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

CASCADE BICYCLE CLUB, et.al.,  
  
Plaintiffs,  
  
v.  
  
PUGET SOUND REGIONAL COUNCIL,  
  
Defendant.

No. 10-2-22228-6 SEA

**PUGET SOUND REGIONAL COUNCIL’S  
RESPONSE TO *AMICUS CURIAE* BRIEF  
OF SNOQUALMIE INDIAN TRIBE**

**I. INTRODUCTION**

The Snoqualmie Indian Tribe (“Tribe”) chose not to participate in the three-year public process to develop Transportation 2040 (“*T2040*”) or its Environmental Impact Statement (“EIS”). In its *amicus* brief, the Tribe belatedly claims that the *T2040* EIS, which analyzes impacts over the thirty-year period of 2010 to 2040, did not consider climate change impacts on future generations. The record does not support that claim. Further, the heart of the Tribe’s argument is that the EIS and *T2040* are inadequate under the State Environmental Policy Act (“SEPA”) because they “did not provide an alternative that curtailed vehicle traffic or drastically reduced GHG emissions from the transportation sector in this region . . . .”

(*Amicus Curiae* Brief of Snoqualmie Indian Tribe (“Tribe Amicus Br.”) at 15 & 22,

1 (Dkt. #37).) Although the Tribe might wish that the Puget Sound Regional Council (“PSRC”)  
2 could prevent an increase in traffic, or limit future population growth only to those who ride  
3 transit, that point of view is similarly unsupportable. The Tribe’s *amicus* brief reflects a  
4 fundamental misunderstanding of what *T2040* and the *T2040* EIS can, and did, accomplish in  
5 the area of climate change. None of the Tribe’s arguments establish that PSRC’s adoption of  
6 *T2040* violated SEPA.  
7

## 8 **II. RESPONSE ARGUMENT**

### 9 **A. THE TRIBE’S LACK OF PARTICIPATION IN *T2040* IS NOTEWORTHY.**

10 The Tribe’s decision not to participate in the *T2040* public process is important to note  
11 for two reasons. First, since the Tribe did not participate in the multi-disciplinary effort to  
12 develop *T2040* and its Draft and Final EIS over the three-year public process conducted in  
13 2007 to 2010, it is not surprising that the Tribe is unaware of the full analysis conducted. For  
14 example, as explained in PSRC’s Response to Hearing Memorandum (e.g. at 51) (Dkt. #28),  
15 climate change impacts and mitigation options were discussed at numerous PSRC Board  
16 meetings. However, there is no record of the Tribe attending any PSRC Board meeting  
17 during the entire three-year process. (Declaration of Andi Markley (“Markley Decl.”) ¶ 4  
18 (Dkt. #52).)  
19

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21  
22 Second, although the Tribe’s current interest in the *T2040* EIS is sincere, it must be  
23 noted that the Tribe never submitted any comments regarding *T2040* or its EIS. (*Id.* at ¶5.)  
24 Under SEPA, failure to provide timely comment on environmental documents “shall be  
25 construed as lack of objection” to the environmental analysis. WAC 197-11-545. Although  
26 the Court has ruled that it will consider the Tribe’s *amicus* brief, that consideration must be  
27 tempered by this mandate in the SEPA Rules. The Tribe’s belated allegations about perceived  
28

1 shortcomings in the EIS are belied by the lack of comment during the three-year public  
2 process to develop the EIS and *T2040*. Under the SEPA Rules, lack of comment shall be  
3 construed as lack of objection.  
4

5 **B. *T2040* IS A PLAN FOR THE FUTURE.**

6 The Tribe's *amicus* brief claims that the *T2040* EIS is inadequate under SEPA because  
7 it fails to consider the impacts of *T2040* on future generations. However, the Tribe's claim  
8 here is perplexing, in light of the fact that the very essence of *T2040* is that it is a long-range  
9 transportation plan, designed to address critical issues such as congestion and mobility, the  
10 environment, and transportation finance in the central Puget Sound region for the next  
11 30 years, as well as the fact that the EIS for *T2040* analyzes the impacts of *T2040* for that  
12 same time period. PSRC at 00001209.  
13

14 By the year 2040, the Puget Sound region is expected to grow by an additional  
15 1.5 million persons, an additional 1.2 million jobs, and an additional 800,000 net new housing  
16 units. PSRC at 00001211. This dramatic growth is expected to increase the demand for  
17 travel within and through the region by about 40 percent by 2040. PSRC at 00003309. In  
18 light of the significant growth expected in the region, PSRC's purpose for *T2040* was to  
19 address the following question:  
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22 How can the region best provide the mobility required to support a growing  
23 population to the year 2040, sustain the region's environment and economic  
24 vitality, improve system safety and efficiency, and enhance the region's overall  
25 quality of life?

26 PSRC at 00001209. PSRC achieved this purpose through adoption of innovative  
27 transportation planning strategies, including, among other measures, an unprecedented level  
28 of attention to reducing greenhouse gas emissions, incorporating significant tolling of

1 roadways, and significant investments in transit and non-motorized travel. PSRC at  
2 00001456-57; PSRC at 0003351.<sup>1</sup>

3 The Tribe overlooks the enormous strides that *T2040* makes in establishing a  
4 sustainable transportation system, while still accommodating the region's population growth.  
5 Despite a projected 40 percent increase in population by 2040, implementation of *T2040* will  
6 achieve reductions in greenhouse gas emissions in the range of nine percent (without  
7 technology changes) to 31 to 48 percent (with technology changes) from the "business as  
8 usual" approach, represented by the EIS Baseline Alternative. PSRC at 00001466, 3351.  
9

10 Moreover, far from a static plan incapable of change for the next 30 years, *T2040* will  
11 be subject to continuous data collection, performance monitoring and opportunities for  
12 updates and amendments. PSRC at 00003415-16. Among other areas, PSRC's  
13 comprehensive monitoring system will address greenhouse gas and other emissions. PSRC  
14 at 00003417. PSRC took an extremely proactive stance at addressing greenhouse gas  
15 emissions in *T2040*, but the agency also recognizes that this is an emerging field, in which  
16 research and legislation will continue to evolve at both the state and national levels over the  
17 next 30 years. PSRC at 00002461. Although there are currently no emissions reductions  
18 goals established for individual sectors or specific regions, there may be future federal or state  
19 greenhouse gas emissions requirements that establish specific requirements for PSRC's  
20 transportation planning activities. PSRC at 00001456. According to the *T2040* EIS, "PSRC's  
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25 <sup>1</sup> The Tribe claims that *T2040* did not adopt any of the 10 measures mentioned in the national *Moving*  
26 *Cooler* study. (Tribe Amicus Br. at 23, Dkt. #37.) That is not the case. As detailed in PSRC's Response to  
27 Hearing Memorandum, the adopted *T2040* includes many of the measures assessed in *Moving Cooler*, such as,  
28 tolling of roadways, expanded transit, and increased bicycle and walkway improvements. In addition, "increased  
densities" is another *Moving Cooler* measure, and *T2040* builds on and reinforces PSRC's VISION 2040 land  
use plan for the region that calls for increased densities in urban centers. Also, when the Tribe claims that  
additional measures to reduce greenhouse gas emissions should have been included in the EIS, they have  
similarly not accurately accounted for the measures that were included in the EIS.

1 Boards have directed that Transportation 2040 should be flexible and adaptable in order to  
2 respond to new guidance and directions on a variety of issues, including climate change.”

3 PSRC at 00002461.  
4

5 In sum, *T2040* is in its very essence a plan for the future, and the Tribe’s allegations  
6 should be rejected.

7 **C. THE *T2040* EIS INCLUDES A COMPREHENSIVE ASSESSMENT OF**  
8 **GREENHOUSE GAS IMPACTS.**

9 The Tribe claims that the EIS is inadequate under SEPA because the EIS lacks the  
10 requisite “in-depth analysis” of climate change impacts caused by greenhouse gas emissions.  
11 (Tribe Amicus Br. at 20 (Dkt. #37).) However, review of the EIS makes clear that there is no  
12 basis for this claim. PSRC went above and beyond SEPA requirements to provide its decision  
13 makers with the best available information, based upon the best available science, regarding  
14 the potential greenhouse gas emission impacts that could arise from implementation of *T2040*.  
15

16 In reviewing the adequacy of an EIS under the “rule of reason,” Washington courts  
17 examine whether the environmental impacts of the proposed action were “sufficiently  
18 disclosed, discussed, and substantiated by supportive opinion and data.” *Citizens Alliance to*  
19 *Protect our Wetlands (CAPOW) v. City of Auburn*, 126 Wn.2d 356, 362, 894 P.2d 1300  
20 (1995). Courts will analyze whether the EIS provided decision makers with sufficient  
21 information so as to allow for an informed decision. *See Residents Opposed to Kittitas*  
22 *Turbines v. State Energy Facility Site Evaluation Council*, 165 Wn.2d 275, 311, 197 P.3d  
23 1153 (2008). Here, PSRC clearly provided its decision makers with sufficient information,  
24 substantiated by supportive data, to allow for an informed decision.  
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1                   **1. The EIS Fully Evaluated Impacts of Greenhouse Gas Emissions.**

2                   PSRC evaluated each EIS alternative for greenhouse gas emissions over the 30-year  
3 period of *T2040*, using the EPA’s draft Motor Vehicle Emission Simulator (MOVES)  
4 software. PSRC at 00001463. Both the EIS Executive Summary and its Chapter 6 on Air  
5 Quality and Climate Change contain exhibits that present the numerical results of PSRC’s  
6 analysis. PSRC at 00001236 (Exhibit 1-17), and PSRC at 00001465 (Exhibit 6-8). These  
7 exhibits identify the carbon dioxide emissions for mobile sources in annual tons for each of  
8 the EIS alternatives, including the 2040 Baseline Alternative, as well as the 2006 base year.  
9  
10 *Id.* Like the Plaintiffs, the Tribe may wish that the anticipated emissions levels presented in  
11 these exhibits were lower than they are; however, there is no denying that the anticipated  
12 cumulative and future impacts of each EIS alternative were in fact sufficiently disclosed to the  
13 decision makers.  
14

15  
16                   Moreover, in calculating the anticipated greenhouse gas emissions under each of the  
17 EIS alternatives, PSRC believes it was the first transportation planning entity in the country to  
18 utilize the EPA’s new MOVES emissions model; indeed, PSRC served as a beta test site for  
19 this state-of-the art modeling tool. PSRC at 00002449. Unlike other available technologies,  
20 the MOVES model allowed PSRC to generate emission rates by type for different speed  
21 ranges, resulting in more accurate calculations. PSRC at 00002446. As discussed in the EIS,  
22 MOVES:  
23

24                   will estimate emissions separately for each vehicle in the region rather than  
25 estimating emissions at a regional level . . . . **This model will increase the**  
26 **accuracy of air quality analysis significantly** by modeling each vehicle  
27 rather than groups of vehicles.  
28

1 *Id.* (emphasis added). Accordingly, PSRC not only disclosed the cumulative and future  
2 emissions impacts of each EIS alternative, but PSRC’s substantive data also contained a far  
3 greater level of accuracy than the typical modeling would have produced.  
4

5 In addition to the quantitative analysis of impacts resulting from PSRC’s sophisticated  
6 modeling, the EIS includes thorough discussion of the anticipated cumulative effects of  
7 increased greenhouse gas emissions, including potential impacts to water quality and  
8 hydrology, human health, marine ecosystems, and various animal species. Following are just  
9 a few examples of this discussion in the EIS:  
10

11 Expected consequences from climate change include an increase in global  
12 temperatures, resulting in a rising of the sea level. Other effects include a  
13 change in precipitation and impacts to local climates, which could alter forests,  
14 crop yields, and water supplies. Climate change may also affect human health,  
15 animals, and many types of ecosystems. For example, deserts may expand into  
16 existing rangelands, and features of some national parks may be permanently  
17 altered. The Puget Sound region may experience warmer summers and longer,  
18 wetter winters. Such effects could reduce forests in the Cascade Mountains and  
19 decrease snow packs. Reduced snow packs are likely to drastically change  
20 water availability in the region, which in turn will require a change in the way  
current water demands for agriculture, salmon populations, and energy uses are  
managed. Climate change is also likely to result in more winter floods and  
higher water temperatures that would further stress salmon populations, and  
potentially increase heat-related pollution such as ozone (UW Climate Impacts  
Group, 2007).

21 PSRC at 00001450.

22 Although climate change models do not provide detailed predictions at the  
23 local level, several general conclusions about the effects of climate change in  
24 the Pacific Northwest are now well accepted by scientists. The University of  
25 Washington Climate Impacts Group models indicate that the combination of  
26 reduced snowpack and earlier peak runoff times will affect regional water  
27 supplies and flooding. In addition, the biological communities of rivers,  
28 freshwater wetlands, and estuaries—fish, aquatic insects, birds, mammals,  
plants, and amphibians—are affected by the volume, timing, velocity, and rates  
of change of water supplies. Changes in the natural hydrology in terms of  
volumes or timing will affect aquatic life, although some of these impacts are  
not well understood . . . . All of the alternatives would result in continuing air

1 emissions (a potential source of pollutants to water, as well as a source of  
2 greenhouse gases that are linked to climate change). In addition, all of the  
3 alternatives assume the continued operation of the existing transportation  
4 system. As such, the existing impacts to water quality and hydrology would  
5 continue unless additional mitigation measures are implemented.

6 PSRC at 00001516, 18, 19.

7 The expected effects of climate change on ecosystems and species would occur  
8 under all of the alternatives. Specific effects of climate change would depend,  
9 in part, on the proximity of individual transportation projects to sensitive  
10 habitats and/or species. For example, the natural process of beach and bluff  
11 erosion could allow adaptation to sea level rise in some locations. New beaches  
12 could form by the erosion of bluffs as sea levels rise, with the bluffs becoming  
13 narrower and migrating inland from their current location. However, if  
14 shorelines are armored to protect transportation facilities located near the  
15 shoreline, then beach migration would not occur and habitat could be  
16 permanently lost.

17 PSRC at 00001540, 41.

18 Far from a superficial or cursory review, PSRC's *T2040* EIS went well beyond SEPA  
19 requirements in order to provide for its decision makers the best and most accurate  
20 information it could produce regarding emissions impacts associated with the EIS  
21 alternatives.

22 **2. The Non-Project Nature of the EIS Is also Relevant to Its  
23 Adequacy.**

24 In claiming that the *T2040* EIS contains insufficient analysis of the impacts of  
25 greenhouse gas emissions, or insufficient mitigation in response to those impacts, the Tribe  
26 fails to recognize that the *T2040* EIS is a *plan-level* or *non-project* EIS, rather than a *project-*  
27 *level* EIS. However, this is a relevant distinction in SEPA law.

28 The *T2040* EIS is a plan-level EIS because it is evaluating the impacts of a  
transportation plan for the Puget Sound region. However, PSRC is not responsible for  
implementing the transportation projects included in *T2040*. Rather, the choice of whether to

1 move forward with planning and implementation of individual projects will be the  
2 responsibility of individual cities, counties, state and federal agencies, ports, transit agencies,  
3 tribal nations, and non-governmental organizations. PSRC at 00001211. If and when a  
4 sponsor chooses to move forward with a specific transportation project, the project would  
5 undergo more detailed, project-specific environmental review under SEPA, including analysis  
6 of specific impacts arising from the project, as well as determination of appropriate mitigation  
7 to address those specific impacts. PSRC at 00001244.  
8

9  
10 This distinction is significant under SEPA. In situations such as this, where there will  
11 be phased SEPA review, first at the planning stage, and then at the project stage, the SEPA  
12 rules make clear that the EIS for the non-project proposal, such as the *T2040* EIS, is to be a  
13 higher level, more broad analysis of the alternatives and their impacts:  
14

15 The lead agency shall have more flexibility in preparing EISs on nonproject  
16 proposals, because there is normally less detailed information available on  
their environmental impacts and on any subsequent project proposals.

17 WAC 197-11-442; *see also CAPOW*, 126 Wn.2d at 363.

18 PSRC made this distinction clear throughout the EIS, emphasizing that additional,  
19 project-level SEPA review would occur in the future for each of the specific transportation  
20 projects, if and when they are implemented:  
21

22 This is a plan-level or non-project [FEIS] . . . Accordingly, the alternatives are  
23 defined and the environmental effects are evaluated at a relatively broad level.  
24 More detailed project-specific environmental review will be developed as  
25 appropriate in the future for projects identified in the Transportation 2040 plan  
that are selected for implementation by their sponsors.

26 PSRC at 00001210.

27 Consistent with the EIS analysis of impacts of *T2040* for the other elements of the  
28 environment, the EIS analysis of greenhouse gas emissions arising from implementation of

1 T2040 looked at the impacts of the EIS alternatives in the aggregate, with additional review to  
2 occur during the project-level SEPA review stage. PSRC at 00001470. At that time, the  
3 sponsor will be required to assess the specific impacts of the transportation project on air  
4 quality and climate change, and to implement appropriate mitigation measures in response to  
5 those impacts. *Id.*

7 As a non-project EIS, the T2040 EIS more than meets SEPA requirements. Indeed, as  
8 discussed above, the EIS goes above and beyond SEPA requirements in analyzing the  
9 potential greenhouse gas emissions arising from implementation of T2040. The Tribe's  
10 allegation that the EIS inadequately assess impacts is without merit.

12 **D. THE T2040 EIS INCLUDES A REASONABLE RANGE OF ALTERNATIVES.**

13 The Tribe claims that PSRC was required under SEPA to craft an EIS alternative that  
14 curtailed vehicle traffic. (Tribe Amicus Br. at 22 (Dkt. #37).) The law does not support the  
15 Tribe's claim.

17 Under SEPA, an EIS is to discuss "reasonable alternatives" and reasonable  
18 alternatives are "actions that could feasibly attain or approximate a proposal's objectives, but  
19 at a lower cost or decreased level of environmental degradation." WAC 197-11-786.

21 Washington courts apply the rule of reason in determining the adequacy of an EIS, giving a  
22 great deal of discretion to the agency in developing the range of alternatives, and in  
23 determining what alternatives are reasonable. *See* R. Settle, THE WASHINGTON STATE  
24 ENVIRONMENTAL POLICY ACT: A LEGAL AND POLICY ANALYSIS § 14.01[2][b], at 14-62,  
25 14-62.1 (4th ed. 1993); *see also* *Solid Waste Alternative Proponents v. Okanogan County*,  
26 66 Wn. App. 439, 445, 832 P.2d 503 (1992).

1 Here, PSRC acted within its discretion to develop a reasonable range of alternatives to  
2 meet the proposal's objectives. PSRC's EIS was the culmination of a rigorous, multi-year  
3 process in which PSRC defined its objectives, identified the major challenges and issues to be  
4 addressed by the EIS alternatives, and formulated the alternatives. PSRC at 00001270.  
5  
6 Having sat out that process, the Tribe now seemingly suggests that an objective of "no  
7 increase in traffic" or "drastic reductions" in greenhouse gas emissions should have been the  
8 paramount objective of *T2040*. However, that ignores the reality that a 30-year transportation  
9 plan for Puget Sound would have to address multiple objectives in addition to environmental  
10 stewardship, such as to: "Improve freight mobility to increase the health of the national, state,  
11 and regional economy" and "Meet the region's present and anticipated travel needs." PSRC  
12 at 00001210. Given a projected 40 percent increase in population by the year 2040, the  
13 Tribe's suggestion that the EIS should have had an alternative of no increase in vehicle traffic  
14 is unreasonable and one-dimensional.  
15

16  
17 To address the multiple objectives of a regional transportation plan, the EIS included a  
18 wide range of alternatives from the Baseline of no special measures to address greenhouse  
19 gases all the way to Alternative 5 that included tolling of vehicles on every highway and  
20 every arterial in the entire four-county Puget Sound region. In addition, the Preferred  
21 Alternative identified in the *T2040* EIS includes more transit service than any other  
22 alternative, miles of biking and walking facilities focused on access to transit stations and  
23 completing regional trail links, and replacement, completion, or expansion of certain roadway  
24 projects necessary to support regional development and keep freight moving to support a  
25 strong economy. PSRC at 00001300-01, 0004.  
26  
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1 Furthermore, in adopting the statewide greenhouse gas emissions reductions in 2008,  
2 the legislature addressed transportation sector emissions by, among other things, adopting  
3 “benchmarks” for reductions in vehicle miles traveled (“VMT”). LAWS OF 2008, ch. 14  
4 (E2SHB 2815), § 8, *codified at* RCW 47.01.440. These benchmarks establish per capita  
5 VMT reductions for the years 2020, 2035 and 2050. PSRC projects that *T2040* will reduce  
6 daily per capita VMT by 2040 to below the benchmark established for 2035, and *T2040*  
7 incorporates strategies to support further VMT reductions. PSRC at 00001220, 1468. Thus,  
8 *T2040* makes significant progress in reducing daily per capita VMT, a fact that Snoqualmie  
9 fails to note. In sum, the EIS included a reasonable range of alternatives, and an EIS  
10 alternative that resulted in no increase in vehicle traffic is simply not a “reasonable  
11 alternative” under SEPA.  
12  
13

### 14 III. CONCLUSION

15 PSRC has taken proactive strides in planning for a long-term, sustainable  
16 transportation system for the region. PSRC’s *T2040* and EIS are the result of a vigorous,  
17 multi-year analysis that uses the best available science, and extends far beyond what is legally  
18 required of PSRC. Because the Tribe fails to acknowledge or understand the fundamental  
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1 characteristics of *T2040* and the *T2040* EIS, and what these documents accomplish, the claims  
2 in the Tribe's *amicus* brief add little of merit to the Court's consideration of the issues in this  
3 case.  
4

5 DATED this 17th day of June, 2011.

6 HILLIS CLARK MARTIN & PETERSON, P.S.

7  
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16 psrc answer to snoqualmie indian tribe amicus.docx  
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