisite
21 clarity. You know, here there's, the waiver is on behalf of the Tribe...

22 Judge: Mmm-hmm.

23 Abell: The waiver applies... it is limited, and it applies only to disputes that arise under the
24 terms of this agreement. This is not something that's going to involve who knows how
25 many sub-entities of the Tribe, or who knows how many contracts, it's limited to *this*
26 contract.

27 Judge: OK.

28 Abell: And it is with requisite clarity, the Tribe has waived its sovereign immunity,
29 particularly given the terms of the Gaming Act, which specify that the SGC is a
30 political sub-entity of the Tribe. And I think a good example here, Your Honor, is the
31 *Marceau* case, *Marceau v. Blackfeet*, out of 9th Circuit. I don't believe that was briefed.
32 But that was the waiver of sovereign immunity where the Tribe had a similar waiver
33 which applied on behalf of the Tribe, and there was an action brought against the Tribal
34 Housing Authority, and there was no argument there that somehow this political sub-
35 entity of the Tribe is different from the Tribe. It is *the Tribe*. It is part and parcel of the
36 Tribe. That's the reason why in that case, the Tribal Housing agency was able to argue
37 that it had sovereignty, because it's part of the Tribe. Here in this case, the SGC is able
38 to argue it has sovereign immunity only because it's part of the Tribe. And again, the
39 Act articulates, as we would expect it to articulate, that the Tribal Council is
40 empowered to waive sovereign immunity. And that's precisely what happened here
41 when it waived sovereign immunity on behalf of the Tribe. Because otherwise, as I
42 said, there can be really no waiver of sovereign immunity the Tribal Council does on

1 behalf of the SGC that doesn't implicate, in some fashion, the actions and activities of
2 the SGC. We're going to hear this time and time again that well, they've conflated the
3 two. And I think what we've articulate here is that there is a difference between the
4 power of the Tribal Council to waive sovereign immunity on behalf of the Tribe, and
5 regulatory functions of the SGC.

6 Goodman: Your Honor, I need to address this misrepresentation of the *Marceau* case. The
7 point of the *Marceau* case, I'm familiar with it, 'cause I've seen it _____ brief in that
8 case, is that the sub-entity there waived its immunity. It had the authority to waive its
9 immunity, and it waived its immunity. The question was whether that waiver then went
10 up to the Tribe and that sub-entity was dissolved. And the court there first found that it
11 did, and then ultimately said no, we've got to remand, because that's misreading the
12 doctrine of sovereign immunity, which is, waiver has to be, you know, read narrowly,
13 and be narrowly construed in favor of the entity, the sovereign entity that's granting that
14 waiver. And that is not what is happening here. Again, as you pointed out, it would
15 need to state the Commission, and its waiver, and the Act requires. The Act doesn't...

16 Judge: OK, I'm done.

17 Goodman: Sorry, Your Honor.

18 Judge: You know, this is one of those cases where I wish that I could rule for you, Mr. Abell, I
19 really do. I wish that I could rule for you. And trust me. When all of this is said and
20 done, they're not gonna want me back on the bench to review what happens at the end
21 of this, if, you know, at the end of the day. I have to rule against you, unfortunately,
22 and indicate that the Court does not have jurisdiction at this point. And do you have a
23 proposed order?

24 Goodman: I don't, Your Honor.

25 Judge: You do not, OK. So I'm gonna need one of those.

 Goodman: [inaudible]

 Judge: And I feel terrible about it, because I do feel like... I won't say any more. (Off the
 record.)

K. Tribal-State Compact for Class III Gaming between the Snoqualmie Indian Tribe and the State of Washington (Feb. 11, 2002) (as amended June 14, 2008) §§ V, VI

V - LICENSING AND CERTIFICATION PROCEDURES

- A. Procedures for Tribal License Applications and State Certification. Each applicant for a Tribal gaming license and for State certification shall submit the completed application along with the required information to the Tribal Gaming Agency. Each completed application shall be accompanied by the applicants' fingerprint card(s), current photograph, and the fees required by the State and Tribal Gaming Agencies. Upon receipt, the Tribal Gaming Agency will transmit to the State Gaming Agency a copy of all application materials for each applicant to be certified, together with a set of fingerprint cards, a current photograph, and the fees required. For applicants who are business entities, these provisions shall apply to the principals and spouses of such entities.
- B. Background Investigations of Applicants. Upon receipt of a completed application, attachments and the fee required for State certification, the State Gaming Agency shall conduct the necessary background investigation to ensure the applicant is qualified for State certification. The State Gaming Agency shall expedite gaming certification requests submitted by the Tribe. Upon completion of the necessary background investigation, the State Gaming Agency shall either issue a State certification to the applicant with a copy to the Tribal Gaming Agency, or deny the application based on criteria set forth in this Compact. If the State Gaming Agency issues a State Certification to the applicant, the State shall forward a copy of the certification to the Tribal Gaming Agency. If the application for certification is denied, a statement setting forth the grounds for denial shall be forwarded to the applicant in accordance with the provisions of Chapter 230-50 WAC with a copy forwarded to the Tribal Gaming Agency. After twenty-four (24) months of operation, and upon the Tribe's demonstration of its capacity to conduct background investigations meeting Compact standards for certifications, the State and the Tribe shall meet and confer regarding the possibility of transferring to the Tribe the primary responsibility for the conduct of

background investigations for its tribal member applicants. State certification of tribal member applicants shall still be required even if the primary responsibility for conducting background investigations is transferred to the Tribe, but certification fees will be adjusted to reflect the primary background investigation responsibility of the Tribe. The State shall not apply to any applicant for certification required under this Compact a more rigorous standard than that actually applied in the approval of state licenses or certifications in non-Tribal gaming activities regulated by the State. All background materials compiled by the State Gaming Agency in connection with the background investigation of any applicant for certification shall be available to the Tribal Gaming Agency at the State Gaming Agency office upon request, subject to any constraints imposed by the State Gaming Agency's accreditation as a law enforcement agency and status as a member of Law Enforcement Intelligence Unit.

C. Grounds for Revocation, Suspension or Denial of State Certification. The State Gaming Agency may revoke, suspend or deny a State certification under the provisions of RCW 9.46.075, and rules promulgated thereunder, for any reason or reasons it deems to be in the public interest. In addition, these reasons shall include, but shall not be limited to when an applicant or holder of certification or principal of an entity:

1. Is determined to be a person who because of prior activities, criminal record, if any, or reputation, habits and associations poses a threat to the effective regulation of gaming or creates or enhances the chances of unfair or illegal practices, methods and activities being used in the conduct of the gaming activities permitted pursuant to this Compact;
2. Has violated, failed or refused to comply with the provisions, requirements, conditions, limitations or duties imposed by any provision of a Tribal-State Compact.
3. Has failed to provide any information reasonably required to investigate the application for state certification or to reveal any fact which the applicant or holder knows or should reasonably know or is

material to such application, or has furnished any information which is untrue or misleading in connection with such application.

4. Has had a Tribal or State gaming license revoked or denied during the twelve (12) months prior to the date the Tribe received the application; is currently on probation imposed by any jurisdiction; or has demonstrated a willful disregard or failed to comply with the requirements of any gaming regulatory authority in any jurisdiction, including offenses that could subject the individual or entity to suspension, revocation or forfeiture of any gaming license. For the purpose of reviewing any application for a state certification or for considering the denial, suspension or revocation of any state certification, the State Gaming Agency may consider any prior criminal conduct or current probationary status of the applicant or holder of certification and the provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to such cases.
5. Notwithstanding anything herein to the contrary, in the absence of other violations, it shall not automatically be grounds for revocation, suspension or denial for an Indian person from a federally recognized Indian Tribe to have been charged or convicted under state law of the following non-gambling related offenses if the charge or conviction occurred prior to United States Supreme Court rulings upholding state jurisdiction over Indians for such offenses as, but not limited to: (1) fishing or hunting offenses; (2) cigarette, fireworks or alcohol sales offenses; or (3) cases involving the exercise of trust or treaty rights. In the absence of other violations, activities or factors which would warrant denial, revocation or suspension, these Indian persons shall not be barred solely as a result of such activities from certification.
6. The State Gaming Agency will consult with the Tribal Gaming Agency prior to denying certification to such an applicant who does not meet the criteria for certification. For enrolled members of the Tribe

who are applicants for Class III gaming certification, and licensing, the State and Tribal Gaming Agencies may waive, by mutual agreement, through a provisional or conditional certification, certain criteria for such enrolled tribal members if the waiver does not pose an appreciable risk to the public or the lawful operation of the Gaming Facilities. If the Tribe can show extenuating circumstances why an enrolled tribal member who does not meet all criteria should be further considered for a provisional or conditional certification, the Tribal and State Gaming Agencies may agree to a temporary certification, based on specific conditions and a further detailed review of the applicant. Additional fees may be required to maintain a conditional or provisional certification, which the Tribe agrees to pay.

- D. Right to Hearing for Revocation, Suspension, or Denial of State Certification. Any applicant for State certification, or holder of a State certification shall be entitled to notice and a full hearing on any action by the State Gaming Agency which may result in the revocation, suspension, or denial of State certification. The notice and hearing will be conducted in accordance with the procedures contained in the applicable provisions of Chapter 9.46 RCW, Chapter 34.05 RCW and Chapter 230-50 WAC. The State, may at its discretion, defer such actions to the Tribal Gaming Agency. Nothing herein shall prevent the Tribal Gaming Agency from invoking its own disciplinary procedures and proceedings at any time.
- E. Denial, Suspension, or Revocation of Licenses Issued by Tribal Gaming Agency. The denial, suspension, or revocation of any Tribal gaming license by the Tribal Gaming Agency shall be in accordance with Tribal ordinances and regulations governing such procedures and the grounds for such actions shall not be less stringent than those of Section V.C. The Tribe shall notify the State Gaming Agency of any determination under this paragraph.
- F. Duration and Renewal of Tribal Issued Licenses and State Certifications. Any Tribal license or State certification shall be effective for one year from the date of issuance of the

license, certification, or temporary license or certification, unless otherwise revoked or suspended. A licensed or certified employee or entity that has applied for renewal may continue to be employed under the expired Tribal license or State certification or license until the Tribal Gaming Agency or State Gaming Agency takes action on the renewal application or the certification or license is suspended or revoked. Applicants seeking renewal of license or certification shall provide information updating originally submitted information as requested, on the appropriate renewal forms, but shall not be required to re-submit historical data already available to the Tribal Gaming Agency or the State Gaming Agency. Additional background investigation shall be required if new information concerning the applicant's continuing suitability or eligibility for a Tribal license or a State certification is discovered by either the Tribal or State Gaming Agency. The State shall forward a copy of any updated information to the Tribe, subject to any constraints imposed by the State Gaming Agency's accreditation as a law enforcement agency and status as a member of Law Enforcement Intelligence Unit. Should any renewal application be denied, the State shall send a copy of the statement to the Tribal Gaming Agency setting forth the grounds for the non-renewal of the certification.

- G. Identification Cards. The Tribal Gaming Agency shall require all gaming employees to wear, in plain view, identification cards issued by the Tribal Gaming Agency which include photo, first name and an identification number unique to the individual Tribal license and/or certification which shall include a Tribal seal or signature, and a date of expiration.
- H. Exchange of Tribal Licensing and State Certification Information. In an effort to ensure a qualified work force in all areas of Class III gaming and in all types of gambling authorized under the laws of the State, upon completion of any administrative action or legal proceeding against a Tribal license or State certification, the final disposition shall be forwarded to either the Tribal Gaming Agency or the State Gaming Agency and maintained as part of both agencies' permanent licensing records.

- I. Fees For State Certification. The fees for initial and renewal State certification shall be determined pursuant to WAC 230-04-204 for gaming employees, WAC 230-04-119 for Service Suppliers, and WAC 230-04-203 for manufacturers and distributors. Provided, should actual costs incurred by the State Gaming Agency exceed the stated fees, those costs will be assessed to the applicants during the investigation process. Payment in full to the State Gaming Agency will be required prior to beginning the investigation for the issuance of State certification. Notwithstanding any other provision of this Compact, the State Gaming Agency may modify any of the above fees consistent with like fees charged by the State Gaming Agency for non-Compact gaming elsewhere in the State by giving the Tribe sixty (60) days notice of intent to modify fees. Should a dispute arise under this Section it shall be resolved pursuant to Section XII. C of this Compact.
- J. Fees For Tribal License. The Tribal Gaming Agency shall establish the fees for Tribal gaming licenses.
- K. Temporary Certification of Gaming Employees. Within thirty (30) days of the State Gaming Agency's receipt of the completed application, the State Gaming Agency shall upon request of the Tribal Gaming Agency, issue a temporary certification to the applicant unless the background investigation undertaken by the State Gaming Agency discloses that the applicant has a criminal history, or unless other grounds sufficient to disqualify the applicant pursuant to this Section are apparent or have been discovered during that period. The temporary certification shall become void and be of no effect upon either the issuance of a State certification or upon the issuance of intent to deny, in accordance with the provisions of this Compact.
- L. Summary Suspension of Tribal License. The Tribal Gaming Agency, pursuant to the laws and regulations of the Tribe, may summarily suspend any Tribal license if the continued licensing of a person or entity constitutes an immediate and potentially serious threat to the public health, safety or welfare.
- M. Summary Suspension of State Certification. The State Gaming Agency, pursuant to the laws of the State, may summarily suspend any State certification if the continued

certification constitutes an immediate and potential serious threat to public health, safety or welfare. Provided, the State shall not summarily suspend or revoke the certification of key management personnel who have supervisory responsibilities in the Class III Gaming Facilities solely for failing to comply with procedural requirements of this Compact and any applicable laws incorporated herein. To minimize any potential of jeopardizing the proper operations of the Gaming Facilities, the State Gaming Agency shall discuss its intent to summarily suspend or revoke the certification of any key personnel and the basis for such action with the Tribal Gaming Agency prior to taking any action.

- N. Submission to State Administrative Process. Applicants for State certification agree by submitting such application to submit to State jurisdiction to the extent necessary to determine qualification to hold such certification, including all necessary administrative procedures, hearings and appeals pursuant to RCW 9.46, WAC 230-50 and the State Administrative Procedures Act, RCW 34.05. Tribal members who apply specifically grant a waiver of immunity, defense, or other objection they might otherwise have to the exercise of State jurisdiction for these purposes, but only for the purposes discussed in this paragraph. Nothing in this Section shall be deemed or interpreted as a waiver of immunity or submission to State jurisdiction for any other purpose or cause of action.
- O. Tribal Certification. The Tribe for any certification process may, in its sole election, rely upon the certification of the State as the Tribe's qualification process for a Tribal gaming license.

VI - TRIBAL ENFORCEMENT OF COMPACT PROVISIONS

- A. Tribe. The ultimate responsibility for ensuring the regulation, control and integrity of the gaming authorized by this Compact shall be that of the Tribe. The Tribe shall provide for and oversee the following functions:
 - 1. Ensure the enforcement in the gaming operation, including the facilities, of all relevant laws;

2. Ensure that the gaming operation has adequate policies in place for the physical safety of patrons in the establishment; and
3. Ensure the physical safety of personnel employed by the establishment.

B. Tribal Gaming Agency. The primary responsibility for the on-site regulation, control and security of the Gaming Operation authorized by this Compact, and for the enforcement of this Compact within the Snoqualmie Tribal Lands, shall be that of the Tribal Gaming Agency and any Snoqualmie law enforcement agency. The Tribal Gaming Agency and/or the Tribe's law enforcement agency shall perform the following functions, as related to the regulation and integrity of gaming:

1. Ensure the physical safeguarding of assets transported to and from the Gaming Facility and cashier's cage department;
2. Protect patrons and the Gaming Operation's property from illegal activity;
3. To the extent of its jurisdiction, arrest and prosecute or temporarily detain until notification and turnover to the appropriate law enforcement authorities, persons who may be involved in illegal activities; and
4. Record in a permanent and detailed manner any and all occurrences that require evaluation, investigation, or other decision making under the terms of this Compact that happen within each Gaming Facility. Each occurrence shall be assigned a sequential number and, at a minimum, the following information shall be recorded in indelible ink in a bound notebook from which pages cannot be removed and each side of each page of which is sequentially numbered:
 - (a) the assigned number;
 - (b) the date;
 - (c) the time;
 - (d) the nature of the incident;
 - (e) the name, address and telephone number of all persons involved in the incident; and

- (f) the name and identification number of the security department or Tribal Gaming Agency employee assigned responsibility for recording the occurrence.
- C. Tribal Gaming Agents. The Tribal Gaming Agency shall employ qualified agents. Tribal Gaming Agents shall be independent of the Tribal Gaming Operation, and shall be supervised and accountable only to the Tribal Gaming Agency.
- D. Reporting of Violations. A Tribal Gaming Agent shall be present in each Gaming Facility during all hours of such facility's gaming operation authorized under this Compact, and shall have immediate access to any and all areas of the Gaming Operation for the purpose of ensuring compliance with the provisions of this Compact and Tribal Ordinances. Any violation(s) of the provisions of this Compact, or of Tribal Ordinances, by the Tribal Gaming Operation, a gaming employee, or any person on the premises whether or not associated with the Tribal Gaming Operation shall be reported immediately to the Tribal Gaming Agency and forwarded to the State Gaming Agency within seventy-two (72) hours of the time the violation(s) was noted.
- E. Investigation and Sanctions. The Tribal Gaming Agency shall investigate any reported, observed or suspected violation of the Compact provisions or other applicable law and shall require the Tribal Gaming Operation to correct the violation upon such terms and conditions as the Tribal Gaming Agency determines are necessary. The Tribal Gaming Agency shall be empowered by Tribal ordinance to impose fines and other sanctions within the jurisdiction of the Tribe against a gaming employee, or any other person directly or indirectly involved in, or benefiting from, the violation.
- F. Reporting to State Gaming Agency. The Tribal Gaming Agency shall forward copies of all completed incident and investigation reports and final dispositions to the State Gaming Agency on a continuing basis. If requested by the Tribal Gaming Agency, the State Gaming Agency shall assist in any investigation initiated by the Tribal Gaming Agency and provide other related investigation services, for which the Tribe agrees to reimburse the State Gaming Agency.
- G. Agency Meetings. In order to develop and foster a coordinated relationship in the enforcement of the provisions of this

Compact, representatives of the State Gaming Agency and the Tribal Gaming Agency shall meet quarterly during the first year of operation to review existing practices and examine methods to improve the regulatory program created by this Compact. After the first year, the parties shall meet at least annually to discuss these matters. The meetings shall take place at a location selected by the Tribal Gaming Agency. At least ten (10) days prior to such meetings, the State Gaming Agency shall disclose in writing to the Tribal Gaming Agency any concerns, suspected activities or .pending matters reasonably believed to possibly constitute violations of this Compact by any person, organization or entity, if such disclosure will not compromise the interest sought to be protected. If the Tribe should begin operating a satellite wagering facility for horse racing activities, the Washington Horse Racing Commission shall participate in the Agency Meeting.

**L. Employment Agreement between Wendell Long and
Snoqualmie Entertainment Authority (March 27, 2015)**

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "Agreement") is entered into effective this 27th day of March, 2015 (the "Effective Date"), by and between the **SNOQUALMIE ENTERTAINMENT AUTHORITY** ("Authority"), an instrumentality of the **SNOQUALMIE INDIAN TRIBE**, a federally recognized sovereign Indian tribe (collectively, the "Tribe"), and **WENDELL LONG** (the "Employee").

WHEREAS, the Tribe wishes to employ the Employee as Snoqualmie Casino Chief Executive Officer and the Snoqualmie Entertainment Authority President, and the Employee wishes to accept such employment with the Tribe, pursuant to the terms and conditions hereof;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises contained herein, the parties hereto agree as follows:

1. **Employment.** The Tribe hereby employs the Employee as Snoqualmie Casino Chief Executive Officer and the Employee hereby accepts employment by the Tribe, upon the terms and subject to the conditions contained in this Agreement.

2. **At-Will Employment.** Employee's employment with the Tribe is on an at-will basis terminable by either party at any time and for any reason, pursuant to the provisions in Paragraph 6.

3. **Position, Duties and Responsibilities.** Employee shall be employed by the Tribe as Snoqualmie Casino Chief Executive Officer. In this position, Employee shall perform all duties and services incident to this position as described more fully in the Snoqualmie Casino Chief Executive Officer job description, which is hereby incorporated by this reference as if fully set forth herein, as well as such other duties and services as may be established and communicated to Employee from time to time by the Authority Board and/or Tribal Council. Employee agrees that he will devote his full business time and attention to the affairs of the Tribe, and that he will observe any and all rules, regulations, policies, or directives as the Tribe may establish from time to time. Employee shall work directly with the Authority Board and/or Snoqualmie Tribal Council and carry out its directives. Employee agrees that during the term of this Agreement, he will not engage in any business venture (as employee, owner, independent contractor, or otherwise) which competes directly with the Tribe or the Snoqualmie Casino or which conflicts with the mission, goals, and core beliefs of the Tribe or the Snoqualmie Casino.

4. **Compensation.**

(a) Employee will be paid a base compensation equal to \$550,000 (Five Hundred and Fifty Thousand and 00/100 U.S. Dollars) per year to be paid in installments on the Tribe's normal payroll dates for its executive employees (the "Base Salary"). This Base Salary shall be subject to and reduced by applicable taxes and withholdings, and may be adjusted based upon Employee's performance as may be determined by the Authority Board and/or Snoqualmie Tribal Council.

(b) The Tribe shall reimburse Employee for the reasonable and necessary out-of-pocket expenses, including entertainment, travel and similar items, incurred by him in performing his duties hereunder upon presentation of such documentation thereof as the Tribe may normally and customarily require of its employees.

(c) Employee will be eligible for bonuses at such time and in such amount as the Authority Board and/or Tribal Council may determine based on Employee's performance ("Bonuses"). Bonuses are calculated at an amount not to exceed thirty percent (30%) of Base Salary, and are merit based, paid upon successful completion of goals and objectives set for employee by the Authority Board and/or Tribal Council.

(d) **Relocation Reimbursement and Temporary Housing.** Employee is eligible for up to \$15,000 (Fifteen Thousand and 00/100 U.S. Dollars) to reimburse Employee for relocation expenses relating to the true costs of relocating to the Snoqualmie, Washington area. Employee must submit an invoice or other statement from a third-party moving company to obtain the Relocation Reimbursement. Employee is also eligible for up to a six (6) month stipend for Temporary Housing after the Effective Date not to exceed \$2500 (Two Thousand Five Hundred and 00/100 U.S. Dollars) per month. The stipend shall expire on the earlier of the expiration of the six (6) months or the time that Employee locates permanent housing, whichever comes first. If Employee terminates employment voluntarily under 6(c) after less than twelve months, Employee will reimburse the Tribe for Relocation Reimbursement and Temporary Housing Expenses on a prorated basis of 1/12 for each month not employed, during the first year. (Example – If Employee voluntarily terminates employment after six months, Employee will reimburse Tribe 50% of actual Relocation Reimbursement and Temporary Housing Expenses.)

5. **Benefits.** The Tribe will offer Employee, and Employee shall be entitled to such other benefits and perquisites as may be customarily granted by the Tribe to other employees of similar experience and position ("Benefits"). The Tribe will reimburse Employee for COBRA medical payments for the period between start of employment and commencement of health care benefits.

6. **Term and Termination of Employment.** Notwithstanding Paragraph 2, and without altering the nature of the at-will relationship, the term of this Agreement shall be four (4) years from the start of employment (the "Term"). The term of this Agreement is subject to a one (1) year automatic renewal with all terms and conditions remaining the same if, after the termination of the Term, neither party elect to terminate the Agreement in writing at least ninety (90) days prior to the end of the term. The Employee's employment with the Tribe may be terminated before the expiration of the Term in accordance with the following provisions:

(a) **Death.** Employee's employment shall automatically terminate upon Employee's death. Upon Employee's death, the Tribe shall pay to Employee's estate, within thirty (30) days, all salary earned and payable through the date of Employee's death as well as all earned PTO. Except as provided in this Section 6(a), Tribe shall have no further obligation to provide any further salary, compensation for services rendered hereunder, or benefits to Employee or his estate upon his death.

(b) **Termination by Tribe.** The Tribe may terminate this Agreement with or without cause at any time pursuant to the terms so this paragraph.

(i) "Cause" is defined as follows: failure to maintain gaming license in good standing; willful breach of any of the terms of this Agreement; failure or neglect by Employee to perform duties of the Employee's position; misconduct in connection with the performance of any of Employee's duties; or the commission by Employee of an act involving moral turpitude, dishonesty, theft, unethical business conduct, or conduct that impairs or injures the reputation of, or harms, the Tribe. In the event the Tribe believes it has cause to terminate the Agreement, the Employee shall be provided with a written notice providing the grounds for cause and the opportunity to cure said cause within thirty (30) days' of the date of the notice. If Employee fails to cure within the thirty (30) days, and the Agreement is terminated for cause, no additional compensation will be due to the Employee.

(ii) If the Agreement is terminated without cause, Employee shall receive six (6) months of his Base Salary as severance as well as six months of continued medical benefits

(iii) The Six Month Introductory period does not apply to Employee.

(c) **Termination by Employee.** At any time and for any reason, Employee may voluntarily terminate his employment by giving the Tribe not less than thirty (30) days' written notice thereof. The Tribe may, in its sole discretion, choose to accept Employee's voluntarily termination immediately and not require Employee to work the remainder of the notice period. If the Tribe

exercises such right, the Tribe shall pay Employee's Base Salary through the last day of the (30) day notice period and continue Employee's medical benefit through that period.

7. **Confidentiality.** In the course of his employment with the Tribe, the Employee will receive information from or about the Tribe and its affiliates which is proprietary and confidential. The Employee agrees that he will not either directly or indirectly, use, divulge, disclose, or communicate to any person or entity any Confidential Information, as defined below, or Trade Secrets, as that term is defined by applicable law, concerning the governmental, business or other affairs of the Tribe or any of its affiliates which may come to Employee's knowledge or be obtained by him during his employment (including any Confidential Information or Trade Secrets that has previously been communicated to him by the Tribe), except as Employee may reasonably determine is in furtherance of the business of the Tribe and except as requested by the Snoqualmie Tribal Council. As to Confidential Information and Trade Secrets, Employee agrees that his obligations shall continue without limit after the date of the Employee's termination of employment; however, such obligations shall cease as to any Confidential Information and Trade Secrets which becomes generally available to the public without the Employee's fault.

"Confidential Information" shall mean any information, without regard to form, relating to the Tribe's government, operation, finances, and business that derives economic value, actual or potential, from not being generally known to other persons or entities, including, but not limited to, technical or nontechnical data, formulas, patterns, compilations, programs, devices, methods, techniques, processes, or financial data, whether or not in writing. Confidential Information includes information disclosed to the Tribe by third parties that the Tribe is obligated to maintain as confidential. The Employee agrees that he will deliver promptly to the Tribe at the termination of his employment or at any time the Tribe requests all property of the Tribe, including but not limited to all documents or other materials containing or constituting Confidential Information.

During employment with the Tribe, Employee shall not improperly use, disclose or bring onto the premises of the Tribe, any confidential information or trade secrets of any former or concurrent employer or any other person or entity, unless consented to in writing by such employer, person, or entity.

8. **Successors; Binding Agreement.** This Agreement shall be binding upon, and inure to the benefit of, the parties hereto, their heirs, personal representatives, successors and assigns.

9. **Notices.** For the purposes of this Agreement, notices and all other communications provided for herein shall be in writing and shall be deemed to have been duly given when delivered or mailed by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Employee:	Wendell Long 242 Lakeshore Drive North Manistee, MI 49660
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If to the Tribe:	Tribal Council Secretary P.O. Box 969 Snoqualmie, WA 98065
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10. **Governing Law.** The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the Tribe or, in the absence of such laws, the laws of the state of Washington.

11. **Sovereign Immunity.** Except as expressly provided herein, nothing in this Agreement shall be deemed or construed as a waiver or limitation of the Tribe's inherent sovereign immunity from unconsented suit. The Tribe hereby grants a limited waiver of sovereign immunity to Employee for the express and limited purpose of adjudicating a dispute arising out of the terms of this Agreement in the Snoqualmie Tribal Court. Any such claim must be filed with the Tribal Court within one hundred-twenty (120) days of the act or omission giving rise to the claim. This waiver does not extend to nor allow for any award of punitive or exemplary damages, or attorneys' fees against the Tribe.

12. Miscellaneous.

(a) Employee represents and warrants that there are no impediments to his passing a background check and being licensed by the Snoqualmie Gaming Commission for gaming purposes.

(b) No provisions of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing signed by the Employee and the Tribe. The failure of any party to insist upon strict adherence to any terms of this Agreement on any occasion will not be considered a waiver of such party's rights or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party which are not set forth expressly in this Agreement.

(c) Employee acknowledges and agrees that (i) his contractual obligations under this Agreement have a unique and very substantial value to the Tribe; (ii) that Employee has sufficient assets and other skills to provide a reasonable livelihood for herself while such Agreement is in force; and (iii) that Employee's termination from employment shall not relieve Employee from his continuing obligations under this Agreement (including Employee's obligations requiring performance subsequent to this Agreement's termination), or from the imposition by a court of any judicial remedies, including equitable enforcement of these provisions.

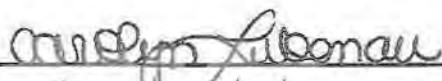
(d) Employee acknowledges and agrees that the restrictions contained in Section 7 of this Agreement are reasonable and necessary to protect the Tribe's legitimate governmental and business interests. Employee further acknowledges and agrees that in the event Employee breaches the provisions of Section 7 of this Agreement, the Tribe shall have the right to obtain an injunction or decree of specific performance from any court of competent jurisdiction to restrain Employee from violating such undertakings or agreements or to compel Employee to perform such undertakings or agreements. Nothing provided herein shall in any way limit or exclude any and all other rights granted by law or equity to the Tribe.

13. Severability. It is the intent of the parties that the provisions of this Agreement shall be enforced to the fullest extent permitted by law. Accordingly, if any particular section(s), subsection(s) or portion(s) of this Agreement shall be held invalid or unenforceable as written, such section(s), subsection(s) or portion(s) shall be modified to the extent necessary to be valid or enforceable. Such modification shall not affect the remaining provisions of this Agreement. To the extent any section(s), subsection(s) or portion(s) of this Agreement found invalid or unenforceable cannot be modified to be valid or enforceable, then the Agreement shall be construed as if that section(s), subsection(s) or portion(s) were deleted, and all remaining terms and provisions shall be enforceable in law or equity in accordance with their terms. The parties acknowledge and agree that each of the restrictive covenants, agreements, and provisions contained in this Agreement are separate, severable and divisible.


14. Assignment. The Employee's obligations under this Agreement are personal in nature, and shall not be transferable by assignment or otherwise.

IN WITNESS WHEREOF, the Tribe has caused this Agreement to be executed and delivered in accordance with Tribal law and the Employee has hereunto set his hand effective the day and year first above written.

SNOQUALMIE INDIAN TRIBE

By: 
Name: Carolyn Lubenau
Title: Chairwoman
Date: March 27, 2015

EMPLOYEE


Wendell Long
Date: March 27, 2015

**M. Confidential Settlement Agreement between Wendell Long and
Snoqualmie Indian Tribe (January 4, 2017)**

CONFIDENTIAL SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made by and between Wendell M. Long ("Long"), and the Snoqualmie Indian Tribe, a federally-recognized sovereign Indian tribe ("Tribe") (collectively, all the above-named entities and individuals are referred to as "the Parties" in this Agreement), effective as of January 4, 2017.

RECITALS

A. On or about December 22, 2015, the Tribe filed a complaint, captioned *Snoqualmie Indian Tribe v. Wendell Long*, King County Cause No. 15-2-31112-3 SEA ("Litigation"), seeking breach of fiduciary damages. Long answered the complaint denying the allegations and asserting counterclaims, which the Tribe denies.

B. On July 5, 2016, the King County Superior Court granted partial summary judgment in favor of Long on Long's counterclaims for breach of contract and violations of Washington wage laws. The King County Superior Court awarded damages in recoupment of \$85,674.44 and an amount, as yet undetermined, in attorneys' fees and costs.

C. The Parties enter into this Agreement to avoid the expense, inconvenience, and uncertainty of litigation. The purpose of this Agreement is to achieve settlement and compromise of all claims, known and unknown, between the Parties.

TERMS

1. By no later than January 11, 2017, the Parties shall file a stipulated dismissal with prejudice and without costs or fees as to any Party as to all claims and counterclaims in the Litigation pursuant to Rule 41(a)(1)(A) of the Washington State Superior Court Civil Rules.

2. Effective upon execution of this Agreement, the Parties, on behalf of themselves, and all persons, spouses, entities or agencies claiming by, through or under them, and their heirs, successors, administrators, trustees and assigns, hereby knowingly and voluntarily unequivocally, irrevocably and absolutely grant and provide to the other Party to the full extent permitted by law, a full and complete general release and discharge of any and all claims, known and unknown, asserted and unasserted, that any Party may have against any other Party as of the date of execution of this Agreement, including but not limited to any and all claims, actions, causes of action, demands, rights, damages, costs, and expenses whatsoever which any Party may have had, may now have, may claim to have, or may hereafter have or claim to have at any time before the date of this Agreement including but not limited to all claims, known and unknown, relating to the subject matter of, or arising out of, the Litigation. The Parties each warrant and represent that they have not assigned or otherwise transferred any claim or cause of

action released by this Agreement. The Parties further acknowledge and agree that these releases are full general releases. The Parties expressly waive and assume the risk of any and all claims for damages which exist as of this date, but which they do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect his or its decision to enter into this Agreement.

3. Long hereby reaffirms that the confidentiality obligations of his Employment Agreement dated March 27, 2015 remain in full force and effect.

4. The Parties agree to cooperate and execute any additional documentation as shall reasonably be required to effectuate the provisions or purposes of this Agreement.

5. The Parties agree that the agreements herein are made entirely for the purpose of a compromise and settlement of a litigated dispute. Neither the consideration set forth herein, nor the compromise and settlement of said dispute, nor anything contained herein shall be construed to be an admission by any Party of liability to any other Party or to any other person or entity, nor shall it be construed to create any rights or interests in third persons or entities. The Parties agree and acknowledge that the fact of this settlement may not be used by any Party to prove or establish liability in any other action or proceeding of any kind whatsoever.

6. This Agreement, and any companion documents referenced or provided for herein, constitutes the entire agreement between the Parties pertaining to the settlement of disputes and obligations between them with respect to the subject matter of this Agreement.

7. Each Party to this Agreement will bear its own costs and fees incurred in the negotiation of this Agreement and in fulfilling its obligations hereunder.

8. The Parties each acknowledge and agree that they have reviewed this Agreement in its entirety, and every part thereof, and that they understand the Agreement. They further acknowledge and agree that they have had the opportunity to review this Agreement and/or otherwise consult with their independent counsel as to the Agreement, and that the terms and conditions hereof adequately and correctly reflect their respective understandings of the subject matter hereof. The Tribe expressly represents and warrants that the Agreement has been approved by the Tribe, and the undersigned representative of the Tribe has authority to execute the Agreement on behalf of the Tribe.

9. This Agreement has been generated pursuant to the equal negotiations and advice of the Parties, their counsel, and their advisors as applicable. Accordingly, this Agreement should not be construed more favorably or unfavorably as to any Party hereto.


CONFIDENTIAL SETTLEMENT AGREEMENT - 2

10. This Agreement may be executed in counterparts, and by facsimile, all of which taken together shall constitute one agreement. This Agreement is effective when executed by all Parties to the Agreement.

11. This Agreement shall be construed, enforced, and interpreted in accordance with the substantive law of the State of Washington. Any dispute arising out of, or related to, this Agreement shall be brought in Washington State Superior Court, King County, and the Parties hereby irrevocably submit to the jurisdiction of the Court to resolve any dispute arising under this Agreement and waive any right to challenge the jurisdiction of said Court or to alter or change venue. The Tribe hereby expressly and unequivocally waives any and all claim(s) of sovereign immunity for purposes of either Party seeking relief in Washington State Superior Court, King County, as outlined in this paragraph, for purposes of resolving any dispute arising under this Agreement.

WHEREFORE, the Parties hereby acknowledge their agreement and consent to the terms and conditions set forth above through their respective signatures as set forth below.

SNOQUALMIE INDIAN TRIBE

By 

Printed Name: Richard V. Zambrano

Title: Tribal Council / Treasurer

Dated: 1-4-2017

WENDELL M. LONG

By 

Printed Name: Wendell Long

Dated: 01-04-2017

CONFIDENTIAL SETTLEMENT AGREEMENT - 3

HOBBS, STRAUS, DEAN, & WALKER, LLP

November 21, 2017 - 2:09 PM

Transmittal Information

Filed with Court: Court of Appeals Division I
Appellate Court Case Number: 77007-1
Appellate Court Case Title: Wendell Long, Appellant vs. Snoqualmie Gaming Commission, Respondent
Superior Court Case Number: 17-2-01853-8

The following documents have been uploaded:

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- habell@williamskastner.com
- jhager@williamskastner.com
- sdandurand@hobbsstrauss.com

Comments:

Attached please find the Brief of the Respondent, Appendix to Brief of the Respondent, and Certificate of Service for same.

Sender Name: Eleanor Manning - Email: emanning@hobbsstrauss.com

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