IN THE SUPREME COURT OF THE STATE OF WASHINGTON

OLIVE OSHIRO, et al., Petitioners, v. WASHINGTON STATE HOUSING FINANCE COMMISSION, et al., Respondents.	No. 1 0 0 8 2 7 - 9 RULING GRANTING REVIEW

Petitioners Olive Oshiro, Norma and Eugene Aldredge, Michael Rabang, Michelle and Rubert Roberts, Francisco Rabang Sr., Wilma Rabang, Alex Mills, and Saturnino Javier, formerly enrolled members of the Nooksack Tribe, seek direct discretionary review of a Thurston County Superior Court order denying petitioners' motion for a preliminary injunction against efforts to evict them from rented Nooksack tribal housing developed and managed by respondents Nooksack Housing Limited Partnership #2 through #4 (Nooksack Partnership). Another respondent in this matter is Washington Housing Finance Commission, which helped facilitate the federal tax credit program underlying financing of the tribal housing project. Because the superior court may have committed reviewable error as to some potentially dispositive issues, discretionary review is granted, as explained below.

This case leads back to a dispute over Nooksack tribal membership, a matter falling far outside this court's jurisdiction. Petitioners have lived for many years in the

Nooksack Tribe community, claiming to be enrolled members of the Tribe. Petitioners reside in modest leased homes situated on land owned by the United States government and held in trust for the benefit of the Tribe in Deming, Whatcom County.

This matter also involves a complex system of federal and state statutes and regulations and agreements between tribal and nontribal entities concerning housing programs for our native citizens. With respect to federally recognized tribes, Congress has stated, among other things, that it recognizes that "providing affordable homes in safe and healthy environments is an essential element in the special role of the United States in helping tribes *and their members* to improve their housing conditions and socioeconomic status." 25 U.S.C. § 4101(5) (emphasis added). Congress further stated that federal assistance for tribal housing "shall be provided in a manner that recognizes the right of Indian self-determination and tribal self-governance by making such assistance available directly to the Indian tribes or tribally designated entities." 25 U.S.C. § 4101(7).[1]

The rental properties at issue were developed and are managed by respondent Nooksack Partnership, a partnership between the Tribe and Native American Housing Fund V, L.L.C., a subsidiary of Raymond James Financial, Inc., headquartered in Florida. The Tribe is general partner and is responsible for .01 capitalization of the partnership. Native American Housing Fund is the limited partner and is responsible for 99.99 of the capitalization.

The partnership agreement partly describes the general purpose of Nooksack Partnership's business as follows:

> [T]o construct, rehabilitate, own and/or operate the Project, to hold, develop and operate it as income-producing property in a manner that will qualify for the Maximum Annual Credit in each year pursuant to the provisions of Section 42 of the code, and to engage in any other commercial enterprise

[1] The archaic term "Indian" is used only as it is quoted in statutes and regulations concerning this matter.

> related to the ownership, construction, rehabilitation and/or operation of the Project not prohibited to limited partnerships under the Act.

App. to Mot. for Discr. Review at A-0717. The reference to Section 42 concerns 26 U.S.C. § 42, a section of the Internal Revenue Code providing tax credits for low income housing.

With Section 42 in mind, the Tribe entered into an agreement subordinating its interests in mortgages on the property to a tax credit regulatory agreement (agreement) with respondent Washington Housing Finance Commission (the commission) for purposes of supporting the low income housing project at issue here.

To obtain tax credit for the rental housing project, Nooksack Housing entered into a "regulatory agreement," also called an "extended use agreement," with the commission. The agreement sets up a 15-year initial tax credit period with the possibility of a five-year extension. Section 4.2 of the agreement states that the project is located on tribal land and that apart from section 12 of the agreement (related to dispute resolution by way of arbitration), nothing in the agreement,

> shall operate to cause any federal, state or local laws that would otherwise not apply to Indian trust land or to an Indian tribal entity to apply by virtue of this Agreement, and that nothing herein will operate to subject activities on the Project property to the jurisdiction of any court other than the [Name of Tribal Court].

App. A-0025 to Mot. for Discr. Review.

Nooksack Partnership promised to rent all of the concerned housing units to residents eligible under low income guidelines at the time of their initial occupancy. As for evictions or nonrenewal of rental agreements, section 4.24 of the agreement states:

> During the Compliance Period and Extended Use Period (i) no tenant of a Low-Income Housing Unit may be evicted, and (ii) the owner may not refuse to renew a rental agreement, other than for Good Cause and each rental agreement shall so provide. Further in addition to any other rights and remedies provided hereunder, any individual who meets the income limitation for a Low-Income Unit (whether a prospective, present or former occupant of the Building) shall have the right to enforce in any

> State court or the [Name of Tribal Court] the requirements of this Section 4.24 and the commitments, restrictions and covenants set forth in Section 4.2 and Exhibit B hereof.

App. 0033 to Mot. for Discr. Review. The above-quoted provision requiring good cause for an eviction and allowing a tenant to seek relief in state or tribal court is similar to provisions in Section 42 requiring good cause for an eviction and allowing a tenant to seek relief in state court, but without any reference to tribal court. 26 U.S.C. § 42(6)(B)(ii), (6)(E)(ii)(I).

Section 1.37 of Exhibit C to the agreement defines "good cause" to mean in relevant part, a "serious or repeated violation of material terms of the lease as that phrase is applied with respect to federal public housing at 24 C.F.R. Section 966.4(l) or (2)." App. 0084 to Mot. for Discr. Review. The cited federal regulatory provision states in relevant part that a landlord may terminate a tenancy only for enumerated reasons, including failure to pay rent and "[o]ther good cause," which includes, but is not limited to, "[d]iscovery after admission of facts that made the tenant ineligible," and "[d]iscovery of material false statements or fraud by the tenant in connection with an application for assistance." 24 C.F.R. § 966.4(l)(2)(iii)(B)-(C).

Policies and procedures promulgated and amended by the Nooksack Indian Housing Authority (now known as the Nooksack Housing Department but referred to as NIHA in this ruling) and approved by the Nooksack Tribal Council have consistently required that all participants in the Tribe's housing programs be enrolled members of the Nooksack Tribe or enrolled members of a different tribe recognized by the United States. More specifically, a participant in the Tribe's housing programs must be a member of a "Native Family," "a family whose Head of Household or spouse is currently [an] enrolled member of a federally recognized Indian Tribe." NIHA Program Policy & Procedures (2021) at 82, Exhibit 4 to Decl. of Malori Klushkan (filed Apr. 18,

2022).[2] There is an exception for non-native individuals who are deemed essential to the well-being of the tribal community. Expulsion from or failure to maintain membership in the Tribe is grounds for termination from such programs.

Petitioners applied for the tribal housing at issue, representing themselves as enrolled members of the Tribe. The Tribe at that time acknowledged petitioners' enrolled membership and approved them as tenants.

Petitioners' rental agreements were for initial six-month terms followed by month-to-month terms. The monthly rent was based on a low-income tax credit formula, generally ranging between $0 and $500 depending on the tenant's situation. There are no allegations petitioners failed to pay rent or failed to maintain their residences.

The housing units at issue were leased 10 to 16 years ago. Petitioners Olive Oshiro, Norma and Eugene Aldredge, and Michael Rabang occupied their dwellings in 2005 to 2006.[3] All petitioners claim they understood that they would obtain ownership of their rental "units" after 15 years, and therefore they have a clear right to the immediate transfer or conveyance of ownership to them. But none of the individual rental agreements involved in this case include a rent-to-own provision. Nooksack Partnership denies these are rent-to-own properties.

NIHA polices identify two rent-to-own programs: Mutual Help Occupancy (MHO) and Low Income Housing Tax Credit (LIHTC). The units in question may fall within the LIHTC program, but the evidence presented thus far is not conclusive on that issue. Under the rent-to-own program, the renter eventually obtains ownership of the "unit" but must also maintain a sublease with the NIHA for the underlying tribal trust land. In other words, the resident obtains ownership of the structure but not the tribal

[2] This definition appears in previous versions of NIHA policies.
[3] Oshiro applied for housing in 1999.

land underneath it. In any event, as indicated, NIHA's housing policies require enrolled membership in the Nooksack Tribe or another federally recognized tribe to participate in any of its housing programs, including ownership of a unit and the underlying sublease.

In 2016 the Tribe disenrolled petitioners, claiming that for many years they had fraudulently represented themselves as Nooksack people. It is unclear whether petitioners are alleged to have engaged in such fraud directly or whether their ancestors allegedly committed such fraud. In any event, the Tribe's decisions to disenroll each of these petitioners have not been reversed. Though petitioners continue to claim tribal membership, the validity of the Tribe's disenrollment decisions are not before this court. At oral argument, petitioners' counsel conceded there is no apparent evidence petitioners are enrolled members of other federally recognized tribes.[4]

Meanwhile, in the fall of 2021 the Tribe, through NIHA, notified petitioners that they were no longer eligible for tribal housing because they were not enrolled members of the Tribe. NIHA later notified petitioners that their housing rental agreements were terminated for failure to maintain tribal membership as a requirement for initial housing eligibility, followed by a demand that they vacate their leased premises. Petitioners refused to vacate. Tribal administrative grievance hearings did not alter the result. NIHA initiated unlawful detainer actions in the Nooksack Tribal Court but then paused

[4] Some of the petitioners in this case sought relief from disenrollment by way of an action filed in federal court, naming as defendants current and former members of the Nooksack Indian Tribal Counsel, but the action ultimately failed. *See Rabang v. Kelly*, 328 F. Supp. 3d 1164 (W.D. WA. 2018), *aff'd*, 846 F. Appx. 594 (9th Cir. 2021). The district court, reasoning it lacked subject matter jurisdiction, dismissed the action without prejudice, concluding, "it is for the Nooksack Tribe, not this Court, to resolve [petitioners'] claims." *Rabang*, 328 F. Supp. 3d at 1169. Meanwhile, an apparent relative of one of the petitioners in this case filed an action in Whatcom County Superior Court against tribal employees, claiming emotional distress damages arising from eviction from different real property. The superior court dismissed the action without prejudice for lack of jurisdiction. That decision is subject to a pending appeal in Division One of the Court of Appeals. *Rabang, et ano. v. Gilliland, et al.*, No 83456-8-I.

further eviction action pending petitioner's administrative appeal to the Department of the Interior.[5]

Petitioners filed an amended complaint in Thurston County Superior Court naming as defendants the commission and Nooksack Partnership. Petitioners alleged causes of action for (1) a declaratory judgment that Nooksack Partnership was evicting petitioners without good cause in violation of federal laws, and that the commission failed to uphold its responsibility to monitor Nooksack Partnership's compliance with those laws; (2) apparently a declaratory judgment that the commission acted outside its regulatory authority and acted arbitrarily and capriciously under the Washington Administrative Procedures Act, chapter 34.05 RCW; (3) breach of a contract (the regulatory agreement) to which petitioners are third-party beneficiaries; (4) injunctive relief against Nooksack Partnership for evicting petitioners without good cause; and (5) wrongful eviction by Nooksack Partnership in violation of the Residential Landlord-Tenant Act, chapter 59.18 RCW. Petitioners sought a declaration that (1) there was no good cause to evict petitioners under federal law and the agreement, (2) petitioners had a right under the agreement to take ownership of their dwellings after 15 years of compliance with the agreement, and (3) Nooksack Partnership breached the agreement as to petitioners. Petitioners also sought an order requiring the commission to comply with chapter 43.180 RCW and enforce the agreement against Nooksack Partnership. Petitioners further requested a temporary restraining order and preliminary

[5] The Bureau of Indian Affairs earlier criticized the Tribe for its disenrollment and eviction procedures but in more recent correspondence determined that the Tribe has thus far followed proper procedures in the disenrollment and termination of housing proceedings. This more recent communication is subject to the pending administrative appeal. A United Nations human rights agency weighed in against the evictions as well. But as noted, the disenrollment decisions appear to be final, and matters of tribal membership are beyond this court's jurisdiction. *See, e.g.*, *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 72 n.32, 98 S. Ct. 1670, 56 L. Ed. 2d 106 (1978) (tribe immune from federal court jurisdiction in disputes concerning tribal membership).

and permanent injunctions restraining Nooksack Partnership from evicting petitioners or terminating their housing.

As indicated, petitioners moved for a preliminary injunction against Nooksack Partnership. The Tribe's attorneys appeared on behalf of Nooksack Housing. Separately retained counsel appeared on behalf of the commission. The parties argued the motion before the superior court. The court observed that petitioners had not joined the Nooksack Tribe and/or the United States in the action. The court concluded that for purposes of injunctive relief petitioners had not met their burden of showing "that they, either individually or collectively, have a 'clear' legal or equitable right to remain in the homes in which they currently reside." Order Denying Plaintiff's Mot. for Prelim. Injunction at 3; App. A-1021 to Mot. for Discr. Review. The court further determined that "[s]ubstantial questions exist" as to whether petitioners could ultimately prevail in light of concerns regarding the court's personal and subject matter jurisdiction, whether the Tribe and/or the United States were indispensable parties, and whether those parties could be joined in the action. The superior court thus denied the motion for a preliminary injunction.

The court entered the above-described order on April 13, 2022. Petitioners filed the instant notice for discretionary review, motion for discretionary review and for injunctive relief, and statement of grounds for direct review on April 14, 2022. I denied the motion for injunctive relief on April 19, 2022.

On June 8, 2022, Department Two of this court granted petitioner's motion to modify my ruling and granted a preliminary injunction enjoining Nooksack Partnership from evicting petitioners pending my ruling on the instant motion for discretionary review. The matter then proceeded to a videoconference hearing on June 15, 2022. At the hearing I asked Nooksack Partnership to provide supplemental records concerning petitioners' applications for housing and NIHA policies, which have since been

provided. Now before me is whether to grant discretionary review and whether to retain this case in this court or transfer it to the Court of Appeals, possibly leaving it to that court to decide whether to grant review. RAP 2.3; RAP 4.2.

As a preliminary matter, it was represented at oral argument that none of the petitioners in this matter have been evicted. As indicated, NIHA represented to the Department of Interior that it paused eviction proceedings pending the administrative appeal, and this court subsequently enjoined the Nooksack Partnership from evicting petitioners pending a decision on this motion for discretionary review. Petitioners asserted at oral argument that an unlawful detainer hearing regarding one or more petitioners is scheduled to occur in tribal court on June 24, 2022. Nooksack Partnership is reminded of this court's order imposing a temporary injunction.

As for discretionary review, appellate courts generally disfavor interlocutory review, being reluctant to intervene in a pending lower court case to direct such court how to proceed. *Maybury v. City of Seattle*, 53 Wn.2d 716, 721, 336 P.2d 878 (1959); *Minehart v. Morning Star Boys Ranch, Inc.*, 156 Wn. App. 457, 462, 232 P.3d 591 (2010). Petitioners contend interlocutory review is justified in this instance because the superior court committed probable error that substantially alters the status quo or that substantially limits a party's freedom to act. RAP 2.3(b)(2).[6] This rule has two elements: probable error and prejudicial effect. Probable error is a relatively low threshold. As for the prejudice prong of the rule, in a recent decision that is not yet final, this court adopted an interpretation of RAP 2.3(b)(2) embraced by Division One of the Court of Appeals that has its origins in a law review article written by a previous commissioner of this court: the probable error criterion applies only when the prejudicial effects of the

[6] There is no allegation that the superior court committed obvious error that renders further proceedings useless or that the lower court departed from the accepted and usual course of judicial proceedings, or a certification from the superior court that immediate appellate review is justified. RAP 2.3(b)(1), (3), (4).

error apply immediately outside the courtroom, not merely affecting the status of the instant litigation or limiting a party's freedom to act in relation that litigation. *In re Dependency of N.G.*, ___ Wn.2d ___, 510 P.3d 335, 2022 WL 1789311, at **3-4 (Wash.); *State v. Howland*, 180 Wn. App. 196, 207, 321 P.3d 303 (2014); Geoffrey Crooks, *Discretionary Review of Trial Court Decisions Under the Washington Rules of Appellate Procedure*, 61 Wash. L. Rev. 1541, 1545-47 (1986). Injunctions, like the one requested here, fall within this rule. *Crooks*, 61 Wash. L. Rev. at 1545-46. More generally, RAP 2.3(b)(2) "'typically requires a party to show that the party's substantive rights will be impaired in some fundamental manner outside of the pending litigation.'" *N.G.*, 2022 WL 1789311, at *4 (quoting Wash. Appellate Practice Deskbook § 4.4(2)(b) at 4-37 (4th ed. 2016)).

The "pending litigation" contemplated in RAP 2.3(b)(2) for purposes of this ruling is the underlying Thurston county matter. The superior court's order denying petitioner's request for injunctive relief certainly impairs their ability to avoid eviction from their tribal housing by way of tribal court proceedings. If there was probable error here, it substantially altered the status quo within the meaning of RAP 2.3(b)(2). Thus, the central matter here is whether probable error occurred.

Petitioners asked the superior court to issue a preliminary injunction against Nooksack Partnership barring it from proceeding with unlawful detainer proceedings against petitioners in tribal court concerning the possession of leased tribal housing on United States government land held in trust for the tribe. The court identified three threshold obstacles to petitioner's request for injunctive relief: (1) lack of personal jurisdiction over "persons not present," (2) lack of subject matter jurisdiction, and (3) the absence of the Tribe and the United States as indispensable parties and whether those absent parties could feasibly be joined.

The superior court's comment concerning jurisdiction over "persons not present" is rather vague. It may be a reference to the Tribe (or NIHA) and the United States and the related indispensable party issue. As indicated, this case ultimately concerns petitioners' right to reside in tribal housing located on federal land held in trust for the benefit of the Tribe. The indispensable party issue turns on whether an allegedly absent person is necessary—indispensable—for a just resolution of the case. *Auto. Union Trades Org. v. State*, 175 Wn.2d 214, 221-22, 285 P.3d 52 (2012). The court considers whether the absent party has a claim to a legally protected interest in the matter and whether its ability to protect that interest will be adversely affected by the action. *Id*. at 223. The absent party's "legally protected interest" must be "sufficiently weighty." *Id*. But an absent party's ability to protect its interests will not be harmed if its interests will be adequately represented by the already existing parties. *Id*. at 225.

This is a fairly debatable issue, at least with respect to the Tribe. Petitioners are correct that the nontribal partner controls nearly all of the initial capital put into Nooksack Partnership, but that line of argument ignores the obvious point that the Tribe is the true landlord in this case. In other words, the housing at issue sits on tribal trust land, and this case implicates the Tribe's right to have a say about who lives in housing intended for the Nooksack people. In this instance, the Tribe is acting mainly through NIHA, which filed unlawful detainer proceedings against petitioners.[7] The United States' interest is based on its primary ownership of the land held in trust for the Tribe, but its interest in the outcome of this case is seemingly less acute than that of the Tribe. In particular, petitioners claim a right to occupancy and/or ownership of the rented dwellings but not the land underneath them.

[7] This court's order enjoins Nooksack Partnership from evicting petitioners but the tribal entity that is actually trying to evict them is NIHA. But as indicated, NIHA represented to the Department of the Interior that it paused eviction action pending the administrative appeal. Any further action in the tribal court on the unlawful detainer proceeding will be highly problematic in light of this court's order imposing a temporary injunction.

On the other hand, it can fairly be argued that the Tribe's and NIHA's interest is adequately represented by Nooksack Partnership, which has been litigating this case with considerable vigor and is represented by the Tribe's attorneys. In fact, Nooksack Partnership referred to itself as the "Tribe" in its superior court proceedings. App. 0865 to Mot. for Disc. Rev. The superior court may have committed probable error with respect to the question of the Tribe and United States being absent and/or indispensable parties.

The indispensable party issue is intertwined with the question of personal jurisdiction. Neither the Tribe/NIHA nor the United States moved to intervene in this case. Until the court determines the indispensable party and subject matter jurisdiction issues, it may be premature to address personal jurisdiction.

Subject matter jurisdiction is even more debatable. In my earlier ruling I concluded the court lacks jurisdiction under RCW 37.12.060, which bars state court jurisdiction in cases involving tribal property. Although I continue to believe that jurisdictional rule applies generally, on deeper reflection I recognize there may be another avenue to state court jurisdiction if it can be determined that asserting jurisdiction would not infringe on the Tribe's rights to make its own laws and be ruled by them. *Outsource Servs. Mgmt., LLC v. Nooksack Bus. Corp.*, 181 Wn.2d 272, 276-77, 333 P.3d 380 (2014). Here, petitioners rely on the state court provision in 26 U.S.C. § 42 (h)(6)(b)(ii) and Section 4.24 of the regulatory agreement. This may be a close question. The federal statute applies to federally subsidized housing generally but not specifically to tribal housing, while the regulatory agreement ambiguously authorizes seeking relief in either state or tribal courts. It could be said that the pending tribal court action affords petitioners an adequate opportunity to vindicate their claims. The real question here it seems is whether the Tribe waived its sovereignty when it entered into the regulatory agreement. As indicated, NIHA oversees applications and

appointments for tribal housing and is the tribal agency seeking to evict petitioners. In doing so, NIHA applies policies approved by the Tribal Council. It would seem this court stepping into this matter could seriously affect the Tribe's ability to govern its people's housing affairs. On the other hand, and significant to this case, respondent commission stated at oral argument its position that state court jurisdiction exists by way of the statute and regulatory agreement. This important concession suggests the superior court may have committed probable error in determining it lacked subject matter jurisdiction.

We now turn to petitioners' request for injunctive relief. Petitioners must establish (1) that they have a clear legal or equitable right at issue, (2) that they have a well-grounded fear of immediate invasion of that right, and (3) that the acts they seek to enjoin have or will result in actual and substantial injury to them. *Rabon v. City of Seattle*, 135 Wn.2d 278, 284, 957 P.2d 621 (1998). The second and third elements seemed to be well established: petitioners fear an immediate threat to their claim to tribal housing and losing such housing would have obviously disastrous effects on their lives. The potentially dispositive element is whether petitioners have a clear legal or equitable right to the tribal housing at issue. *Rabon*, 135 Wn.2d at 284. This necessarily requires this court to assess the likelihood petitioners will prevail on the merits. *Id*. at 285. They cannot obtain injunctive relief if the outcome is doubtful. *Huff v. Wyman*, 184 Wn.2d 643, 652, 361 P.3d 727 (2015).

Here, the superior court ruled petitioners "failed to demonstrate that they, either individually or collectively, have a 'clear' legal or equitable right to remain in the homes in which they currently reside." Order Denying Plaintiff's Mot. for Prelim. Injunction at 3; App. A-1021 to Mot. for Discr. Review. Petitioners argue they have an ownership interest in their dwellings as third-party beneficiaries to Nooksack Partnership's regulatory agreement—essentially an agreement to comply with regulations concerning

financing low-income housing programs. As indicated, there is no conclusive evidence that petitioners' housing rental agreements contemplate eventual ownership. The individual agreements appear to be simply six-month rentals that converted to month-to-month terms after the first six months. On the other hand, the Tribe maintains a rent-to-own program (LIHTC) that arguably falls within the orbit of the partnership and regulatory agreements. Relatedly, a housing management and marketing plan for the rental housing project contemplates eventual ownership for qualifying renters. In light of some evidence of a rent-to-own program, petitioners' argument concerning an ownership interest in their rental units is worthy of further exploration.

But ultimately, petitioners face a particularly daunting hurdle: they are no longer enrolled members of the Tribe. I am mindful that petitioners do not concede their loss of enrolled membership, but they recognize also that this court cannot adjudicate their tribal status. As it stands now, they are not enrolled members of the Tribe, and petitioners' counsel conceded at oral argument that there is no apparent evidence that petitioners are enrolled members of any other federally recognized tribe.[8] Lack of tribal membership arguably undermines petitioners' claims in light of the "good cause" eviction requirement set forth in the federal statute and the regulatory agreement. As indicated, "good cause" to evict a tenant exists if "[d]iscovery after admission of facts that made the tenant ineligible," or "[d]iscovery of material false statements or fraud by the tenant in connection with an application for assistance." 24 C.F.R. § 966.4(l)(2)(iii)(B)-(C). As indicated, petitioners represented and were deemed to be enrolled members of the Tribe when applying for housing, but years later the Tribe determined they were not Nooksack people after all and disenrolled them accordingly. NIHA's housing eligibility policies cannot be any clearer: the applicant or participant must be an enrolled member of the Tribe or any other tribe recognized by the United

[8] This is not to say petitioners are not indigenous people.

States. There is nothing this court can do about that. Petitioners' argument that lack of tribal membership does not constitute good cause to evict them from tribal housing lacks persuasive weight. It therefore appears "doubtful" petitioners can prevail in the end. *Huff*, 184 Wn.2d at 652.

Notwithstanding petitioners' arguably weak case for injunctive relief, discretionary review is justified due to the superior court's probable errors as to indispensable parties and subjection matter jurisdiction. Since those threshold issues are potentially dispositive, the court may not need to reach the injunctive relief issue. If the court does reach that central issue, the parties will have the benefit of an authoritative decision on this potentially recurring issue concerning tribal housing. Furthermore, this case is of sufficient urgency and potential state-wide importance to be retained in this court for a decision on the merits. RAP 4.2(a)(4).

The motion for discretionary review is granted and the case is retained in this court. The clerk of the court will issue a scheduling letter and set a date for oral argument. The court's temporary injunction remains in place until this case becomes final (when the mandate is issued), at which time the injunction will be lifted automatically, or until this court orders the injunction to be lifted on some other date.

COMMISSIONER

June 23, 2022