

HONORABLE BARBARA J. ROTHSTEIN

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE TULALIP TRIBES and THE
CONSOLIDATED BOROUGH OF QUIL
CEDA VILLAGE,

Plaintiffs,

THE UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

THE STATE OF WASHINGTON,
Washington State Governor JAY INSLEE,
Washington State Department of Revenue
Director VIKKI SMITH, SNOHOMISH
COUNTY, Snohomish County Treasurer
KIRKE SIEVERS, and Snohomish County
Assessor LINDA HJELLE,

Defendants.

No. 2:15-cv-00940-BJR

PLAINTIFFS THE TULALIP TRIBES'
AND THE CONSOLIDATED
BOROUGH OF QUIL CEDA
VILLAGE'S AND PLAINTIFF-
INTERVENOR THE UNITED
STATES' POST TRIAL BRIEF

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INTRODUCTION

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2 This case is as striking for what is not in dispute as for what is. It is uncontroverted that
3 in 1970 Congress enacted a Tulalip-specific statute, the Tulalip Leasing Act of 1970, Pub. L. No.
4 91-274, 84 Stat. 301 (T-10), to enable Tulalip to pursue development of its trust lands—
5 including its single largest landholding, the 2,100 acres comprising Quil Ceda Village. Working
6 hand-in-hand with the United States over a period of many years, Tulalip has dramatically
7 fulfilled the core federal goals of encouraging tribal self-determination and economic
8 development—the creation of a regional economic engine out of whole cloth.

9 The responsibility of Tulalip and the federal government for this transformation, through
10 substantial investments in infrastructure, governmental services, economic planning and
11 regulation, and with virtually no assistance from the State and County, is not subject to serious
12 dispute. And while there is disagreement at the margins, the parties agree that Defendants’
13 insistence on imposing the full measure of their sales, business and occupation (B&O), and
14 personal property taxes on the Village economy prevents Tulalip from doing the same.

15 Under the established doctrines of *Bracker* preemption and tribal self-government, these
16 largely uncontroverted facts govern this case. The role of the United States and Tulalip in the
17 creation and maintenance of a thriving Village economy—one that generates tremendous
18 economic value and provides vast opportunity for tribal members and non-members—provides
19 them with powerful interests in the retention of the tax revenues generated by that economy to
20 fund governmental services. The State and County interests in interfering with the realization of
21 that taxing authority are correspondingly weak, where any services they provide for the Village
22 economy are paid for by Tulalip or through fees or taxes (like the State fuel tax) that are not in
23 dispute and that Defendants will continue to receive regardless of the outcome here.

24 Defendants’ claims reduce in large part to the notion that they should be able to exact

1 taxes inside of the Village because they provide generalized governmental services outside of it.
2 But this argument, if accepted, would do away with both *Bracker* preemption and the right of
3 tribal self-government. It could be asserted by a state or county to justify taxation in every case.
4 The Supreme Court and the Ninth Circuit have never sanctioned such an approach, holding
5 instead that where strong federal and tribal interests exist in retaining taxing and regulatory
6 authority over an economy arising out of their sustained and concerted efforts, a state's
7 generalized interest in raising revenue is not sufficient to avoid preemption. Plaintiffs have
8 established, moreover, that any interest Defendants may have is amply satisfied by the benefits
9 and tax revenue they enjoy outside of the Village as a result of its creation. Defendants also
10 collect over \$20 million in taxes annually on the Tulalip Reservation outside of the Village,
11 which are not disputed in this case and which they will continue to collect.

12 Defendants also suggest that because Village commerce involves non-Indians and non-
13 Indian goods, this Court should dispense with the *Bracker* and self-government tests in favor of a
14 per se rule that a tribe can never retain taxes when its economy attracts outside non-Indian
15 investment. This Court rightly rejected Defendants' invitation to rewrite the law in its summary
16 judgment order, and the facts adduced at trial further confirm the correctness of that decision—
17 not only Plaintiffs' experts, but Defendants' as well, testified to the tremendous value generated
18 by Tulalip and the United States in establishing the necessary framework for Village commerce.

19 Finally, Defendants argue that they should prevail because Tulalip does not "need" the
20 revenues at issue here. No such argument could succeed against a non-tribal sovereign. And no
21 Supreme Court or Ninth Circuit opinion has ever weighed such a factor in a *Bracker* or self-
22 government case. The Tulalip people, with the support of the United States, have fought against
23 overwhelming odds to reclaim a measure of the economic self-sufficiency that was their
24

1 historical trademark. They know all too well that fortunes can change and have dedicated
 2 themselves to sustainable and diversified planning for future generations. That they are good
 3 stewards provides Defendants with no license to appropriate the fruits of their efforts. The
 4 established doctrines that govern this case are designed to guard against precisely such a result.

5 ARGUMENT

6 I. The *Bracker* Balancing Test Preempts Defendants' Taxes at Quil Ceda Village

7 Plaintiffs' preemption claim is controlled by the balancing test set forth in *White*
 8 *Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980). Under that particularized inquiry,
 9 "[s]tate jurisdiction is pre-empted by the operation of federal law if it interferes or is
 10 incompatible with federal and tribal interests reflected in federal law, unless the state interests at
 11 stake are sufficient to justify the assertion of state authority." *New Mexico v. Mescalero Apache*
 12 *Tribe*, 462 U.S. 324, 334 (1983). This unique preemption analysis reflects the Supreme Court's
 13 "repeated[] emphasi[s]" that the reservation boundary "remains an important factor to weigh in
 14 determining whether state authority has exceeded the permissible limits." *Bracker*, 448 U.S. at
 15 151. "The historically entrenched idea of tribal autonomy . . . remains central to our reasoning
 16 when confronted with the application of state laws on tribal territory." *Barona Band of Mission*
 17 *Indians v. Yee*, 528 F.3d 1184, 1188 (9th Cir. 2008).

18 A. The Federal Government Has Powerful and Unique Interests in Tulalip's 19 Retention of the Taxes Generated at Quil Ceda Village

20 The Tulalip Indian Reservation lands comprising Quil Ceda Village were condemned by
 21 the United States during World War II for use as a military training site and ammunition storage
 22 depot (the Tulalip Backup Ammunition Storage Depot, or TBASD), including for bombs and
 23 chemical munitions. U-482 at 1. The transformation of the Village into a thriving commercial
 24 and municipal center stems from the government's sustained commitment to Tulalip's economic
 development. The United States' interests in the Village are demonstrated by three specific

1 categories of evidence: (1) federal statutes, regulations, and underlying purposes; (2) direct
 2 federal financial investment in the planning, development, and operation of Quil Ceda Village;
 3 and (3) the ongoing federal regulation and services provided in support of Village businesses.

4 1. Federal statutes, regulations, and underlying purposes

5 The breadth of federal laws and policies underlying Tulalip’s development and operation
 6 of the Village is unique.¹ In the Tulalip Leasing Act of 1970, Congress singled out Tulalip for
 7 expanded authority to lease trust lands under a federally approved Tulalip Leasing Code without
 8 subsequent Bureau of Indian Affairs (BIA) review and approval of individual leases. This Act
 9 was based upon Tulalip’s demonstrated historical success in leasing lands within the current
 10 Village boundaries, and Tulalip’s desire to attract other specific types of development free of
 11 existing limitations. U-490 at 2-5, 11-13; *see also* U-301; U-303; U-307; U-308; U-313; U-316.

12 The Act’s legislative history describes its purposes: to give the Tribe “more responsibility
 13 for and control over their property”; “to place tribal lands in their highest and best use”; and “to
 14 secure the maximum economic benefits for all members.” T-11.0002-03, 07. It recognized that
 15 “tribal lands are strategically located,” T-11.0002, and explicitly identified the Village site: “The
 16 largest single holding of the tribe is 2,100 acres . . . leased to the Boeing Co.” T-11.0005.

17 Tulalip secured congressional authorization to negotiate even longer-term leases to
 18 develop these lands—up to 75 years without secretarial approval—under a 1986 Amendment to
 19 the Leasing Act, Pub. L. No. 99-500, 100 Stat. 1783-267; Pub. L. No. 99-591, 100 Stat. 3341-
 20 267. Tulalip has used its authority under the Act and its federally approved Leasing Code to
 21 develop and regulate the Village economy. There exists no suggestion in the Act, its history, or

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¹ Federal policies and action that “demonstrate the Government’s approval and active promotion” of a particular
 23 activity “are of particular relevance” in *Bracker* balancing. *California v. Cabazon Band of Mission Indians*, 480
 24 U.S. 202, 218 (1987). The Court routinely reviews federal statutes and their legislative history to determine the
 relevant federal interests. *See, e.g., Bracker*, 448 U.S. at 143 n.10; *Mescalero*, 462 at 334 n.17, 337 n.20; *Ramah*
Navajo School Bd. v. Bureau of Revenue of N.M., 458 U.S. 832, 839-40 (1982).

1 any other federal provision that Congress intended the benefits of the Village to flow in gross
2 disproportion to State and local governments and not to the Tribe, the primary governing entity.²

3 Through the Indian Tribal Governmental Tax Status Act of 1982, Pub. L. 97-473, 96 Stat.
4 2607, Congress granted tribal governments a status under the Internal Revenue Code similar to
5 that of the states for certain purposes. U-379. In March 2001, under a tribal ordinance approved
6 by the BIA, the Tulalip Tribes chartered a political subdivision, the Consolidated Borough of
7 Quil Ceda Village, comprising the 2,100 acres of the former TBASD. T-1215, 1261 (SF 67-70,
8 77-78); T-12; T-16; T-18. The Internal Revenue Service formally recognized the political
9 subdivision status of the Village government for purposes of certain federal tax laws, finding that
10 the Village had the power to exercise substantial governmental functions of the Tribe, including
11 the police power and the power to tax. U-489 (SF 76); T-1215 (SF 76); T-17.

12 Congress continued to support the evolution of independent tribal economies through the
13 Native American Business Development, Trade Promotion, and Tourism Act of 2000, Pub. L.
14 No. 106-464, 114 Stat. 2012. The Act is relatively new—enacted after many of the *Bracker*
15 balancing cases. And it is important here because Congress found that “the United States has an
16 obligation to assist Indian tribes with the creation of appropriate economic and political
17 conditions with respect to Indian lands to (A) encourage investment from *outside sources* that do
18 not originate with the tribes; and (B) facilitate economic ventures with *outside entities* that are
19 not tribal entities” 25 U.S.C. § 4301(a)(9) (emphasis added). The purposes of the Act also
20 include “facilitating the movement of goods to and from Indian lands” and assisting tribes in
21 developing tourism projects “that have the potential to increase . . . revenues by attracting [non-
22 Indian] visitors to Indian lands.” 25 U.S.C. §§ 4301(b)(2) & (b)(1)(B), 4305(a)(2)(B). Tulalip’s

23 ² The Leasing Code includes provisions regarding land use planning and zoning, building codes, environmental
24 impacts, taxation, lease enforcement, insurance, assignment and encumbrances, and improvements to leased lands.
Tulalip Tribal Codes, Ch. 6.15, *available at* <http://www.codepublishing.com/WA/Tulalip/>.

1 development of Quil Ceda Village has advanced the Act's policies in substantial ways.

2 Prior legislative schemes, including the Indian Reorganization Act, Pub. L. No. 73-383,
3 48 Stat. 984 (IRA), and the Indian Self Determination and Education Assistance Act, Pub. L. No.
4 93-638, 88 Stat. 2203 (1975) (ISDEAA), are routinely cited in *Bracker* balancing cases for their
5 broad goals of supporting tribal economic development. *See, e.g., Bracker*, 448 U.S. at 143 n.10;
6 *Mescalero*, 462 U.S. at 334 n.17. But in this particular case, the IRA and ISDEAA are more than
7 declarations of policy: Tulalip organized its tribal government pursuant to the IRA,³ re-acquired
8 the lands now comprising the Village primarily using federal IRA funds; and built many of the
9 major roads and other infrastructure within the Village utilizing millions of dollars in federal
10 ISDEAA contract funding. U-446; U-447; U-482 at 1; U-483 at 5-7; U-490 at 10-11.

11 Finally, the Department of the Interior's updated leasing regulations, 25 C.F.R. Part 162,
12 recognize a comprehensive scheme to promote leasing of Indian land for economic development,
13 25 C.F.R. § 162.001(a), and as discussed in the regulatory preamble, weigh heavily against state
14 taxation. *See* 77 Fed. Reg. at 72,447-48. The Secretary found that state taxation of non-Indians
15 on leased lands obstructs economic development, self-determination and self-sufficiency, can
16 impede a tribe's ability to attract non-Indian investment, and may lead a tribe to "refrain from
17 exercising its own sovereign right to impose a tribal tax to support its infrastructure needs." *Id.*
18 That a Tulalip-specific act regulates the leasing of its trust lands does not diminish the weight of
19 federal interests articulated in Interior's regulations, which "[c]larify that tribes with special
20 Federal statutory authority to lease under tribal regulations approved by the Secretary [such as
21 Tulalip] may adopt any of the part 162 regulations subject to Secretarial approval." 77 Fed. Reg.
22 at 72,444. Tulalip has done just that, adopting 25 C.F.R. § 162.017 regarding state taxation of

23 ³ The Tribe's federally-approved Constitution provides that the Board of Directors has the authority "[t]o manage all
24 economic affairs and enterprises of the Tulalip Reservation," "[t]o charter subordinate organizations for economic
purposes," and to levy taxes "upon non-members doing business within the reservation." U-446 at HRA002467.

1 activities on Tulalip’s trust lands. T-29.0001, 0003. Defendants’ treatment of the Village’s
 2 municipal boundaries as having no greater significance than the entrance to a suburban shopping
 3 mall is flatly at odds with the congressional policy of revitalizing tribal self-government and
 4 tribal authority over its territory, so amply expressed in enactments specific to Tulalip.

5 2. Direct federal financial investment in Quil Ceda Village

6 The United States has made substantial financial investments in the Village at each step
 7 of its development. In 1987, Tulalip requested BIA assistance “to build interchanges which will
 8 directly assist us with our Industrial-Business Park development.” U-42. In response, the
 9 Federal Highway Administration (FHWA) provided over \$11 million to build the interchange at
 10 I-5/88th Street and, with millions of dollars in funding from BIA, converted 88th Street from a
 11 one-lane dirt road into a primary Village access road. U-484 at 1-2; U-45 at US0111089.⁴

12 As Tulalip’s leadership continued to develop its vision, the Administration for Native
 13 Americans provided over \$800,000 for planning, zoning, and permitting work. U-485; U-52; T-
 14 79; T-82; Tr. 5/15 84:18-85:5 (Mills).⁵ The Economic Development Administration (EDA)
 15 provided \$300,000 over 13 consecutive years for similar work within the Village. U-486; *see*
 16 *Mescalero*, 462 U.S. at 327, 327 n.3 (finding preemption where “[t]he Tribe has constructed a
 17 resort complex financed principally by federal funds,” and citing similar EDA funding).

18 BIA has also provided tens of millions of dollars for the planning, engineering, and
 19 construction of roads and utilities for the Village; and continues to provide hundreds of
 20 thousands of dollars to Tulalip for law enforcement—and over \$1 million annually for

21 ⁴ Tulalip was described as the “driving force” behind the 88th Street interchange, and the federal government was by
 22 far its biggest contributor. U-44; S-88. By contrast, the State told FHWA that the 88th Street interchange was
 23 “not a high priority” for the State; indeed, it contributed less than \$1 million to the construction phase. U-44. The
 County’s contributions to the project were to portions located east of I-5, in the City of Marysville outside the
 Reservation, and were largely reimbursed by Tulalip. S. Thomsen Tr. 5/18 86:13-15; 87:5-25; C-30. FHWA
 eventually spent over \$20 million on the interstate interchanges that provide access to the Village, U-484 at 1, 4,
 and BIA provided an additional \$8 million via FHWA Surface Transportation Program funding, U-95.

24 ⁵ All references to trial testimony are based upon the rough transcript provided to the parties.

1 transportation projects—on the Reservation, including the Village. U-483 at 5-9; T-254; U-95;
2 P. Mills Tr. (5/15) at 84:7-12; *see Bracker*, 448 U.S. at 150 (“The roads at issue have been built,
3 maintained, and policed exclusively by the Federal Government, the Tribe, and its contractors.”).

4 In January 2003, Tulalip informed the U.S. Army Corps of Engineers (USACE) that the
5 risk assessment code assigned by USACE to the former TBASD in 1994 was a hindrance to
6 Tulalip’s development efforts. U-59; U-60; U-61; U-74; U-75; U-482 at 2. Tulalip funded its
7 own geotechnical survey, continued to work with USACE to reduce the risk assessment score,
8 and requested additional assistance with environmental mitigation work throughout the Village.
9 *Id.* By 2007, USACE had provided over \$9 million to Tulalip pursuant to two separate federal
10 programs for environmental mitigation of Village lands. U-482 at 2-3.

11 In sum, the federal government has expended enormous sums (over \$50 million) in
12 supporting Tulalip’s development of the Village. U-153 at 6-9; U-483 at 9; U-484 at 6-8.

13 3. Federal regulatory activities and services in support of Quil Ceda Village

14 Strong federal interests in the Village are also demonstrated by the longstanding
15 regulatory activity and services. As discussed above, BIA reviewed and approved the Tulalip
16 Tribes’ Political Subdivisions Act, the Quil Ceda Village Charter, Tulalip’s Leasing Code and
17 30-year and 75-year leasing regulations, and other tribal ordinances pursuant to which Tulalip
18 regulates the leasing of trust lands and other activities within the Village. U-483 at 2-4; G.
19 Gobin (5/14) Tr. 89:11-16; 90:22-91:11; 119:20-121:22; U-93; T-18; T-22; T-28; T-29; *see*
20 *Mescalero*, 462 U.S. at 325-29 (preemption based upon “extensive federal assistance,”
21 “[f]ederally approved Tribal ordinances,” and other federal contributions). Pursuant to the
22 Indian Trader Statutes, as well as an MOU developed jointly by BIA, Tulalip, and the Simon
23 Property Group, non-Indian businesses at Quil Ceda Village hold federal Indian trader’s licenses
24 issued by BIA pursuant to 25 U.S.C. §§ 261-264 and 25 C.F.R. Part 140. U-483 at 1-2; Tr. 5/15

1 83:8-16 (Mills); Tr. 5/16 33:24-6 (M. Johnson); U-64;T-817.

2 The Environmental Protection Agency (EPA), not the State or County, comprehensively
3 regulates environmental activities within the Village. EPA directly implements the National
4 Pollutant Discharge Elimination System (NPDES) permit program; regulates hazardous waste
5 generator activity under the Resource Conservation and Recovery Act (RCRA); regulates
6 underground storage tanks (USTs); implements the Underground Injection Control (UIC)
7 Program pursuant to the Safe Drinking Water Act; reviews monthly drinking water samples; and
8 inspects and regulates the operation of injection wells at UIC-regulated facilities. U-487; T-372;
9 T-373; T-397; T-807. EPA has approved Tulalip's treatment-as-state status to administer water
10 quality standards on the Reservation, U-487 at 3; U-49; U-50, and has negotiated a Superfund
11 alternative approach agreement with Boeing for sites in the Village. U-487 at 4; U-88.

12 The Indian Health Service performs environmental health services within the Village,
13 again instead of the State and County. This includes design plan reviews, pre-opening
14 inspections, and routine health and food safety surveys for businesses pursuant to the 2005 FDA
15 Food Code and the BIA-approved Tulalip Food Ordinance (117 inspections from 2000 to 2011).
16 U-488; Tr. 5/15 183:6-11 (Hunter); Tr. 5/16 33:24-6 M. Johnson; T-536. Under agreements with
17 EPA, IHS also inspects Village drinking water systems, the wastewater treatment facility, and
18 underground storage tanks. U-488; Dkt. 225-1 (IHS Dep.) at 95-97, 99; T-373; T-397.

19 Defendants erroneously suggest that this Court should disregard the considerable body of
20 federal statutes and regulatory action directed specifically at Tulalip and instead focus on
21 whether federal law pervasively regulates retail businesses and their commercial activities.
22 Nothing in the Supreme Court's or the Ninth Circuit's *Bracker* jurisprudence counsels such a
23 myopic approach. The United States has taken a keen interest in Tulalip's development of the
24

1 Village, devoting not only substantial financial resources but also considerable regulatory
 2 expertise to the Tribe's endeavor. The United States correspondingly has keen interests in
 3 Tulalip retaining the resultant tax revenues, interests that Defendants cannot simply wish away.⁶

4 **B. Tulalip Has Powerful Interests in Retaining the Taxes Generated at the Village**

5 1. Tulalip Has Generated Tremendous Economic Value at Quil Ceda Village

6 Where a tribe "plays an active role in generating activities of value on its reservation," it
 7 has "a strong interest in maintaining those activities free from state interference." *Cabazon Band*
 8 *of Mission Indians v. Wilson*, 37 F.3d 430, 434-35 (9th Cir. 1994) (quoting *Gila River Indian*
 9 *Cmty. v. Waddell*, 967 F.2d 1404, 1410 (9th Cir. 1992) ("*Gila River I*"). Here, with the
 10 considerable support of the federal government, Tulalip transformed bare, contaminated tribal
 11 trust lands into a thriving marketplace through strategic planning and the provision of critical
 12 infrastructure and governmental services. Tulalip leadership had long set aside these lands for
 13 economic development to create an economic base for the Tribe and new employment and
 14 business opportunities for tribal members. Tr. 5/14 85:13-22, 86:10-20, 104:22-105:17 (G.
 15 Gobin); Tr. 5/15 63:7-14 (Mills). The most important decision Tulalip made was to develop the
 16 economy itself, and not to turn the land over to a developer that would not share its values or
 17 long-term vision of sustainable growth. Tr. 5/14 110:20-111:9; 142:22-144:2 (G. Gobin).

18 As Professor Joseph Kalt testified in detail, in fulfilling this vision Tulalip and the United
 19 States generated tremendous economic value at the Village—totaling hundreds of millions of
 20 dollars in production. Tr. 5/17 19:3-14, 49:25-50:3; Tr. 5/23 122:17-23. Tulalip's investment of

21 ⁶ Even if Defendants were correct that this Court should focus on federal regulation of retail transactions in the
 22 Village, that regulation is likewise substantial. A small sampling includes: 15 U.S.C. §§ 1637, 1638 (credit
 23 disclosures); 15 U.S.C. §§ 1664, 1665a, 1665b (credit advertisements); 15 U.S.C. §§ 1693 – 1693r (electronic fund
 24 transfers); 15 U.S.C. § 1693o-2(a)(2) (electronic debit transactions); 15 U.S.C. § 2068 (product safety); 15 U.S.C.
 §§ 2301-2312 (warranties); 26 U.S.C. §§ 3102, 3111, 3402 (employee and employer taxes); 26 U.S.C. § 3301
 (unemployment taxes); 29 U.S.C. §§ 654 (health and safety); 29 U.S.C. §§ 2601-2654 (family medical leave); 42
 U.S.C. § 12112 (disability discrimination); 15 U.S.C. § 13 (price discrimination); 21 U.S.C. §§ 301 – 399i, 610,
 1037, and 1040 (food, drugs, cosmetics); 15 U.S.C. § 70a (textile fiber products); 15 U.S.C. § 1-278 (toys, games).

1 approximately \$153 million, and the corresponding federal investment, in physical infrastructure
 2 to attract investment and to support commerce played a critical role in the value generated. T-
 3 1234 ¶¶ 49-52, 74-77, Fig. 2 (Kalt); Tr. 5/17 21:4-23:9 (discussing T-1237) (Kalt); T-51. This
 4 infrastructure includes interior roads (\$20.9M), freshwater and sewage treatment systems
 5 (\$35.4M), an electrical substation and lines (\$8M), two highway interchanges (\$63.8M), and
 6 fiber telecommunications system (\$4.4M). T-51; Table Summary of Interests (“Table”), *infra*.

7 There is no dispute about this value generation. Defendants’ expert Nigel Hughes agreed
 8 as to the significance of the Tulalip and federal efforts:

9 A land developer adds value by building infrastructure and changing the use of a
 10 parcel of land from a lower value use to a higher value use. Quil Ceda Village or the
 11 Tribes engaged in land development activities such as economic development,
 12 planning, and building infrastructure such as roads and utilities.

13 S-588.0006 (¶22); *see also* Tr. 5/18 178:22-179:22 (Hughes explaining various ways Tulalip has
 14 added value). The State also recognizes that “the state as a whole benefits from investment in
 15 public infrastructure,” which “stimulates business activity and helps create jobs” and “stimulates
 16 the redevelopment of brownfields” as occurred at the Village.⁷ RCW 39.102.010. As detailed
 17 below, Tulalip has also created value through comprehensive governmental services, which have
 18 allowed a thriving economy to develop in a stable and orderly fashion, T-1234 ¶¶ 53-54, 78-83
 19 (Kalt); Tr. 5/17 23:20-25:4 (Kalt); 30:21-34:22; T-1095.

20 Tulalip has further generated value through its sustained and concerted efforts to create a
 21 unique retail and entertainment destination. Tulalip developed a vision for a destination
 22 marketplace, selecting and siting non-tribal and tribal businesses to maximize synergies and to

23 ⁷ Thus, when Cabela’s was locating in the City of Lacey, the State contributed \$9.9 million in public funds for road,
 24 highway interchange improvements, and sewer and stormwater infrastructure through the Community Economic
 Revitalization Board (CERB) Job Development Fund Project. T-1038.0001, 02. The State did so in significant
 part because of the anticipated annual sales tax revenue of \$5.5 million from Cabela’s (and projected annual sales
 tax revenue of \$43 million after full build-out of the Lacey Gateway Town Center. T-1038.0002.

1 attract visitors from long distances for extended periods of time. T-1234 (Kalt Report) ¶¶ 55-57,
2 84-92; Tr. 5/14 113:9-114:25, 117:5-14 (G. Gobin); Tr. 5/15 76:1-25 (Mills); T-1263 at 67, 73
3 (Res. 2004-172, 2005-164). Not only did Professor Kalt testify to all of this in detail, but
4 Defendants' expert Dr. Zodrow agreed that Tulalip has generated value by creating a destination
5 with highly attractive amenities and complementary businesses. S-607 at 8, 19-21. This is the
6 same type of value the Supreme Court recognized in *California v. Cabazon Band of Mission*
7 *Indians*, 480 U.S. 202, 219 (1987), where it found that in establishing gaming operations the
8 tribes were "not merely importing a product onto the reservations for immediate resale to non-
9 Indians," but instead had "built modern facilities which provide recreational opportunities and
10 ancillary services to their patrons, who do not simply drive onto the reservations, make purchases
11 and depart, but spend extended periods of time there enjoying the services the Tribes provide."

12 Dr. Kalt quantified the economic value generated by Tulalip's development and operation
13 of the Village through 2017 in Figure 5 of his report. T-1234 at 56. At trial he explained that
14 "the GDP [gross regional product] being created is value being created as a direct consequence
15 of the tribes' investments and exercise of its self-determination powers." Tr. 5/17 65:12-21;
16 34:23-36:19. He used the IMPLAN modeling tool to trace the economic impact of the Village:
17 direct impacts (economic activity at the Village), indirect impacts (increased activity in the
18 supply sector that is feeding Village activity), and induced impacts (expansions related to
19 spending by these new workers and businesses in the broader economy). Tr. 5/23 123:17-124:9;
20 Tr. 5/17 (Kalt) 39:13-48:24 (discussing T-1234 at 56; T-1237 at 7-8).⁸ When considering the
21 impacts of both construction and retail activity, Dr. Kalt found that the Village created 43,012
22 jobs (in worker years), \$1.65 billion in labor income, \$2.98 billion in value added (GDP, i.e., net

23 _____
24 ⁸ The IMPLAN model is routinely used by federal and state governments, including Washington, to measure the
impacts of economic activity. Tr. 5/18 42:3-22 (Menenberg); Tr. 5/23 119:13-122:8 (Stowe); T-1234.0055 ¶107.

1 gain), \$4.87 billion in output (i.e., gross margin), and \$572 million in taxes. T-1234 at 56.

2 Defendants offered no expert testimony disputing the existence of this value.⁹

3 Defendants instead argue that many of Tulalip’s efforts have been as a “real estate
4 developer” and are “commercial” in nature, and that this somehow lessens Tulalip’s
5 governmental interest in retaining tax revenues. This argument fails for at least four reasons.
6 First, every successful *Bracker* case has involved a tribe operating in a commercial capacity—
7 and the tribe’s intensive commercial efforts have counted towards, not against, the strength of its
8 interests under the balancing test. *E.g.*, *Cabazon*, 480 U.S. at 219. Second, not only is the
9 distinction between governmental and commercial activities that Defendants’ experts labored to
10 draw at trial irrelevant for *Bracker* purposes, but it is spurious.¹⁰ Third, the Supreme Court flatly
11 rejected this suggestion in *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 138 (1982): “The
12 mere fact that the government imposing the tax also enjoys rents and royalties as the lessor of the
13 mineral lands does not undermine the government’s authority to impose the tax.” Finally,
14 Tulalip’s successful development of the Village is exactly the result Congress envisioned in

15 _____
16 ⁹ Although Defendants’ expert Dr. Bajaj has never worked with IMPLAN and only “sort of” understands how it
17 works, he suggested that Dr. Kalt should have limited his analysis to “new” economic activity that would not have
18 otherwise occurred if Tulalip had never developed the Village. S-606 (¶¶45-53); Tr. 5/23 73:16-74:6. Dr. Kalt
19 explained that his analysis measured the *actual* historic economic activity generated, which in fact accounts for net
20 new activity. Tr. 5/23 122:17-124:9; Tr. 5/17 57:22-58:12 (same); 49:25-51:20 (net addition to the value of the
21 output of the regional economy); 59:8-60:8 (the Village drew into productivity previously unemployed resources,
22 and the analysis accounted for the fact that resources could have been productive elsewhere).

19 ¹⁰ The testimony at trial made abundantly clear that Defendants’ experts applied a different standard to Tulalip than
20 other governments. For example, Mr. Hughes testified that when governments other than Tulalip build a highway
21 interchange or a water pipeline, or maintain streets and sidewalks, or engage in marketing activities to attract
22 visitors and businesses, they act in a governmental capacity. Tr. 5/18 212:24-225:25. Defendants’ expert Michael
23 Hodgins offered similar testimony. But fatal to his entire analysis, Mr. Hodgins admitted that (1) if a government
24 funds infrastructure through its general revenues—as Tulalip did in the Village—the spending should be
25 considered “governmental” rather than “commercial”, and (2) his methodology for distinguishing between
26 “governmental” and “commercial” spending does not work when the government owns the land being
27 developed—as Tulalip does in the case of the Village. Tr. 5/22 142:5-9; 143:11-18; 144:22-145:5.

23 Moreover, Mr. Hughes’s and Mr. Hodgins’s critiques do not reflect how Washington governments approach
24 economic development in practice. As Plaintiff’s expert Robert Stowe, a 30-year city manager for four different
25 Washington cities, explained, municipal governments can and do engage in “commercial” economic development
26 activities, which in no way negates their “governmental” function or undermines their interest in collecting tax
27 revenue to fund governmental services. Tr. 5/23 92:11-93:2, 98:24-100:13.

1 passing the Tulalip Leasing Act of 1970.¹¹

2 Defendants also suggest that the value generated by Tulalip is not cognizable because
 3 Tulalip does not cobble the shoes or sew the shirts sold by Village businesses. Their expert Dr.
 4 Bajaj thus details the design and manufacture, for example, of Samsonite luggage abroad, and
 5 labels these non-tribal (and likewise non-Washington) goods. S-605 at ¶¶ 9, 12, 61-64; 5/23 Tr.
 6 73:1-15. But the Ninth Circuit made it clear in *Cabazon Band*—where California sought to
 7 impose a tax on bets placed by non-Indians on off-reservation horse races run by non-Indian
 8 racing associations—that the outcome of the *Bracker* test does not turn on whether the goods
 9 sold are manufactured on the Tulalip Reservation. 37 F.3d at 435. “*It is not necessary . . . that*
 10 *the entire value of the on-reservation activity come from within the reservation’s borders.*” *Id.*
 11 (emphasis added). The Ninth Circuit reasoned that “the Bands have invested significant funds
 12 and effort to construct and to operate wagering facilities and to attract patrons. . . . It is sufficient
 13 that the Bands have made a substantial investment in the gaming operations and are not merely
 14 serving as a conduit for the products of others.” *Id.* As detailed above, not only Professor Kalt
 15 but Defendants’ other experts agree that Tulalip has invested substantial funds in creating and
 16 maintaining the Village economy and has generated tremendous value in doing so.

17 Dr. Bajaj’s narrow focus on the manufacture of the goods invites the Court to place this
 18 case in a pigeonhole with *Washington v. Confederated Tribes of Colville Indian Reservation*, 447
 19 US. 134 (1980), which had to do with tribal smokeshops. *Colville* is indeed instructive, but as a
 20 powerful foil to the value generated by Tulalip at the Village:

21 What the smokeshops offer these customers, and what is not available elsewhere, is
 22 solely an exemption from state taxation. . . . We do not believe that principles of
 23 federal Indian law, whether stated in terms of pre-emption, tribal self-government, or

24 ¹¹ In the Act, Congress recognized that Tulalip’s lands were “strategically located,” T-11.0002, which is part of the value contributed by Tulalip. See *Yavapai-Prescott Indian Tribe v. Scott*, 117 F.3d 1107, 1112 (9th Cir. 1997).

1 otherwise, authorize Indian tribes thus to market an exemption from state taxation to
2 persons who would normally do their business elsewhere.

3 *Id.* at 155. By contrast, Tulalip has never marketed an exemption from state taxation, and all of
4 the taxed transactions in the Village result from the intensive economic development efforts it
5 has undertaken in conjunction with the United States. What Tulalip does offer consumers is high
6 quality public infrastructure and government services, and a unique mix of businesses and
7 amenities. These are the reasons people choose to do business at the Village, and its success is
8 proof of the active role of Tulalip and the United States in generating value.

9 2. Tulalip Provides Comprehensive Government Services to Taxpayers

10 Under the *Bracker* test, a tribe's interest in maintaining economic activities free from
11 state taxation is further strengthened "when the taxpayer is the recipient of tribal services."
12 *Colville*, 447 U.S. 156. The Court heard extensive testimony regarding Tulalip's provision of
13 comprehensive governmental services and regulation, which touch all aspects of Village
14 commerce and protect the health, safety, and welfare of customers, employees and businesses.

15 By way of illustration, Tulalip's building regulations include plan and design review,
16 permitting, and inspections at each step of the construction or remodeling process. *See* Table.
17 Tulalip's Building Inspector has conducted, for example, more than 1,000 inspections at Seattle
18 Premium Outlets, issuing between 1,000 and 2,000 correction notices and stop-work orders. T-
19 1219 (SF 1139); T-1220 (Nordtvedt Decl.) ¶19. All Village businesses hold a tribal master
20 business license, and some receive specialty licenses for food service, liquor or cigarette sales,
21 and other activities. T-1221 ¶ 3 (Hunter); T-1219 (SF 215, 216). All Village food service
22 establishments (68 in 2015) are regularly inspected by the Tulalip Health Official or the IHS, and
23 liquor and cigarette license holders are inspected at least twice annually. T-1219 (SF 170, 175,
24 221); T-1221 (Hunter Decl.) ¶¶3-4.

1 In addition, the Village Transportation Department performs road and streetlight repair
2 and maintenance, traffic planning, traffic studies, and collision data collection and analysis. *E.g.*,
3 T-1227 ¶¶ 9-10, 24-34, 38, 41-43 (Bray); T-1231 (SF 680, 686, 688); T-255; Table. The
4 Maintenance Department cleans snow and debris in the Village, and maintains park, trail, and
5 other common areas, stormwater infrastructure, sprinklers, sidewalks, medians, and fences. Tr.
6 5/16 23:2-17 (Johnson); T-1215 (SF 266); Table. The Utilities Department operates and
7 maintains the Village freshwater and sanitary sewer systems, including the membrane bioreactor
8 wastewater treatment plant, and in coordination with EPA and IHS regulates and inspects those
9 systems, including collecting and testing 30 monthly drinking water samples. Table; T-1238 (SF
10 277). The Village Wetlands Program manages the nation's first tribal In-Lieu Fee wetlands
11 mitigation program. Table; U-482 (SF 367); T-1215 (SF 1328); Tr. 5/14 131:20-134:15 (G.
12 Gobin). The Village provides fire protection and emergency medical services under a negotiated
13 fee-for-service contract with the Marysville Fire District, and licenses and regulates charitable
14 and commercial use of public spaces in the Village. T-1215 (SF 1117-1123); T-556.

15 The Tulalip Police Department (TPD) is and always has been the primary law
16 enforcement agency in the Village. Tr. 5/17 155:15-17 (Echevarria); T-504; T-1229 ¶¶ 12, 22
17 (Goss). Longtime TPD Chief Carlos Echevarria and longtime Seattle Premium Outlets General
18 Manager Mark Johnson testified regarding TPD's crucial role in public safety and the success of
19 Village businesses, Tr. 5/16 27:3-21, 28:3-29:9 (M. Johnson); Tr. 5/17 126:21-127:7; 129:14-
20 134:25; 138:13-139:2 (Echevarria), everything from investigating armed robbery and aggravated
21 assault to conducting vehicle, foot and bike patrols; responding to vehicle collisions and thefts;
22 cleaning up homeless encampments; meeting with store managers to discuss crime trends and
23 traffic planning; and providing safety training for store employees. Tr. 5/16 26:2-16 (M.

1 Johnson); Tr. 5/17 133:2-135:18, 147:7-14, 154:24-155:14 (Echevarria); T-411. Overall, TPD
 2 responds to approximately 6,000 calls for service each year (including 911 calls) and refers 90%
 3 of the cases for criminal prosecution arising in the Village. Tr. 5/17 155:15-156:1 (Echevarria);
 4 T-459; T-487; T-1243 (SF 1164-1166); T-1229 ¶¶ 12, 22 (Goss). Mr. Johnson testified that he
 5 interacted with the Sheriff's Office only on rare occasions and had no interaction with the State
 6 Patrol. Tr. 5/16 29:10-30:5.

7 The Tulalip Tribal Court provides a forum for all civil disputes arising in the Village,
 8 including between Village businesses and their customers. TTC § 2.05.020(1) (jurisdiction over
 9 all causes of action arising in Village), *avail. at* <http://www.codepublishing.com/WA/Tulalip/>; T-
 10 531; T-1243 (SF 999). From 2011 through 2015, nearly 100 civil disputes arising in the Village
 11 were filed in Tribal Court. T-524. The Tribal Court also exercises jurisdiction over criminal
 12 offenses by Indians, and by non-Indians in certain domestic violence cases. T-1243 (SF 1008).
 13 From January to May 2015, the Tribal Prosecutor had a total of 114 cases arising in the Village,
 14 including theft, drug, and trespass cases. T-513.0003.

15 Finally, Tulalip not only paid for and installed the fiber infrastructure in the Village, it
 16 ensures that businesses receive the telecommunications services to enable the credit card
 17 transactions, point of sale systems, and internet and telephone that Village businesses and their
 18 customers rely upon each day. Tr. 5/14 203:12-204:14 (Jones); Tr. 5/15 10:16-12:15. T-1226 ¶¶
 19 16-22 (Erdly). And when businesses and visitors to the Village fall victim to crime, Tulalip Data
 20 Services provides video retrieval and computer forensics services to support TPD's investigation.
 21 Tr. 5/14 202:15-203:11 (Jones); Tr. 5/17 133:21-134:11 (Echevarria).

22 3. Tulalip Has a Strong Interest in Employment at Quil Ceda Village

23 Development in the Village has contributed significantly to lowering Tulalip's
 24 unemployment rate from 26% in 1999, when the first Village lease was signed, T-1084.01390,

1 to approximately 6 or 7% today, and in providing productive careers for hundreds of Tulalip
2 tribal members and other Native Americans. Tr. 5/15 155:4-14, 159:7-160:4 (T. Gobin); T-1223
3 (SF 511). The Court heard testimony from Tulalip members who operate the Village's water and
4 sewer systems, maintain the telecommunications infrastructure, managed the construction of
5 commercial buildings, and provide the myriad other governmental services detailed above. *E.g.*,
6 T-1235 ¶¶ 7-10 (J. Gobin); Tr. 5/14 189, *et seq.* (Jones); Tr. 5/17 123 *et seq.* (Echevarria); T-
7 1236 (N. Gobin) ¶ 11-28; Tr. 5/15 124 *et seq.* (T. Gobin); T-1223 (SF 511). In total, the Village
8 government employs approximately 100 Tulalip members, spouses or parents of members, and
9 other Native Americans who serve the economy each day. T-1223 (SF 504).

10 From the very outset, Tulalip members and member-owned businesses have been
11 involved in all construction and remodeling projects in the Village. Tr. 5/15 129:22-25; Tr. 5/14
12 80:9-22, 81:15-82:1, 82:19-25, 83:1-10. The Tribal Employment Rights Office (TERO) enforces
13 Indian preference in contracting and has issued more than 600 plans within the Village to ensure
14 members receive these opportunities. Tr. 5/15 130:9-16, 133:4-15, 135:1-9. Tribal participation
15 has increased with each building project, with many members forming their own businesses, and
16 with over 700 people (70% Native American) graduating from the TERO vocational training
17 program to fill these jobs. Tr. 5/15 137:4-14, 139:25-140:3, 142:5-18, 145:6-146:4, 147:15-19,
18 153:19-154:5. TERO dispatches workers to jobs throughout the Village, including cashiers,
19 kitchen help, landscapers, painters, carpenters, electricians, plumbers, roofers, truck drivers, and
20 general laborers. T-1223 (SF 649). Tulalip has also created small business opportunities for
21 tribal entrepreneurs in the retail industry, with many members operating businesses at the Tulalip
22 Retail Center or other Village locations. T-1232 (S. Gobin) ¶¶9-15.

23 That the number of tribal members employed at non-Indian retail businesses in the
24

1 Village is relatively low does not diminish the career opportunities created for hundreds of tribal
2 members in higher-paying fields such as government services, skilled trades, and small business
3 ownership. T-1223 (SF 512). All of the tribal members employed at the Village play an
4 essential role in creating and sustaining the marketplace that generates the disputed taxes. Quil
5 Ceda Village is not an isolated project, like the single hotel at issue in *Yavapai-Prescott Indian*
6 *Tribe v. Scott*, 117 F.3d 1107, 1108 (9th Cir. 1997), but comprises a master-planned development
7 and municipal government of which Tribal members form an integral part.

8 4. Tulalip's Leases with Businesses Reflect Its Strong Interests in the Village

9 Every ground lease in the Village was negotiated at arm's length in an open market.
10 Accordingly, the terms of each lease vary, but all of the leases reflect Tulalip's strong interests in
11 activities at the Village and its role in the success of Village businesses. Leases require Tulalip
12 to make substantial capital investments in infrastructure such as roads, water and sewer systems,
13 and telecommunications (for example, Seattle Premium Outlets \$11M), and sometimes to
14 construct the building itself (Cabela's \$20M). T-1215 (SF 497), T-1218 (498, 500, 502, 503).
15 Leases include provisions for joint marketing and profit-sharing between Tulalip and the
16 business. T-821.0024-.0026; T-824.0010. Leases explicitly recognize the synergy between non-
17 tribal and tribal businesses, going so far as to condition the tenant's obligations on, for example,
18 Tulalip's construction of the Tulalip Retail Center and continued operation of the Tulalip Resort
19 Casino. *e.g.*, T-821.0027-29, .0046-47. Leases also provide for preference in construction and
20 other employment for Native American, set aside retail space for members, and exempt member-
21 owned businesses from non-compete provisions. T-823.0066-69 (SPO lease); Tr. 5/15 99:18-
22 100:8; T-671 at 4. In addition to recognizing Tulalip's governmental authority, virtually all
23 leases are construed in accordance with Tulalip law and federal law, with disputes resolved by
24

1 arbitration enforceable in Tulalip Tribal Court.¹² *E.g.*, T-823.0045; T-832.0015; T-837.0028.

2 5. Tulalip Cannot Simply Impose Its Taxes on Top of Defendants' Taxes

3 As discussed in greater detail below, *infra* at § II, it would be economically infeasible for
4 Tulalip to impose its own taxes to fund governmental services in addition to those being exacted
5 by the State and County. The parties' experts agreed that were Tulalip to impose its 8.6% sales
6 tax on top of the 8.9% presently being levied by Defendants, the Village economy would be
7 devastated. Professor Zodrow suggested that Tulalip might be able to impose a very modest tax
8 of its own, but ultimately conceded that even an additional tax of 1.0% could cause economic
9 harm at the Village, a view amply corroborated by Professor Hines. *Id.* In insisting on levying
10 the full measure of their taxes at the Village, then, Defendants have appropriated the entire
11 stream of tax revenues generated by the Village economy for themselves, interfering with the
12 federal and tribal interests in Tulalip's self-sufficiency.

13 In *Mescalero* (further explained below) the Supreme Court deemed preempted New
14 Mexico's concurrent regulations and taxation that would have "effectively nullif[ied]" the
15 Tribe's authority over the economy it created in partnership with the federal government. 462
16 U.S. at 338. Here, Defendants' taxation has likewise nullified Tulalip's authority to derive tax
17 revenues from the economy it created in conjunction with the United States, and this economic
18 reality serves as an important predicate for the *Bracker* balancing in this case.

19 **C. Defendants Have a Weak Interest in Taxing Activities at Quil Ceda Village**

20 Defendants' evidence regarding their interests in taxing Village commerce includes the

21 ¹² Subleases for individual spaces in Seattle Premium Outlets also highlight mandatory tribal and federal regulatory
22 requirements and the requirement to provide employment opportunities for Native Americans. *E.g.*, T-827.0015,
39-40; T-831.0036. Tulalip has a separate contract with major tenants to ensure that as the Village develops, uses
23 remain complementary to the parties' respective business interests, and do not compete with those interests. T-
858; Tr. 5/15 80:23-81:20. Tulalip has also entered separate agreements with individual tenants in Seattle
24 Premium Outlets—construed in accordance with Tulalip law, with disputes resolved by arbitration enforceable in
Tulalip Tribal Court—that define the circumstances under which Tulalip will step into Simon Property Group's
contractual shoes and assume Simon's obligations under the subleases. *E.g.*, T-860.0004, 6-7; *see* Table.

1 few services they provide in the Village, along with a broad range of unrelated government
2 services they offer generally in their jurisdictions. These generalized services are entitled to little
3 weight in the balancing test. While this Court previously ruled that it would hear Defendants’
4 evidence regarding such services, it did not prejudge the relative weight of those or any other
5 interests and confirmed that it had not yet assessed the respective federal, tribal, and state
6 interests at issue in this case. Dkt. 134.

7 In *Barona Band*, the Ninth Circuit acknowledged that “[r]aising revenue to provide
8 general government services is a legitimate state interest,” but further confirmed that “the state
9 interest strengthens where there is a nexus between the taxed activity and the government
10 function provided” 528 F.3d at 1192-93. Thus, where strong federal and tribal interests
11 exist, state taxes must be narrowly tailored to funding services provided in connection with the
12 activity. *Yavapai-Prescott*, 117 F.3d at 1111 (the “appropriateness [of the narrow tailoring
13 requirement] remains dependent on the strength of the tribal and federal interests found to
14 exist.”). This Court has now heard the evidence as to the strength of the federal and tribal
15 interests. Defendants’ services generally lack any nexus to the disputed taxes, and their “general
16 desire to raise revenue” is therefore insufficient to avoid preemption. *Bracker*, 448 U.S. at 150.

17 1. Defendants Provide Few Services at the Village, and Those They Do Are Not
18 Supported by the Disputed Taxes

19 There exists a broad range of essential governmental services that Defendants do *not*
20 provide in the Village. The County, for example, does not provide business licensing or
21 inspections, building permitting or code enforcement, land use planning, roads or road
22 maintenance, animal control services, or fire marshal services. T-1260 (SF 224, 231); T-1261
23 (840, 879); C-167 (SF 893). Nor does the State provide, for example, food, health, and safety
24 inspections, drinking water regulation and monitoring, or environmental permitting that it

1 typically provides elsewhere. Dkt. 230 (DOH Dep.) 95:1-4; T-1238 (SF 279); U-487. Visitors,
 2 businesses, and employees rely entirely on Tulalip and the United States for these services. It is
 3 also undisputed that Defendants have not contributed to any of the infrastructure within the
 4 Village, and that Plaintiffs have funded 93% of the costs of the interchanges at 88th Street and
 5 116th Street, which also serve the non-Indian communities on the east side of I-5.¹³ T-51.

6 For the few services the State does provide in the Village, virtually *none* of them are
 7 funded by the disputed taxes. For example, while Labor & Industries (L&I) performs a small
 8 number of inspections in the Village, L&I programs receive no support from the taxes at issue.
 9 T-1261 (SF 521, 525, 527); Dkt. 234 (L&I Dep.) 33:3-35:20; 138:24-139:7. Likewise, while the
 10 State offers workers compensation and unemployment insurance programs, and may issue
 11 licenses to some Village businesses, these programs receive no funding from the disputed taxes,
 12 but instead are funded 100% by fees or other sources that Plaintiffs do not challenge. T-1261
 13 (SF 532). Dkt. 231 (DOL Dep.) 52:6-13, 136:21-137:13; 138:14-21; Dkt. 230 (DOH Dep.)
 14 109:17-110:2; Dkt. [to be filed upon resolution of sealing] (DOR Dep.) 24:18-26:1.

15 The State relies heavily on road maintenance provided by the Department of
 16 Transportation (WSDOT) for Interstate-5, which many visitors use to access the Village.
 17 However, the parties have stipulated that “WSDOT is not funded by the taxes at issue in this case
 18 or the general fund.” T-1231 (SF 1432). This includes highway maintenance as well as
 19 pavement preservation, which are paid for through a combination of federal dollars (including
 20 nearly 75% of funding for WSDOT’s highway preservation program) and state motor vehicle
 21 fuel taxes.¹⁴ T-1231 (SF 1432); Tr. 5/21 26-27 (Sheikh-Taheri). Similarly, fuel tax funds will

22 _____
 23 ¹³ The State’s WSDOT witness testified that Tulalip’s investments in the I-5 interchanges have improved mainline I-
 5 safety, improved traffic congestion, and benefited truck traffic. Tr. 5/21 35:5-23.

24 ¹⁴ Likewise, pavement preservation work performed by the County Department of Public Works on county roads is
 paid for in part through state fuel taxes. T-1265 (SF 897). County road construction on the Tulalip Reservation is

1 cover the State’s commitment to future improvements at the 88th Street and 116th Street
2 interchanges—a commitment stemming from the State’s outstanding 1971 legal obligation to
3 Tulalip resulting from Tulalip’s conveyance of reservation land along the I-5 corridor. Tr. 5/21
4 28:2-31:3; T-90 at 2-3; T-1231 (SF 1434, 1436, 1438). And while the State Patrol provides law
5 enforcement on I-5, those services are funded 98.5% by the Highway Patrol Account, which
6 again receives no monies from the disputed taxes. S-604 (SF 1198).

7 The State’s heavy emphasis on I-5, in sum, is misplaced. The I-5 related services
8 performed by the State are fully paid for by revenue sources, including federal funding, that are
9 not at issue and will be unaffected by the outcome in this case. *See Bracker*, 448 U.S. at 150
10 (preempting state fuel tax designed to compensate state for use of its highways where “no such
11 compensatory purpose is present” on tribal and federal roads). As in *Bracker*, the State’s interest
12 in Village taxes is in truth a “generalized interest in raising revenue,” *id.*, unrelated to its I-5
13 operations. It is not narrowly tailored to providing services in the Village, *see Yavapai-Prescott*,
14 117 F.3d at 1111, and hence is entitled to little weight in the balancing analysis.

15 As noted above, Tulalip also pays Defendants for the limited services that support
16 activities in the Village. Under *Bracker*, the state interest is weak where a tribe reimburses the
17 state outside of the state tax structure for services. *Cabazon Band*, 37 F.3d at 435. For example,
18 while WSDOT mows the grass along I-5 in the Village and maintains Tulalip’s traffic signals
19 near the 88th Street and 116th Street interchanges, Tulalip pays the full cost of those services. T-
20 1231 (SF 270, 1361). Likewise, Tulalip contracts with the County for jail services (\$2.3M,
21 2007-2015), funds one full-time County prosecutor under an MOU to prosecute cases arising in

22
23 paid from the County Road Fund, which is funded by property taxes. C-169 (SF 876). The disputed property tax
24 in Quil Ceda Village for the County Road Fund is approximately \$32,000 to \$44,000 annually. T-1215 (SF 19).
And while the County also submitted testimony regarding E911, those services are again not funded by the
disputed taxes. Dkt. 226 (County Exec. Dep.) at 56:10-20.

1 the Village (\$102,000 annually), and notwithstanding TPD's primary law enforcement duties,
 2 has paid more than \$1.6M to support the Sheriff's Office and State Patrol since 2003.¹⁵ Tr. 5/17
 3 141:5-23; T-493; T-504; T-509.0005; T-510; T-1224 (SF 1060, 1061, 1199); T-1261 (SF 1256).

4 2. Defendants Receive Substantial Benefits Outside of Quil Ceda Village from
 5 Commerce within the Village

6 Under the *Bracker* test, "[a] State's regulatory interest will be particularly substantial if
 7 the State can point to off-reservation effects that necessitate State intervention" in the on-
 8 reservation activity. *Mescalero*, 462 U.S. at 336. Here, Defendants presented no evidence of
 9 such effects. For example, no County department has ever increased or requested additional staff
 10 or resources as a result of negative impacts from the Village.¹⁶ Dkt. 229 (County Finance Dep.)
 11 13:19-14:21, 29:22-30:5, 30:19-31:19, 32:2-20, 33:22-34:11; *see also* Dkt. 228 (Sheriff Dep.
 12 Vol. II) 209:23-210:7; U-493 at 4 (Public Works).

13 To the contrary, the evidence establishes that the development of the Village has
 14 generated tremendous *positive* off-reservation effects for the Defendants, including substantial
 15 *off-reservation* tax revenue. Dr. Kalt explained that taxes are generated, for example, when
 16 Village businesses purchase inputs from local suppliers and Village employees spend their
 17 wages. Tr. 5/17 44:18-45:14. Thus, without even considering the disputed taxes, Village retail
 18 activity has already generated \$88.7M in indirect and induced taxes, and construction activities
 19 have generated an additional \$30.3 million in taxes. T-1234 at 56. In projecting the future
 20 impacts of Village sales, Dr. Kalt testified that Defendants will collect \$248.5 million in taxes
 21 *outside* the Village over the next thirty years. T-1234 at 59 ¶¶115, Fig. 7. *100% of these taxes*

22 ¹⁵ The dearth of services provided by the County in the Village is evidenced by its submission of two separate
 23 declarations describing the role of the Sheriff's Office in processing background checks performed in connection
 24 with gun sales at Cabela's. C-177 (King); C-176 (Leyda). Cabela's is the only seller of guns in the County that
 does not perform this data processing itself. C-177 ¶¶ 8-9 (King).

¹⁶ The County Public Works Department made an unsubstantiated claim of alleged traffic impacts upon unspecified
 County roads, but admitted that neither I-5, nor the roads west of I-5 leading into the Village, nor the roads east of
 I-5 in the City of Marysville, are County-maintained roads. Tr. 5/18 121:17-123:2; 143:15-23.

1 *will continue to go to the Defendants*, regardless of the decision in this case.

2 Local officials and the business community have also long recognized the spillover
 3 benefits that have spurred commercial development and employment across I-5 in Marysville. T-
 4 1234 at 53, 57-58, 66 ¶¶ 103, 112, 128; Tr. 5/17 81:10-13 (Kalt). For example, an Executive
 5 Director of the County Executive’s Office testified that the County relies on the Village to attract
 6 large numbers of tourists who in turn spend money in other parts of the County. Tr. 5/21 152:16-
 7 153:5, 156:19-22 (Neely); C-10 at 5, B-6, B-7. The value Tulalip has created for Defendants
 8 well outside the boundaries of the Village is important in considering whether Defendants should
 9 also be able to appropriate the entire stream of tax revenues generated within the Village.

10 3. Defendants’ General Services in Their Jurisdictions Are Entitled to No Weight

11 Because Defendants play no significant role in the Village, they offered substantial
 12 evidence at trial of governmental services they provide generally throughout their jurisdictions.
 13 The State, for example, offered testimony regarding the Attorney General’s Office, S-580
 14 (Bowers); the Washington Health Care Authority, S-598 (Atkinson); and the Department of
 15 Corrections, S-590 (Martin). Similarly, the County offered testimony regarding its Paine Field
 16 Airport enterprise, C-187 (Neely ¶¶ 19-20); child support enforcement, C-201 (Hart); and
 17 elections, C-174 (Fell). These services do not establish a particularized interest in collecting tax
 18 revenue at Quil Ceda Village.

19 First, Defendants did not introduce evidence that Village taxpayers, whether businesses
 20 or individuals, benefit from the services provided generally by Defendants within their
 21 jurisdictions.¹⁷ While Defendants invite the Court to *assume* that all visitors to the Village

22 ¹⁷ For example, while the County offers alternatives to prosecution for persons suffering from addiction and mental
 23 health issues—as does the Tulalip Tribal Court, T-1243 (SF 1004, 1005)—the County is unaware of any person
 24 with any connection to Quil Ceda Village participating in such a program. Dkt. 236 (PAO Dep.) 162:13-163:6; C-
 204 (SF 410). Similarly, the County is unaware of any case in which it has obtained a child support order resulting
 in issuance of a payroll deduction notice to a Quil Ceda Village business. *Id.* 125:24-126:2.

1 receive services from Defendants outside of the Village, the factual record does not support that
2 conclusion. The vast majority of customers who visit Seattle Premium Outlets are not from
3 Snohomish County. In 2008, for example, 83% of those visitors came from beyond 30 miles
4 away, and 68% came from beyond 60 miles away. T-155; T-156.0002, .004; Tr. 5/16 39:4-10
5 (M. Johnson). There is no evidence that these visitors receive services from the County.

6 Moreover, more than half of visitors to the outlet mall come from outside the State—the
7 same study evidences that 56% of visitors came from the Vancouver, B.C. metropolitan area,
8 other parts of Canada, or other foreign countries, and another 8% came from other parts of the
9 United States. T-156.0005. The General Manager of Seattle Premium Outlets from 2005
10 through 2015 testified that this was no anomaly—for the entirety of his tenure, at least 50% of
11 visitors were traveling from Canada. Tr. 5/16 35:14-23. There is no evidence that they receive
12 services from the State that are funded by the taxes in dispute here. Rather, these taxpayers
13 receive services from Tulalip. In the Joint Pretrial Statement, Defendants suggested their
14 interests are strong because they “provide the majority of government services benefitting the
15 taxpayers at issue.” Dkt. 190 at 5:18-19. They have simply failed to make this showing.

16 Second, Defendants generate substantial tax revenue elsewhere to support their
17 generalized services. *On the Tulalip Reservation* outside of the Village, Defendants collected
18 \$10.2 million in sales tax and \$11 million in property tax in 2015. T-1215 (SF 9, 22). Statewide,
19 during the 2015-2017 biennium, the State collected \$18.9 billion in state sales tax (not including
20 local sales tax collected by counties and cities) and \$7.4 billion in B&O tax.¹⁸ T-1215 (SF 27,
21 30). In 2016, Snohomish County collected taxes, fees, special assessments, and other items, on

22 _____
23 ¹⁸ Defendants have made a policy decision not to collect large sums of these taxes. DOR’s 2016 study of the 694 tax
24 exemptions in state law found that for the 2015-2017 biennium, retail sales tax exemptions resulted in taxpayer
savings of \$23.65 billion; B&O tax exemptions resulted in taxpayer savings of \$11.4 billion; and property tax
exemptions resulted in taxpayer savings of \$59.1 billion. T-1215 (SF 27, 30, 32); *see also* T-1017.0004.

1 behalf of the County and other taxing districts, of approximately \$3.2 billion. T-1215 (SF 18). It
 2 is clear that Village businesses and visitors who in fact reside within the State or County do not
 3 restrict their tax-paying activities to the boundaries of the Village. The Supreme Court
 4 considered this issue in *Ramah Navajo Sch. Bd.*, 458 U.S. at 843-844 & n.9, finding as to the
 5 state’s claimed interest in providing off-reservation services that “[p]resumably, the state tax
 6 revenues derived from [the taxpayer’s] off-reservation business activities are adequate to
 7 reimburse the State for the services it provides to [the taxpayer].” The same holds true here.¹⁹

8 4. Tulalip Provides Government Services to Taxpayers Outside of Quil Ceda Village

9 Defendants’ argument also ignores that Tulalip provides a broad range of governmental
 10 services and infrastructure to non-Indians and Indians alike outside of the Village. In fact, non-
 11 members comprise approximately 75% of the population of the Tulalip Reservation, and
 12 approximately 40% of reservation lands are owned in fee by non-Indians. *See* T-1260 (SF 83,
 13 84); C-171 (SF 90). TPD has primary law enforcement responsibility for keeping this
 14 community safe. It responds to approximately 20,000 calls for service annually (including
 15 through its Drug Task Force, Search and Rescue, and Emergency Response (SWAT) teams), T-
 16 410.0001; T-1243 (SF 1225); Tr. 5/18 139:3-141:2; 146:4-148:24 (Echevarria), and makes
 17 approximately 85% of criminal case referrals involving non-Indians from the reservation. T-457.

18 Over the past decade, Tulalip invested \$51.7 million in the Big Water project to secure a
 19 source of water for the *entire* Tulalip Reservation. T-1238 (SF 730, 1443). Tulalip provides
 20 potable water to 1600 and sewer service to 900 homes, both Indian and non-Indian, outside of
 21 the Village. T-1261 (SF 261). Similarly, Tulalip has dedicated more than \$31 million to

22 ¹⁹ Tulalip unsuccessfully sought to introduce evidence produced by the State in discovery, summarized at T-1005,
 23 showing the sales and B&O tax collected from Village businesses at their locations *outside* of the Village. Tr.
 24 5/23 157:16-160:21 (sustaining objection). If the Court gives serious consideration to Defendants’ provision of
 off-reservation services, Plaintiffs would urge the Court in fairness to reconsider the exclusion of T-1005. *See also*
 T-1002, T-1113, and Dkt. [] at 112-124 (DOR Dep.) (explaining information summarized in T-1005).

1 reconstructing the I-5 interchange and overpass at 116th Street, which provides access not just to
2 the Village, but also to the City of Marysville and North Snohomish County. T-1231 (SF 1430).
3 This project was estimated to support 7,000 new permanent jobs, annual salaries of \$531 million,
4 and \$1.7 billion in direct economic impacts to North Snohomish County. T-1231 (SF 1420).

5 Tulalip also spends millions of dollars each year to provide educational programs and
6 public-school funding for both Indian and non-Indian students. From 2006 to 2016, Tulalip
7 spent approximately \$66 million of its own monies on its Youth Services budget, including Head
8 Start, Montessori, and other programs. T-1213; T-1239 (Nelson). Tulalip's Early Learning
9 Academy provides daily education services to about 275 tribal and non-tribal students at an
10 average cost of over \$1 million per year. T-1240 (SF 1401); T-1239 ¶¶ 5, 10. Tulalip also
11 provides funding to the Marysville School District for 3 full-time teaching positions and 50% of
12 a Principal's salary, at a cost of over \$300,000 per year. *Id.*

13 Tulalip's provision of public goods is not limited to the boundaries of the Tulalip
14 Reservation. The Salmon Section Manager of the Washington State Recreation and
15 Conservation Office, for example, testified regarding the numerous salmon recovery and habitat
16 restoration programs that Tulalip is leading outside the Reservation. Tr. 5/23 82:6-83:3, 85:1-7,
17 86:22-87:3. Tulalip's TERO program has built homes to support housing for Seattle's homeless
18 community. Tr. 5/15 138:13-24 (T. Gobin). And Tulalip provides significant funding, totaling
19 in the tens of millions of dollars, to governmental and non-governmental organizations providing
20 public goods off the Reservation. T-1225 ¶ 5-12, 18-26 (Sheldon); T-1214.

21 These are just a few examples. As a sovereign, Tulalip provides the full panoply of
22 government services, including public housing, child welfare, health care, chemical dependency,
23 and mental health programs. *See* Table. Indeed, the Supreme Court has recognized that non-

1 Indians benefit from government services and “the advantages of a civilized society” assured by
2 tribal governments. *Merrion*, 455 U.S. at 137-38. Tulalip’s interest in raising revenue to support
3 these public goods is entitled to no lesser consideration than Defendants’ generalized interest.

4 **D. Defendants’ Taxes in Quil Ceda Village Are Preempted Because the Federal and
Tribal Interests Overwhelm the State Interests**

5 A long line of governing precedent makes clear that the assertion of state jurisdiction,
6 including taxation, over reservation activity is pre-empted “if it interferes or is incompatible with
7 federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient
8 to justify the assertion of state authority.” *Mescalero*, 462 U.S. at 334. In light of the evidence
9 introduced at trial, this balancing test requires preemption of Defendants’ taxes.

10 First, the federal and tribal interests at issue are undeniably strong. Far from marketing a
11 tax exemption in the vein of *Colville*, Tulalip and the federal government have created a new
12 reservation economy out of whole cloth. Their considerable investments in infrastructure,
13 strategic planning, and the provision of governmental services and a sound regulatory
14 environment have generated tremendous economic value both within and outside of the Village,
15 and substantial employment opportunities for Tulalip members and non-members alike.

16 The Tulalip and federal interests in the creation of the Village economy bear a close
17 resemblance to those recognized by a unanimous Supreme Court in *Mescalero*. As with Tulalip,
18 Tr. 5/23 139:10-23, the Mescalero Apache Tribe sought to diversify its economy, “commit[ting]
19 substantial time and resources to the development of other sources of income.” *Id.* at 327.

20 Through “a sustained, cooperative effort” with the federal government, the Tribe developed a
21 resort complex and reservation hunting and fishing resources. *Id.* at 327-28. Pursuant to
22 federally-approved ordinances, the Tribe and the United States comprehensively regulated these
23 activities and set the conditions under which hunting and fishing could occur. *Id.* at 325, 328-29.
24

1 While the Village economy differs in its details from the one created by the Mescalero
2 Apache Tribe, both situations involve a “concerted and sustained undertaking” by the federal
3 government and a tribe to generate substantial economic value, and both accordingly give rise to
4 significant federal and tribal interests for purposes of the *Bracker* test. *Id.* at 341; *see also*
5 *Cabazon*, 480 U.S. at 219-20 (comparing tribal bingo enterprises to the hunting and fishing
6 complex in *Mescalero* and finding that the tribes were “[s]imilarly . . . generating value on the
7 reservations through activities in which they have a substantial interest”); *Cabazon Band*, 37
8 F.3d at 435, *supra* at 14. The two *Cabazon* cases (which arose out of separate controversies)
9 make clear that a tribal economy need not be grounded in natural resources for federal and tribal
10 interests to be deemed sufficiently strong to support a finding of preemption. *See also Salt River*
11 *Pima-Maricopa Indian Cmty. v. Arizona*, 50 F.3d 734, 738 (9th Cir. 1995) (characterizing the
12 allegations in *Gila River I*, where the tribe “constructed a lake and a marina” as describing a case
13 in which an “Indian resource or service is being sold”).

14 In *Mescalero*, the Court found that New Mexico had not contributed significantly to the
15 Tribe’s development of its reservation economy, and hence found no justification for state
16 regulation of non-members participating in it, including through the imposition of “a tax in the
17 form of a hunting and fishing license.” 462 U.S. at 328, 330, 343. The same is true for
18 Defendants here. They have contributed little towards the infrastructure or services
19 underpinning the Village economy, and the services they do provide are either paid for through
20 other taxes or by Tulalip itself.²⁰ Moreover, Defendants benefit greatly from the spillover effects
21 arising from that economy. Under these circumstances, there is no warrant for the significant
22 interference that Defendants’ taxes pose to Tulalip’s realization of tax revenues from the Village.

23 ²⁰ As in *Mescalero*, *see* 462 U.S. at 327 n.4, a very significant portion of the visitors attracted to the new economy
24 created by Tulalip and the United States at Quil Ceda Village are not state residents.

1 In arguing to the contrary, Defendants rely on three Ninth Circuit cases from the 1990s—
2 *Salt River, Gila River Indian Cmty. v. Waddell*, 91 F.3d 1232, 1236 (9th Cir. 1996) (*Gila River*
3 *II*), and *Yavapai-Prescott*. They have claimed, in the first instance, that these cases establish a
4 per se rule that in situations involving sales of non-Indian goods by non-Indian businesses, a
5 state may retain the sales taxes. None of these cases announces such a rule. They instead engage
6 in the particularized inquiry called for by *Bracker*, as does more recent Ninth Circuit precedent.
7 *Barona Band*, 528 F.3d at 1186, 1190 (“Without the convenience of a *per se* bright line test, we
8 turn to the *Bracker* balancing test, developed for those ‘difficult questions . . . where, as here, a
9 State asserts authority over the conduct of non-Indians engaging in activity on the reservation.’”
10 (quoting *Bracker*, 448 U.S. at 144)).

11 In applying the *Bracker* test, the cases relied upon by Defendants provide them with little
12 comfort, as the scant evidence of tribal and federal interests implicated in those decisions bears
13 no resemblance to the factual record here. Thus, in *Salt River*, taxes on sales at a shopping mall
14 were at issue. The tribe did not own, lease, or otherwise control the lands where the subject
15 shopping center was located; the tribe played no role in the development of the center, leaving
16 that instead to a non-Indian land developer; and the tribe provided no roads, water, sewer, or
17 other infrastructure. 50 F.3d at 734-735. The Ninth Circuit could thus conclude that the tribe
18 “contribute[d] relatively little” to the generation of economic value, *id.* at 738, and that the state
19 “provide[d] the majority of the governmental services used by these taxpayers,” *id.* at 737.

20 In *Gila River II*, the Court likewise held that state taxes can survive where “the tribe does
21 not contribute to the value of the goods sold and provides only some of the governmental
22 services used by the non-Indian businesses.” 91 F.3d at 1236. There the state provided “a
23 number of governmental functions critical to the success” of the activities at issue, specifically
24

1 law enforcement and traffic control services. *Id.* at 1238-39. As discussed above, this stands in
2 stark contrast to the facts of this case. *See supra* at 16-17.

3 In *Yavapai-Prescott*, the tribe similarly failed to carry its burden to show its contribution
4 to the value generated at the single hotel that had given rise to the tax dispute. 117 F.3d at 1112.
5 It had “no responsibility to provide or pay for police protection, fire protection, or street
6 maintenance” and had not contributed to the necessary infrastructure. *Id.* at 1108. It performed
7 only “minor tribal regulatory acts,” *id.* at 1112, in contrast to the comprehensive regulatory
8 structure and governmental services that Tulalip and the federal government bear responsibility
9 for here. Moreover, while the Circuit cited certain state laws applicable to the hotel, it did not
10 note any tribal laws to be applicable. 117 F.3d at 1111. Here, in contrast, Tribal law governs
11 everything from construction permitting to construction of the terms of the leases themselves.
12 *See supra* at 5 n.2, 15, 19. In addition, as discussed above, *Yavapai-Prescott* makes clear that in
13 cases where federal and tribal interests are strong, as they are here, state and county taxes must
14 be narrowly tailored to funding the services provided in connection with the taxed activity. 117
15 F.3d at 1111. Defendants have not come close to satisfying this requirement given that the
16 disputed sales taxes are designated—entirely in the case of the State, and almost entirely in the
17 case of the County—for their general funds.

18 In none of these cases, moreover, was any evidence presented by the tribes demonstrating
19 that the projects in question had any spillover benefits for the state or local governments. Nor
20 did any evidence exist as to the tribes providing governmental services to the community outside
21 of the disputed area as Tulalip does here. Far from supporting Defendants’ position, then, these
22 cases only serve to highlight the various factors compelling the conclusion that the Tulalip and
23 federal interests in Tulalip’s retention of Village taxes far outweigh those of Defendants.

1 Finally, Defendants' narrow focus on the non-Indian status of Village businesses and
2 visitors suggests that it was somehow improper for Tulalip to attract outside, non-Indian
3 investment to the economy it was creating, and that such investment *per se* limits the federal and
4 tribal interests under *Bracker*. This is flatly incorrect. As discussed above, in the Native
5 American Business Development, Trade Promotion, and Tourism Act of 2000, which postdates
6 the Ninth Circuit cases relied upon by Defendants, Congress sought to "promote private
7 investment in the economies of Indian tribes" and noted that "the capacity of Indian tribes to
8 build strong tribal governments and vigorous economies is hindered by the inability . . . to
9 engage communities that surround Indian lands and outside investors in economic activities on
10 Indian lands" 25 U.S.C. §§ 4301(a)(7), (b)(2). Likewise, in passing the Tulalip Leasing
11 Act of 1970, Congress recognized Tulalip's need for long-term leasing authority "to attract the
12 type of development that is desired" and "to compete more effectively in today's business
13 world." T-11.0003, .0006. This is precisely what Tulalip has accomplished at the Village.

14 Unlike prior cases involving the sale of non-Indian goods, including *Barona Band*, *Salt*
15 *River*, and *Colville*, Tulalip does not seek to gain any competitive advantage by marketing a tax
16 exemption to non-Indians who would otherwise do their business outside the reservation. *See*
17 *Barona Band*, 528 F.3d 1190-91 (discussing this "parallel line of authority" that is "a backdrop
18 to the *Bracker* test"). Rather, Tulalip seeks to generate tribal tax revenue from the tax base it has
19 created through robust efforts that have had the full support of the federal government. Under
20 these facts, the *Bracker* test points decisively in favor of the preemption of Defendants' taxes.

21 **II. The Doctrine of Tribal Self-Government Bars Defendants' Taxes**

22 The doctrine of tribal self-government serves as an independent barrier to state taxation.
23 *Bracker*, 448 U.S. at 142-43. The sovereign right of Indian tribes "to make their own laws and be
24 ruled by them," *Williams v. Lee*, 358 U.S. 217, 220 (1959), is "deeply engrained in our

1 jurisprudence,” *Bracker*, 448 U.S. at 143. An Indian tribe’s power to tax derives from its
2 “general authority, as sovereign, to control economic activity within its jurisdiction, and to
3 defray the cost of providing governmental services by requiring contributions from persons or
4 enterprises engaged in economic activities within that jurisdiction.” *Merrion*, 455 U.S. at 137.
5 This power “is an essential attribute of Indian sovereignty because it is a necessary instrument of
6 self-government and territorial management.” *Id.*

7 Here, Tulalip seeks to vindicate its sovereign right to derive tax revenues from the
8 Village economy. By instead appropriating to themselves that entire stream of revenue,
9 Defendants have undermined this core right of Tulalip self-government. While Tulalip has
10 enacted an 8.6% sales tax in the Village, there exists no dispute that it is handcuffed from
11 implementing that tax. At trial, the parties’ experts agreed that were Tulalip to impose its tax in
12 addition to Defendants’ 8.9% levy, the resulting rate of 17.5% would devastate the Village
13 economy.²¹ T-1228 at 29-30 (Hines); Tr. 5/22 177:4-11 (Zodrow).

14 Indeed, the only dispute between the parties’ experts centers on whether Tulalip can
15 impose a small fraction of its tax rate, to the tune of 1.0-1.5%. Dr. Hines explained why this
16 would not be economically feasible, grounding his conclusion in an econometric, population-
17 based model (which posits an optimal rate of 8.8% for the Village) and his undisputed finding
18 that apparel stores and outlet malls, which form a central part of the commerce at the Village, are
19 particularly sensitive to tax competition. T-1228 at 21-22, 29; Tr. 5/16 157:8-25.

20 Dr. Zodrow testified that Dr. Hines’ optimal rate may in fact be *too high*, Tr. 5/22
21 175:20-24, but nevertheless offered certain criticisms of Dr. Hines’ analysis, none of which are

22 _____
23 ²¹ The State Legislature has enacted numerous tax exemptions to avoid the problem of double taxation and its
24 adverse effects on economic activity. DOR Dep. [*to be filed*] 152:18-153:5, 153:19-154:5, 155:13-156:20); e.g.,
T-1017.0241, .0297, .0460. The Department of Revenue agrees that double taxation in Indian country creates a
disincentive for non-Indians to do business there. DOR Dep. 186:9-187:9, 189:15-190:3.

1 warranted. First, he speculated that Dr. Hines might have incorporated other variables into his
 2 model—without specifying what they should be, whether sufficient data exists for them, and
 3 whether they would be reliable modeling factors. Tr. 5/22 185:3-25. Second, Dr. Zodrow cited
 4 two elasticity studies—but then acknowledged that elasticity studies have produced a wide range
 5 of estimates, finding that a 1% increase in sales tax may reduce sales by as much as 12%. Tr.
 6 5/22 174:16-175:3. Finally, while Dr. Zodrow posited that the Village might support a slightly
 7 higher tax rate due to the number of visitors and retail sales volumes, he acknowledged that these
 8 variables are affected by tax rates and hence are not reliable predictors of those same rates. Tr.
 9 5/22 186:9-24; *see also* Tr. 5/16 218:17-24, 219:7-23.²² Ultimately, Dr. Zodrow acknowledges
 10 that even his proposed rate of 9.9% could result in a reduction in the number of Village retailers
 11 and in customers choosing to take their business elsewhere. Tr. 5/22 193:18-194:14.

12 The history of lease negotiations and the leases themselves confirm this economic reality:
 13 *no rational business was willing to locate in the Village without contractual assurance they*
 14 *would not be subject to double taxation.* Peter Mills and Glen Gobin, who were involved in
 15 negotiations with Walmart, Simon Property Group, and other major tenants, testified that double
 16 taxation was a subject of significant concern. Tr. 5/14 123:3-11, 126:14 - 127:4; Tr. 5/15 100:9 -
 17 101:12, 112:10-113:14. There was extensive correspondence, between Tulalip and Simon for
 18 example, regarding this issue. T-673, T-764. The final leases thus generally provide that the
 19 total tax burden in the Village may not exceed the burden across I-5 in Marysville. T-832.0004
 20 (Walmart); T-0837.0014 (Home Depot); T-823.0014 (Simon).

21 ²² Defendants argue that because other cities in Snohomish County, including cities near I-5, have tax rates higher
 22 than 8.9%, it is economically feasible to increase the Village tax rate. But as Dr. Hines explained, and as Dr.
 23 Zodrow recognized, it makes little sense to limit one's analysis to Snohomish County because the Village faces
 24 competition from a far broader geographic area, and because the vast majority of visitors to Seattle Premium
 Outlets are not county residents. Tr. 5/16 221:11-223:1; Tr. 5/22 178:7-21. Beyond Snohomish County, every
 jurisdiction north of the Tulalip Reservation, including much larger cities on I-5 such as Bellingham (8.7%) and
 Mount Vernon (8.7%), has a tax rate lower than the rate in the Village. T-1255. Dr. Zodrow agreed with Dr.
 Hines that mere proximity to I-5 does not in and of itself support a higher tax rate. Tr. 5/22 182:23-183:4.

1 Defendants' claim that Tulalip's decision not to impose its own tax on top of Defendants'
2 taxes is voluntary simply ignores the fact that had Tulalip insisted on doing so, the Village would
3 never have come into existence. It is likewise no answer to say that Tulalip's right of self-
4 government is not infringed because Defendants' taxes are imposed on third parties. This was
5 true in *Cabazon Band*, 37 F.3d at 434, and *Crow Tribe v. Montana*, 819 F.2d 895, 899 (1987)
6 (*Crow Tribe II*), and in both cases the Ninth Circuit recognized that the tribes bore the actual
7 economic burden of the taxes because they were deprived of the ability to collect those revenues.

8 This case contrasts sharply with *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163,
9 171-72, 173 n.9, 185 (1989), where the district court found that the state tax did not affect the
10 tribe's ability to collect its own tax, and in fact, the tribe could impose an even higher tax without
11 adversely affecting oil and gas development. Here, Defendants' taxes put Tulalip to a Hobson's
12 choice. If it imposes tribal taxes, businesses and customers will go elsewhere, destroying the
13 economy it spent decades creating. If it does not, Tulalip foregoes tax revenue from that tax
14 base, and is denied the mechanism all other governments use to fund their services. Thus,
15 Tulalip is prevented from exercising its sovereign right to promote economic development
16 undergirded by the power to tax, subverting its governmental prerogatives and federal policy.

17 The doctrine of tribal self-government "seeks an accommodation between the interests of
18 the Tribes and the Federal Government, on the one hand, and those of the State, on the other."
19 *Colville*, 447 U.S. at 156. Defendants' taxes make no accommodation for Tulalip's sovereign
20 interest in generating tax revenue from its own economy, instead appropriating that tax base
21 entirely for themselves. Defendants have offered no valid justification for this usurpation.²³

22 "While some interference with the Tribe's economic development may be justified if the state's

23 ²³ While frustrating Tulalip's power to tax, the Department of Revenue *writes off* outstanding tax obligations of \$40
24 million annually—an amount equivalent to the disputed taxes here. Dkt. [to be filed] (DOR Dep.) 85:19-86:7.

1 interests in imposing the taxes are legitimate, the State has not shown that its taxes are narrowly
2 tailored to meet these interests.” *Crow Tribe II*, 819 F.2d. at 902-03 (citations omitted).

3 **III. Evidence Regarding Tulalip’s Financial Condition and Other Revenue Sources Is**
4 **Not Legally Relevant and Is Entitled to No Weight**

5 Accountant Todd Menenberg opined that Tulalip is not suffering from “economic
6 hardship.” S-579 at 2, 20. Mr. Menenberg conceded, however, that “economic hardship” is not
7 a term of art in accounting, that he is aware of no analysis of a government that employs the
8 term, and that he has no standard for defining it. Tr. 5/18 11:2-24, 12:1-10. He also conceded
9 that Tulalip has never claimed it is suffering from “economic hardship.” Tr. 5/18 14:6-15.
10 Nevertheless, attacking this straw man, he offered testimony regarding Tulalip’s financial
11 condition, its accounting practices, and the revenues available to it.

12 The fundamental problem with this evidence is that a tribe’s overall financial condition
13 has no legal relevance. The Supreme Court and the Ninth Circuit have preempted state taxes
14 under the *Bracker* balancing test in several cases. *E.g., Mescalero*, 462 U.S. 324; *Bracker*, 448
15 U.S. 136; *Cabazon Band*, 37 F.3d 430. In none did the court find a tribe’s overall financial
16 condition probative. The Courts have also upheld state taxes in several *Bracker* cases. *E.g.,*
17 *Cotton Petroleum*, 490 U.S. 163; *Colville*, 447 U.S. 134; *Salt River*, 50 F.3d 734; *Gila River II*,
18 91 F.3d 1232; *Yavapai-Prescott*, 117 F.3d 1107. Again, in none of these cases did the court find
19 a tribe’s (or a state’s) financial condition probative in balancing the interests.²⁴ The Court
20 therefore should not accord any weight to the this testimony.

21 Moreover, Mr. Menenberg does not dispute, nor could he credibly, that tax revenues
22 generated by Village businesses would support critical Village projects, including police and fire

23 ²⁴ While the Ninth Circuit in *Barona Band*, 528 F.3d at 1186, referred to the tribe’s “highly lucrative gambling
24 enterprise,” it did so in the same breath as finding that the tribe “merely marketed a sales tax exemption to non-
Indians as part of a calculated business strategy” in connection with expanding its casino. Its analysis did not
hinge in any respect on an evaluation of the overall financial condition of the tribe.

1 stations, road construction, water and sewer improvements, and infrastructure to support
 2 development west of 27th Avenue. *E.g.*, T-1073; Tr. 5/14 136:16-139:3 (G. Gobin); T-1227 ¶¶
 3 36-37(Bray); T-1232 ¶ 21(S. Gobin); T-1235 ¶ 26 (J. Gobin). These tax revenues would also
 4 help fund outstanding needs of the Tulalip community, including housing, schools, water and
 5 sewer infrastructure, and health care, to name a few.²⁵ *See* Tr. 5/14 134:23-136:6; T-1073
 6 (showing over \$500 million needed for capital projects); T-1241 ¶¶ 10-11 (Lotan); T-1232 ¶¶ 22-
 7 24 (S. Gobin); Tr. 5/15 157:4-13; 158:3- 159:6 (T. Gobin).

8 Under Defendants’ view, a tribe is “damned if you do, damned if you don’t.” If a tribe
 9 lacks the financial resources to pay for infrastructure, to provide government services, and to
 10 play an active role in the activities, the tribe’s interests will be insufficient to prevail under
 11 *Bracker*. Yet a tribe’s success via careful planning and prudent management will render the tribe
 12 insufficiently needy. There is no scenario under which a tribe can prevail. The authority of state
 13 governments to generate tax revenues is not abridged depending on their financial position. The
 14 same must be true for tribes. The federal policies of promoting tribal self-determination and
 15 economic development would mean nothing if tribes, having achieved a certain measure of
 16 development and self-sufficiency, cannot earn the tax revenues allowing them to sustain that
 17 development. Fortunately, no court has so held, and this Court should decline to be the first.²⁶

18 _____
 19 ²⁵ The suggestion that Tulalip does not have a strong interest in the disputed taxes because it makes per capita
 20 payments to tribal members is not well taken. These payments are a government program providing social welfare
 21 benefits for education, health care, and other basic needs of a people suffering from chronic poverty, a graduation
 22 rate of 42%, T-1240 (SF 85), and a life expectancy of only 54, T-33.0018. Tr. 5/23 124:15 - 126:24.

23 ²⁶ The testimony of Mr. Menenberg is also entitled to no weight because the Court disallowed rebuttal evidence
 24 regarding revenues available to Defendants to pay for the government services they have identified in this case.
 The Court sustained Defendants’ objection to Professor Lily Kahng, who was prepared to testify about the myriad
 revenue sources available to the State, but who instead did not take the stand at all. Tr. 5/22 198:8-202:20.
 Professor Kahng’s testimony also would have responded to Mr. Hughes’s testimony regarding revenue-generating
 options available to Tulalip—for example, his claim that Tulalip could generate revenue by imposing tax on its
 own property or charging rent to its own enterprises, which he ultimately conceded would not result in any actual
 increase in Tulalip’s net revenues. Tr. 5/18 202:21-203:4. In sustaining Defendants’ objection, the Court
 indicated it would disregard this type of testimony, 5/22 Tr. 201:19-25, and Plaintiffs accordingly request that Mr.
 Hughes’s testimony be disregarded.

1 **IV. Plaintiffs Are Entitled to Declaratory and Injunctive Relief**

2 The federal and tribal interests overwhelm the state interests in this case. Plaintiffs
3 request that the Court declare invalid and enjoin Defendants' current collection of sales tax,
4 B&O tax, and personal property tax at the Village to the extent of like tribal taxes imposed by
5 Tulalip. Tr. 5/22 207:16-209:7; Dkt. 190 at 9-10; Dkt. 1 at 27-28. The current tribal sales tax in
6 the Village is 8.6%, while Defendants' current combined rate is 8.9%. If the Court grants this
7 relief, and absent an increase in the tribal rate, Defendants would receive the .3% differential.
8 The relief requested does not enable a scenario in which Tulalip would ever market a tax
9 exemption. The relief clearly accords with Supreme Court and Ninth Circuit precedent, where
10 the balance tips in favor of the state where a tribe markets a tax exemption to non-Indians.

11 The Court asked the parties to address its ability to fashion relief that would divide the
12 disputed taxes in some manner. The Court may do so, in addition to drawing from its broad
13 equitable power to fashion a remedy, *e.g.*, *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311-12
14 (1982), by particular reference to *Bracker* decisions balancing the interests as to the respective
15 statutory components of the disputed taxes. *E.g.*, *Colville*, 447 U.S. at 150, 162 (separately
16 examining cigarette and vehicle taxes); *Yavapai-Prescott*, 117 F.3d at 1112 (separately
17 examining "food and beverage sales and the State tax on them and room sales and the State tax
18 on them"). The disputed sales tax comprises (1) a 6.5% state tax deposited in the general fund
19 for general purposes, RCW 82.08.020; (2) a 1% county tax deposited in the general fund for
20 general purposes, RCW 82.14.030; (3) a 0.1% tax for local criminal justice purposes, RCW
21 82.14.340; (4) a 0.1% tax for local chemical dependency or mental health programs, RCW
22 82.14.460; and (5) a 1.2% county transportation benefit area tax. *See* T-1215 (SF 1, 5, 27).

23 While the "requirement of narrow tailoring is elusive," where strong federal and tribal
24 interests exist, taxes should be "narrowly tailored to funding the services . . . provided in

1 connection with activities taking place on the reservation.” *Yavapai-Prescott*, 117 F.3d at 1111.
2 Because the federal and tribal interests here are strong, it is appropriate for the Court to consider
3 which taxes, if any, are tailored to providing services related to the Village. Considering just two
4 of the sales tax components—the 6.5% state tax and the 1% county tax—those are general levies
5 deposited in the general funds for general expenditure. Because the 6.5% and 1% taxes are not
6 tailored in any respect, and for all the reasons discussed above, the balance with respect to them
7 currently clearly favors federal and tribal interests. *See Cabazon Band*, 37 F.3d at 435 (finding
8 preemption where 100% of disputed taxes go to general fund); *Crow Tribe II*, 819 F.2d at 901-02
9 (finding preemption where 19% to 30% of disputed taxes go to general fund).

10 To Plaintiffs’ knowledge, no court has taken a percentage-based approach to sharing tax
11 revenues in the context of *Bracker*, which is usually applied in a binary fashion to determine
12 whether or not taxes are preempted. A percentage-based division, however, is how states and
13 tribes typically have resolved tax disputes in the wake of judicial decisions vindicating tribal
14 interests, and the Court’s opinion here might provide guidance for those discussions. For
15 example, following U.S. District Judge Zilly’s decision in *Squaxin Island Tribe v. Stephens*, 400
16 F. Supp. 2d 1250, 1261-62 (W.D. Wash. 2005), preempting the state fuel tax 100%, the parties
17 agreed to divide the disputed tax on a 75% tribal/25% state basis.²⁷ The State Legislature
18 thereafter provided for these “75/25” agreements by statute, which illustrates an allocated tax
19 approach among state and tribal governments. RCW 82.38.310. Other states have taken a
20 similar approach to taxes on retail transactions. *See* N.M. Stat. § 7-9-88.1 (providing for 75%
21 tribal/25% state division of taxes for sales on tribal lands).

22 Plaintiffs and Plaintiff-Intervenor respectfully request judgment in their favor.

23
24 ²⁷ *See* <http://www.dol.wa.gov/about/docs/leg-reports/2016-tribal-fuel-tax.pdf>.

TABLE SUMMARY OF TRIBAL & FEDERAL INTERESTS (ILLUSTRATIVE EXAMPLES)	
Quil Ceda Village Background and Planning	
Land Status: 2,100 acres comprising Quil Ceda Village are Tulalip trust lands; former munitions depot and Boeing test site	Tr. 5/14 78:3-25 (G. Gobin); T-1215 (SF 87)
Master Planning: Extensive master planning and visioning in 1980s and 1990s by tribal leaders to ensure development at Quil Ceda Village was successful and compatible with tribal community's goals and values	Tr. 5/14 104:15-106:21 (G. Gobin); Tr. 5/15 75:4-76:25, 83:17-84:17 (Mills); T-50; T-62; T-84; T-92b; T-99
No Outside Developer: Tulalip maintained complete control over development and did not use an outside non-Indian developer	Tr. 5/14 110:20-111:9 (G. Gobin); T-1215 (SF 481); Tr. 5/15 65:8-17 (Mills)
Political Subdivision: Tulalip established the legal framework for municipal governance within the Village	T-1215 (SF 67-70); T-1261 (SF 77); Tr. 5/14 119:5-120:22 (G. Gobin); T-22
Infrastructure	
Roads Within Quil Ceda Village	T-51 at 3; T-1231 (SF 677-78, 681-85, 688, 707, 709, 1351, 1439); T-1261 (SF 879); T-1227 ¶¶ 17, 41 (Bray); T-12; T-252; T-256; T-266
<ul style="list-style-type: none"> • Tribal & Federal Funding: \$20.9 million (100%) • Planned, designed, constructed roads, street lighting, etc. • No County/tenant ownership/maintenance of roads in Village 	
88th Street NE/I-5 Interchange (southern access)	T-51 at 2; Tr. 5/15 85:8-24 (Mills); T-1218 (SF 1404, 1393, 768, 747, 773, 1406, 752, 774, 776, 779); T-1231 (SF 343, 1403-05, 1409, 1411-12, 1429, 1434); T-254; T-0082.0003; T-257; T-264; T-267; T-0294.0002-.0003
<ul style="list-style-type: none"> • Tribal & Federal Funding: \$14.4 million (93%) • Interchange result of tribal lobbying efforts starting 1988 to aid economic development and job opportunities • Tulalip lead agency for planning and engineering design, PS&E, environmental review, etc. for original interchange 	
116th Street NE/I-5 Interchange (northern access)	T-51 at 1; T-1227 ¶¶ 18-23 (Bray); T-1231 (SF 1414-1428, 1430, 1434); T-268; T-288; T-289; T-276 to T-279; S-92; T-895; T-897; T-291 to T-294
<ul style="list-style-type: none"> • Tribal & Federal Funding: \$49.4 million (93%) • Tulalip lead Phases 1-4 funding, planning, construction, etc. • Major job creation and economic output predicted in County 	
Water & Sanitary Sewer	T-51 at 5-10; T-1235 ¶¶ 11-22, 26 (J. Gobin); Tr. 5/15 89:24-90:24, 104:21-105:6 (Mills); T-1238 (SF 714-15, 722-23, 732, 1363-65, 1368, 1442); T-1218 (SF 711-12); T-1231 (SF 713); T-134
<ul style="list-style-type: none"> • Tribal & Federal Funding: \$35.4 million (100%) • Planned, designed, constructed all water/sewer infrastructure (e.g., water lines, water reservoirs, sewer lines, MBR sewage treatment plant, pump station, underground injection channel) 	
Tulalip/Everett Joint Water Pipeline ("Big Water")	T-51 at 4; T-1238 (SF 724, 728-31, 1362, 1443); T-353; T-1261 (SF 260, 261); Tr. 5/22 74:21-75:1 (Barkley); Dkt. 239 at 23-24 (Commerce)
<ul style="list-style-type: none"> • Tribal & Federal Funding: \$54.8 million (89%) • Planned, designed, constructed 7.5-mile 36" pipeline (address water shortage on Reservation, provide water supply for Everett) 	
Telecommunications	T-51 at 15; Tr. 5/15 15:1-20, 16:2-8, 17:5-21, 18:18-22, 35:16-36:2 (Jones); T-144; T-902; T-1226 ¶¶ 6-13, 24 (Erdly); T-1216 (SF 301, 588-606, 611-13); T-0745.0002; T-794; T-808
<ul style="list-style-type: none"> • Tribal & Federal Funding: \$4.4 million (100%) • Planned, designed, constructed fiber optic/copper lines, etc. • Regardless of ISP provider, Village businesses use Tulalip infrastructure for credit card transactions, phones, etc. 	
Electricity	T-51 at 11-13; T-1238 (SF 281, 290, 292-93); T-1218 (SF 286-90); T-143; T-145; T-0304.0002
<ul style="list-style-type: none"> • Tribal & Federal Funding: \$8 million (100%) • Constructed 28 MW electrical substation, electrical backbone 	
Natural Gas: Tribal & Federal Funding: \$450,000 (100%)	T-51 at 14; T-1238 (SF 295, 298-300); T-1218 (SF 296-97); T-1227 ¶ 18 (Bray)
<ul style="list-style-type: none"> • Construction of natural gas infrastructure 	
Infrastructure for Specific Tenants	Tr. 5/16 21:11-22:1 (Johnson); T-1218 (SF 291, 498, 500); T-1230 (SF 577); T-1238 (SF 298-99); T-745; T-793; T-1264 at 28-29; T-1263 at 53, 62, 65-68, 73-74; T-724; T-1215 (SF 497)
<ul style="list-style-type: none"> • <i>Seattle Premium Outlets (SPO) Improvements (\$11.4 million):</i> E.g., Roundabout; electrical, natural gas, telecommunications extensions & equipment, passive membrane ventilation system • <i>Cabela's:</i> Tulalip built and owns building (\$20.4 million) 	

Government Services Within Quil Ceda Village	
Licensing, Permitting, Regulation	
<p>Business Licensing & Inspections</p> <ul style="list-style-type: none"> • Master Business License (all businesses) • Bureau of Indian Affairs Trader's Licenses • Special Licenses: Liquor, Cigarette, Food Service, Transient Accommodations (as applicable) • Inspections: Liquor, Cigarette, Transient Accommodations • Village/Indian Health Services Inspections: Food Safety 	T-1221 ¶¶ 3-6 (Hunter); Tr. 5/15 182:11-15, 183:6-11 (Hunter); Tr. 5/16 21:3-10, 22:2-11, 33:24-34:6 (Johnson); T-1219 (SF 216, 170, 172, 174, 182, 184-85, 221, 635, 1334); T-167; T-177 to T-179; T-183; T-185; T-190a; T-194; T-198; T-535; T-538; T-540; T-548
<p>Construction & Design Regulation</p> <ul style="list-style-type: none"> • Codes: Building and Land Use • Design and application review and approval • Permits: Building, Mechanical, Clearing, Grading, Excavation, Conditional Use, Dewatering, Sanitary Sewer, Stormwater • Inspections & Enforcement: site-prep, construction, remodels, and fire safety; issuance of correction and stop work orders 	T-1220 ¶ 5-19 (Nordvedt); T-1219 (SF 839, 1126-1143); T-219 to T-224; Tr. 5/14 103:10-23 (G. Gobin); Tr. 5/15 111:2-112:4 (Mills); Tr. 5/16 21:3-10 (Johnson); T-1215 (SF 617, 623, 1118); T-149; T-709; T-555
<p>Permits: Public assemblage, charitable event, commercial sidewalk use</p>	T-1215 (SF 640-44); T-239; T-247
<p>Environmental Permitting, Planning & Mitigation</p> <ul style="list-style-type: none"> • Comprehensive environmental regulation by Tulalip, Village, EPA, U.S. Army Corps of Engineers; environmental planning and analyses for development; site remediation; wetlands mitigation, including first tribal In Lieu Fee (ILF) program 	Tr. 5/14 106:18-109:4, 131:20-134:15 (G. Gobin); T-111; T-115; T-755; T-756; T-757; T-803; T-1215 (SF 674); T-1264 at 29; T-103; T-379; T-381; T-385; T-1263 at 20-31, 78, 102
Law Enforcement, Justice System, Fire & Emergency Medical Services	
<p>Tulalip Police Department (TPD)</p> <ul style="list-style-type: none"> • Primary law enforcement agency; vehicle, foot, bicycle patrols • Responds to all crimes (6K calls, 20K Res.-wide, including 911) • Exclusive animal control in Village: 200+, 58 at SPO (2005-15) • Refers 90% of prosecuted cases from the Village • Funding to Sheriff's Office and State Patrol (\$1.2 million) • Provides traffic planning/control for events (e.g., Black Friday) • Daily interaction with tenants, SPO protocol to always call TPD 	Tr. 5/17 155:15-156:1, 124:19-125:1, 133:7-135:18, 136:18-137:20, 156:17-157:5 (Echevarria); T-504.0001; T-1243 (SF 302-05, 1207, 1209, 1222, 1164-66); T-1225 ¶¶ 21-22 (Sheldon); T-411; T-457; Tr. 5/16 26:2-16, 27:3-21, 28:3-24, 29:10-30:5 (Johnson); T-1230 (SF 1230-31, 1233, 1235-37, 1242, 576); T-487
<p>Tulalip Tribal Court</p> <ul style="list-style-type: none"> • Civil and criminal cases from Village, including non-Indians • All traffic infractions referred to Tulalip Tribal Court • Funds full-time County prosecutor for cases arising in Village 	T-1215 (SF 647), T-1243 (SF 990, 991, 1193); Tr. 5/17 148:25-149:11 (Echevarria); T-504; T-508; T-1224 (SF 1060-61)
<p>Jail (Fee-for-Service): Tulalip pays jail costs for pre-and-post trial detainees; payments to Snohomish County: \$2.3 million (2007-2015)</p>	T-1243 (SF 1083, 1086); Tr. 5/17 141:8-23 (Echevarria); T-493
<p>Fire & Emergency Medical (Fee-for-Service): \$500,000/year base rate</p>	T-1215 (SF 1117-1123); T-556
Public Utilities	
<p>Utilities Department</p> <ul style="list-style-type: none"> • Tulalip, Village, EPA, and IHS regulate water and sanitary sewers (e.g., water sampling and testing, inspections) • Administers water wheeling, sewer capacity contracts • Operation & maintenance of water/sewer infrastructure 	T-1235 ¶¶ 11, 23-26 (J. Gobin); U-487 (SF 394-97); T-1238 (SF 275-79, 716-18, 720-21, 1364, 1366, 1369); T-1069; T-1070; Tr. 5/15 91:19-92:24 (Mills); T-1212; T-1230 (SF 577); T-142
<p>Transportation Department</p> <ul style="list-style-type: none"> • Traffic planning, studies, and counts (including for business expansion, events like Black Friday); collision data collection and analysis; interjurisdictional coordination; road inventories • Repair & maintenance of roads, street lights, signs, sidewalks, 	T-1227 ¶¶ 7-8, 11, 38, 42-43 (Bray); T-1231 (SF 687, 1352-60, 1440, 1347-48, 267-69, 710); T-627; Tr. 5/16 101:17-105:15, 131:23-132:18 (Bray); T-399; T-401; T-640; T-628; T-641; Tr. 5/16

etc. (e.g., striping, snow/ice removal, pot hole repair)	23:2-17 (Johnson)
<i>Tulalip Data Services (TDS)/Salish Networks</i> <ul style="list-style-type: none"> TDS provides technology services, 24/7/365 support TDS supports TPD technology; computer forensics; TPD's and other agencies' investigations (involving Indians/non-Indians) TDS/Salish Networks provides tenants with state of the art technology; Salish Networks is ISP for about 50% of all tenants 	Tr. 5/14 190:13-192:2, 198:19-201:24, 202:15-204:14 (Jones); Tr. 5/15 10:18-14:24, 34:9-18 (Jones); Tr. 5/16 24:8-23 (Johnson); T-1226 ¶¶ 9, 14-23 (Erdly); T-1216 (SF 282-85, 607-08, 1170, 1196, 564, 609, 610, 563, 616); T-903; T-698
<i>Maintenance</i> <ul style="list-style-type: none"> Park, trail, and other common areas; stormwater infrastructure; snow & debris removal; clean up homeless encampments 	T-1238 (SF 1370); Tr. 5/17 154:24-155:14 (Echevarria); T-1231 (SF 679); T-250; T-973
Leasing, Tenant Negotiations, and Additional Active Involvement with Tenants	
<i>Lease Approval:</i> Board approves all leases under Tulalip Leasing Code	T-1215 (SF 549)
<i>Tenant Selection:</i> Selected tenants to meet development goals and vision, create synergy, and be consistent with community values; determined Cabela's and SPO were best match for development goals	Tr. 5/14 113:9-114:6, 115:1-15, 122:5-123:8 (G. Gobin); Tr. 5/15 75:20-76:25, 107:8-108:3 (Mills); T-1215 (SF 480)
<i>Double Taxation:</i> Businesses would not locate in Village without protection against no double taxation	Tr. 5/15 100:9-101:12, 112:10-17, 113:9-16 (Mills); T-673
<i>Negotiated Terms in Commercial Leases and Easements, Covenants, and Restrictions (ECR)</i>	
<ul style="list-style-type: none"> Infrastructure, including for Tulalip-installed roads, sidewalks, lighting, utilities, and telecommunications (T-0821.0034-.0035, .0037-.0038; T-0832.0017-.0018; T-0837.0011, .0016, .0048-.0062) Profit sharing (T-0821.0024-.0026) Joint Marketing (T-0824.0010) Choice of law (tribal) and forum (arbitration, tribal court) (T-0823.0045; T-0832.0015, .0106; T-0837.0028) Tribal member employment rights and preferences (T-0821.0062; T-0823.0072; T-0832.0005) Non-compete agreements, limitations on business types, requirements that certain tribal businesses remain open (T-0821.0027-.0029, .0046-.0047; T-0823.0066-.0069; T-0837.0012, .0043-.0047) Double taxation prohibitions (T-0821.0036; T-0823.0014-.0015; T-0832.0004; T-0837.0014) No non-compete for members, kiosks (T-0823.0030, 69, 194-196; T-1233 (SF 585); T-1232 ¶ 15 (S. Gobin)) Recognition of complementary business interests amongst Tulalip, Wal-Mart, Home Depot, and Cabela's (Tr. 5/15 80:23-81:20 (Mills); T-853; T-858) 	
<i>Seattle Premium Outlets Subleases and Estoppel and Non-Disturbance Agreements (ENDA)</i>	
<ul style="list-style-type: none"> Mandatory federal and tribal licensing, permitting, and regulation (T-0829.0014, 56) Preclusion of subleases to unlicensed businesses (T-0829.0039, T-0830.0039) Requirement to provide Native American employment opportunities (T-0827.0039-40, T-0831.0036) ENDAs are contractual agreements between Tulalip and SPO subtenants (T-860; T-869; T-870) 	
<i>Joint Marketing & Customer Analysis</i> <ul style="list-style-type: none"> Leverage synergy between casino, resort, and SPO Regular meetings with SPO marketing, shared advertising Sharing of customer origin information 	Tr. 5/16 23:18-25, 34:13-35:13, 36:24-37:21 (Johnson); T-1230 (SF 573, 581, 583, 1384); T-684; T-154; T-155; T-0824.0010
<i>Highly Responsive Municipal Services</i> <ul style="list-style-type: none"> Daily interactions between Tulalip and Village Departments (TPD, TDS, Transportation, Utilities) and SPO general manager Close coordination with Community Development to ensure compliance with design and other legal requirements 	Tr. 5/16 18:10-14, 19:1-9, 20:20-21:2, 22:12-21, 31:2-23, 32:4-33:5, 34:7-12 (Johnson); Tr. 5/14 203:12-204:14 (Jones); T-1226 ¶¶ 14-23 (Erdly); T-1230 (SF 501); T-709; T-717
Tribal Employment	
<i>Tulalip created job opportunities for hundreds of tribal members by creating the Village and actively promotes tribal employment</i> <ul style="list-style-type: none"> Tribal members engaged in site preparation, infrastructure construction/repair/maintenance, construction of retail premises 	Tr. 5/14 80:9-83:10 (G. Gobin); Tr. 5/15 129:13-130:6, 142:15-22, 145:6-146:10 (T. Gobin); T-1232 ¶¶ 9-14 (S. Gobin); Tr. 5/14 188:16-17, 189:9-16, 192:6-8,

<ul style="list-style-type: none"> (e.g., Wal-Mart, Home Depot, SPO, Tulalip Retail Center) • Support for tribal member contractors, businesses owners • Tribal members lease property/operate retail businesses in Village • Tribal Employment in Village Government (including Salish Networks): 80 Tulalip members, 17 spouses or parents of Tulalip tribal members, 10 Other Native, and 91 Non-Native (2015) 	194:18-195:6 (Jones); T-1235 ¶¶ 1-2, 5-10 (J. Gobin); T-1226 ¶¶ 15, 25 (Erdly); T-1227 ¶¶ 8, 12-13, 15 (Bray); T-1215 (SF 488, 496, 1444); T-1216 (SF 613, 615); T-1231 (SF 1350); T-1223 (SF 504-505, 511); T-235; T-236; T-845
Tulalip Employment Rights Office (TERO) <ul style="list-style-type: none"> • Negotiates TERO contractor compliance plans; TERO/ EEOC enforcement (on-site inspections, complaint adjudication); does EEOC contract discrimination investigations (on/off reservation) • Maintain and enforce Native Owned Business Registry • Vocational training program; job fair, contractor job listings 	Tr. 5/15 125:18-20, 129:13-130:6, 134:6-136:5, 142:23-145:5, 148:1-15, 149:18-150:18, 151:25-153:5 (T. Gobin); T-1223 (SF 648-652); T-580; Tr. 5/16 18:16-23 (Johnson); T-1236 ¶ 25 (N. Gobin)
Tribal Unemployment Rate dropped from 72% in 1972 to 26% in 2000 to 11.8% in 2006 to 6% or 7% in 2016	Tr. 5/15 126:8-127:3, 154:6-155:19 (T. Gobin); T-1084.0139; T-605
Tulalip's Government Services Outside of Quil Ceda Village (Illustrative)	
Public Works: Construction, repair, maintenance of tribal roads and stormwater infrastructure outside of Quil Ceda Village; repair of County roads, sign replacement, etc. at Tulalip's expense	T-1231 (SF 680, 686, 688); T-1227 ¶¶ 9-16, 24-34, 38, 41-43 (Bray); T-255; T-644; T-366; T-367; T-1064.0056
Tulalip Data Services: Telecommunications infrastructure, fiber optic ring around the Reservation; serves government and other buildings; technology services for Tulalip (e.g., project management, elections, database management, tribal ID support)	T-1226 ¶¶ 8-9, 12-13 (Erdly); Tr. 5/15 18:12-21:1 (Jones); T-0808.0024; Tr. 5/14 191:15-23, 196:8-198:18 (Jones); T-1216 (SF 591, 599, 604); T-902
Utilities: Potable water to 1,600 homes; sewer service to 900 homes	T-1261 (SF 260, 261); T-1238 (SF 280)
Housing: Affordable housing on and off reservation (240 units)	T-1241 ¶¶ 6-11 (Lotan); T-1065
Tulalip Education & Youth Services: E.g., Childcare, Early Head Start, ECEAP, Montessori school (building cost \$8 million); higher education classes & support; Marysville School District support (e.g., 9 FTE teachers/teacher tutors/support staff; 50% principal's salary); youth services (e.g., computer lab, day camps, funding for Boys & Girls Club)	T-1239 ¶¶ 3-5, 7, 10-11, 13-20 (Nelson); T-1240 (SF 1401); T-1213; T-1064; T-1065
Tulalip Social and Health Services: E.g., health and dental care; behavioral therapy, crisis management, chemical dependency, mental health treatment, Safe House; child welfare services, guardianships, child placement, counseling; elder support (e.g., housing, guardianship, safety)	T-1223 (SF 415, 419, 422-25, 427-28, 455-56); T-1064; T-1065; Tr. 5/14 135:19-136:6 (G. Gobin); Tr. 5/15 157:4-159:6 (T. Gobin)
Add'l Dep'ts: TPD, Elections, Communications, Human Resources Natural/Cultural Resources, Forestry, Facility Maintenance, etc.	T-410; T-1223 (SF 466-67, 1381, 539-40, 542, 544-454); T-1064; T-1065
FEDERAL STATUTES, REGULATIONS, AND UNDERLYING PURPOSES	
Tulalip Leasing Act , P.L. 91-274, 84 Stat. 301: to attract business to Tulalip; increase development through leasing of Tulalip trust lands; approval of Tulalip Leasing Code.	
IRA , P.L. 73-383, 48 Stat. 984: to promote tribal economic development, including through chartered corporations.	
Indian Self Determination and Education Assistance Act , P.L. 93-638, 88 Stat. 2203: to develop tribal economies and further tribal self-determination, including through administration of federal programs and services.	
Indian Trader Statutes (25 U.S.C. § 261 <i>et seq.</i> and 25 C.F.R. Part 140): to regulate non-Indian traders.	
Tribal Government Tax Status Act , Pub. L. 97-473, 96 Stat. 2605: to provide equal tax treatment to tribes/states.	
Native Am. Bus. Dev., Trade Prom., and Tourism Act , Pub. L. No. 106-464, 114 Stat. 2012: to encourage tribal economic development through partnerships with outside businesses, trade and tourism, engaging non-Indian communities, and movement of goods to and from Indian land.	
Federal Tribal Transportation Program (TTP) 25 C.F.R. Part 170 and 81 Fed. Reg. 78456: to provide public roads and access to tribal lands for economic development and other purposes.	

Regulations for Leasing of Indian Lands , 25 C.F.R. Part 162 and 77 Fed. Reg. 72440: to promote leasing of tribal lands for economic development and protect activities on leased tribal trust lands from double taxation.
DIRECT FEDERAL FINANCIAL INVESTMENT IN QUIL CEDA VILLAGE
U.S. Army Corp of Engineers (USACE): Over \$9 million for environmental mitigation. U-482 at 3.
U.S. Department of the Interior, Bureau of Indian Affairs (BIA): <ul style="list-style-type: none"> • \$8.8 million for the construction of QCV roads pursuant to P.L. 93-638 contracts. U-483 at 5-7; T-254. • \$8.0 million for the I-5/116th Street Interchange. U-95. • \$412,760 for QCV engineering, planning, design work. U-483 at 7-9; Tr. (5/15) at 84:7-12. • \$240,000 annually for Tulalip law enforcement, including within QCV. U-483 at 9. • \$17.7 million in IRR/TTP funding for transportation projects, including QCV roads. U-484 at 6-8.
U.S. Dep’t of Commerce, Economic Development Administration (EDA): \$308,214 over 13 years for QCV planning, zoning, permitting, and development work. U-486.
U.S. Dep’t of Transportation, Federal Highway Administration (FHWA): over \$20 million for I-5 interchanges at 88th and 116th Streets and \$1.4 million to signalize the 116th Street ramps. U-484 at 1; T-1231 at 11.
Administration for Native Americans (ANA): \$813,567.00 for QCV zoning, design guidelines, master planning, surface water management, marketing, and web development. U-485; U-52; T-79; T-82; Tr. (5/15) at 84:18-85:5.
U.S. Environmental Protection Agency (EPA): \$550,000 of onsite septic system management. U-487 at 4.
FEDERAL REGULATORY ACTIVITIES AND SERVICES IN QUIL CEDA VILLAGE
Re-acquisition of QCV lands (a formerly used defense site) using IRA funding “to further the economic status of the Indians of the Tulalip Tribes of the Tulalip Reservation.” U-490 at 10-13; U-21; U-482 at 1-2.
U.S. Department of the Interior, Bureau of Indian Affairs (BIA): <ul style="list-style-type: none"> • Reviewed and approved Tulalip Tribes’ Political Subdivisions Act, QCV Charter, Tulalip’s Leasing Code, 30-year/75-year leasing regulations, Code amendments re taxation, other tribal ordinances re leasing and activities within QCV. U-483 at 2-4; 5/14 Tr. 89:11-16; 90:22-91:11; 119:20-121:22; U-93; T-18; T-22; T-28; T-29. • Licenses non-Indian businesses in Village pursuant to Indian Trader Statutes and regulations. U-483 at 1-2; Tr. (5/15) at 83:8-16; Tr. (5/16) at 33:24-34:6. • Developed MOU between BIA, Tulalip, and Chelsea/Simon Property Group, for reviewing applications and issuing federal Indian Trader’s licenses to non-Indian businesses within Village. U-483 at 1-2; U-64; T-817.
U.S. Army Corps of Engineers (USACE): <ul style="list-style-type: none"> • Environmental mitigation activities (with BIA and EPA) from 1980s-2000s. U-482 at 2-3; U-491 at 2; U-40; U-41; U-51; U-53; U-59; U-60; U-61; U-70; U-71; U-73; U-74; U-75; U-78; U-82; U-89. • Clean Water Act Section 404 permits within the Village U-482 at 4; U-66; U-72. • First ever tribal in-lieu fee program pursuant to 33 C.F.R. Parts 325 and 332 re wetlands and construction projects within QCV. Tr. (5/14) at 131:20-134:15; T-379; T-381; T-385; U-482 at 4-5.
Indian Health Service (IHS): <ul style="list-style-type: none"> • Health/food safety services to the exclusion of the State and County; design plan reviews, pre-opening inspections, routine health/food safety surveys for compliance with 2005 FDA Food Code and Tulalip Food Ordinance. U-488; Tr. (5/15) at 183:6-11; Tr. (5/16) at 33:24-34:6; T-536. • Operator training and technical assistance to QCV businesses and tribal inspectors. U-488; T-535. • Inspects drinking water systems, wastewater treatment facility, and underground storage tanks; performs stormwater consulting. U-488; IHS Dep. at 95-97, 99; T-373; T-397.
U.S. Environmental Protection Agency (EPA): <ul style="list-style-type: none"> • Regulates environmental activities to exclusion of State (NPDES permits, RCRA hazardous waste, underground storage tanks, underground injection control, drinking water samples). U-487; T-372; T-373; T-397; T-807. • Approved Tulalip treatment-as-state status to administer water quality standards. U-487 at 3; U-49; U-50. • Negotiated Superfund alternative agreement with Boeing for areas within QCV. U-487 at 4; U-88.
U.S. Department of the Treasury, Internal Revenue Service (IRS): Recognized political subdivision status of the QCV pursuant to Tribal Government Tax Status Act. Tr. (5/14) 99:21-100:8; U-489; T-17.

1 DATED this 8th day of June, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2018, I served PLAINTIFFS THE TULALIP TRIBES' AND THE CONSOLIDATED BOROUGH OF QUIL CEDA VILLAGE'S AND PLAINTIFF-INTERVENOR THE UNITED STATES' POST-TRIAL BRIEF, by email and by first class U.S. Mail to all parties in this matter who are registered with the Court's CM/ECF filing system.

DATED this 8th day of June, 2018.

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