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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING**

SNOQUALMIE INDIAN TRIBE, a federally-  
recognized Indian tribe on its own behalf and  
as *parens patriae*,

Petitioner,

v.

CITY OF SNOQUALMIE, and  
MUCKLESHOOT INDIAN TRIBE,

Respondents.

Case No.: \_\_\_\_\_

**LAND USE PETITION**

**INTRODUCTION**

This is an action by the Snoqualmie Indian Tribe, in its sovereign capacity and as *parens patriae* on behalf of its tribal members (“Tribe” or “Petitioner”). Petitioner challenges the City of Snoqualmie’s (“City”) May 9, 2016 approval of an Amended and Restated Development Agreement to build 175 homes and to expand the Salish Lodge (“Project”) on an ancient Snoqualmie burial ground adjacent to Snoqualmie Falls (“the Falls”). The City’s approval is founded on an outdated environmental determination—a mitigated determination of nonsignificance (“MDNS”)—that fails to consider irreversible impacts of the Project on Snoqualmie Falls, on cultural resources likely on the Project, as well as ancestral remains. The

1 2003 MDNS is invalid under the State Environmental Policy Act (“SEPA”) for these reasons; in  
2 addition, the City refused to reconsider it three times since 2003: when the Falls were listed on  
3 the National Register of Historic Places in 2009; when the scope of the Project expanded in  
4 2016; and prior to the City’s May 9, 2016 approval. Petitioner seeks declaratory and injunctive  
5 relief to protect the integrity of the Falls, cultural resources likely on the Project Site, and to  
6 enjoin further action on the Project in violation of SEPA and Petitioner’s right to religious  
7 freedom under Article 1, Section 11 of the Washington State Constitution.

### 8 **PARTIES**

9 1. Petitioner, Snoqualmie Indian Tribe (sduk<sup>w</sup>albix<sup>w</sup> in the Lushootseed language),  
10 is a federally-recognized sovereign Indian tribe with its governmental offices at P.O. Box 969,  
11 Snoqualmie, WA 98065. The Tribe operates pursuant to its Constitution as amended on June 24,  
12 2006, and conducts its government through the elected Snoqualmie Tribal Council. The  
13 Snoqualmie Tribal Council has primary responsibility to protect the welfare of Snoqualmie tribal  
14 members and the interests of future generations. The Tribe expressly retains its sovereign  
15 immunity from unconsented suit.

16 2. Petitioner is represented by Rob Roy Smith and Claire Newman of Kilpatrick  
17 Townsend & Stockton LLP, 1420 Fifth Avenue, Suite 3700, Seattle, WA 98101.

18 3. Respondent City of Snoqualmie is the local jurisdiction and decision-making  
19 body in this action. The City is a Washington municipal corporation with offices located at P.O.  
20 Box 987, Snoqualmie, Washington, 98065. The City is organized and operates under the  
21 Optional Municipal Code, RCW 35A and City of Snoqualmie Municipal Code  
22 (“SMC”) 1.08.010. The City enacted Resolution 1342 approving entry into the Amended and  
23 Restated Development Agreement (“Development Agreement”) with the Muckleshoot Indian  
24 Tribe on May 9, 2016.

25 4. The persons to be made a party under RCW 36.70C.040(2)(b) through (d) are:  
26 the City as the owner of the Tokul Parcel within the Project Site and the Muckleshoot Indian  
27 Tribe (“Muckleshoot” or “Muckleshoot Tribe”) as the applicant for approval of the Project and

1 owner of the Morgan Parcel within the Project Site. Muckleshoot is a federally recognized Indian  
2 Tribe with governmental offices at 39015 172<sup>nd</sup> Avenue Southeast, Auburn, Washington 98092,  
3 approximately thirty-three miles south of the Petitioner. Muckleshoot purchased the Salish  
4 Lodge and Spa and the Morgan Parcel on or about 2007.

#### 5 **IDENTIFICATION OF AGENCY ACTION AT ISSUE**

6 5. This Petition seeks review of the City's entry into the Development Agreement  
7 with Muckleshoot for the Project based on an outdated and invalid environmental determination.  
8 The Development Agreement is attached as Exhibit 1. City Council Resolution 1342 enacted on  
9 May 9, 2016 adopting the Development Agreement and the accompanying Findings of Fact and  
10 Conclusions of Law are attached as Exhibit 2. The 2003 SEPA determination and 2016 SEPA  
11 Addendum are contained in Exhibit 3. Portions of the underlying SEPA Checklist completed by  
12 the City Planning Department and current SEPA Checklist requirements are contained in Exhibit  
13 4. The Registration Form for registration of Snoqualmie Falls Traditional Cultural Property in  
14 the National Register of Historic Places (NRHP) is contained in Exhibit 5.

#### 15 **JURISDICTION AND VENUE**

16 6. The Court has subject matter jurisdiction over Petitioner's claims under the  
17 Court's original jurisdiction (RCW 2.08.010), as well as under Land Use Petition Act ("LUPA")  
18 (RCW 36.70C.030) and SEPA (RCW 43.21C.075).

19 7. The Court has jurisdiction to issue declaratory relief under the Uniform  
20 Declaratory Judgments Act, RCW 7.24, under which this Court has the power to issue  
21 declaratory relief whether or not further relief is or could be claimed.

22 8. The Court has personal jurisdiction over the City and Muckleshoot because  
23 Respondents reside and do business within King County.

24 9. Venue is proper in King County Superior Court under RCW 4.92.010 because the  
25 real property that is the subject of the action is situated in King County and the cause of action  
26 arose in King County. Petitioner has its principal place of business in King County, and many  
27

1 tribal members reside and do business within King County. Venue is also proper under RCW  
2 4.12.025 because the City and the Muckleshoot are located in King County and regularly  
3 conduct business there.

4 10. Petitioner falls within SEPA's zone of interest. In enacting SEPA, the legislature  
5 declared a priority to "Preserve important historic, cultural, and natural aspects of our national  
6 heritage" and established environmental review requirements as a means to enable Washington  
7 citizens to be informed of and influence governmental decisions affecting this policy priority.  
8 RCW 43.21C.020(2)(d). SEPA requires public disclosure of adverse impacts to the environment  
9 and historic and cultural resources from proposed governmental action and permits the public to  
10 review and dispute such proposals. Petitioner seeks review of the Development Agreement  
11 which permanently incorporates development standards and mitigation measures arising from an  
12 outdated and invalid SEPA determination that will govern the terms of future Project permits.  
13 RCW 36.70B.180. Further, the Development Agreement approves a plan to permanently and  
14 adversely affect land that Petitioner considers sacred and culturally significant without prior  
15 consideration of those impacts or proper SEPA review.

16 11. Petitioner has standing under LUPA under RCW 36.70C.060. Petitioner is a  
17 person aggrieved and adversely affected by the City's land use decision to enter into the  
18 Development Agreement with Muckleshoot for the Project as follows:

19 (a) Petitioner is prejudiced by City Resolution 1342 and the Development Agreement.  
20 These are final determinations of the development standards and mitigation measures that will  
21 govern the terms of Project permits but which are based on an outdated and invalid SEPA  
22 determination. RCW 36.70B.180.

23 (b) The City was required to consider Petitioner's interests in "[p]reserve[ing] important  
24 historic, cultural, and natural aspects of our national heritage" (RCW 43.21C.020(2)(d)), "sites,  
25 located on or near the site . . . listed . . . in national . . . preservation registers located" (WAC  
26 197-11-960(13)) and "evidence of Indian or historic use or occupation" including "human burials  
27

1 or old cemeteries,” (*id.*) but neither the Development Agreement nor the MDNS address these  
2 issues.

3 (c) A judgment in favor of Petitioner would substantially eliminate or redress the  
4 prejudice caused by the Development Agreement. Specifically, vacating the Development  
5 Agreement, requiring the City to conduct a new, full environmental review that adequately  
6 accounts for adverse impacts to Snoqualmie Falls and cultural resources likely on the Morgan  
7 Parcel would ensure compliance with SEPA prior to permitting construction.

8 (d) Petitioner has exhausted all administrative remedies because the City neither offers an  
9 administrative appeal for land use decisions such as the Development Agreement nor an  
10 administrative appeal of SEPA determinations on their own. *See* SMC Title 19 (adopting certain  
11 provisions of SEPA); WAC 197-11-680(3)(a)(i) (requiring specification by rule, ordinance or  
12 resolution of SEPA appeal process). SMC Chapter 14.4 permits SEPA appeals in conjunction  
13 with processing certain categories of permits; however, the City concedes that the Development  
14 Agreement is not a project permit.

15 12. In the absence of a municipal administrative appeal process, the period for filing  
16 claims under LUPA applies. RCW 43.21C.075(d)(5). LUPA provides Petitioner with twenty-one  
17 days from the issuance of a land use decision to file and serve a petition. RCW 36.70C.040(3).  
18 The City enacted Resolution 1342 adopting the Development Agreement on May 9, 2016. This  
19 Petition is filed and served on the parties and local jurisdiction within twenty-one days and  
20 therefore is timely.

21 13. The City is the principal Respondent. In Paragraph 18 of the Development  
22 Agreement, Muckleshoot agrees to a limited waiver of its sovereign immunity “with respect to  
23 the enforcement” of the Development Agreement and “consents to the exercise of subject matter  
24 and personal jurisdiction by the Superior Court for King County for the enforcement of this  
25 Agreement and any judgment rendered thereon.” Muckleshoot is made a party to this case as  
26 land owner and applicant for approval of the Project in accordance with RCW 36.70.C.040(b).  
27 The rights and interests of the City would be adequately protected even if Muckleshoot were not

1 a party to this action. Therefore, Muckleshoot is not an indispensable party within the meaning  
2 of CR 19(b). Accordingly, even if Muckleshoot is adjudicated not to be subject to the jurisdiction  
3 of this Court, this Petition can and should proceed against the City.

#### 4 **STATEMENT OF FACTS**

5 14. The facts upon which Petitioner relies to sustain the statements of error under  
6 LUPA are set forth in the administrative record of the land use decision, and as it may be  
7 supplemented in this proceeding.

8 15. Thirty miles east of Seattle, Snoqualmie Falls emerges from the Snoqualmie  
9 River, plunging 268 feet off granite cliffs through the mist to a pool below. The Falls have been  
10 held sacred by the Tribe since time immemorial as the place of origin of the Snoqualmie people  
11 and the epicenter of Snoqualmie culture. The Falls remains the center of Snoqualmie cultural  
12 identity and religious practice.

13 16. In 2009, in recognition of its cultural and spiritual significance, the Falls was  
14 listed as Traditional Cultural Property (“TCP”) on the National Register of Historic Places  
15 (“NRHP”). Snoqualmie Falls remains an icon of the natural beauty of Washington State today.

16 17. Overlooking Snoqualmie Falls, the Morgan Parcel is known to be an ancestral  
17 burial ground likely containing cultural resources commonly accompanying the deceased,  
18 including lithics (stone tools), shells and trade beads. Cultural resources, including Indian burial  
19 grounds and ancestral remains, are a nonrenewable resource valuable to all citizens of  
20 Washington state and, in particular, to the Tribe. RCW 27.44.030(a).

#### 21 **A. Historical and Archaeological Significance of Snoqualmie Falls and Its Environs**

22 18. “Native American communities related to today’s Snoqualmie Tribe [ ] have  
23 occupied the region surrounding the project area for millennia, taking advantage of riverine and  
24 terrestrial resources.”<sup>1</sup>

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27 <sup>1</sup> Northwest Arch. Ass’s, Inc., *Cultural Resources Assessment for the SR 202/Tokul Road Improvement Project*,  
King Co., WA (Feb. 27, 2008) at 6.

1           19.     When the Point Elliot Treaty was signed in 1855, the Upper Band of Snoqualmie  
2 occupied approximately 58 multi-family houses on the prairies above Snoqualmie Falls.<sup>2</sup> The  
3 Lower Band occupied approximately 38 houses from the Falls area downriver to the confluence  
4 of the Snoqualmie and Skykomish Rivers.<sup>3</sup> As one archaeologist studying the Tokul Parcel  
5 adjacent to the Falls found, “[t]he time depth and intensity of both Native American and  
6 Euroamerican settlement along the Snoqualmie river is such that evidence of human activity can  
7 be expected in this vicinity.”<sup>4</sup>

8           20.     The Tribe controlled a major trade route stretching from Whidbey Island through  
9 the Snohomish-Snoqualmie Rivers, and through Cascade Mountains where it connected with the  
10 eastern Washington plateau.<sup>5</sup> Neighboring tribes bought flint arrowheads from the Snoqualmie,  
11 who, according to one study, “were the only tribe who made them.”<sup>6</sup> The route between  
12 Snoqualmie and Yakima Passes and Snoqualmie Falls was well-traveled and connected tribal  
13 communities east and west of the Cascades.<sup>7</sup>

14           21.     Snoqualmie Falls functioned as the critical link between the Upper and Lower  
15 Snoqualmie Bands.<sup>8</sup> Snoqualmie Falls linked the distinct cultures of Coast Salish tribes with the  
16 tribes of eastern Washington, through their diet, kinship ties, and inter-tribal trade that enabled  
17 the Upper and Lower Bands to flourish.<sup>9</sup> Land above the Falls plays a central role in the Tribe’s  
18 creation story which lies at the foundation of the Tribe’s existence.<sup>10</sup> A Snoqualmie village  
19  
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21 <sup>2</sup> NRHP Reg. Form; Gail Thompson, Historical Research Ass’s Inc, *Cultural Resources Mitigation and*  
22 *Management Plan for Snoqualmie Falls Project* (Feb. 26, 1996) at 27; U.S. Court of Claims 1933:29, 178, 187.

23 <sup>3</sup> *Id.*

24 <sup>4</sup> Northwest Arch. Ass’s Inc. at 6.

25 <sup>5</sup> George Gibbs, *Tribes of Western Washington and Northwestern Oregon*, Contributions to North American  
26 Ethnology, vol. 1, part 2 (Washington D.C.: Smithsonian Institution, 1877) at 180, cited in Kenneth Tollefson,  
27 *Cultural Survival of the Snoqualmie Tribe*, American Indian Cultural and Research Journal, 16:4 (1992) at 32.

<sup>6</sup> Haeberlin and Gunther, at 180 cited in Tollefson, at 31.

<sup>7</sup> Lynn L. Larson, *Report on Cultural Resource Reconnaissance and Identification of Traditional and*  
*Contemporary American Indian Land and Resource Use in the Snoqualmie River Flood Damage Reduction Study*  
Area, Final Report Submitted to the U.S. Army Corps of Engineers (1988) at 6 citing (Hancock 1860:121).

<sup>8</sup> NRHP Reg. Form at 8.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 2-4.

1 named Soxqo'ko, located on the prairie above Snoqualmie Falls, was described in 1928: "Here a  
2 great number of lodge sites . . . could be seen until very lately about a hundred in all."

3         22. The Project is in close proximity to numerous recorded archeological sites,  
4 including but not limited to the following examples. The Tokul Creek Site, 45KI19, is located  
5 approximately 4000 feet downstream from Snoqualmie Falls and one mile northwest of the  
6 Tokul Parcel. In 1968 excavations revealed projectile points, worked antler and hearth features,  
7 indicating the presence of a temporary camp.<sup>11</sup> A maul and pestle were later found by the  
8 boundary of this site. Across the river from the Tokul Creek Site is Site 45KI50, a pre-contact  
9 village site. A flake from a large stone core used to make stone tool was found at site 45KI937,  
10 located in Snoqualmie Falls Park at the top of the Falls. Downstream from the Tokul Creek site  
11 is the Fall City Site 45KI263. According to one report of excavations of that site, "partial  
12 excavations in 2000 yielded abundant fire-modified rock, charcoal, and burned features as well  
13 as flaked and ground stone artifacts and structural features including post molds" indicating that  
14 the site may have been a plank house and village dating between AD 1400 and the early 17<sup>th</sup>  
15 Century.<sup>12</sup> A projectile point was found at the Tokul Roundabout Site, KI01273, which is located  
16 within the Project area, during clearing and grading of the Tokul Roundabout on July 23, 2015.  
17 Pre-contact lithic (stone tool) material was found adjacent to the City's wastewater treatment  
18 facility at Site KI01275 as recently as April 2016.

19         23. According to an archaeological study of Snoqualmie Falls in 1996, the area where  
20 archaeological sites have been discovered along the Snoqualmie and Tokul Rivers "appears to be  
21 one of relatively high artifact density and considerable archaeological age."<sup>13</sup> Cultural resources  
22 can be expected to be found a few inches below the surface to three to five feet below the surface  
23 but can vary depending on location.

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<sup>11</sup> *Id.* at 4.

<sup>12</sup> *Id.*

<sup>13</sup> Thompson at 27.



1           24.     Snoqualmie Falls has become a cultural icon of the State of Washington. In 1888,  
2 just one year before the construction of a hydroelectric facility at the Falls, naturalist John Muir  
3 wrote after visiting the Falls,

4           It is situated on the main river where it plunges over a sheer precipice, about two  
5 hundred and forty feet high, in leaving the level meadows of the ancient lake  
6 basin . . . The pool is of considerable depth, as is shown by the radiating well-  
7 beaten foam and mist, which is of a beautiful rose color at times, of exquisite  
8 fineness of tone, and by the heavy waves that lash the rocks in front of it.  
9 . . . . The beauty of the river-reaches above and below, and the views down the  
10 valley afar over the might forests, with all its lovely trimmings of ferns and  
11 flowers, make this one of the most interesting falls I have ever seen.

12           25.     As a result of prior cultural studies, the Falls became eligible for listing on the  
13 NRHP in 1993. In 2009, Snoqualmie Falls was designated as a Traditional Cultural Property on  
14 the NRHP.

15           26.     Snoqualmie Falls attracts an estimated 1.5 to 1.8 million tourists each year.

#### 16           **B. The Sacred Significance of Snoqualmie Falls**

17           27.     Snoqualmie Falls or “sqwəd” has been sacred to the Tribe and its members since  
18 time immemorial. It has supported Snoqualmie tribal identity and spirituality for countless  
19 generations. It is the Snoqualmie Tribe’s place of origin and remains the “religious center of the  
20 [T]ribe.”<sup>14</sup> According to Snoqualmie beliefs, “[t]he spirits of various resources of the  
21 Snoqualmie River valley and the spirits of the prairie met at the falls, forming a very sacred site  
22 for seeking spirit power.”<sup>15</sup> “[T]he Falls is home to a powerful spirit that guides the lives of  
23 many Snoqualmie persons.”<sup>16</sup>

24           28.     The sacred nature of the Falls includes the water flowing over the Falls, the mist,  
25 the plunge pool, the rock cliffs and the vegetation surrounding the Falls.<sup>17</sup>

26           29.     According to Snoqualmie oral tradition, documented in numerous studies and the  
27 NRHP Registration Form, Moon created Snoqualmie Falls as follows:

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28 <sup>14</sup> Tollefson at 34

29 <sup>15</sup> *Id.*

30 <sup>16</sup> *Id.*

31 <sup>17</sup> Thompson at 44.

1 It was then a fish weir of wood, closed so that the salmon could not go up the  
2 stream. Most of the people who owned the trap lived on the prairie above. Moon  
3 turned the weir into a waterfall. Moon address the waterfall thus: ‘You Waterfall,  
4 shall be a lofty cataract. Birds flying over you will fall and people shall gather  
5 them up and eat them. Dear coming down the stream will perish and the people  
6 shall have them for food. Game of every kind shall be found by the people for  
7 their subsistence.<sup>18</sup>

8 30. According to the Registration Form, oral traditional also instructs that  
9 the Falls divides the spirits of the Snoqualmie into prairie and valley spirits, which  
10 meet at the Falls making Snoqualmie Falls a site of special spiritual power. Tribal  
11 elders hold that a powerful water spirit inhabits the deep pool formed at the base  
12 of the Falls and those individuals who dared to dive into the pool could obtain  
13 spirit power from it.<sup>19</sup>

14 31. Traditional Snoqualmie religious beliefs and practice continue today. The area  
15 surrounding the Falls continues to be still used for spiritual gatherings, including each year on  
16 the National Day of Prayer, spirit renewal ceremonies, prayer, meditation, and gathering  
17 traditional plants for ceremony and healing. According to recent studies, Snoqualmie tribal  
18 members continue to take “children to the Falls to seek spiritual power to be healed, to  
19 experience comfort in bereavement, and to obtain guidance in making decisions,” “ceremonial  
20 bathing, pursuit of spiritual power, spiritual meditation, pursuit of Indian identity, contacts with  
21 ancestral spirits, ceremonial healing /cleansing, and personal renewal.”<sup>20</sup>

22 32. Approximately thirty-three plants in the vicinity of the Falls are used by the  
23 Snoqualmie, many for medicinal and or spiritual purposes.<sup>21</sup> “Because Snoqualmie Falls is  
24 sacred, any plants taken from the vicinity of the Falls are considered to retain the sacredness of  
25 the area.”<sup>22</sup>

26 33. Petitioner has long expressed its concern that its religious practices would be  
27 diminished by development in the vicinity of the Falls: “Snoqualmie representatives . . . are

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<sup>18</sup> Reg. Form 9, Thompson at 32.

<sup>19</sup> Reg. Form at 10.

<sup>20</sup> Tollefson at 37. *See* Larson at 12.

<sup>21</sup> Larson at 7.

<sup>22</sup> *Id.* at 14.

1 concerned about archaeological sites, including burials, that their oral tradition holds are located  
2 in the vicinity of the Falls, and they are also concerned about the cumulative effects of overall  
3 development in the vicinity of the Falls.”<sup>23</sup>

#### 4 **C. The Sacred and Historic Significance of the Morgan Parcel**

5 34. Indian burials in western Washington were most often performed on hilltops  
6 above bodies of water and near villages. Snoqualmie oral tradition holds that burials were  
7 conducted around Snoqualmie Falls, in particular, above the Falls on the Morgan Parcel.

8 35. Burials were conducted both above and below ground. Bodies were normally  
9 “dressed in clothing, wrapped in skins, blankets and cedar mats and tied with swamp grass,”  
10 placed with their property including shells, stone tools, and eventually trade beads and then  
11 placed in a canoe.<sup>24</sup> The canoes were placed up in a tree or beneath a tree.<sup>25</sup> When the burial  
12 decayed, individuals were reburied in a grave.<sup>26</sup>

13 36. Petitioner has repeatedly expressed concerns about archaeological remains that  
14 may be present from “past use for habitation, traditional religious activities, and burials.”<sup>27</sup> There  
15 is a very strong likelihood that cultural resources and remains are present at the Morgan Parcel.

16 37. Gathering of cedar bows, ferns, traditional roots and berries were commonly  
17 gathered at the Morgan Parcel and continue to be gathered there today.

18 38. On information and belief, Muckleshoot Tribe has knowledge or constructive  
19 knowledge of past and current use of the Morgan parcel for traditional gathering purposes based  
20 on such use of the parcel by Snoqualmie people.

21 39. The Morgan Parcel continues to hold intrinsic and irreplaceable historic, cultural  
22 and spiritual significance for the Petitioner.

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25 <sup>23</sup> Thompson at 41.

26 <sup>24</sup> Haerberlin and Gunther at 54-55.

27 <sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Thompson at 14, 39, 41.

1                   **D. Overview of the Salish Expansion Project**

2                   40.     The City began planning for development east of Snoqualmie Falls in an area it  
3 called the “Snoqualmie Falls Planning Area” around 2002. The planning was to accommodate  
4 development on a 53-acre site comprised of two parcels, the 49.60-acre Morgan Parcel and the  
5 3.70-acre Tokul Parcel. Both parcels were originally owned by Gateway Cascades, LLC  
6 (“Gateway”), which proposed a three-phase development as follows: (A) a new roundabout  
7 located on the Tokul Parcel, (B) an expansion of the Salish Lodge and Spa and (C) a 110-home  
8 residential area. Phases B and C are to be built on the Morgan Parcel.

9                   41.     According to the City, “On an overall basis, the proposed Salish Expansion would  
10 complement and strengthen the tourist and recreation focus of the surrounding area. The  
11 proposed development would be . . . compatible with surrounding land uses.” Construction of  
12 the Project “furthers the City’s Comprehensive Plan and related goals of fostering recreational  
13 tourism, generating economic development, supporting downtown Snoqualmie business, and  
14 providing sufficient property tax and other tax revenues to pay the costs of general City  
15 governmental services to both the Morgan Parcel and within the City generally.” Ex. 1 at 5.

16                  42.     Phase A, known as the “Tokul Roundabout”, was completed during the summer  
17 of 2015.

18                  43.     In 2016, the number of homes to be built on the Morgan Parcel was increased by  
19 65 homes to a total of 175 homes.

20                  44.     Muckleshoot predicts that “Many hotel and conference guests would also likely  
21 visit the Falls.” The proposal predicts a total on-site population from the residential development  
22 to be 275 persons (assuming a ratio of 2.5 persons per household). The 2016 SEPA Addendum  
23 does not increase this projection. Visits to the Falls would be facilitated by a 9,500 foot, eight-  
24 foot wide pedestrian trail connecting the Snoqualmie Valley Trail with State Route 202.

25                   **E. City’s 2003 Mitigated Determination of Nonsignificance**

26                  45.     On June 11, 2003, the City issued a two-page environmental determination for the  
27 Project. The MDNS applied to (1) annexation of a portion of the Project property, (2)

1 amendments to the City’s zoning laws, (3) approval of the Development Agreement, and (4) the  
2 issuance of development permits and approvals for what was then the scope of Phases B and C  
3 of the Project: construction of a 250-room conference oriented hotel, 200-seat restaurant, 100-  
4 seat lounge, 40-seat lobby, 33, 250 square feet conference space, 15,500 square food and fitness  
5 center, retail space, 110 homes, a mini-park and trails. Ex. 1 at 1. The MDNS concludes that the  
6 Project “does not have a probable significant adverse impact on the environment, provided the  
7 proposal complies with applicable City codes . . .” Ex. 3 at 2.

8 46. The MDNS was based on an Environmental Checklist (“Checklist”) completed in  
9 2002. The Checklist was prepared by the City Director of Planning on behalf of the lead agency,  
10 the City Planning Department. The Project Description in the MDNS provides only one sentence  
11 discussing the “history” of the properties: “The site has historically been used for timber  
12 production and is currently characterized predominantly by forest cover of varying ages.” It does  
13 not reference use of both parcels by the Petitioner from time immemorial, use of the Morgan  
14 Parcel as a burial ground or for traditional gathering, or the use of Tokul Parcel for religious  
15 ceremony.

16 47. Similarly, in its description of surrounding land uses, the Checklist describes the  
17 wastewater and water treatment facility, Salish Lodge and Snoqualmie Falls Park, rural  
18 residences nearby, and undeveloped forested land, but does not describe the use of both parcels  
19 by Petitioner since time immemorial, use of the Morgan Parcel as a burial ground or for  
20 traditional gathering, or the use of Tokul Parcel for religious ceremony.

21 48. And, according to the Checklist, the Project is compatible with existing and  
22 projected land uses because “An on-site trail system would be developed providing opportunities  
23 for links to regional trails in the area and the existing Salish Lodge and Snoqualmie Falls Park.”  
24 It concludes that “It is not anticipated that there would be . . . view interference from on-site  
25 lighting or glare”, but also states that lighting fixtures would be placed on proposed hotel trails  
26 and pathways.  
27

1           49.     According to the Checklist, forty-nine percent of the Project Site would be  
2 covered by impervious surfaces.

3           50.     Checklist Question 13 asked the following questions:

4           a. Are there any places or objects listed on, or proposed for, national, state or local  
5 preservation registers known to be on or next to the site? If so, generally describe.

6           b. Generally describe any landmarks or evidence of historic, archaeological,  
7 scientific, or cultural importance known to be on or next to this site.

8           c. Proposed measures to reduce or control impacts, if any.

9           51.     The City responded to Question 13(a) and (b) by stating, “*There are no known*  
10 *places or objects on the project site that are listed or proposed for listing on historical or*  
11 *cultural preservation registers.*” Ex. 4 at 2 (emphasis added).

12           52.     The Checklist proposes mitigation measures under which the City repeats its  
13 conclusion: “*[t]here would be no impacts on any known historic or cultural resources in the*  
14 *vicinity as a result of the proposed Salish Expansion project.* The project would not adversely  
15 affect the Snoqualmie Falls Historic District, and project structures would not be visible from the  
16 observation platform in Snoqualmie Falls Park.” Emphasis added.

17           53.     The City provides the single assurance that “[i]f any evidence of historic,  
18 archaeological or cultural importance is discovered during construction, the State Historic  
19 Preservation Office would be notified immediately and appropriate measures taken.” Ex. 4 at 3.  
20 However, this mitigation measure does not define “evidence of historic, archaeological or  
21 cultural importance” or indicate what the range of appropriate measures may be. It does not  
22 require compliance with the Archaeology Sites and Resources Act or the Indian Graves and  
23 Records Act. It does not require notification to, input from, or repatriation of cultural resources  
24 to the Tribe. The mitigation measure permits construction in the absence of a cultural assessment  
25 or archaeological survey of the area.

26           54.     There are no mitigation measures in the MDNS or Amended MDNS which  
27 accommodate religious practices at Snoqualmie Falls or on the Project Site.

1           **F. Amendment of the Development Agreement**

2           55.     On August 11, 2003, the City amended its zoning ordinances in anticipation of the  
3 Project, including Planned Residential Development Regulation, SMC 17.15.050 and the  
4 Planned Commercial Industrial Regulations, SMC 17.20.050. Ex. 1 at 2.

5           56.     On March 8, 2004, the City annexed 40.3 acres of the Morgan and Tokul Parcels,  
6 which were formerly situated in unincorporated King County in the City’s Urban Growth Area.  
7 Both properties were designated Planned Residential and Planned Commercial/Industrial under  
8 the City’s Comprehensive Plan. *Id.*

9           57.     On March 8, 2004 Gateway and the City signed a Development Agreement for  
10 the Project recorded under King County Recording Number 20040804002287. The Development  
11 Agreement incorporated mitigation measures from the MDNS. The City and Gateway amended  
12 the Development Agreement on June 14, 2005 and on April 9, 2007. *Id.* at 3.

13           58.     On October 9, 2007, Muckleshoot purchased the property and became a successor  
14 in interest to Gateway’s rights and obligations under the Development Agreement and the First  
15 and Second Amendments. *Id.*

16           59.     The City and Muckleshoot subsequently amended the Development Agreement  
17 three times on March 23, 2009, February 8, 2010 and again on December 10, 2012. *Id.*

18           **G. The Tribe’s Opposition to the Tokul Roundabout**

19           60.     Between 2012 and 2015 the Tribe opposed the first phase of the Project—  
20 construction of the Tokul Roundabout.

21           61.     In February 2008, the City conducted a Cultural Resource Assessment for the  
22 Tokul Roundabout Project. The Tribe was contacted eight days prior to the commencement of  
23 the assessment, but was not invited to participate in planning or undertaking the assessment.

24           62.     On September 2, 2008, the City issued an environmental determination—another  
25 MDNS—for the Tokul Roundabout. The Morgan Parcel lay outside the scope of the Assessment  
26 and the MDNS, which were specifically focused on the Tokul Roundabout; thus, impacts to the  
27 Morgan Parcel were not considered in either document.

1           63.     Over four years later, on December 10, 2012, the City and Muckleshoot signed  
2 the Fifth Amendment to the Development Agreement which announced the award of long-  
3 awaited funding for the Tokul Roundabout project. One day later, the Tribe sent a letter stating  
4 its concerns about the outdated environmental review and the lack of consultation with the Tribe.  
5 The letter emphasized the importance of the listing of the Falls on the NRHP in 2009 *after* the  
6 completion of the cultural survey for the Tokul Roundabout in 2008. Finally, the letter requested  
7 government-to-government consultation between the U.S. Army Corps of Engineers (“Corps”)  
8 and the Tribe as required under Section 106 of the National Historic Preservation Act.

9           64.     Between 2013 and 2015, the Tribe sent letters and participated in meetings with  
10 the City, Muckleshoot, the Corps and other governmental entities to urge the parties to conduct a  
11 cultural assessment which considered the full extent of adverse impacts of the project on the  
12 NRHP-listed Snoqualmie Falls, tribal members’ use of the Falls and the likely presence of  
13 cultural resources and ancestral remains on the Tokul project site.

14           65.     On February 22, 2013, the Corps suspended its authorization of a federal permit  
15 required for construction of the Tokul Roundabout pending completion of Section 106  
16 consultation with the Tribe. On May 3, 2013, the Corps determined that the Tokul Roundabout  
17 would have adverse impacts on Snoqualmie Falls. Importantly, the Corps found that  
18 “documentation of the Snoqualmie Falls TCP does not adequately capture the importance and  
19 significance of the site to the Tribe. Further the Corps finds that the Tribe’s views were not  
20 adequately considered during the 2008 effects determination and were not given the opportunity  
21 to comment on that determination.” The Corps further found that the Tokul Roundabout project  
22 was in the view shed of Snoqualmie Falls.

23           66.     Ultimately, and over Petitioner’s objections, construction of the Tokul  
24 Roundabout commenced in the summer of 2015. The City refused to allow the Tribe’s  
25 archaeologist to monitor clearing and grading activity at the site for archeological objects.  
26 Consistent with the Tribe’s predictions, on July 23, 2015, after the majority of the site had been  
27 graded, a projectile point was discovered.



1                   **H. January 2016 Issuance of an Addendum to the MDNS**

2                   67.     On January 13, 2016 the City issued a SEPA Addendum to the 2003 Salish  
3 Expansion MDNS. Ex. 3 at 15.

4                   68.     The Addendum states that a Restated and Amended Development Agreement has  
5 been proposed and increases the residential portion of the Project “to allow for construction up to  
6 175 single family homes.” *Id.* at 16. The SEPA Addendum also fails to respond to new  
7 questions under SEPA Checklist 13, effective May 19, 2014, that are directly relevant to the  
8 Project. The addendum also incorporates a Traffic Analysis Addendum which increases the total  
9 daily trips generated by the proposed development to 3,270. Yet, the SEPA Addendum states  
10 that it “does not substantially change the analysis of the significant impacts and alternatives  
11 analyzed in the existing adopted environmental document.” *Id.* at 17. The SEPA Addendum also  
12 states that it “does not require circulation of a comment period” and no public hearing was held.

13                   **I. Resolution 1342 Adopting the Development Agreement**

14                   69.     On or about January 13, 2016, the City issued a notice of a public hearing for  
15 consideration of the Development Agreement on January 25, 2016. The hearing was canceled.  
16 On or about April 27, 2016, a new notice was issued for a public hearing on May 9, 2016.

17                   70.     The City Planning Office issued a Staff Report at the end of the day on May 6,  
18 2016, the Friday before the Monday, May 9, 2016 public hearing. Appendices to the Staff Report  
19 included materials about the Tribe which were irrelevant to the Project. The Staff Report  
20 contained numerous false representations regarding the Tribe’s interests and motives behind its  
21 efforts to preserve the Falls. Despite the statement in the Staff Report that “The City did not  
22 received [*sic*] any written public comment in advance of the public hearing,” the Tribe timely  
23 submitted ten pages of written comments to the City on May 9, 2016.

24                   71.     The Snoqualmie Tribal Council, numerous tribal members, and concerned  
25 citizens of the City attended the May 9, 2016 hearing to present their comments on the Project.



1 wetlands, wild and scenic rivers, or wilderness.” WAC 197-11-330(3)(e)(i). Threshold  
2 determinations must also consider direct, indirect and cumulative impacts of the proposal on the  
3 environment. WAC 197-11-060(d),(e).

4 78. Based on an independent review of all relevant information, the responsible  
5 official determines whether the proposal is “likely to have a probable significant adverse impact  
6 on the environment.” Significance means “a reasonable likelihood of more than a moderate  
7 adverse impact on environmental quality.” WAC 197-11-794. The responsible official then  
8 issues a “determination of significance” (DS), or a “determination of nonsignificance” (“DNS”).  
9 A DS mandates intensified environmental review through the preparation of an environmental  
10 impact statement (“EIS”).

11 79. If the agency indicates that a DS is likely, the applicant may amend the proposal  
12 to mitigate the impacts of the project. If the impacts will be mitigated, the lead agency may issue  
13 a “mitigated determination of nonsignificance” (MDNS). However, “[i]f a proposal continues to  
14 have a probable significant adverse environmental impact, even with mitigation measures, an  
15 EIS shall be prepared.” WAC 197-11-350(2).

16 80. The lead agency must withdraw a DNS if there are “substantial changes to a  
17 proposal so that the proposal is likely to have significant adverse environmental impacts;” or  
18 “there is significant new information indicating, or on, a proposal’s probable significant adverse  
19 environmental impacts; or the DNS was procured by misrepresentation or lack of material  
20 disclosure.” WAC 197-11-340(3)(a). “If the lead agency withdraws a DNS the agency must  
21 make a new threshold determination and notify other agencies with jurisdiction” WAC 197-11-  
22 340(3)(c).

23 81. SMC 19.04.230(B) authorizes the City to attach conditions to a permit or approval  
24 for a proposal, including the condition that “*the city shall use all practicable means*, consistent  
25 with the other essential considerations of state policy, to improve and coordinate plans,  
26 functions, programs and resources to the end that the state and its citizens may . . . *Preserve*  
27

1 *important historic, cultural and natural aspects of our national heritage.” SMC*

2 19.04.230(D)(1)(d) (emphasis added).

3 82. Courts may overturn a threshold determination when, although there is evidence  
4 to support it, the reviewing court on the record is left with a definite and firm conviction that the  
5 agency committed a mistake. *Anderson v. Pierce Cnty.*, 86 Wash.App. 290, 302, 936 P.2d 432,  
6 439 (1997). To survive judicial scrutiny, the record must demonstrate that “environmental factors  
7 were adequately considered in a manner sufficient to establish prima facie compliance with  
8 SEPA and that the decision to issue a MDNS was based on information sufficient to evaluate the  
9 proposal’s environmental impact.” *Id.* (internal quotations omitted). If a MDNS is issued and an  
10 appealing party proves that the project will still produce significant adverse environmental  
11 impacts, then the MDNS decision must be held ‘clearly erroneous’ and an EIS must be  
12 promulgated. *Id.* at 304.

13 83. The Development Agreement is an action that approves an extensive development  
14 of a hotel, conference center retail space, 175 homes, a 492-stall parking lot and other facilities  
15 that will directly modify the environment. It is also an action governing a series of actions,  
16 including the expansion of Salish Lodge and the construction of a residential development.

17 84. The City failed to consider any significant adverse environmental impacts of the  
18 Project on Snoqualmie Falls TCP or cultural resources on the Morgan Parcel. In part, this is  
19 because the City failed to respond to amended SEPA Checklist Question 13 when it amended the  
20 MDNS in January 2016. Question 13 now requires applicants to respond to the following four  
21 questions:

22 a. Are there any buildings, structures, or sites, located on or near the site that are  
23 over 45 years old listed in or eligible for listing in national, state, or local  
preservation registers located on or near the site? If so, specifically describe.

24 b. Are there any landmarks, features, or other evidence of Indian or historic use or  
25 occupation. This may include human burials or old cemeteries. Are there any  
26 material evidence, artifacts, or areas of cultural importance on or near the site?  
27 Please list any professional studies conducted at the site to identify such  
resources.

1 c. Describe the methods used to assess the potential impacts to cultural and  
2 historic resources on or near the project site. Examples include consultation with  
3 tribes and the department of archeology and historic preservation, archaeological  
surveys, historic maps, GIS data, etc.

4 d. Proposed measures to avoid, minimize, or compensate for loss, changes to, and  
5 disturbance to resources. Please include plans for the above and any permits that  
may be required.

6 85. With regard to Question 13(a), Snoqualmie Falls TCP was not listed on the NRHP  
7 in 2002 when the Checklist was completed, but was listed in 2009 and remained listed at the time  
8 that the City amended the MDNS in 2016. Significant adverse impacts to the TCP stem from  
9 increased tourism caused by a minimum of nearly 450 new residents living within easy walking  
10 distance from the Falls, a new 250-room hotel, new shuttle buses and trail systems intended to  
11 attract more visitors to the Falls.

12 86. Increased residence and tourism will inevitably eliminate any remaining privacy  
13 and solitude required for the exercise of traditional Snoqualmie religious ceremonies. Increased  
14 residence and tourism will increase noise, light and signs required for new trails around the Falls  
15 will introduce invasive species and animals that will impact medicinal plants and reduce animal  
16 habitat surrounding the Falls; and increase human activity in sensitive areas of ancient spiritual  
17 and cultural importance around the Falls that remain significant to tribal members.

18 87. Significant adverse impacts to the Morgan Parcel include the likely disturbance of  
19 cultural resources buried with individuals of Snoqualmie ancestry, such as stone tools, shells and  
20 trade beads; cultural resources that remain from occupation and travel across the property; and  
21 potentially, ancestral remains. The continuing historic, cultural and spiritual significance and  
22 integrity of this property and the likely presence of such cultural resources there may make the  
23 Property eligible for listing on the NRHP.

24 88. The City also failed to respond to SEPA Checklist Question 13(b). According to  
25 that question, there are “landmarks, features and other evidence of Indian and historic use or  
26 occupation,” including the Falls themselves, trees and places used for religious ceremony,  
27

1 gathering, meditation and healing around the Falls and the Morgan Parcel. The area above the  
2 Falls, including the Morgan Parcel, has also been documented as an area of historic, cultural and  
3 spiritual importance for the Snoqualmie Tribe due to prior human occupation, travel between the  
4 coast and the mountains and for burials. Snoqualmie oral tradition supports the existence of  
5 burials on the Morgan Parcel. An artifact was discovered on the Tokul Parcel and numerous  
6 archeological sites have been documented in the vicinity of the Project. To date, the Morgan  
7 Parcel has not been the subject of any specific archeological or ethnographic study, however, its  
8 historic and archeological importance is encompassed in both the oral tradition and written  
9 documentation of traditional Snoqualmie territory.

10 89. The City failed to respond to Checklist Question 13(c). An assessment of  
11 potential impacts of the Project on Snoqualmie Falls and the Morgan Parcel, specifically, has  
12 never been conducted, nor has the Tribe ever been consulted by the City regarding impacts to  
13 cultural resources likely present on the Morgan Parcel.

14 90. The City failed to respond to Checklist Question 13(d) in that it proposes only  
15 general measures to take if ancestral remains are encountered. No other measures to avoid,  
16 minimize or compensate for loss, changes to and disturbance to resources have been proposed.

17 91. Because the Checklist failed to respond to Question 13 in its entirety, the City  
18 could not have determined whether the proposal was likely to have a probable significant adverse  
19 environmental impact on the Falls or the Morgan Parcel under WAC 197-11-330.

20 92. Likewise, because the Checklist failed to respond to Question 13, the City could  
21 not have considered certain required factors in making its threshold determination, including, but  
22 not limited to “absolute quantitative effects of” adjacent residential development and increased  
23 tourism; “values” such as Snoqualmie cultural identity and spirituality that “cannot be  
24 quantified”; or impacts to “sensitive or special areas such as loss or destruction of historic,  
25 scientific, and cultural resources” as required by WAC 197-11-330(3)(d),(e)(i).

26 93. Without a thorough cultural resource assessment on the Morgan Parcel informed  
27 by professionals with knowledge of Snoqualmie history, culture and religion prior to clearing

1 and grading at the Project Site, there is a very high risk of loss of cultural resources. Digging  
2 foundations for homes, basements, utility ditches and pavement could permanently disturb,  
3 deface and destroy cultural resources. Storm water runoff and soil erosion have the potential to  
4 destabilize and or expose cultural resources in areas not planned for construction. The permanent  
5 destruction and elimination of cedar trees, ferns and berries gathered for spiritual ceremonies in  
6 the Project Site is a significant adverse impact not considered by the MDNS.

7 94. The failure to conduct a cultural resources assessment also runs afoul of the  
8 Indian Graves and Records Act (IGRA), wherein the legislature declared that “Native Indian  
9 burial grounds and historic graves are acknowledged to be a finite, irreplaceable and non-  
10 renewable cultural resource, and are an intrinsic part of the cultural heritage of the people of  
11 Washington. The legislature recognizes the value and importance of respecting all graves, and  
12 the spiritual significance of such sites to the people of this state.” RCW 27.44.030.

13 95. The IGRA recognizes “incidents of deliberate interference with Native Indian  
14 graves for profit-making motives” and “careless indifference in cases of accidental disturbance  
15 of sites, graves and burial grounds.” *Id.* It further affirms that “Indian burial sites, cairns, glyptic  
16 markings, and historic graves located on public and private land are to be protected.” *Id.*

17 96. Likewise, RCW 27.53.060 requires that a permit be obtained before knowingly  
18 removing, altering, digging, excavating, damaging, defacing or destroying historic or prehistoric  
19 archeological resources or their removal without a permit from the Department of Archaeology  
20 and Historic Preservation.

21 97. A thorough archaeological and cultural assessment prepared in full consultation  
22 and participation by the Tribe is warranted to understand the presence and impacts to these  
23 cultural resources and potentially ancestral remains on the Morgan Parcel. Such an assessment  
24 should consider and better understand direct harm to the cultural wellbeing of the Tribe and its  
25 members resulting from the disturbance and destruction of its sacred burial ground. Without a  
26 thorough cultural resource assessment for the Snoqualmie Falls area, elimination of what is  
27 required for religious practice at the Falls and in the surrounding area, and the resulting loss of

1 cultural identity and religious practice is an inevitable significant impact of the Project not  
2 considered by the MDNS.

3 98. The City's MDNS is clearly erroneous because is not based on information  
4 "reasonably sufficient" to determine the environmental impact of the Project.

5 99. None of the City's development standards or mitigation measures address long-  
6 term increased tourism at the Falls on its natural integrity and religious practice there. Likewise,  
7 none of the City's development standards or mitigation measures address destruction of cultural  
8 resources likely on the Morgan Parcel and potentially, ancestral remains.

9 100. The City violated SEPA by failing to withdraw the thirteen-year old MDNS in  
10 light of the subsequent listing of the Snoqualmie Falls TCP and cultural resources, traditional  
11 gathering and the potential for ancestral remains located on the Morgan Parcel.

## 12 **SECOND CAUSE OF ACTION**

### 13 **Statement of Errors Under the Land Use Protection Act**

14 101. Petitioner incorporates all preceding paragraphs as if fully set forth herein,  
15 including the elements of a LUPA petition previously plead.

16 102. The City Council Findings of Fact and Conclusions of Law adopted under City  
17 Council Resolution No. 1342 and the Development Agreement contain errors of law.

18 103. The City engaged in unlawful procedure, failed to follow a prescribed process and  
19 the error was not harmless. RCW 36.70C.130(1)(a). The City failed to withdraw the MDNS prior  
20 to the enactment of Resolution No. 1342 and execution of the Development Agreement on the  
21 basis of (1) new information regarding the listing of Snoqualmie Falls TCP and likelihood of  
22 ancestral remains present on the Morgan Parcel (WAC 197-11-340), on the basis of (2) an  
23 incomplete SEPA checklist (RCW 197-11-060, 330, 460, 960) and on the basis of its lack of  
24 consideration of adverse impacts to "sensitive and special areas" under WAC 197-11-  
25 330(3)(e)(i).

26 104. The land use decision is an erroneous interpretation of the law. RCW  
27 36.70C.130(1)(b). Resolution 1342 erroneously interprets WAC 197-11-500(4)(a) and (c) to



1 permit reliance on existing environmental documents by the City on a different proposal relating  
2 to the Tokul Roundabout and on an Addendum to the MDNS that substantially changes the  
3 analysis of significant impacts from those considered in the 2003 MDNS. Ex. 2.

4 105. The land use decision is not supported by evidence that is substantial when  
5 viewed in light of the whole record before the Court. RCW 36.70C.130(1)(c). The MDNS fails  
6 to consider adverse impacts to Snoqualmie Falls and cultural resources likely on the Morgan  
7 Parcel. Therefore, the City's Finding of Fact and Conclusion of Law that the provisions of the  
8 Development Agreement are consistent with SEPA is not supported by substantial evidence. *Id.*

9 106. In addition, the City's second Finding of Fact and Conclusion of Law that "the  
10 Amended and Restated Salish Expansion Development Agreement does not change the Salish  
11 Expansion Project elements set forth in the initial Development Agreement and the First – Fifth  
12 Amendments" is erroneous. *Id.* The May 9, 2016 approved Development Agreement adds 65  
13 homes to the residential development and incorporates a Traffic Analysis Addendum for  
14 increased residential density that adds 470 additional daily vehicular trips. Neither was analyzed  
15 by the City in violation of State law.

16 107. The land use decision is a clearly erroneous application of law to facts. RCW  
17 36.70C.130(1)(d). The City threshold determination that the Project "does not have a probable  
18 significant adverse impact on the environment" erroneously construes "significant adverse  
19 impacts" in light of numerous factors not considered in the City's MNDS or Addendum.

### 20 **THIRD CAUSE OF ACTION**

#### 21 **Violation of Tribal Members' Religious Freedom**

22 108. Petitioner incorporates all preceding paragraphs as if fully set forth herein.

23 109. The City's land use decision violates the rights of Snoqualmie tribal members to  
24 free exercise of religion as protected under Article 1 Section 11 of the Washington State  
25 Constitution

26 110. Article I Section 11 of the Washington State Constitution guarantees that "no one  
27 shall be molested or disturbed in person or property on account of religion." Washington's

1 protection of religious freedom “absolutely protects the free exercise of religion [and] extends  
2 broader protection than the first amendment to the federal constitution.” *City of Woodinville v.*  
3 *Northshore United Church of Christ*, 166 Wash.2d 633, 642, 211 P.3d 406, 410 (2009). The  
4 constitutional protection for religious free exercise under state law protects the freedom to  
5 believe and the freedom to act. *State v. Balzer*, 91 Wash.App. 44, 52, 954 P.2d 931, 935 (1998).

6 111. Burdens on religious freedom must be evaluated in the context in which it arises.  
7 Petitioner’s religious freedom claim warrants thoughtful consideration of the unique context in  
8 which it arises.

9 112. The State’s Governor’s Executive Order 05-05 recognizes that archaeological and  
10 historic sites located in Washington “hold special cultural, historical, and spiritual significance  
11 for both tribal members and citizens of Washington” and requires state agencies to consult  
12 affected tribes and to take reasonable action to avoid, minimize or mitigate adverse effects to  
13 archeological or cultural resources.

14 113. United States Executive Order 13007 requires federal agencies to “accommodate  
15 access to and ceremonial use of Indian sacred sites” and to “avoid adversely affecting the  
16 physical integrity of such sacred sites.”

17 114. Article 12 of the United Nations Declaration on the Rights of Indigenous People  
18 affirms their “right to manifest, practise, develop and teach their spiritual and religious traditions,  
19 customs and ceremonies; the right to maintain, protect, and have access in privacy to their  
20 religious and cultural sites; the right to use and control of their ceremonial objects; and the right  
21 to the repatriation of their human remains.” It further provides, “States shall provide redress  
22 through effective mechanisms . . . developed in conjunction with indigenous peoples, with  
23 respect to their cultural, intellectual, religious and spiritual property taken without their free,  
24 prior and informed consent.” On December 15, 2010, the United States announced its formal  
25 support for the Declaration.

26 115. This persuasive authority from the state, national and international levels  
27 expresses a consensus at the highest levels of government that archaeological and historical sites

1 and sacred places are to be granted the utmost protection. Together, they strongly support  
2 Petitioner’s request for the City to fully consider impacts to and to avoid action that will  
3 interfere, disturb or destroy places sacred to the Tribe or irreplaceable cultural resources.

4 116. Snoqualmie traditions heavily rely on the natural integrity of the Falls, including  
5 its surroundings.

6 117. The Project will exclude Snoqualmie tribal members from religious practice  
7 around the Falls and traditional gathering on the Morgan Parcel. The burden on the free exercise  
8 of Snoqualmie religious traditions at the Falls and surrounding area will be considerable given  
9 the minimum of 450 new residents in the area, hundreds of guests at the expanded Salish Lodge,  
10 and new shuttles and paths facilitating hundreds more visits to the Falls each day. The Project  
11 would leave Snoqualmie tribal members without access to their most sacred place to practice  
12 their religion, without an alternative.

13 118. This is far from a “slight inconvenience.” Snoqualmie Tribal members will be  
14 excluded from practicing their religious traditions at the Falls or gathering plants for ceremonies  
15 on the Morgan Parcel. The Project risks an irreversible disruption in the transmission of tribal  
16 culture and spirituality to future generations of Snoqualmie.

17 119. The City’s execution of the Development Agreement does not fulfill a compelling  
18 goal. Even if fostering tourism or aiding the City’s property tax coffers were compelling goals,  
19 the Project is far from a narrow means for achieving those goals. Alternative opportunities to  
20 achieve those same goals, that would not burden Snoqualmie’s religious freedom, exist.

21 **REQUEST FOR RELIEF**

22 WHEREFORE, Petitioner prays that this Court enter judgment in its favor and against  
23 Respondents, granting the following relief:

- 24 A. An order declaring the Amended and Restated Development Agreement null and  
25 void.
- 26 B. An order vacating and declaring that City Council Resolution 1342 violates SEPA  
27 and Petitioners’ constitutional right to freedom of religion.

- 1 C. An order declaring that the 2003 MDNS and 2016 SEPA Addendum are in  
2 violation of SEPA and invalid.
- 3 D. An order enjoining the City to conduct a cultural and archaeological assessment  
4 of the Project Site, in consultation and collaboration with Tribe, before any new  
5 environmental determination is made by the City.
- 6 E. An order enjoining any further action on or relating to the Project, including any  
7 ground disturbing activity, until the City issues a new threshold determination  
8 which fully complies with state law.
- 9 G. Such other and further relief as the Court deems appropriate.

10 DATED this 27<sup>th</sup> day of May, 2016.

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12  
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