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[King County Superior Court No. 19-2-30171-6 SEA]

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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GARFIELD COUNTY TRANSPORTATION AUTHORITY; et al.

Appellants/Plaintiffs,

WASHINGTON ADAPT; TRANSIT RIDERS UNION; and

CLIMATE SOLUTIONS

Appellants/Intervenor-Plaintiffs,

v.

STATE OF WASHINGTON,

Respondent/Defendant.

CLINT DIDIER; PERMANENT OFFENSE; TIMOTHY D. EYMAN;

MICHAEL FAGAN; JACK FAGAN; and PIERCE COUNTY,

Respondent/Intervenor-Defendants.

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**BRIEF OF *AMICI CURIAE***

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**Puyallup Tribe of Indians**

**Nisqually Indian Tribe**

**Tribal Transportation Planning Organization Transit Subcommittee**

Tahl Tyson (WSBA No. 21183)  
Jeremy F. Wood (WSBA No. 51803)  
LITTLER MENDELSON, P.C.  
600 University Street, Suite 3200  
Seattle, WA 98101  
(206) 623-3300  
[ttyson@littler.com](mailto:ttyson@littler.com)  
[jfwood@littler.com](mailto:jfwood@littler.com)  
**Attorneys for all *Amici Curiae***

Brent W. Bottoms (WSBA# 36263)  
Nisqually Legal Department  
4820 She-Nah-Num Drive SE,  
Olympia, WA 98513  
(360) 456-5221  
[bottoms.brent@nisqually-nsn.gov](mailto:bottoms.brent@nisqually-nsn.gov)  
**Attorney for Nisqually Indian Tribe**

Samuel J. Stiltner, (WSBA #7765)  
Director, Legal Department  
Law Office Puyallup Tribe of Indians  
3009 Portland Avenue  
Tacoma, WA 98404  
Office: (253) 573-7875  
Cell: 253-389-5460  
Fax: 253-680-5998  
[sam.stiltner@puyalluptribe-nsn.gov](mailto:sam.stiltner@puyalluptribe-nsn.gov)  
**Attorney for Puyallup Tribe of Indians**

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## I. INTRODUCTION

Amici curiae the Puyallup Tribe of Indians (“Puyallup Tribe”), the Nisqually Indian Tribe (“Nisqually Tribe”) (these collectively, “the Tribes”), and the Tribal Transportation Planning Organization Transit Subcommittee (“TTPO”) (collectively, “Amici”) respectfully submit this brief contingent on granting of the accompanying motion for leave. Amici urge that this Court consider how affirming the lower court’s orders, permitting implementation of Initiative 976 (“I-976”), would impact tribal members, reservation, and operations by impeding crucial infrastructural and economic development.

Traffic fatalities kill more Native Americans than members of any other ethnic group, and lack of transit infrastructure impedes tribal economic progress. To remedy these evils, the Tribes have worked for years with state and local transit authorities, including the Central Puget Sound Regional Transit Authority (“Sound Transit”) and the Washington State Department of Transportation (“WSDOT”) to improve traffic conditions and knit their region more closely together, while safeguarding treaty-protected resources.

I-976 threatens to defund such vital work, including the first project in United States history to bring mass transit to Indian Country. Delaying necessary transit development will only worsen the congestion that threatens tribal lives and divides tribal reservations from urban centers. It could set regional and tribal economies

back several years, ignoring the costs tribes have already sunk expecting conditions to improve. And it could force tribes into a Hobson's choice between vital transit improvement and the health of precious natural resources.

Amici hope the Court will consider the impacts discussed below in deciding whether to permit implementation of a measure imposed by outsiders on tribal communities that have suffered outsider intervention enough already.

## **II. IDENTITY, INTEREST, AND FAMILIARITY OF *AMICI CURIAE***

The Puyallup Tribe of Indians is a sovereign and federally recognized Indian tribe, and the direct successor to the Puyallup tribe that signed the Treaty of Medicine Creek in 1854. Since time immemorial, its members have lived throughout the South Puget Sound. Its modern reservation, although much reduced from its ancient bounds, covers much of Pierce County, including the entire City of Fife, together with parts of East Tacoma, Federal Way, Puyallup, and the Port of Tacoma. Its unique and complex character, both urban and rural, coupled with the I-5 Highway's proximity, make transit and traffic ever pressing concerns. The Puyallup Tribe has long coordinated with other local governments and transit authorities to address those concerns. It is not only familiar with the need for improved transit, but is deeply involved in those coordinated solutions underway.

Likewise, the Nisqually Indian Tribe is a sovereign and federally recognized Indian tribe, and the direct successor to signatories of the Treaty of Medicine Creek

in 1854. Since time immemorial, its members have lived throughout the interior woodlands and coastal waters between Mount Rainier and Puget Sound. It maintains an extensive reservation covering parts of Thurston and Pierce Counties along the Nisqually River, and it is concerned with the impact of highway connections on its watershed absent roadway improvement.

The Tribal Transportation Planning Organization is an independent nonprofit with a membership including all 29 recognized tribes in Washington State. Founded in 2003, it provides its members a forum to actively engage in statewide transportation planning by identifying and highlighting tribal transportation needs.

I-976 now threatens to drain the funding necessary to implement solutions important to Amici, drawing their concerned interest to this case, especially as COVID-19 places tribal communities in special jeopardy.

### **III. ARGUMENT**

Traffic accidents, caused by congestion, poor road maintenance, and inadequate transit kill Native Americans at a higher rate than any other ethnicity. The same evils slow the Puyallup Tribe's effort to grow its economy in order to fund crucial governmental services. The Puyallup Tribe spent decades working to improve matters and introduce new and necessary transit solutions, coordinating in good faith with non-tribal governments to do so. And together with the Nisqually Tribe, it is deeply concerned with pending transit projects necessary to mitigate the

impact of climate change on fishing stocks. I-976 threatens to undo these substantial efforts, defunding and delaying vital infrastructure and economic development by years the Tribes do not have to waste, as they chart a road to recovery from the ongoing COVID-19 pandemic.

**A. Inadequate Transit Puts Native Americans at Disproportionate Risk of Dying in Traffic Accidents**

The Washington Traffic Safety Commission recently published a report entitled *Target Zero: Washington State Strategic Highway Safety Plan 2019*. That Plan paid special attention to safety problems for Native Americans and reservation communities in Washington. Washington Traffic Safety Commission, *Target Zero: Washington State Strategic Highway Safety Plan 2019* 15 (2019), available at [http://targetzero.com/wp-content/uploads/2020/03/TargetZero2019\\_Lo-Res.pdf](http://targetzero.com/wp-content/uploads/2020/03/TargetZero2019_Lo-Res.pdf). Using data from 2008-2017, the Commission explained that Native Americans are 4.4 times more likely to die in a traffic related fatality and 6.4% more likely to die in a pedestrian involved fatality than all other races combined. *Id.*

In certain counties, disparities are even starker. Natives make up 1.2% of the Pierce County population but 3.4% of traffic fatalities, clustered around the Puyallup reservation. *Id.* at 18. Likewise, Natives are 0.6% of the King County population, and represented in 2.3% of fatalities. *Id.* Trends are only worsening. *Id.*

According to the Target Zero Plan, “[t]ransportation planning and engineering, as well as the human factors of traffic safety on tribal lands, are

important areas of focus in our state.” *Id.* at 16. In concrete terms, the Commission named “[m]inimal availability of transit services” as a factor “creat[ing] unsafe conditions and contribut[ing] to the disproportionate fatalities rates.” *Id.* at 19.

No governments are more attuned to such disparities or more committed to improving reservation safety through vital transit development than tribes. Until I-976’s passage, necessary progress looked more promising than ever.

**B. For Almost Twenty Years, the Puyallup Tribe has Worked with Governmental Partners to Expand Local Transit Infrastructure to Increase Public Safety, Encourage Economic Development, and Further Regional Prosperity**

For almost two decades, the Puyallup Tribe has sought transit solutions to take its members off dangerous roadways, reduce traffic congestion that has left its reservation one of the most collision-prone in the country, and link its government offices, medical clinic, and flagship business, the Emerald Queen Casino (“EQC”) to downtown Tacoma and King County.

From humble origins on the deck of a Mississippi riverboat, the EQC has grown into a multi-facility gaming enterprise centered in East Tacoma with a satellite in Fife, funding 80% of tribal governmental services. *New Emerald Queen Casino opens June 8 - Sneak Preview*, 500 NATIONS, last visited Jun. 2, 2020, available at <https://www.500nations.com/casinos/waEmeraldQueen.asp>. The EQC is a regional magnet and, together with the Puyallup tribal government, one of Pierce County’s largest employers, drawing most of its workforce from surrounding non-

Indian populations and investing millions of dollars in local economies. 272 *Qualify as Pierce County's Major Employers in 2019*, ECONOMIC DEVELOPMENT BOARD OF TACOMA PIERCE COUNTY, available at <https://www.edbtacomapierce.org/area-profile/largest-employers/> (visited Jun. 2, 2020).

Since 2002, the Puyallup Tribe has worked to connect the EQC's East Tacoma location, along with adjacent government offices and health clinic, to transit by proposing to extend Tacoma Link light rail. Rob Carson, *City, tribe study light-rail deal*, THE NEWS TRIBUNE, Oct. 17, 2002; Seattle Post-Intelligencer Staff, *Casino Seeks Light Rail Link*, SEATTLE POST-INTELLIGENCER, Oct. 17, 2002, available at <https://www.seattlepi.com/news/article/Casino-seeks-light-rail-link-1098739.php>.

The Tribe paid \$41,000 in 2004 to study the project's cost and feasibility. <https://www.seattlepi.com/local/transportation/article/Light-rail-extension-studied-in-Tacoma-1140565.php>. The proposed extension would connect not only the EQC's East Tacoma site to downtown Tacoma, but also tens of thousands of Native people throughout the Puget Sound to the Puyallup tribal health clinic. *Id.*

Eventually, in 2016, Sound Transit voters approved financing the Sound Transit 3 plan ("ST 3"), the first public project in American history to provide mass transit directly to tribal land, including the very extension the Puyallup had proposed long ago, now entitled the Tacoma Dome Link Extension ("TDLE").<sup>1</sup>

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<sup>1</sup> This brief discusses the TDLE planning process largely from the Puyallup Tribe's

This Extension would add 9.7 miles of fast, reliable light rail to connect 27,000 to 37,000 daily riders between South King and Pierce Counties, drastically easing traffic on the I-5 corridor. Tacoma Dome Link Extension, Sound Transit, <https://www.soundtransit.org/system-expansion/tacoma-dome-link-extension> (last visited Jun. 2, 2020) (containing numerous subpages with project details, timelines, and stakeholder lists). It would serve four new light rail stations, in South Federal Way, Fife, East Tacoma, and the Tacoma Dome area, respectively. *Id.*

The Puyallup Tribe has worked with Sound Transit on this project for years, explaining to the regional agency in 2018 that it remains “aligned with Sound Transit’s mission to provide transit options to our tribal community and throughout the Puyallup Reservation.” Letter from the Puyallup Tribe of Indians to Sound Transit Chair Dave Somers Re: Sound Transit Scoping Process Initial Comments (Apr. 30, 2018), available at Appendix to Brief of Tribal Amici Curiae (“App.”) at 1-3. Its good faith engaging with Sound Transit is made more poignant by the Puyallup Tribe’s troubling history with non-tribal transit projects.

For over 150 years, the Puyallup Tribe has been forced to accept such projects over which it had no say. When President Grant approved construction of the Northern Pacific Railroad across the Puyallup reservation, the Tribe was neither

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perspective because of its greater involvement in a project that crosses its reservation. The project is vital to the Nisqually Tribe too, whose members also suffer the long commutes and dangers current traffic poses.

consulted nor compensated. Timothy Egan, *The Good Rain* 122-23 (Vintage Departures, 1991). Again, the Tribe was left out when the Pierce County electorate voted to establish the Port of Tacoma in 1918. *See Puyallup Indian Tribe v. Port of Tacoma*, 717 F.2d 1251, 1253–54 (9th Cir. 1983) (discussing the Puyallup Tribe’s historical relationship with the Port of Tacoma). Yet again, Congress ignored the Puyallup Tribe in the late 1950s when it forced the Tribe to accept construction of the I-5 across its reservation. Federal Aid Highway Act of 1956, 70 Stat. 374 (1956); *Tacoma Opens New Section Of Freeway*. THE SEATTLE TIMES, Oct. 1, 1959. p. 15. As a result, the Puyallup Tribe has been left a checkerboard reservation, a superfund site that requires mitigation to protect imperiled fish stocks, and traffic congestion the members of this Court can take judicial notice of each morning.<sup>2</sup>

Despite cause for distrust, the Puyallup Tribe has actively engaged with Sound Transit in good faith to plan the TDLE. In early 2019, these parties signed a Statement of Partnering Intent to “memorialize[] shared understandings between Sound Transit and the Puyallup Tribe regarding the Project scope and schedule.” *Statement of Partnering Intent Between the Central Puget Sound Regional Transit*

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<sup>2</sup> The Puget Sound Regional Council recently reported that Pierce County residents, including many employees of the ECQ, have the longest average commute of any county population in the state. *Region's workers spending more time commuting*, PUGET SOUND REGIONAL COUNCIL, Dec. 5, 2018, available at <https://www.psrc.org/whats-happening/blog/regions-workers-spending-more-time-commuting>.

*Authority (Sound Transit) and the Puyallup Tribe of Indians for the Tacoma Dome Link Extension Project 3* (2019), available at App. 4-7. The Statement acknowledged “[m]eeting the Project schedule milestones and objectives . . . as a mutual goal of Sound Transit and the Puyallup Tribe in order to begin transit operations on time. . . . Sound Transit and the Puyallup Tribe will work in coordination to meet these dates.” *Id.*

Sound Transit and the Puyallup Tribe have done just that. Leadership from the tribal chairperson and council on down have contributed to this effort.

**1. The Puyallup Tribe has Worked with Sound Transit to Ensure the TDLE Furthers Tribal and Regional Wellbeing**

In planning the TDLE, the Puyallup Tribe has worked with Sound Transit to coordinate station alignment to best connect members and the broader public to tribal businesses and other services. Thus, for example, the Tribe persuaded Sound Transit to place the East Tacoma Station near the East Tacoma EQC location and tribal governmental offices, rejecting other alternative proposals. Letter from Puyallup Tribal Chairman Bill Sterud to Sound Transit Chair John Marchione at 2 (May 1, 2019), available at App. 8-10; Level 2 Alternatives for Tribal Council at 3, available at App. 13. The Tribe has paid similar attention to supporting the economic development of other local jurisdictions within its borders. Thus, it and the City of Fife jointly urged Sound Transit to locate the Fife station to “capture potential riders going to and from existing Tribal enterprises in this area and to recognize the City

of Fife’s plans to catalyze the area as part of their City Center Plan.” Letter to Sound Transit Chair John Marchione, App. at 9.

**2. The Puyallup Tribe has Engaged with Sound Transit in Good Faith, Trusting that Agency will Commit the Necessary Funding to Protect Tribal Infrastructure, and Natural and Cultural Resources**

As noted above, the Puyallup Tribe’s voice has often been ignored in transit decisions that affect its reservation. Accordingly, the Puyallup Tribe has vigorously defended its interests in planning the TDLE, based on trust that Sound Transit will respect those interests and commit the necessary funding to do so.

Crucially, the Puyallup Tribe has sought throughout planning to protect its natural and cultural resources, enshrining the parties’ “mutual goal that the Preferred Alternative identified in NEPA/SEPA documents is supported by the Puyallup Tribe” in the original Statement of Partnering Intent. *Statement of Partnering Intent Between the Central Puget Sound Regional Transit Authority (Sound Transit) and the Puyallup Tribe of Indians for the Tacoma Dome Link Extension Project* at 2.

Some of these concerns relate to potential impacts off-reservation. For example, in considering placement of the Tacoma Dome Station, the Puyallup Tribe opposed “tunneling in the Tacoma Dome station because of the high probability of culture and human remains in the area,” where a large traditional village site once stood. Letter to Sound Transit Chair John Marchione, App. at 10. The risks of tunneling would be “catastrophic [and] could end up being immitigable and prevent

the completion of the project.” *Id.*

But the potential on-reservation impacts warranted no less concern. Much of the TDLE must cross the Puyallup reservation, and can only be constructed should the Puyallup Tribe grant the necessary easements. In making that pivotal decision, the Tribe has worked at length with Sound Transit to minimize impact where the TDLE would have to traverse the Puyallup River. “The Puyallup River is a significant historical, cultural, and economic resource to the Puyallup Tribe.”<sup>3</sup> *Id.* at 9. Thus, the Tribe advocated, successfully so, to persuade Sound Transit to shelve theoretical plans to lay rail near tribal ceremonial grounds on the River’s western banks. *Id.* Later, the Tribe urged Sound Transit to find alternatives to in-river piling, noting if that “option were to be pursued, strong mitigation measures to prevent

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<sup>3</sup> Similarly, the Nisqually Tribe is concerned about the adequacy of funding for transit projects impacting the Nisqually watershed. WSDOT Olympic Region Multimodal Planning Office and Thurston Regional Planning Council, *Interstate 5: Tumwater to Mounts Road Mid-Range Strategies | 2020: Chapter 5 – Developing a strategic plan for Interstate 5 through the Nisqually River valley* (2020), available at <https://www.wsdot.wa.gov/sites/default/files/2020/05/06/I-5-tumwater-mounts-rd-study-chapter5.pdf>. The nation’s only river to begin and end in nationally protected land, the Nisqually has sustained the Tribe since time immemorial and hosts various endangered salmonid populations protected by treaty. *Id.* Eight bridges carry the I-5 over the River and through its watershed. *Id.* These bridges and the impoundments they entail, the Nisqually Tribe has noted, reduce sediment delivery to the delta and imperil salmon recovery, growing worse each year due to rising sea levels. *Id.* To resolve these concerns, the Nisqually Tribe has actively engaged WSDOT since at least 2018 to study transit improvement options that would protect river integrity and promote fish recovery, and future efforts may be imperiled by any shortfall in funding. *Id.*

impacts to the Tribal Fishery must be explored and part of the EIS process.” *Id.*

The Puyallup Tribe has raised these concerns while reiterating its commitment “to continuing to work with [Sound Transit] and [its] staff on making sure this project is successful.” *Id.* at 10.<sup>4</sup> But it has done so, assuming Sound Transit will maintain necessary funding to keep its side of the bargain.

I-976 threatens that good faith.

**C. Unless the Lower Court Blocks I-976, Its Expected Funding Cuts on Sound Transit and Other State Accounts Could Imperil Transit Developments Vital to the Tribes**

I-976 threatens to defund projects like ST 3 and others vital to helping reservations succeed, in which the Puyallup Tribe has invested substantial effort, and upon which its future development relies. Without exaggeration, I-976 will make much of this vital work, conducted in good faith between independent sovereigns, impossible.

I-976’s projected impacts to transit funding are not in controversy. Studying these in a fiscal note on the initiative, Washington’s Office of Financial Management (“OFM”) summarized: “Total revenue loss to the state in the next six years is \$1,922,643,101. Total revenue loss to local governments in the next 6 years is \$2,317,121,034.” Office of Financial Management, *Fiscal Impact Statement for*

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<sup>4</sup> Consistently, it has signed several Entry Agreements in recent months, granting Sound Transit access across numerous parcels of tribal land to facilitate construction. App. at 14-29.

*Initiative 976* at 1, available at <https://wacities.org/docs/default-source/Legislative/i976fiscalimpactstatement.pdf?sfvrsn=0> (visited Jun. 2, 2020).

The OFM's fiscal note further breaks down projected impacts to various agencies and accounts. Sound Transit will lose \$328 million every fiscal year for the upcoming future. *Id.* at 3. Sound Transit projects the total loss as \$7.2 billion through 2041 from direct cuts, reduced taxing authority, and requirements to prematurely retire existing bonds. Sound Transit, *Powerpoint: Discussion on I-976* at 19 (Nov. 21, 2019), available at [https://www.soundtransit.org/st\\_sharepoint/download/sites/PRDA/ActiveDocuments/Presentation%20-%20I-976%20Discussion.pdf](https://www.soundtransit.org/st_sharepoint/download/sites/PRDA/ActiveDocuments/Presentation%20-%20I-976%20Discussion.pdf). Such a drastic shortfall, the Puyallup Tribe fears, will substantially impact projects like the TDLE.

But the Puyallup Tribe is also concerned for the fate of other state transit accounts, which could impact not only the TDLE but the SR 167 development and regular transit operations. These impacted accounts include:

- \$1.5 million in cuts to the Multimodal Transportation Account, which funds all modes of transportation projects, including public transportation, rail and bicycle/pedestrian projects, *Fiscal Impact Statement for Initiative 976* at 2-3;
- \$265.5 million in cuts to Motor Vehicle Account, limiting the funds it can provide for highway construction, maintenance, and local road

programs, *Id.*; and

- \$5,446,700 in cuts to the Transportation Improvement Account, which funds local transportation projects to address congestion. *Id.*

Such funding cuts will likely impact projects crucial to the Tribes like the TDLE. For that reason, the Puyallup Tribe opposed I-976 before its passage and, together with the other Amici does so still.

**D. The Puyallup Tribe Opposed I-976 Before its Passage Given Projected Threats to Transit Projects, and Maintains that Opposition Still, Together with the Nisqually Tribe**

As explained, Amici value expanding transit to reduce dangerous congestion, foster economic development, and help all local communities prosper. They understand, informed by a troubling history, the importance of leaving local transit decisions to local affected communities. Accordingly, the Puyallup Tribe has long opposed the efforts of I-976's sponsors like Tim Eyman to dictate local transit revenue and hopes this Court will consider its reasons; all Amici oppose it still.

The Puyallup Tribe made its opposition plain on October 8, 2019, when Puyallup Tribal Councilmember Timothy Reynon appeared before the Tacoma City Council in his official capacity, urging that body to adopt Council Resolution 40442, opposing passage of I-976. Video coverage Tacoma City Council Meeting at 40:00, TACOMA CITY COUNCIL, Oct. 8, 2019, available at [http://cityoftacoma.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=3880](http://cityoftacoma.granicus.com/MediaPlayer.php?view_id=2&clip_id=3880). In his comment, Councilme

mber Reynon conveyed the Tribe's concern that I-976 would deprive "major transit projects critical to the future of the region" of necessary funding. *Id.* He specifically identified the TDLE amongst those at risk. *Id.*

I-976, Councilmember Reynon explained, threatened to "destabilize[] the future for addressing traffic and planning for economic development in our region." *Id.* Regarding traffic, he stressed the importance of transit to reducing traffic accidents on the Puyallup reservation, one of the "most collision prone reservations in the United States." *Id.*

Referencing the Puyallup Tribe's many years of work on these projects, he explained that "[w]ithout state funding we have to go back to the drawing board to complete this vital project that makes our region economically competitive." *Id.*

I-976 threatens to make Councilmember Reynon's concerns a frightening reality. It will rob \$1.9 billion from state coffers over six years, and \$7.2 billion from Sound Transit through its 2041 planning period. It is difficult for the Tribes to imagine such cuts will leave projects like the TDLE or those affecting fish passage unaffected.

If Sound Transit has to cancel or delay the TDLE beyond 2030, it would severely impact Puyallup tribal safety, infrastructure, revenue, and resources. In supporting the TDLE, the Puyallup Tribe sought to reduce congestion that endangers members, leaving them longer commutes than residents in any other Washington

county, distances economic development projects from market, and discourages talented employees outside the reservation from working for the Tribe.

Even partial project reductions would imperil tribal welfare. For example, if Sound Transit has to skip over the East Tacoma station, the EQC and tribal government would lose access to almost 40,000 projected transit riders every single day, who could otherwise work for tribal operations, or patronize the EQC's restaurants, gaming, and entertainment facilities. And any reduction in the scope of construction would leave fewer jobs for tribal members.

Lastly, if Sound Transit or WSDOT are forced to take shortcuts, it could damage important tribal resources throughout the reservation. These impacts could be devastating off-reservation. On-reservation, they could force the Puyallup Tribe to deny Sound Transit necessary easements and shelve the TDLE project entirely.

I-976 may force state and local transit authorities to break the trust the Tribes have placed in them. The Tribes need these projects to succeed more than ever, given the devastation the COVID-19 pandemic has already left in its wake.

**E. I-976's Promised Cuts do not Exist in a Vacuum and this Court Should Not Allow Tim Eyman to Further Imperil the Road to Recovery from the COVID-19 Pandemic or Any Other Local Government.**

In considering I-976's consequences, Amici hope this Court will note the unprecedented times in which we live, and the strain the COVID-19 pandemic puts on tribal finances.

The COVID-19 pandemic has left no jurisdiction in Washington unscathed, ending lives, burdening healthcare, and closing businesses statewide for the public good. But while state and local governments can rely on a varied tax base to fund government services, tribes must depend disproportionately on revenue from their closed business developments. Letter from the Harvard Project on American Indian Economic Development to Treasury Secretary Steven Mnuchin Re: Allocation of COVID-19 Response Funds to American Indian Nations (Apr. 10, 2020), available at [https://ash.harvard.edu/files/ash/files/hpaied\\_ash\\_covid\\_letter\\_to\\_treasury\\_04-10-20\\_vsIGNEDVFINV02.pdf](https://ash.harvard.edu/files/ash/files/hpaied_ash_covid_letter_to_treasury_04-10-20_vsIGNEDVFINV02.pdf).

The toll visited upon tribal economies, therefore, has been devastating. The New York Times recently detailed that devastation. Simon Romero and Jack Healy, *Tribal Nations Face Most Severe Crisis in Decades as the Coronavirus Closes Casinos*, N.Y. TIMES, May 11, 2020, available at <https://www.nytimes.com/2020/05/11/us/coronavirus-native-americans-indian-country.html>. Its coverage quotes Joseph Kalt, co-director of the Harvard Project on American Indian Economic Development, comparing the forced closure of tribal businesses to the demise of the bison herds in the 19th century or the termination of tribal governments in the 1950s to the impact of forced casino closures. *Id.* Fawn R. Sharp, President of the Quinault Nation and the National Congress of American Indians elaborates, noting that “[t]he failure to fund us has left us incredibly vulnerable” to economic and infrastructural

disaster. *Id.*

While the New York Times coverage examined COVID-19's impact on tribal economies nationwide, its choice of photograph to run by the headline was illustrative: the marquee of the Puyallup Tribe's Emerald Queen Casino. *Id.*

The Puyallup Tribe depends on revenue from the EQC, which funds 80% of tribal services and government operations, including various emergency services vital to protecting tribal members on the road. Economically, the Tribe hoped Spring 2020 would be a time for celebration, as it welcomed customers to a massive 310,000 square foot expansion of the East Tacoma facility, at a cost of \$450 million. The Puyallup Tribe, *Final Casino Update: Emerald Queen Casino to remain closed at least 2 more weeks* (Mar. 31, 2020), available at [http://news.puyalluptribe-nsn.gov/wp-content/uploads/2020/03/2020\\_0331\\_Final\\_Casino-update-002.pdf](http://news.puyalluptribe-nsn.gov/wp-content/uploads/2020/03/2020_0331_Final_Casino-update-002.pdf).

But instead, COVID-19 has forced the EQC to close, at a substantial cost to both its workforce and government services. Debbie Cockrell, *Closure of Emerald Queen casino operations extended; layoffs, furloughs announced*, THE NEWS TRIBUNE, May 15, 2020, available at <https://www.thenewstribune.com/news/local/article241669391.html>. 12% of the casino's 2,400-person workforce were laid off, with another 73% furloughed. *Id.* Although the Puyallup Tribe is in the process of reopening the EQC, it is severely limiting guest capacity to protect public health. Drew Mikkelsen, *Casinos in Western Washington reopen to big crowds*, KING 5,

available at <https://www.king5.com/article/news/local/casino-opening-line-covid-fife-emerald-queen/281-937f0fe4-42af-4fb0-97e3-4ee9075c7f76> (May 18, 2020).

These restrictions have cost the Puyallup Tribe around \$100 million and delayed opening of the East Tacoma expansion by several months. The News Tribune Editorial Board, *Risky gamble? Puyallup Tribe may reopen EQC casinos in May as Inslee's shutdown continues*, THE NEWS TRIBUNE, May 14, 2020, available at <https://www.thenewstribune.com/opinion/editorials/article242480916.html>.

Although the Puyallup Tribe cannot yet estimate the full effect of such privation in the long term, the immediate hardship is clear. On April 16, 2020, the EQC's closure and other COVID-19 impacts, forced the Puyallup Tribe to furlough nearly 40% of its governmental workforce. Debbie Cockrell, *Layoffs, furloughs announced for Puyallup tribal government workers after casino shutdown*, THE NEWS TRIBUNE, Apr. 4, 2020, available at <https://www.thenewstribune.com/news/local/article241764081.html>. Likewise, it has been forced to suspend long-planned capital projects in order to sustain the most basic government operations. *Id.*

I-976 threatens to cut off a major planned artery to tribal government offices, medical clinics, and the EQC East Tacoma expansion that offered to light the way to recovery. The wound that COVID-19 opened, I-976 threatens to drive still deeper.

#### IV. CONCLUSION

Amici ask this Court consider how its decision may impact Washington's tribes, whose members suffer traffic fatalities more than any other community and whose economies suffer behind congested roadways due to inadequate transit infrastructure. The Puyallup Tribe spent almost two decades fighting to connect its businesses and government to urban centers in Pierce and King Counties, to improve safety and overcome those barriers. ST 3, the first project in American history to promise Indian County mass transit, appeared to make that vision possible. A good neighbor, the Puyallup Tribe has worked with Sound Transit to complete vital transit projects like the TDLE, expecting Sound Transit to uphold its commitments. Together with the Nisqually Tribe, it needs these projects to succeed to clear the road to recovery from the economic devastation of COVID-19.

I-976 threatens to block that road and set transit planning back many years the Tribes cannot spare. The costs to tribal government, business, safety, infrastructure, regional access, and natural resources have been detailed. I-976 is just one more effort by those outside the reservations to dictate transit decisions within.

The Tribes respectfully request this Court reverse the orders under review, and direct the lower court to enjoin I-976's implementation.

June 8, 2020

Respectfully submitted

*s/ Brent W. Bottoms*

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Brent W. Bottoms (WSBA No. 36263)  
Nisqually Legal Department  
4820 She-Nah-Num Drive SE  
Olympia, WA 98513  
(360) 456-5221  
[bottoms.brent@nisqually-nsn.gov](mailto:bottoms.brent@nisqually-nsn.gov)  
**Attorney for Nisqually Indian Tribe**

*s/ Samuel J. Stiltner*

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Samuel J. Stiltner, (WSBA #7765)  
Director, Legal Department  
Law Office Puyallup Tribe of Indians  
3009 Portland Avenue  
Tacoma, WA 98404  
(253) 573-7875  
[sam.stiltner@puyalluptribe-nsn.gov](mailto:sam.stiltner@puyalluptribe-nsn.gov)  
**Attorney for Puyallup Tribe of  
Indians**

*s/ Jeremy F. Wood*

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Tahl Tyson (WSBA No. 21183)  
Jeremy F. Wood (WSBA No. 51803)  
LITTLER MENDELSON, P.C.  
One Union Square  
600 University Street, Suite 3200  
Seattle, WA 98101  
(206) 623-3300  
[ttyson@littler.com](mailto:ttyson@littler.com)  
[jfwood@littler.com](mailto:jfwood@littler.com)  
**Attorneys for all *Amici Curiae***

## CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2020, I electronically filed and caused to be served on all counsel of record the foregoing **Brief of Amici Curiae**.

s/ Jeremy F. Wood  
Jeremy F. Wood  
LITTLER MENDELSON, P.C.

# LITTLER MENDELSON

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- matthew.segal@pacificallawgroup.com
- paul.lawrence@pacificallawgroup.com
- pcpatvecf@piercecountywa.gov
- philip@burifunston.com
- randallg@sanjuanico.com
- sam.stiltner@puyalluptribe-nsn.gov
- shae.blood@pacificallawgroup.com
- shsappealnotification@atg.wa.gov

- spidgeon007@gmail.com
- stephen.pidgeon@comcast.net
- sydney.henderson@pacificallawgroup.com
- tamarag@sanjuanico.com
- ttyson@littler.com

**Comments:**

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Sender Name: Jeremy Wood - Email: jfwood@littler.com

Address:

600 UNIVERSITY ST STE 3200

SEATTLE, WA, 98101-3122

Phone: 206-765-9031

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