United States Department of the Interior
OFFICE OF THE SECRETARY
Washington, DC 20240

JUN 15 2015

The Honorable Jay Inslee
Governor of Washington
Olympia, Washington 98504

Dear Governor Inslee:

On February 24, 2006, the Spokane Tribe of Indians (Spokane Tribe) submitted a request to the Bureau of Indian Affairs asking that the Department of the Interior (Department) determine that land taken into trust on August 16, 2001, for economic development purposes by the United States for the Tribe in Airway Heights (Site), is eligible for gaming pursuant to the Indian Gaming Regulatory Act (IGRA).

As explained in the enclosed Record of Decision, we have completed our review of the Spokane Tribe's request under applicable law and have determined, subject to your concurrence, that the Spokane Tribe's proposed gaming establishment at the Site would be in the best interest of the Tribe, and would not be detrimental to the surrounding community.

Poverty, and the tragedies that sometimes accompany distressed areas, are among the most serious challenges that we face in Indian country. The Spokane Tribe has significant economic challenges. The unemployment rate on its Reservation is nearly double that of the surrounding communities and 25 percent of Reservation families live in poverty. Approximately 10 percent of the Spokane Tribe's population is on a waiting list for housing that the Tribe cannot provide. Living conditions for the 2,849 members of the Spokane Tribe are, on average, far below the standards of surrounding communities.

The Spokane Tribe has always sought self-sufficiency, but the traditional economic activities of the Tribe are no longer viable as sources of sustainable income. From the Spokane Tribe's early history until the late 1930s, the Tribe depended on salmon for food and income. However, the construction of the Grand Coulee Dam in 1939 barred salmon migration to the Reservation. Following the destruction of the Spokane Tribe's fishing industry, the Tribe turned to timber and uranium mining for sources of employment and revenue. A decline in the uranium industry in the early 1980s forced mining operations on the Reservation to be terminated, but left a troubling legacy of contamination. Consequently, the community is facing significant health problems. The Spokane Tribe is also facing serious environmental remediation issues from contamination at the Midnite Mine Superfund site located on the Reservation. While the Spokane Tribe still engages in the timber industry, it has proven to be an unstable source of revenue. For example, from 2007 to 2009, the Spokane Tribe's timber revenue fell 65 percent.

The Spokane Tribe has high hopes for gaming revenues, and gaming at the Site would provide a new economic engine to lift the Tribe's members out of poverty by providing revenues for employment on the Reservation and in the surrounding area. The Spokane Tribe plans to use gaming revenues to address uranium contamination (using 27 percent of expected gaming revenue), governmental programs including healthcare (27.5 percent), education (1.2 percent), and cultural preservation (25 percent). It should be noted that Airway Heights, Washington, where the facility would be located, is within the Spokane Tribe's aboriginal territory and is located in an area with historical significance to the Spokane Tribe.

There is, of course, precedent for this action. The Kalispel Tribe successfully navigated the same process, in the same State, in the same city, in 1997. In that year, then-Secretary of the Interior Bruce Babbitt and Governor Gary Locke concurred in a similar determination that a gaming establishment on a 40.06 acre parcel of land in Airway Heights was in the best interest of the Kalispel Tribe and would not be detrimental to the surrounding community. As a result of that 1997 Determination, the Kalispel Tribe developed the Northern Quest Casino and Resort, a gaming facility that has for several years brought increased economic opportunity to the Kalispel Tribe through its gaming revenues. The Kalispel Tribe have had nearly 2 decades with little or no direct competition.

The success of the Kalispel Tribe has been inspirational. We visited the Kalispel Reservation in the course of considering the Spokane Tribe's application. The Kalispel Tribe, which has approximately 434 members and is located approximately 60 miles north of Spokane, has used gaming revenues to support important governmental purposes, including cultural preservation. The Kalispel Tribe has a beautiful community center that likely would not have been possible without gaming revenues, and has made significant progress addressing its own serious economic and natural resource challenges. Indeed, one of the most difficult aspects of this action is the potential economic impact on the Kalispel off-reservation casino in Airway Heights.

The proposed Spokane gaming operation is roughly 2 miles from the Kalispel Tribe's existing Indian gaming operation in Airway Heights, but is clearly located within the Spokane Tribe's aboriginal lands. Both Tribes' Reservations are some distance from Airway Heights. In 1997, Secretary Babbitt approved the Kalispel Tribe's proposed gaming operation in Airway Heights over the Spokane Tribe's concerns that the project would negatively impact the Spokane Tribe's existing casinos, which are located farther outside the city. Secretary Babbitt, in his determination in favor of the Kalispel Tribe's gaming operation, recognized that the Spokane Tribe's existing casinos would experience intense competition from the new Kalispel operation, but decided that competition alone was not sufficient to conclude that the project would be detrimental to the surrounding community. We reach the same conclusion as Secretary Babbitt. The IGRA does not guarantee that tribes operating existing facilities will conduct gaming free from competition.

Economic competition between tribes is one of the most difficult issues facing a Federal trustee with the responsibility to support all tribes. We realize that a second casino could create competition for the gaming revenues earned by the Kalispel Tribe, which leveraged itself financially to build its beautiful new casino. The question is whether the Spokane Tribe should

be denied a similar opportunity because the Kalispel Tribe is already there. The Kalispel Tribe's leadership is opposed to the Spokane Tribe's proposed gaming establishment for fear that it would harm the Kalispel's revenues. In our analysis below, we conclude that the proposed site for the Spokane Tribe's casino in Airway Heights is within the aboriginal area of the Spokane Tribe, and that Airway Heights is not within the aboriginal lands of the Kalispel Tribe. We note that it would be deeply ironic to allow the Kalispel Tribe to develop a casino within the Spokane Tribe's aboriginal area, while denying the Spokane Tribe the opportunity to use its own aboriginal lands for the same purpose.

Perhaps the best solution to the problem of a potentially diffused market share for each Tribe involves negotiation toward a model that benefits both Tribes. Cooperation could preserve the capital investments made for the Kalispel Tribe and simultaneously increase the number of Indian people benefiting from gaming. The recently signed compact appears to increase gaming and opportunities for Washington tribes, so it may be a convenient time for a compromise. Of course, it is a matter of relationships between sovereign tribal governments whether to engage in an effort to benefit both tribes or, instead, to risk a costly battle over market share. As trustee, we can merely ask tribal nations to try to work together for the good of both.

We know that this kind of negotiation would not seriously begin without the decision that we are issuing today. We know that each Tribe will be tempted to spend millions of dollars on lobbyists and lawyers to fight rather than cooperate. While the Governor considers whether to concur, we respectfully encourage the Kalispel Tribe and Spokane Tribe to take a higher path and engage in mediated negotiations to determine the best course of action to benefit both Tribes and their citizens. Such decisions should be made on the basis of economics and the public good, not on politics. Barring a compromise, however, both Tribes should have the opportunity to conduct gaming on trust lands to benefit their tribal communities.

In our work, we have carefully considered the views of local municipalities and other residents. While the City of Airway Heights fully supports the Spokane Tribe's request, the City of Spokane's views have been more mixed, and have evolved over time. Virtually all of the members of the community seem to share the desire to ensure that Fairchild Air Force Base (AFB), the community's largest employer, continues to operate uninhibited. We recognize the importance of Fairchild to the regional economy.

Thus, prior to making our determination, we considered the concerns of all those who submitted comments and met several times with local government and community groups. Some initially questioned aspects of the Spokane Tribe's plans, including whether the proposed facility's height, lighting, and noise might encroach upon the flight path of aircraft at Fairchild AFB. When the City of Spokane, Greater Spokane, Incorporated, or others raised concerns, the Spokane Tribe listened, conducted studies, and/or altered its plans to address them. For example, the Tribe participated in a Joint Land Use Study, which provided recommendations for land use restrictions designed to protect the integrity of operations at Fairchild AFB. The Spokane Tribe then requested that the Federal Aviation Administration (FAA) conduct a further study to determine whether the project would be hazardous to air navigation. Despite the FAA's determination that a structure up to 140 feet high could be erected safely at the site, the Spokane Tribe nevertheless agreed to limit the height of the proposed structure to 60 feet. After the City

of Spokane's concerns were addressed, the City has since amended its comments to support the project, noting that the proposed project is important to the Spokane region and that the region has few similar opportunities for substantial private investment.

The Department worked with the Spokane Tribe and the United States Air Force to establish procedures to mitigate any potential encroachment and to ensure that the base will operate undisturbed. Cooperation is critical to the success of Fairchild AFB and the proposed gaming operation. The U.S. Air Force, which operates Fairchild AFB, did not submit comments opposing the project. Notably, the Principal Deputy Assistant Secretary of the Air Force wrote a letter dated February 3, 2015, expressing the Air Force's commitment to work collaboratively with the Spokane Tribe as the project moves forward.

Major economic developments can be controversial. It is our responsibility to determine whether the Spokane Tribe's proposed casino is in the best interest of the Tribe and to consider whether the project would be detrimental to the surrounding community. Critical in our determination is weighing the creation of employment opportunities by the project as well as our commitment to implementing the intent of IGRA. The Spokane Tribe's proposed project would create jobs and increase tribal public service programs on the Spokane Reservation. As Federal resources shrink, tribes must necessarily become more self-sufficient to sustain their communities. As a result, economic development for Indian tribes is a top priority. Accordingly, we have determined that this proposal is in the best interest of the Spokane Tribe and its members and is not detrimental to the surrounding community.

We request your concurrence with the determination pursuant to 25 U.S.C. § 2719(b)(1)(A). Thank you for your consideration.

Sincerely,

Kevin K. Washburn
Assistant Secretary – Indian Affairs

Enclosure

cc: Chairman, Spokane Tribe of Indians
Regional Director, Northwest Regional Office

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I. Background

The Spokane Tribe of the Spokane Reservation (Tribe or Spokane Tribe) is a federally recognized Indian Tribe with a total enrollment of 2,849 members.[1] The Tribe's 157,376 acre reservation (Reservation) is located approximately 40 miles northwest of the City of Spokane in Stevens and Lincoln Counties, Washington.

On August 16, 2001, the United States acquired a 145-acre+/- parcel (Site) of land located in the City of Airway Heights, Spokane County, Washington, in trust for the Tribe for economic development purposes. The Tribe is seeking to conduct gaming at the Site pursuant to the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 *et seq.*

Proposed Project

Within the trust property, the Tribe is seeking to develop a phased construction of a mixed-use development that includes a class II and class III casino and resort on the Site (Project). The Project will include approximately 2,500 electronic gaming devices, 50 table games, and 10 poker room tables within a 98,442 square feet (s.f.) gaming floor area.[2] The facility will include a 300 room hotel with a fully enclosed 71,719 s.f. indoor swimming pool area, a spa/wellness center, and a fitness center. The facility will also include a cafe, steakhouse, three restaurants, food court, two bars, and a convention/banquet area. In addition, 96,634 s.f. of lifestyle retail (traditional retail combined with leisure amenities) will be located on the southwest side of the casino-resort facility, and a 107,490 s.f. specialty retail "box store" (large retail establishment, usually part of a chain) with direct access to the casino floor will be constructed. An additional 155,145 s.f. of retail space would be included on the Site. A total of 4,753 surface parking spaces would be provided, and 1,500 parking spaces would be provided in a four-story concrete parking structure to be located on the west side of the casino-resort facility. The Tribe will construct a 10,480 s.f. tribal cultural center, a 14,036 s.f. tribal police and fire station, and a 41,633 s.f. two-story commercial building. A 13.25 acre area in the northwestern portion of the Site would be set aside as open space to protect the wetland/vernal pool located in that area. At final completion, the development will have a footprint of 986,366 s.f. excluding the parking structure.[3]

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[1] Letter from Rudy Peone, Chairman, Spokane Tribal Business Council, to Kevin Washburn, Assistant Secretary – Indian Affairs (January 6, 2015) [hereinafter Updated Unmet Needs Report], in Office of Indian Gaming Binder, Tab 12 (Attachment 1 to this Determination).

[2] First Supplement to Spokane Tribe of Indians' Application for a Secretarial Determination, Spokane Tribe, rec'd by the Office of Indian Gaming on May 8, 2012, at 1- 2 [hereinafter Spokane Tribe's First Supplement], (Attachment 2 of this Determination), in Memorandum from Northwest Regional Director, to Director, Office of Indian Gaming, (rec'd Nov. 8, 2012) [hereinafter Regional Director's Recommendation], Ex. 2a (Attachment 3 to this Determination).

[3] Final Environmental Impact Statement, Spokane Tribe of Indians, West Plains Casino and Mixed-Use Development Project [hereinafter FEIS], vol. II, § 2.3.1, in Regional Director's Recommendation, Ex. 24.

The Spokane Tribe

In their early existence, the Spokane Indians lived on over 3 million acres of land in what is now eastern Washington State.[4] The Spokane ancestral homelands were located along the Spokane River from the Idaho border to the confluence of the Spokane and Columbia Rivers. The Spokane Indians fished in the Spokane and Columbia Rivers and used Spokane Falls as a gathering place for their community events. By Executive Order on January 18, 1881, President Rutherford B. Hayes formally set aside and reserved the territory for the use and occupancy of the Spokane Indians.[5] In August 1877, after the Commissioner of Indian Affairs directed the Indian inspector in charge of all agencies in the Washington territory to establish permanent reservations, representatives of the United States Government and the Tribe entered into an agreement pursuant to which the Tribe agreed to relocate to land set aside for the Tribe as its reservation.[6]

Following the establishment of its reservation in 1877, the Spokane Tribe's land was allotted and opened for acquisition by non-Indians. In the Act of May 27, 1902, Congress opened the mineral lands of the Spokane Reservation. Congress subsequently directed the Secretary of the Interior to make allotments in severalty to the Indians of the Spokane Indian Reservation. Upon the completion of allotment, the President proclaimed the remaining lands on the Spokane Reservation not already allotted to Indians, used or reserved by the Government, or occupied for school purposes, to be opened to exploration, location, occupation, and purchase under the mining laws.[7]

Former economic activities

The Tribe historically relied on fall and spring salmon runs along the Spokane River from its mouth at the Columbia River southeasterly to Spokane Falls.[8] Prior to the completion of the Grand Coulee Dam on the Columbia River in 1939, anadromous fish comprised 70-80 percent of the calories consumed by tribal members.[9] The dam blocked all salmon and steelhead from the upper Columbia River Basin after its completion.

Following the destruction of the salmon fishery, timber extraction on the Reservation provided a leading source of tribal governmental revenues and tribal member employment. The timber

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[4] Spokane Tribe of Indians Unmet Needs Report (November 17, 2011) [hereinafter 2011 Unmet Needs Report], Appendix A of the Final Environmental Impact Statement, (Attachment 4 to this Determination). The Tribe submitted an additional Unmet Needs Report date September 25, 2014, which includes the information from the 2011 Unmet Needs Report,.

[5] *Id.*; Regional Director's Recommendation at 18.

[6] *Northern P.R. Co. v. Wismer*, 246 U.S. 283 (1918).

[7] *See e.g., U.S. v. Newmont Mine Corp. et al.*, 504 F. Supp. 2d 1050, 1054 – 1055 (E. D. Wash. 2007).

[8] Updated Unmet Needs Report at 2.

[9] *Id.*

market's substantial decline, however, resulted in significant job loss in the tribal timber industry.[10] The Tribe's timber revenue fell from (b) (4) in 2007 to (b) (4) in 2009.[11]

Uranium mining was also a source of tribal member employment.[12] Throughout the 1970s and into the early 1980s, 2 uranium mines employed hundreds of tribal members. The mines were shut down permanently in 1982, but left significant contamination, as discussed in more detail below.[13]

Natural Resource and Contamination Issues

The Tribe has faced significant challenges in protecting tribal environmental and natural resources within its Reservation.

Midnite Mine Superfund Site

The Midnite Mine Superfund Site is located on the Tribe's Reservation approximately 45 miles from the City of Spokane.[14] The mine is an inactive open-pit uranium mine that closed in 1982. The mine consists of 350 acres of land disturbed by active mining that took place for over 23 years, beginning in 1954. Approximately 5.3 million tons of ore and 33 million tons of waste rock were removed from 9 pits.[15] Approximately 2.9 million tons of ore were hauled offsite and processed at the Dawn Mill adjacent to the Reservation in the town of Ford, Washington.

The Tribe reported that there have been continuous releases from the mine of hazardous substances throughout the Reservation, including releases into lands and waters in the Blue Creek drainages (estimated 6 creek miles) and the lands and waters in drainages along the Ford-Wellpinit Road. That road was the route historically used to transport ore from the mine off Reservation for milling at the Dawn Mill site.[16] In addition, releases of contaminants from the mill have come to be located in waters and wetlands in Chamokane Creek, which flow through the Spokane Indian Reservation (estimated 5 creek miles and 10 wetland acres).[17]

Mine-related contaminants at the site and at the mill include radionuclides and heavy metals mobilized as a result of mining activities and environmental processes, such as acid mine

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[10] Updated Unmet Needs Report at 2.

[11] Background Study and Competitive Effects Analysis: West Plains mixed Use Development, conducted by the Innovation Group (2011) [hereinafter 2011 Innovation Group Report] at 5 in Appendix G of the Draft Environmental Impact Statement, (Attachment 5 to this Determination).

[12] Updated Unmet Needs Report at 2.

[13] Updated Unmet Needs Report at 2.

[14] Midnite Mine Superfund Site, Spokane Indian Reservation Washington, Record of Decision (September 2006) [hereinafter Midnite Mine ROD] at 1-1, in Updated Unmet Needs Report Ex. 9, (Attachment 6 to this Determination).

[15] *Id.* at 2-6.

[16] Updated Unmet Needs Report at 13.

[17] *Id.*

drainage, radioactive decay, as well as particulate transport in air, surface water, and groundwater.[18] Additional releases of contaminants in ground water and surface water continue and are expected to occur during remediation activities.[19] The Tribe reported that heavy metals, radioactive materials, and other mine-related contaminants from the mine onto other lands and waters within the Superfund Site have occurred and continue to occur as have releases of mill-related contaminants to waters and wetlands in Chamokane Creek.[20] The Tribe also reported that since at least 1980, waters and wetlands in the Blue Creek and Chamokane Creek drainages affected by the mine and the mill have exceeded relevant federal and/or tribal water quality standards.[21]

In 2005, the United States filed a cost recovery action against the mining companies, under which the Government sought reimbursement for past cleanup costs incurred by the Environmental Protection Agency (EPA) at the site and a declaratory judgment on liability for future costs needed to restore the site. The mining companies filed counterclaims against the United States. In 2007, the Federal district court issued an opinion on the liability of the United States under Comprehensive Environmental Response Compensation Liability Act (CERCLA).[22]

In 2006, the EPA issued its Record of Decision (ROD) for remediation of the contaminated sites.[23] The ROD concluded that remediation is necessary to protect the public health and welfare from actual or threatened releases of hazardous substances into the environment.[24] It further stated that such a release or threat of release may present an imminent and substantial endangerment to public health, welfare, or the environment.[25] The ROD also concluded that the biggest risks to tribal members on the Reservation result from the consumption of plants, inhalation of indoor radon, consumption of livestock, and use of surface water and groundwater as drinking water and for other purposes.[26]

In 2012, the EPA reached a settlement with the mining companies and the Department of the Interior, under which the mining companies would design, construct, and implement the cleanup plan of 40 million cubic yards of contaminated soil and water that was projected to cost approximately $193 million at that time.[27] The Department of the Interior also agreed to make payments. The settlement agreement was approved by the district court.

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[18] Midnite Mine ROD at 14.

[19] *See* USEPA's Five-Year Review Report (April 18, 2014) at 21-23, available at http://www.epa.gov/region10/pdf/sites/midnite_mine/midnite_mine_1st_5yr_review_2014.pdf (last visited on 05/15/15).

[20] Updated Unmet Needs Report at 14.

[21] *Id.*

[22] *U.S. v. Newmont Mine Corp. et al.*, 504 F. Supp. 2d 1050 (E. D. Wash. 2007).

[23] *See supra* note 12.

[24] Midnite Mine ROD at 2-64.

[25] Midnite Mine ROD at 2-64.

[26] Midnite Mine ROD at 2-48.

[27] *See* USEPA website http://www2.epa.gov/enforcement/case-summary-cleanup-agreement-reached-former-uranium-mine-spokane-indian-reservation#summary (last visited 05/22/15).

Groundwater Contamination

All of the homes on the Reservation use groundwater for drinking and domestic use, and wells are tested on a regular basis to monitor water quality.[28] The Tribe reported that uranium and the uranium-decay product "gross alpha particle" has been identified, in amounts exceeding EPA Safe Drinking Water Standards, in 31 domestic wells on the Reservation.[29] Additionally, gross alpha particle contamination was discovered in the well water supplying the Reservation's only middle/high school located in Wellpinit.[30] The Tribe has received grant funds from the Department of Housing and Urban Development to begin remediating the contaminated wells. However, the Tribe requires approximately $500,000 to complete its investigation of potential groundwater contamination, and approximately $100,000 per year to cover ongoing monitoring and maintenance costs and the expansion of its public water system.[31]

Furthermore, the Tribe reported that arsenic has recently been found in many wells at hazardous levels throughout the Reservation, including the public drinking water systems serving the 124 homes at the Boardman and Ford housing cluster.[32] Filtration will be required at an estimated cost of $1.12 million combined with $300,000 annual operating costs.[33] Also, wells providing water for 15 homes with high levels of arsenic are located near the Tribe's Two-Rivers development. Rather than providing filters for these wells, the Tribe will expand the Two-Rivers potable water system to provide safe drinking water to these homes.[34] The Tribe will require additional revenue to fund the expansion.

Dump closure and reclamation

Historically, the Tribe operated two landfills, one in Wellpinit and one in the western portion of the Reservation.[35] Neither landfill was appropriately lined to limit groundwater contamination. The landfill in the western portion of the Reservation was abandoned and covered with clay in 2010. The Tribe reported that the cost of covering the landfill was approximately $300,000.[36] Although the clay covering reduces the amount of water percolating through the abandoned site, there is still a risk to groundwater quality. The Wellpinit landfill now serves as the only landfill for the Reservation and has been in use for approximately 45 years. To adequately reduce

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[28] 2011 Unmet Needs Report at 21; Updated Unmet Needs Report at 16.

[29] Updated Unmet Needs Report at 15. For further information about gross alpha particle contamination *see* USEPA discussion of radionuclides in drinking water at http://water.epa.gov/drink/contaminants/basicinformation/radionuclides.cfm (last visited 05/22/15).

[30] Updated Unmet Needs Report at 15. *See also* Map, Spokane Indian Reservation Drinking Water Exceedances December 2014 in Updated Unmet Needs Report.

[31] Updated Unmet Needs Report at 15.

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] Updated Unmet Needs Report at 18.

[36] Updated Unmet Needs Report at 16.

groundwater contamination, the Tribe stated that it must remediate both landfill sites and start transferring the waste generated on the reservation to a facility that is appropriately equipped.[37]

The Tribe reported that the Indian Health Service completed an initial estimate for remediation of the Wellpinit site and concluded that the proper removal of the landfill would cost approximately $4 to 5 million.[38] Assuming that the landfill on the western portion of the reservation would have an equivalent cost, the Tribe requires approximately $9 million to safely close and reclaim the two existing landfills.[39] The Tribe stated that in order to begin transferring solid waste to a more appropriate facility, it must construct and operate a transfer station. The Tribe estimates that construction of the transfer station would cost approximately $310,000, and approximately $250,000 per year to operate.[40]

Existing Gaming Facilities

The Tribe currently operates two gaming facilities. The Two Rivers Resort Casino located within the Reservation boundaries is located approximately 45 miles northwest of the City of Spokane, along State Route 25 (27 miles from the tribal administration office in Wellpinit). The Two Rivers Resort Casino operates on a seasonal basis. The Chewelah Casino is located approximately 42 miles north of the City of Spokane on land acquired in trust before October 17, 1988, along U.S. 395 (37 miles from the tribal administration office).

As discussed in the BIA's report *Background Study and Competitive Effects Analysis: West Plains Mixed Use Development*, prepared by the Innovation Group (2011 Innovation Group Report), a variety of reasons, including increasing competition from other gaming venues and the economic downturn of 2008, have contributed to a significant decrease in the Tribe's gaming revenues.[41] Additionally, until 2004, the Tribe received a share of the gaming revenue from slot machines placed in private locations. When the gaming compact with the State was signed in 2007, these private-location lease agreements were cancelled.[42] Though the Tribe experienced some revenue growth at its Chewelah casino, the modest increase nevertheless provides insufficient income to the Tribe to meet is financial needs.

Total gaming revenues declined from $(b) (4) in 1998 to $(b) (4) in 2009.[43] This represents an average annual decline of (b) (4).

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[37] *Id.*

[38] *Id.*

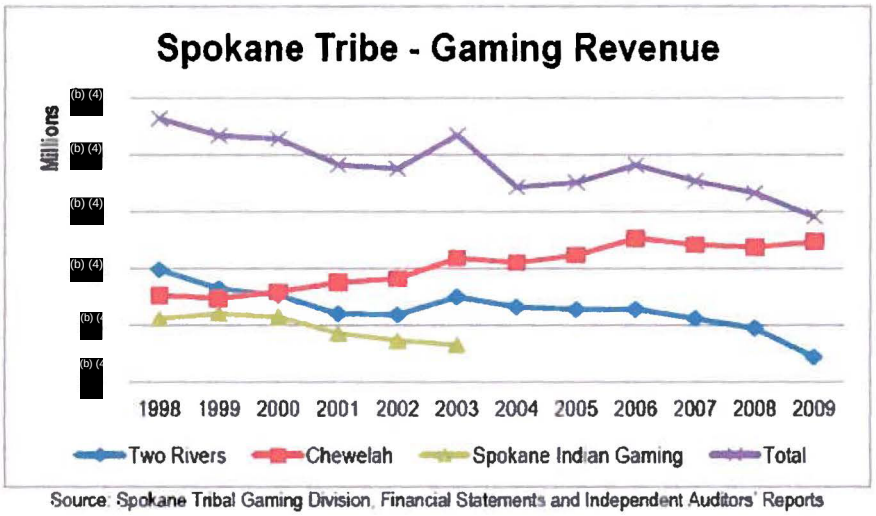
[39] *Id.*

[40] *Id.*

[41] *See supra* note 10.

[42] 2011 Innovation Group Report at 6, note 6.

[43] 2011 Innovation Group Report at 6.



Source: Spokane Tribal Gaming Division, Financial Statements and Independent Auditors' Reports

While the overall gaming revenues declined during that period, gaming revenues at Chewelah casino increased from (b) (4) in 1998 to (b) (4) in 2009, an average annual growth of (b) (4).[44] However, revenue from Two Rivers decreased approximately (b) (4) annually, from (b) (4) in 1998 to $(b) (4) in 2009.[45] During the period 2010 to 2013, overall gaming revenue increased to (b) (4) from its lowest figure in 2009.[46]

[44] *Id.*

[45] *Id.*

[46] Updated Unmet Needs Report at 7.

GAMING REVENUE 1998-2013

Fiscal Year ending Sept. 30	Two Rivers	Percent Change (%)	Chewelah	Percent Change (%)	Spokane Indian Gaming[1]	Percent Change (%)	Total	Percent Change (%)
1998	(b) (4)		(b) (4)		(b) (4)		(b) (4)	
1999	(b) (4)	(b) (4)	(b) (4)	(b) (4)	(b) (4)	(b) (4)	(b) (4)	-(b) (4)
2000	(b) (4)	(b) (4)	(b) (4)	(b) (4)	(b) (4)	(b) (4)	(b) (4)	-(b) (4)
2001	(b) (4)	-(b) (4)	(b) (4)	(b) (4)	(b) (4)	(b) (4)	(b) (4)	(b) (4)
2002	(b) (4)	-(b) (4)	(b) (4)	(b) (4)	(b) (4)	-(b) (4)	(b) (4)	-(b) (4)
2003	(b) (4)	(b) (4)	(b) (4)	(b) (4)	(b) (4)	(b) (4)	(b) (4)	(b) (4)
2004	(b) (4)	(b) (4)	(b) (4)	(b) (4)			(b) (4)	(b) (4)
2005	(b) (4)	(b) (4)	(b) (4)	(b) (4)			(b) (4)	(b) (4)
2006	(b) (4)	(b) (4)		(b) (4)			(b) (4)	(b) (4)
2007	(b) (4)	(b) (4)	(b) (4)	-(b) (4)			(b) (4)	(b) (4)
2008	(b) (4)	-(b) (4)	(b) (4)	(b) (4)			(b) (4)	(b) (4)
2009	(b) (4)	-(b) (4)	(b) (4)	(b) (4)			(b) (4)	-(b) (4)
2010	(b) (4)	(b) (4)	(b) (4)	(b) (4)			(b) (4)	(b) (4)
2011	(b) (4)	(b) (4)	(b) (4)	(b) (4)			(b) (4)	(b) (4)
2012	(b) (4)	(b) (4)	(b) (4)	(b) (4)			(b) (4)	(b) (4)
2013	(b) (4)	(b) (4)	(b) (4)	(b) (4)			(b) (4)	%

The opening of the Kalispel Indian Community of the Kalispel Reservation's (Kalispel Tribe) Northern Quest Casino and Resort (Northern Quest) within the City of Airway Heights in 2001 contributed to a revenue decline (b) (4) at Two Rivers.[47] While the gaming revenue at Chewelah Casino increased between 2001 and 2009, it only increased by approximately (b) (4) (b) (4) annually, which is less than the growth in gaming revenues experienced across Washington as discussed below.[48] Further expansions at Northern Quest in 2007 resulted in a 2008 reduction of (b) (4) in revenue at Two Rivers and (b) (4) reduction in revenue at Chewelah.[49]

Declines in operating income at Chewelah and Two Rivers were significant through 2006 but gradually increased at Chewelah beginning in 2006. Although Chewelah's gaming revenues were fairly steady from 2006 through 2009, total operating income from both casinos declined from (b) (4) in 2006 to (b) (4) in 2009.[50] In both 2008 and 2009, Two Rivers posted operating losses. In addition, (b) (4) had to be transferred from the Tribe to Two Rivers in 2009 in order to compensate for these operating losses.[51]

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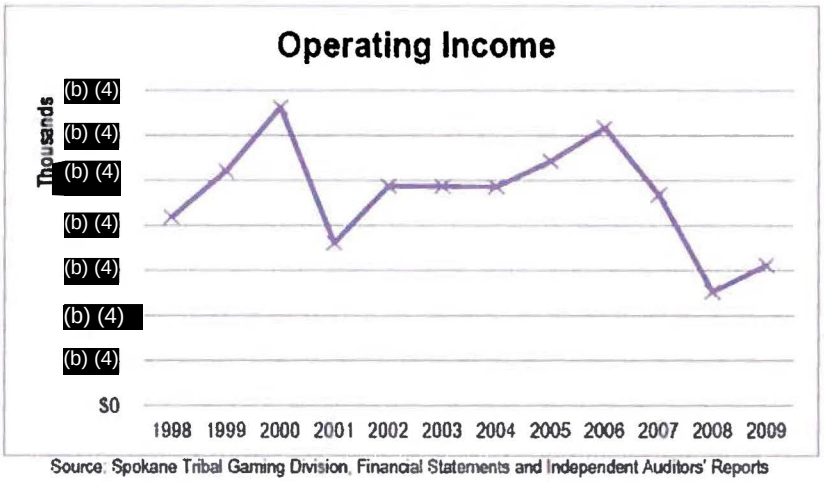
[47] 2011 Innovation Group Report at 6.

[48] *Id.*

[49] *Id.* Updated Unmet Needs Update at 7-8 (Table 3-2).

[50] 2011 Innovation Group Report at 7.

[51] *Id.*



Source: Spokane Tribal Gaming Division, Financial Statements and Independent Auditors' Reports

Total operating income for the casino enterprises peaked at (b) (4) in 2000.[52] In 2001, total operating income dropped by (b) (4) with both Two Rivers and Chewelah reporting low operating incomes. The second peak in operating income occurred in 2006 at (b) (4). Subsequently, the total operating income for these tribal enterprises dropped to (b) (4) in 2008. Since 2009, Chewelah's operating income has shown an increase to (b) (4) in 2013.[53]

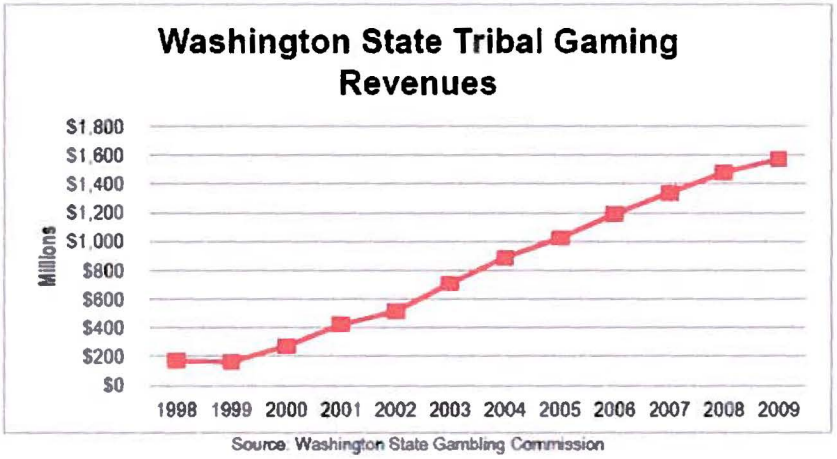
CASINO OPERATING INCOME (LOSS) 1998-2013

Fiscal Year ending Sept. 30	Two Rivers	Chewelah	Spokane Indian Gaming[1]	Total	(b) (4)
1998	(b) (4)	(b) (4)	(b) (4)		
1999	(b) (4)				
2000	(b) (4)				
2001	(b) (4)	$(b) (4)			
2002	(b) (4)		(b) (4)		
2003	(b) (4)				
2004	(b) (4)				
2005	(b) (4)				(b) (4)
2006	(b) (4)				
2007	(b) (4)				
2008	(b) (4)				
2009	(b) (4)				
2010	(b) (4)				
2011	(b) (4)				
2012	(b) (4)				
2013	(b) (4)				

[52] 2011 Innovation Group Report at 7.

[53] Updated Unmet Needs Report, at 8.

The declining gaming revenue for the Spokane Tribe contrasts sharply with the significant growth at other tribal casinos in Washington. Total gaming revenues in Washington have grown from $170.5 million in 1998 to $1.57 billion in 2009.[54] For the decade 2000 to 2009, gaming revenues have grown by an average of 21 percent annually.[55] From 2007 to 2009, annual growth averaged 8 percent.[56] Thus, though the Tribe experienced some revenue growth at its Chewelah casino since 2006, the modest increase nevertheless provides insufficient income to the Tribe to meet its financial needs.[57]



Source: Washington State Gambling Commission

The Spokane Tribe's Unmet Needs

The Tribe's application materials describe the significant unmet needs of the Tribe and its members. Several of the most pressing needs, as discussed in the Tribe's Updated Unmet Needs Report, are identified below.[58]

The economic development needs of the Tribe are expected to grow as the tribal population continues to increase. For the decades 1990 to 2000 and 2000 to 2009, the Tribe experienced a population growth rate of 32-33 percent.[59] The population has increased further since 2009.[60] However, the Tribe reported that it has experienced difficulty providing services to its members on the Reservation due to the growing tribal population and the decline in income from tribal

[54] 2011 Innovation Group Report at 9.

[55] *Id.*

[56] *Id.*

[57] Updated Unmet Needs Report at 2.

[58] *See supra* note 1.

[59] 2011 Innovation Group Report at 4.

[60] Updated Unmet Needs Report at 4.

business enterprises.[61] Tribal members also face high poverty levels, limited employment opportunities, and a lack of housing within the Reservation.[62]

Socioeconomic Conditions

In 2012, the Spokane Tribe commissioned a socioeconomic profile that represents an analysis of the decennial 2010 demographic data generated by the U.S. Census Bureau (2012 Profile).[63] The 2012 Profile compared family income of the Spokane Indian Reservation and nearby Stevens County, and showed that family income was higher in Stevens County than on the Reservation in all income levels except for the lower income levels (less than $10,000 to $49,999).[64] Moreover, the Spokane Indian Reservation per capita income was $7,486 less than that of Stevens County, and the Reservation median income was also $10,749 less than Stevens County.[65] In addition, 29.1 percent of Spokane Reservation households are below the Federal poverty level.[66] The 2012 Profile determined that the Reservation and surrounding area lacked a strong base of diverse industries that generate revenue, such as logging.[67]

Budget Shortfalls

As a result of the decline in operating income from the casino enterprises, the transfer of revenues to the Tribe to fund tribal government programs has significantly decreased. From 1998 through 1999, transfers from the gaming operations to the Tribe ranged from (b) (4) to (b) (4).[68] Transfers dropped to approximately (b) (4) in 2004, but in 2005, transfers increased to (b) (4), the largest in the 12-year period described.[69] This primarily came from the Chewelah Casino, which from 2001-2013 onward has contributed the bulk of transfers.[70]

From 2005 to 2009, however, transfers declined to a total of less than (b) (4)[71] An additional loss in cash reserves came in 2009 with the transfer (b) (4) from the Tribe to the Two Rivers Casino.[72] From 2010 to 2013, transfers from the Tribe to Two Rivers continued to decrease for a total of $(b) (4).[73] Rather than close the Two Rivers Casino entirely, the Tribe

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[61] 2011 Innovation Group Report at 4.

[62] *Id.*

[63] *The Spokane Tribe of Indians: A Socioeconomic Profile 2012* (Spokane Tribe of Indians) at 35-36, in Office of Indian Gaming Binder Tab 1.

[64] *Id.* at 30-36.

[65] *Id.*

[66] *Id.*

[67] 2012 Profile at 51-52.

[68] 2011 Innovation Group Report at 8.

[69] *Id.*

[70] *Id.*; see also Updated Unmet Needs Report at 7.

[71] *Id.*

[72] *Id.*

[73] Updated Unmet Needs Report at 9, Table 3-3.

operates the Casino on a seasonal basis which provides some employment.[74] For the same period, transfers from Chewelah to the Tribe increased from (b) (4) in 2010 to (b) (4) in 2013.[75] At present, however, the Tribe's cash reserves remain well below the 2005 levels,[76]

The declining income from gaming and timber led to significant cuts in tribal budgets and declining cash reserves. In 2010 and 2011, budget cutbacks reduced expenditures to their lowest point at (b) (4) that equals approximately (b) (4) per month.[77] In 2014, expenditures increased to (b) (4).[78]

SPOKANE TRIBE GENERAL FUNDS BUDGETS

2009	2010	2011	2012	2013	2014
(b) (4)					

SPOKANE TRIBE CASH RESERVES

Year	Cash Reserves (Millions)
2005	(b) (4)
2006	(b) (4)
2007	(b) (4)
2008	(b) (4)
2009	(b) (4)
2010	(b) (4)
2011	(b) (4)
2012	(b) (4)
2013	(b) (4)
2014	(b) (4)

For FY 2010, the projected budget shortfall was (b) (4), leading to a number of significant cuts to services to the Tribe's membership and Tribal employee jobs.[79] These included cuts to employee pay, as well as reductions or eliminations of social services. Through a reduction in benefits, non-gaming per capita payments (paid from Avista Settlement Funds),[80] and two weeks of furlough, the Tribe effectively reduced it expenses for employees and membership services by

[74] *Id.* at 7; Ex. 3 at 3 (10 employees at Two Rivers Casino).

[75] *Id.*

[76] *Id.* at 10.

[77] 2011 Innovation Group Report at 11.

[78] Updated Unmet Needs Report, at 10.

[79] 2011 Innovation Group Report at 11. In 2010, $2.7 million of available case reserves was restricted as to use.

[80] Avista owns and operates a hydroelectric dam on the Spokane River at Little Falls. The dam is located entirely within the Reservation boundaries. The Tribe filed suit against Avista to establish the Tribe's right, title, authority and jurisdiction of the Little Falls Dam. The parties settled the litigation in 1994. Historically, the Tribe has set aside enough of the annual settlement payment to provide an annual per capita payment. *See* Updated Unmet Needs Report at 10, note 4.

(b) (4) [redacted].[81] In its 2014 budget, the Tribe stated that it was able to restore some of the previous budget cuts due in part to increased grant funding.[82]

BUDGET CUTS FY 2010 AND PARTIAL RESTORATION AS OF 12/2014: EMPLOYEE AND PER CAPITA PAYMENTS

Category	Description of Cut	Amount of Cut
Employee Pension Plan	Eliminate 5% contribution *Pension match was brought back but only at 2%	(b) (4) [redacted]
Medical Premiums	Require 25% from employees *Require 20% from employees	(b) (4) [redacted]
Annual and Sick Leave	2 hour reduction *No annual or sick leave, converted to PTO	(b) (4) [redacted]
Committee Members	Pay eliminated	(b) (4) [redacted]
Per Capita	Reduced by $300 * Reduced by $200	(b) (4) [redacted]
Employee Furlough	2 weeks * Furlough no longer	(b) (4) [redacted]

Unemployment and Underemployment

Unemployment among tribal members has increased in recent years. In 2009, the tribal unemployment rate was approximately 47 percent.[83] In 2013, the unemployment rate was approximately 51 percent.[84] In 2014, the rate rose to 56 percent.[85] Of those employed, 45.3 percent of tribal members had such low earnings that they fell beneath the Federal poverty level in 2011.[86]

Health Care

The Indian Health Service currently funds a small health clinic in Wellpinit for the benefit of the Tribe.[87] Historically, the clinic receives approximately (b) (4) [redacted] annually for direct patient care. Nonetheless, in order to maintain existing service levels, the clinic must obtain an additional (b) (4) [redacted] annually.[88] The clinic has seen 2,416 patients over the past two years.

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[81] 2011 Innovation Group Report at 11.

[82] Updated Unmet Needs Report at 10 -11, table 3-6.

[83] FEIS vol. II, § 1.2; § 3.7.1, Table 1-1 *citing* Bureau of Indian Affairs, Labor Survey Information on the Indian Labor Force, Survey for Calendar Year 2009 and 2008.

[84] Bureau of Indian Affairs, Labor Survey Information on the Indian Labor Force, Survey for Calendar Year 2013. (Attachment 7 to this Determination).

[85] Bureau of Indian Affairs, Labor Survey Information on the Indian Labor Force, Survey for Calendar Year 2014, (Attachment 7 to this Determination).

[86] 2011 Innovation Group Report at 1.

[87] The Indian Health Services indicates American Indians and Alaska Natives have a higher risk of death than other Americans from tuberculosis (500% higher), alcoholism (519% higher), diabetes (195% higher), unintentional injuries (149% higher), homicide (92% higher) and suicide (72% higher) (IHS, 2010). *See* Updated Unmet Need Report at 36.

[88] Updated Unmet Needs Report at 33.

There were, however, 775 referrals for patients that the clinic was not able to serve with its existing budget.[89]

Tribal Housing

The Tribe reported that as of 2010, there were 777 units of housing on the Reservation and 2 units on trust lands located off the Reservation.[90] Of those homes, 85 are classified as "mobile" with a 92 percent occupancy rate. Of the 777 units, 221 are low-income housing units that are managed by the Spokane Indian Housing Authority (SIHA). Currently, there are 305 applicants on the waiting list for SIHA-managed rental and home ownership units.[91] SIHA estimates that the construction of approximately 10 homes per year would be necessary to meet both existing and anticipated low income housing needs. Assuming an average size of 1,600 square-feet and a construction cost of approximately $120/ square foot, the Tribe requires approximately $1.92 million per year to construct 10 homes per year.[92]

Education

There is a significant educational gap between the Tribe's Reservation, nearby counties, and the rest of the State of Washington. The Reservation has a 16.2 percent dropout rate compared to 9.4 percent for Stevens County, 7.4 percent for Spokane County, and 10 percent statewide.[93] Only 15 percent of the population (age 25+) on the Spokane Reservation has a college degree, compared to 24 percent in Stevens County and 36 percent in the City of Spokane and statewide.[94]

In 2010, the Tribe was forced to eliminate its supplemental funding of the Spokane Tribal College because of lack of available revenue. The Tribe reported that it historically has allotted (b) (4) /year from its general fund to supplement funding from tuition and grants. In 2010 this supplemental funding was cut due to Tribal budget shortfalls.[95] Since 2010, the Tribal Council has provided limited additional funding. For instance, in 2014, the Tribal Council was only able to provide (b) (4) These cuts have hampered the tribal college's ability to provide quality educational services to its students.

The Tribe reported that it has been forced to place restrictions on a scholarship program that provides a stipend and tuition for an applicant's school of choice.[97] This scholarship program

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[89] *Id.* at 34-35.

[90] *Id.*at 21.

[91] *Id.*

[92] *Id.*

[93] Updated Unmet Needs Report at 4.

[94] 2011 Innovation Group Report at 3.

[95] Updated Unmet Needs Report at 11.

[96] *Id.* at 29.

[97] *Id.*

was funded through a portion of timber revenue that was placed into a separate account to accrue every year. Due to declining timber revenue, those funds are no longer available. As a result, the Tribe stated that funding has steadily decreased from (b) (4) for FY 2010 to (b) (4) for FY 2015. Similarly, additional cuts were made to the Tribe's adult vocational training program and apprenticeship programs[98]

Assistance Programs

The Tribe reported that its existing program currently provides "meals on wheels" to approximately 100 seniors per day. The Tribe also reported that it previously operated 2 senior centers, but in 2012, 1 center was closed due to the presence of toxic black mold.[99] Thus, the elderly population of the Tribe has less access to essential services. The Tribe stated that a new facility has been designed and would cost approximately $1.2 million. Construction of a new facility cannot begin, however, until $372,000 in additional funding is secured. The Tribe also reported that its Head Start Program facility, composed of 2 modular units, has leaking roofs.[100] The program serves 70 children, but has a waitlist. The Tribe stated that the cost of a new facility is approximately $507,000.

Unmet Needs Conclusion

As discussed above, the Tribe has numerous and serious unmet needs. In addition to addressing the programs described above, the Updated Unmet Needs Report identifies numerous other assistance programs administered by the tribal government that have suffered significant cutbacks due to budget shortfalls, or are insufficient to meet the current needs of the Tribe. These include the Division of Child and Family Services, family violence program, youth programs, social service programs, housing services, and cultural and language programs.[101]

The Tribe is attempting to address groundwater contamination that contains hazardous levels of arisen and other uranium decay produces from former mining operations. The Tribe is further addressing the extensive environmental remediation challenges resulting from the Midnite Mine Superfund site. The expected revenue from the project will provide the missions of dollars needed to address these issues into the future.

II. Review of the Tribe's Application Pursuant to IGRA and Part 292, Subpart C

The Secretarial Determination exception in IGRA, found in 25 U.S.C. § 2719, permits gaming on lands acquired in trust after October 17, 1988, if the Secretary, after consultation with the Indian tribe and appropriate State, and local officials, including officials of other nearby Indian tribes, determines that gaming on the newly acquired lands would be in the best interest of the tribe and its members and would not be detrimental to the surrounding community, but only if

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[98] *Id.*

[99] *Id.* at 28.

[100] Updated Unmet Needs Report at 30.

[101] *Id.* at 21 – 36..

the governor of the state in which the gaming activity is to be conducted concurs in the Secretary's determination.[102]

The Department's regulations located at 25 C.F.R. Part 292, which implement section 2719, became effective on August 25, 2008. These regulations articulate the standards that the Department uses to evaluate applications from tribes seeking to game on lands acquired after October 17, 1988. In particular, Subpart C of Part 292 governs Secretarial Determinations.

Subpart C – Secretarial Determination

Sections 292.13 through 292.15 identify the conditions under which a tribe may conduct gaming.

Sections 292.16 through 292.18 identify the information that must be included in a tribe's request for a Secretarial Determination.

Section 292.17 pertains to an evaluation of whether the gaming establishment would be in the best interest of the tribe and its members.

Section 292.18 pertains to an evaluation of whether there is detriment to the surrounding community.

Application Contents

Section 292.16 provides that a tribe's application requesting a Secretarial Determination under section 292.13 must include the following information:

(a) The full name, address, and telephone number of the tribe submitting the application.

Spokane Tribe of the Spokane Reservation
6195 Ford-Wellpinit Road
P.O. Box 100
Wellpinit, Washington 99040
Telephone: (509) 458-6500

(b) A description of the location of the land, including a legal description supported by a survey or other document.

The Site is located northwest of the intersection of U.S. 2 and Craig Road within the boundaries of the City of Airway Heights, Spokane County, Washington. The Site is described as follows:

> The Southwest quarter (SE 1/4) of SECTION 22, TOWNSHIP 25 NORTH, RANGE 41 EAST, W. M, in Spokane County, Washington, EXCEPT that portion conveyed to State of Washington by deed dated June 19, 1929 recorded

[102] 25 U.S.C. § 2719 (b)(1)(A).

under Recording No. 997235 and dates July 25, 1942, recorded under Recording No. 557182A;

ALSO EXCEPT that portion conveyed to Spokane County for Craig Road by deed Recorded June 7, 1906 under Recording No. 146192;

ALSO EXCEPT that East 830 feet of the South 497.5 feet of the Southeast quarter of said Section 22, containing 145.00 acres more or less.[103]

(c) Proof of identity of present ownership and title status of the land.

The Site, Tract 102-T1368, is held in trust for the Tribe by the United States. In its application, the Tribe provided a copy of the August 16, 2001, Statutory Warranty Deed conveying the Site to the United States in trust for the Tribe, along with a corrected Statutory Warranty Deed dated June 19, 2003.[104]

(d) Distance of the land from the tribe's reservation or trust lands, if any, and tribal government headquarters.

The Site is located approximately 30 driving miles and 19 direct-line miles from the Reservation boundary, and is 35 driving miles and 24 direct-line miles from the Tribal headquarters in Wellpinit, Washington.[105]

(e) Information required by section 292.17 to assist the Secretary in determining whether the proposed gaming establishment will be in the best interest of the tribe and its members.

As discussed more fully below under section 292.17, the Tribe has submitted the required information.

(f) Information required by section 292.18 to assist the Secretary in determining whether the proposed gaming establishment will not be detrimental to the surrounding community.

As discussed more fully below under section 292.18, the Tribe has submitted the required information.

(g) The authorizing resolution from the tribe submitting the application.

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[103] Spokane Tribe's First Supplement Ex. 5, Statutory Warranty Deed (Aug. 16, 2001) and corrected Statutory Warranty Deed (Jun. 19, 2003); and Title Status Report (Feb. 16, 2012)); *see also* Regional Director's Recommendation Ex. 1, Spokane Tribal Resolution 2006-171 (Jan., 2006).

[104] Regional Director's Recommendation at 6.

[105] *Id.*

On February 24, 2006, the Tribe submitted its initial application and included Resolution 2006-171. The Resolution formally requested the Secretary to make the determination required by 25 U.S.C. § 2719, that gaming at the Site would be in the best interest of the Tribe and its members and not detrimental to the surrounding community.[106] Subsequently, on May 8, 2012, the Tribe submitted its First Supplement, which included Tribal Resolution No. 2012-147 that authorized the submission of the Tribe's First Supplement to the application, along with other supporting documentation, consisting of accompanying Exhibits 1-59.

(h) The tribe's gaming ordinance or resolution approved by the National Indian Gaming Commission in accordance with 25 U.S.C. § 2710, if any.

The Tribe's gaming ordinance was approved by the National Indian Gaming Commission by letter dated March 25, 1996.[107]

(i) The tribe's organic documents, if any.

The Tribe submitted the Constitution of the Spokane Tribe-Spokane Reservation, dated June 2011, which stated that the Tribe was organized under a constitution and bylaws that became effective on June 27, 1951.[108]

(j) The tribe's class III gaming compact with the State where the gaming establishment is to be located, if one has been negotiated.

The Tribe and the State of Washington have an existing class III Tribal-State Compact, which was approved by the Secretary on April 30, 2007.[109]

(k) If the tribe has not negotiated a class III gaming compact with the State where the gaming establishment is to be located, the tribe's proposed scope of gaming, including the size of the proposed gaming establishment.

This subsection is not applicable to the Tribe because it has negotiated a class III gaming compact with the State.

(l) A copy of the existing or proposed management contract required to be approved by the NIGC under 25 U.S.C. § 2711 and 25 CFR Part 533, if any.

The Tribe submitted an executed Management Agreement between Spokane Tribe of Indians and Warner Gaming dated July 7, 2010, as part of its application.[110] To date, the NIGC has not approved the management agreement.

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[106] Regional Director's Recommendation at 7; Ex. 1.

[107] Notice of Approved Class III Tribal Gaming Ordinances, 78 Fed. Reg. 14352, 14354 (Mar. 5, 2013).

[108] Spokane Tribe's First Supplement at 9; Ex 2 (Constitution of the Spokane Tribe-Spokane Reservation).

[109] 72 Fed. Reg. 21,284 (April 30, 2007)(Notice of Approval of Tribal-State Compact). The Tribe submitted an Amendment to the Compact April 22, 2015.

[110] Regional Director's Recommendation at 8.

III. Analysis of Best Interest of the Tribe and its Members

Section 292.17 provides that an application must contain:

> *(a) Projections of class II and class III gaming income statements, balance sheets, fixed assets accounting, and cash flow statements for the gaming entity and the tribe.*

When considering whether a proposed gaming project is in the best interest of the Tribe and its members, we examine the income statement which projects income and expenses in accordance with generally accepted accounting principles. An income statement is considered the best tool to determine the profitability of a proposed gaming project.

We also review the balance sheet which lists assets, liabilities, and capital. From the balance sheet we can identify various ratios to determine if a proposed gaming project will grow and whether it will have the resources to pay obligations in the short term and long term. It also allows us to review the ownership composition of the proposed gaming project.

Cash flow statements project the distribution to the various stakeholders, such as debt holders and owners. They project how earnings and assets will flow into and out of a proposed gaming project. They also project what ongoing investments will be made, what debt will be incurred or repaid, and the projected utilization of non-cash expenses, such as depreciation and amortization. We review cash flow statements to determine the amounts that will go to the manager/developer, the debt holders, the state, and its political subdivisions, and the Tribe. From cash flow statements, we can generally determine whether the Tribe will be the primary beneficiary of the proposed gaming project.

Because the financial documents are based on projections rather than actual performance, we examine the financial information to determine whether they are reasonable. This permits us to conclude that the proposed gaming project will likely perform according to the projections. In this case, we conclude that the financial projections are reasonable and lend support to an expectation that the proposed gaming project will perform as projected.

The Tribe has provided financial projections for the Project prepared by Warner Gaming including a balance sheet, cash flow statement, and income statement.[111] The projected income from the proposed gaming facility is significant. The financial projections are based on reasonable assumptions, including the assumptions that (i) the facility will operate 1,500 class III gaming devices; [112] (ii) the gaming devices will have the win per unit identified in the pro forma income statements; and (iii) the revenues will increase at the rate reflected in the pro forma

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[111] Spokane Tribe's First Supplement Ex. 10 (Fixed Assets Accounting, Balance Sheet, Cash Flow Statement and Income Statement).

[112] *Id.* The Tribe will operate a single gaming facility comprised almost entirely of class III gaming activities, with the possible exception of a limited number of class II gaming devices. The projections assume aggregated class II and class III gaming activities. Regional Director's Recommendation at 9.

income statements.[113] We find these assumptions to be reasonable by industry standards and the market research conducted for the Project. The Tribe projects the following financial results:

Income Statements: The annual net income of the Gaming Facility is projected to be:

- Year 1 (b) (4)
- Year 2 [redacted]
- Year 3 [redacted]
- Year 4 [redacted]
- Year 5 [redacted][114]

Balance sheet: The balance sheet for the gaming operation shows the projected total cost of the Property, Plant, and Equipment is (b) (4) [redacted].[115]

Fixed assets accounting: Land: (the land is already in trust) Resort: (b) (4) [redacted].[116]

Cash Flow from Operations:

- Year 1 (b) (4)
- Year 2 [redacted]
- Year 3 [redacted]
- Year 4 [redacted]
- Year 5 [redacted]

Cash Distributions to the Tribe from the Project are estimated to be:

- Year 1 (b) (4)
- Year 2 (b) (4)
- Year 3 (b) (4)
- Year 4 (b) (4)
- Year 5 (b) (4)[118]

Debt amortization: The financial projections assume aggressive principal pay-down over the first three years. At the end of year three, the projections assume a refinancing that will provide

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[113] Spokane Tribe's First Supplement Ex. 10 (Fixed Assets Accounting, Balance Sheet, Cash Flow Statement and Income Statement); Regional Director's Recommendation at 8.

[114] Spokane Tribe's First Supplement at 10.

[115] *Id.* Property, Plant and Equipment can be defined as tangible assets that have an estimated useful life of two or more years, are not intended for sale in the ordinary course of business, and are intended to be used or available for use by the entity. *See* Accounting for property, Plant, and Equipment Federal Financial Accounting Standards no. 6 (Jun. 1996), available at http://www.fasab.gov/pdffiles/sffas-6.pdf (last visited 05/18/15).

[116] *Id.* at 11.

[117] *Id.*

[118] *Id.*

for interest-only payments, with the principal being due in a balloon payment at the end of a 10-year term.[119]

We find these projects reasonable and conclude that the Project will be economically viable in the current market. For discussion of the available gaming market, see Section V, *Market Saturation, infra.*

(b) Projected tribal employment, job training, and career development.

At full build out, the casino portion of the Project will create 1,027 full-time jobs, with an additional 1,060 jobs projected from the retail development component.[120] More than 1,200 construction jobs are projected to be created during the projected 7 years of construction.[121]

The Project will result in the creation of jobs and wages, offering substantial employment opportunities to tribal members. The Tribe has Indian preference and tribal preference requirements, and jobs will be extended to tribal members who live within 40 miles of the Site.[122] The Project will require personnel in the areas of lodging, retail, special events, food and beverage, security, surveillance, information technology, accounting, human resources, and marketing. The Management Agreement for the Project requires that Warner Gaming not only consider tribal Indian Preference, but also train tribal personnel for executive positions.[123] The Tribe envisions that the on-site leadership team will be composed almost exclusively of tribal members.

The Tribe will utilize revenues from the Project to increase and improve governmental services, as well as generate additional commercial and tribal governmental job opportunities. A substantial portion of the tribal membership resides within 40 miles of the Site. The close proximity of the Project to the Tribe's Reservation will allow tribal members residing far away to return to their community.

(c) Projected benefits to the tribe and its members from tourism.

The Tribe predicts an increase in tourism for the Spokane region due to the multi-use development that includes gaming, lodging, entertainment, dining, and shopping experiences.[124] This will stimulate the existing local tourist industry and benefit the local economy. Up to 10 percent of the gaming revenue generated at the facility is expected to come from visitors outside a 100-mile radius of the Site, which will, in turn, benefit local businesses and the local economy as a whole.[125] The influx of non-resident consumers will benefit businesses owned by tribal

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[119] Spokane Tribe's First Supplement at 10.

[120] Regional Director's Recommendation at 10.

[121] FEIS vol. II, § 3.7.

[122] Regional Director's Recommendation at 10.

[123] Spokane Tribe's First Supplement at 11.

[124] *Id.* at 11.

[125] *Id.* at 12.

members or employing tribal members, thus creating new employment opportunities for tribal members generally. The Tribe may also benefit from tourism by allowing visitors and local residents to become familiar with the Tribe and its culture by visiting the Tribal Cultural Center. The increase in visitors to the City of Airway Heights and Spokane County will have direct and indirect benefits to the Tribe and its members, as well as to the surrounding community.[126]

(d) Projected benefits to the tribe and its members from the proposed uses of the increased tribal income.

During the first 10 years of operation, the Tribe is projected to receive over (b) (4) in cash distributions from the Project.[127] In addition to addressing the pressing natural resource and contamination issues discussed above, the Tribe intends to use gaming income from the Project to provide a variety of much needed governmental programs for its members, including health care, education, social services, elder services, housing, public utilities, transportation facilities, cultural planning and preservation, and environmental protection.[128] The annual supplement income needed by the Tribe to fund these programs is estimated to be in the millions of dollars.[129] The Tribal Council has assigned priority to healthcare and scholarship funding for tribal members as well as increased funding for cultural preservation programs.[130]

In addition, the Tribe seeks to reduce its reliance on grant funding. The Tribe reported that it spent approximately (b) (4) in grant funding during the 2013 fiscal year[131] The Tribe stated that much of this grant funding is discretionary and non-reoccurring.[132] Revenue from the Project will not only allow the Tribe to reduce its reliance on grants, but also pursue investment opportunities in other ventures and diversify its economy, which could potentially lead to additional revenues for the tribal government and more job opportunities for tribal members.

(e) Projected benefits to the relationship between the tribe and non-Indian communities.

The Tribe established a strong relationship with the surrounding community throughout the application process and expects that the development of the Project will strengthen those relationships.[133] From the early stages of the application process, the Tribe made substantial efforts to keep the surrounding community informed as the Tribe developed its plans, including meeting with dozens of business and civic organizations to provide information regarding the Project. Because the Project will create employment and contracting opportunities and provide a

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[126] *Id.* at 2.

[127] Regional Director's Recommendation at 13.

[128] *Id.* at 12 – 13.

[129] *Id.* at 13.

[130] Spokane Tribe's First Supplement at 12-13.

[131] Updated Unmet Needs Report at 12.

[132] *Id.* For example, the Tribe's domestic violence program is 100 percent dependent on discretionary, non-recurring grants. *Id.*

[133] Regional Director's Recommendation at 13.

significant economic stimulus to the region, the Project enjoys substantial support from local governments in the area, as well as the business community. This is evidenced by the numerous letters of support submitted to the BIA during both the Two-Part Determination and EIS process.[134]

There is local support for the Project. For instance, the City of Airway Heights, which is the closest to and most affected by the Project, has shown significant support for the Project through both comment letters on the EIS, as well as written comments during the consultation process. Airway Heights indicated its "unwavering support" for the Project, and noted that the Spokane Tribe, the City of Airway Heights, and Spokane County entered into an agreement to mitigate impacts that may arise from the Project's development.[135]

The Tribe entered into 2 agreements with local governments on April 10, 2007, (amended on August 26, 2010) that include provisions compensating the City of Airway Heights and Spokane County for impacts to local government services from the Proposed Project: a Memorandum of Agreement (MOA) with Airway Heights, and an Intergovernmental Agreement (IGA) with Airway Heights and Spokane County.[136] These agreements include provisions relating to the nature and scope of compensation for local government services that would be affected by the Project.[137] For additional discussion of these agreements, see Section 292.18(d) below.

The City of Airway Heights stated that the Tribe and the City have nurtured their relationship, and that development of the Project is an example of smart development that enhances the West Plains region while providing economic job growth.[138] The Board of Lincoln County Commissioners stated that they did not foresee any environmental impacts to Lincoln County but that they generally support "all forms of economic development."[139] Lincoln County supports economic development that creates employment and housing, and as a result, increases the tax base and stimulates the economy in Lincoln County. In addition, BIA and the Tribe have received many written expressions of support from local leaders, labor unions, and business interests.[140]

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[134] Spokane Tribe's First Supplement at 14; Ex. 11.

[135] Letter from Patrick D. Rushing, Mayor, City of Airway Heights to B.J. Howerton, Bureau of Indian Affairs (June 7, 2011) in Regional Director's Recommendation, Ex. 4, (Attachment 8c of this Determination); *see also,* Spokane Tribe's First Supplement at 49. *See* FEIS vol. I. for all comments.

[136] FEIS vol. II, Appx. C.

[137] Spokane Tribe's First Supplement Ex. 4, app. C.

[138] Letter from Patrick D. Rushing, Mayor, City of Airway Heights to B.J. Howerton, Bureau of Indian Affairs (June 7, 2011) in Regional Director's Recommendation, Ex. 4, (Attachment 8c of this Determination).

[139] Letter from Dennis D. Bly, Chairman, Board of Lincoln County Commissioners, to B.J. Howerton, Bureau of Indian Affairs, (May 24, 2011) in Regional Director's Recommendation, Ex. 4 (Attachment 8b to this Determination).

[140] Spokane Tribe's First Supplement at 49; Ex. 11 (Letters of Support).

The Project will provide economic growth that will have a positive impact on the surrounding community by creating much-needed job opportunities, which will help further enhance the Tribe's relationship with the surrounding community. The Tribe also intends to develop a cultural center on the Site, which will educate the community about the Tribe's history and cultural traditions.[141]

(f) Possible adverse impacts on the tribe and its members and plans for addressing those impacts.

While the majority of tribal members have been able to enjoy gaming responsibly, the Tribe will offer support programs to its membership who may become addicted to gambling.[142] As described in Section 292.18 (e) below, in accordance with the Tribal-State Gaming Compact, the Tribe will set aside 0.13 percent of gross gaming revenue from class III gaming activities on the Site to support gambling education, awareness, and treatment.[143] Contributions shall be made to the Washington State Department of Social and Health Services' Division of Alcohol and Substance Abuse. Based on the financial projections provided by the Tribe, it would pay approximately (b) (4) in the first year of Project operation.[144]

The Tribe has also committed to providing written information to the gaming public, which will include a list of professional gambling treatment programs and self-help groups available to casino customers in key locations inside the casino and near all automated teller machines (ATMs). Similarly, the Tribe has committed to implementing procedures to allow for voluntary self-exclusion.[145] Also, pursuant to the Tribal-State Compact, no person under the age of 18 shall be allowed to participate in any gaming operation, or be allowed on the class III gaming floor during actual hours of operation.[146]

(g) Distance of the land from the location where the tribe maintains core governmental functions.

The Site is located approximately 35 driving miles and 24 direct line miles from the Tribal headquarters in Wellpinit, Washington.

(h) Evidence that the tribe owns the land in fee or holds an option to acquire the land at the sole discretion of the tribe, or holds other contractual rights to cause the lands to be transferred from a third party to the tribe or directly to the United States.

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[141] Spokane Tribe's First Supplement at 14.

[142] *Id.* at 15.

[143] Regional Director's Recommendation at 14. The 0.13% contribution amount is similarly contained in the Tribe's 2015 proposed Compact Amendment submitted to the Department on April 22, 2015.

[144] *Id.*

[145] Spokane Tribe's First Supplement at 46.

[146] *Id.*

The Tribe provided a true and accurate copy of the August 16, 2001, Statutory Warranty Deed in which the United States accepted legal ownership of the parcel in trust for the Tribe; a corrected Statutory Warranty Deed dated June 19, 2003; and a Title Status Report generated on February 16, 2012, for Tribal Tract Number 102-T1368.[147]

(i) Evidence of significant historical connections, if any, to the land.

Section 292.17(i) does not require a significant historical connection to the subject land to make a best interest determination. Nevertheless, the Tribe has provided extensive documentation and information on its historical connections to the Site.[148] Numerous exhibits are attached to the Tribe's Supplemental Application, including Indian Claims Commission (ICC) testimony and exhibits, copies of original military journals and battle maps from the battles of Four Lakes and Spokane Plain, and extensive documentation of historic, cultural, and archaeological sites within a five-mile radius of the Site.[149]

As noted above, in their early existence, the Spokane Indians lived on over 3 million acres of land in what is now eastern Washington State.[150] The Spokane Indians fished in the Spokane and Columbia Rivers and used the Grand Spokane Falls as a gathering place for their community events. They lived along the river in three bands known as the Upper, Middle, and Lower Spokane Indians.[151] By Executive Order on January 18, 1881, President Rutherford B. Hayes formally set aside and reserved the territory for the use and occupancy of the Spokane Indians.[152]

The first historical report of the Spokane Tribe comes from the 1805-1806 Lewis and Clark Expedition.[153] In the years following, the Tribe interacted with traders, prospectors, missionaries, and settlers. The Tribe also engaged the United States military in battle.[154] As more non-Indians began to enter Spokane Territory, the United States entered into treaties with the Spokane.[155] The Northwest Indian Commission met with the Spokane leaders on March 18, 1887, which resulted in an agreement in which the Spokane ceded all rights, title, and claims to any lands lying outside the Reservation and agreement by the off-reservation Spokane to move to the Spokane Reservation or a nearby reservation. In exchange, the Tribe received $127,000, which was to be used for constructing homes and to buy cattle, seeds, and farm implements.

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[147] Spokane Tribe's First Supplement at 8.

[148] *See Id.* at 16-33.

[149] *See Id.* Ex. 13-15, 17, 23-25, 28-30, 38-40, 43-44, 46, and 48.

[150] Updated Unmet Needs Report at 1.

[151] *Id.*

[152] *See generally, Northern P.R. Co. v. Wismer*, 246 U.S. 283 (1918).

[153] Spokane Tribe's First Supplement, at 16–17; Ex. 14 (*Spokane Tribe of Indians v. United States); See* map of the Spokane Territory prepared by William Clark, .Ex 26 (Map prepared by William Clark).

[154] Regional Director's Recommendation at 16 – 18; Spokane Tribe's First Supplement at 16-25.

[155] Spokane Tribe's First Supplement at 19.

The Tribe filed a claim against the United States before the ICC in 1951, alleging the $127,000 paid for the cession of land under the 1887 agreement was insufficient.[156] As part of its proceedings, the ICC established the Tribe's aboriginal territory.[157] Expert testimony during the proceedings established the Spokane Tribe's exclusive use of the territory that encompasses the Site.[158]

The Site is also within 5 miles of several Spokane permanent villages along the Spokane River, within 5 miles of several of the Tribe's key fishing locations, and within a critical harvest area for the Tribe. Also within a 5-mile radius of the Site, there are over 60 documented sites of historic, archaeological, cultural, or spiritual significance to the Tribe.[159]

With regard to the Kalispel Tribe, the Indian Claims Commission established the Kalispel Tribe's historic territory as being north of the Site along the Pend D'Oreille River and in the western part of Montana.[160] While the Spokane Tribe allowed members of friendly tribes such as Kalispel to harvest from the dry land camas fields and pass through Spokane territory to gather camas or to reach fishing sites, these activities were permissive, occasional, limited, and not subsistence activities[161] These activities are, thus, not evidence of a significant historical connection for the Kalispel Tribe.[162]

(j) Any other information that may provide a basis for a Secretarial Determination that the gaming establishment would be in the best interest of the tribe and its members, including copies of any: 1) Consulting agreements relating to the proposed gaming establishment; 2) Financial and loan agreements relating to the proposed gaming establishment; 3) Other agreements relative to purchase, acquisition, construction, or financing of the proposed gaming establishment will be located.

As noted above, a Management Agreement was entered into between the Tribe and Warner Gaming on July 7, 2010. The Amended and Restated Development Agreement, dated August 9, 2010, has been signed by the Tribe and WG-Airway Heights, LLC.[163] To date, the Management Agreement has not been approved by the NIGC.

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[156] Spokane Tribe's First Supplement at 26 & Ex. 23 at 1.

[157] Spokane Tribe's First Supplement at 47; Ex. 56 (referencing *Spokane Tribe of Indians v. U.S.*, ICC Docket No. 331, Defendant's Exhibit 68, Map of Conflicting Claims).

[158] *Id.*

[159] Spokane Tribe's First Supplement at 30.

[160] The Kalispel Indian Claims Commission area is far removed from the Site, "along the Pend D'Oreille River in what are now the States of Washington and Idaho and along the Clark Fork River in the western part of what is now the State of Montana." *The Lower Pend D 'Oreille or Kalispel Tribe of Indians v. United States,* Docket No. 94, 12 Ind. Cl. Comm. 141, 141 (1963); Spokane Tribe's First Supplement at 29.

[161] Spokane Tribe's First Supplement at 30.

[162] *Id.*

[163] Spokane Tribe's First Supplement at 33; Ex. 9.

Best Interest of Tribe and its Members Conclusion

The Tribe submitted the required financial projections under 25 C.F.R. § 292.17(a). Our analysis of the financial projections indicates that the Project will provide much needed revenue for the Tribe.

The Tribe submitted the required financial projections under 25 C.F.R. § 292.17(b) regarding tribal employment, job training, and career development. The record shows that the Project will create significant employment opportunities for tribal members at the Site.

The Tribe submitted the required information under 25 C.F.R. § 292.17(c) regarding benefits to the Tribe and its members from tourism. The record shows that the Project will stimulate the existing local tourist industry and benefit the local businesses and economy by creating an influx of non-resident consumers.

The Tribe submitted the required information under 25 C.F.R. § 292.17(d) regarding projected benefits to the Tribe and its members from the uses of the increased tribal income. The Tribe's allocation of anticipated revenue demonstrates a clear commitment to strengthening its government and advancing its social and political development. The Tribe's intent to use the gaming revenue to address significant unmet social and economic needs of its members shows that the Project is in the best interest of the Tribe and its members.

The Tribe submitted the required information under 25 C.F.R. § 292.17(e) regarding projected benefits to the relationship between the Tribe and non-Indian communities. The application demonstrates that the relationship with local non-Indian communities has been strengthened during the course of the application process and is expected to strengthen as the Project develops.

The Tribe submitted the required information under 25 C.F.R. § 292.17(f) regarding possible adverse impacts on the Tribe and its members and plans for addressing those impacts. The Tribe acknowledged that problem gambling may arise as a result of the Project. The Tribe has planned to set aside 0.13 percent of its gross gambling revenue from class III gaming to support gambling education, awareness, and treatment.

The Tribe submitted the required information under 25 C.F.R. § 292.17(g) regarding the distance of the land from the location where the Tribe maintains core governmental functions. The Site is 35 driving miles and 24 direct line miles from the Tribe's government headquarters in Wellpinit, Washington.

The Tribe submitted the required information under 25 C.F.R. § 292.17(h) regarding evidence that the Tribe acquired the land at the sole discretion of the Tribe.

The Tribe submitted the required information under 25 C.F.R. § 292.17(i) regarding evidence of significant historical connections. The Tribe has submitted evidence of a significant historical connection to the Site.

The Tribe submitted information under 25 C.F.R. § 292.17(j) regarding other information that may provide a basis for a Secretarial Determination that the gaming establishment would be in the best interest of the Tribe and its members. The Tribe provided its Development Agreement, Management Agreement, and a Loan Agreement with Warner Gaming.

The record demonstrates that development of the Project will be in the best interest of the Tribe and its members because it will strengthen the tribal government and create needed jobs. Tribal members living on the Reservation and in the greater Spokane area will have access to jobs related to construction and at the Project. The Tribe's plan to invest directly in tribal infrastructure and tribal programs that are currently unfunded or underfunded will benefit the Tribe and its members.

As discussed above, the Project will also provide additional revenue for tribal government services.[164] For example, the additional revenue will provide expanded funding for education and housing.[165] The Tribe will allocate additional gaming revenue for monitoring and controlling contamination due to the former uranium mining operations,[166] even as releases of contaminants in ground water and surface water continue, and are expected to continue, to occur during remediation activities.[167] All of the homes on the Reservation use groundwater for drinking and domestic use, and wells are tested on a regular basis to monitor water quality.[168] The Tribe requires more than $2 million in additional revenue for monitoring, filtration, and construction of the Reservation's water supply.[169] The Tribe will also require revenue to address remediation of impacts from the Midnite Mine Superfund Site. The Project is expected to provide the necessary additional revenue to address the contamination.[170]

IV. Analysis of Detriment to the Surrounding Community

Section 292.18 provides that to satisfy the requirements of § 292.16(f), an application must contain the following information on detrimental impacts of the proposed gaming establishment:

> *(a) Information regarding environmental impacts and plans for mitigating adverse impacts, including an Environmental Assessment (EA), an Environmental Impact Statement (EIS), or other information required by the National Environmental Policy Act (NEPA).*

The issuance of a Secretarial Determination is major federal action affecting the quality of the human environment for purposes of NEPA. An EIS was developed by the BIA to analyze the

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[164] Updated Unmet Needs Report, Table 5-1.

[165] *Id.*

[166] *Id.* at 21-22.

[167] *Id.* at 14.

[168] *Id.* at 16.

[169] *Id.* at 15.

[170] *Id.* Table 5-1.

impact of the Secretarial Determination. The BIA published the Notice of Intent (NOI) to prepare an EIS for the Project in the *Federal Register* on August 19, 2009.[171] During the scoping process, BIA identified seven cooperating agencies: (1) the Tribe, (2) Washington State Department of Transportation, (3) the National Indian Gaming Commission, (4) the City of Airway Heights, (5) Spokane County, (6) the Federal Aviation Administration, and (7) the U.S. Air Force.[172] The BIA published the Notice of Availability (NOA) for the Draft EIS in the *Federal Register* on March 2, 2012.[173] The NOA for the Final EIS was published in the *Federal Register* on February 1, 2013.[174] The 30-day waiting period following the publication of the NOA for the Final EIS was extended to May 1, 2013, through a publication of a notice in the *Federal Register* on March 8, 2013.[175]

Both the Draft EIS and Final EIS considered reasonable alternatives addressing the purpose and need for the proposed Federal action and analyzing potential impacts. The Final EIS found that the Project, as identified in the Preferred Alternative (Alternative 1), consisting of the issuance of the Secretarial Determination and development of the Tribe's Project in Airway Heights did not significantly affect the quality of the human environment as defined by NEPA. A summary of potential environmental impacts and plans for mitigation are discussed below. See the Final EIS and Record of Decision for this Secretarial Determination for a more detailed discussion of environmental impacts and mitigation measures.

Environmental considerations for the Preferred Alternative

Geology and Soils:[176] The Preferred Alternative would result in the disturbance of soils that could result in loss of topsoil and a degradation of air quality through wind erosion. An Erosion Control Plan will be prepared and implemented by the Tribe prior to start of any site disturbance. The Final EIS identified mitigation measures to ensure a less-than-significant effect to geology and soils.

Water Resources:[177] The Preferred Alternative could result in sedimentation and discharges of pollutants to surface waters through storm water runoff. Any potentially significant impacts to surface waters will be mitigated through compliance with a National Pollutant Discharge Elimination System permit and implementation of a Storm Water Pollution Prevention Plan. In Section 2.4 of its Intergovernmental Agreement with the City of Airway Heights, the Tribe has committed to design storm water facilities in accordance with the Airway Heights Public Works

[171] The NOI published on August 19, 2009, contained incorrect dates for the close of the comment period and public scoping meeting. 74 Fed. Reg. 41,928 (Aug. 19, 2009). A corrected NOI was published on August 27, 2009. 74 Fed. Reg. 43,715 (Aug. 27, 2009).

[172] FEIS vol. II, § 1.3 at 1-4.

[173] 77 Fed. Reg. 12,873 (Mar. 2, 2012).

[174] 78 Fed. Reg. 7,448 (Feb. 1, 2013).

[175] 78 Fed. Reg. 15,040 (March 8, 2013).

[176] FEIS vol. II, § 4.2; § 5.2.1.

[177] *Id.* at § 4.15.3; §5.2.2

Standards.[178] Also, several features designed to filter surface runoff have been incorporated into the project design to reduce impacts to groundwater, in accordance with the Airway Heights Public Works Standards. The Final EIS identified mitigation measures to ensure a less-than-significant effect to water resources.

Air Quality:[179] The Preferred Alternative would not cause an exceedance of National Ambient Air Quality Standards for criteria air pollutants. Dust and emissions of diesel particulate matter during construction could impact sensitive receptors, however. The Final EIS identified mitigation measures to ensure a less-than-significant effect to air quality.

Biological Resources:[180] No federally listed wildlife species occur within the Site. Thus, no impacts to federally listed wildlife would occur. The Preferred Alternative could result in impacts to species protected under the Migratory Bird Treaty Act if active nests are present within shrubs and/or ornamental trees within the Site. The Final EIS identified mitigation measures to ensure a less-than-significant effect to migratory birds.

Cultural and Paleontological Resources:[181] The Preferred Alternative will avoid any known cultural or paleontological resources. Previously unknown cultural and paleontological resources may be encountered during ground disturbing activities, however. The Final EIS identified mitigation measures to ensure a less-than-significant effect to cultural and paleontological resources.

Transportation:[182] Potential impacts to transportation from construction activities at the Site would be concentrated on U.S. Highway 2 in the immediate vicinity of the Site and would include temporary traffic delays due to slower moving construction trucks and the increase in worker vehicles on area roadways. The Tribe will comply with all Washington State Department of Transportation (WSDOT) requirements for work within Federal and state rights-of-way and prepare a traffic management plan for submission to the City of Airway Heights, Spokane County, and WSDOT.

The increase in traffic generated at full build out of the Preferred Alternative would contribute to unacceptable traffic operations at several study intersections, causing them to operate below acceptable level-of-service standards. The Tribe shall implement and/or pay a fair-share contribution to traffic improvements. Mitigation would restore the impacted intersections to acceptable operating conditions in accordance with applicable requirements, or would restore operating conditions to pre-development levels. These mitigation measures were developed in consultation with WSDOT, the City of Airway Heights, and Spokane County. The Final EIS identified mitigation measures to ensure a less-than-significant effect to transportation.

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[178] *See* discussion of the Intergovernmental Agreement at Section 292.18(d) of this Determination.

[179] FEIS vol. II, § 4.4.2; § 5.2.3.

[180] *Id.* at § 4.5.1; § 5.2.4.

[181] *Id.* at § 4.6.1; § 5.2.5

[182] *Id.* at § 4.8.2; § 5.2.7.

Land Use:[183] The Preferred Alternative is compatible with nearby existing and planned land uses. Although state and local land use plans generally do not apply to tribal trust lands, the Preferred Alternative would remain compatible with local zoning and land use policies, as well as policies related to land use in the vicinity of the Fairchild Air Force Base (AFB) and Spokane International Airport (SIA). The Final EIS identified mitigation measures to ensure a less-than-significant effect to land use. See Section 292.18(b) below for additional discussion of Fairchild AFB and SIA.

Noise:[184] During the construction phase, noise levels from equipment and vehicles may exceed noise levels from equipment and vehicles may at times exceed Federal noise abatement criteria standards used by the Federal Highway Administration and Washington State Department of Transportation. The Tribe will implement best management practices for noise abatement to minimize noise generated during construction.

The western half of the Site is located within a Military Influence Area as defined by the Fairchild AFB, the boundaries of which were based on the primary areas of aircraft overflight and the potential for noise and vibrations. In particular, exposure of hotel patrons to noise from aircraft could cause annoyance and nuisance complaints. The Final EIS identified mitigation measures to ensure a less-than-significant effect to noise.

Aesthetics:[185] The Preferred Alternative conforms with Spokane County's standards for development adjacent to U.S. 2, a designated aesthetic corridor. New development on the Site would alter views and the effect may be considered significant. However, screening features and natural elements will be integrated into the landscaping design to screen the view of the facilities from existing residences directly adjacent to the Site. The Final EIS identified mitigation measures to ensure a less-than-significant effect to aesthetics.

Hazardous Materials:[186] Although not anticipated, construction personnel could encounter possible contamination during earth-moving activities that may pose a risk to human health and/or the environment. Construction personnel will follow best management practices to prevent the release of hazardous materials used during construction into the environment. The Final EIS identified mitigation measures to ensure a less-than-significant effect from hazardous materials.

Summary: Many of the environmental impacts, which the Final EIS determines to be potentially significant before mitigation, only occur during the construction phase, such as discharge of pollutants and fugitive dust from construction activities or construction noise. Other potential impacts may never occur, such as the possibility of encountering significant paleontological resources or migratory bird nests. Some potential impacts will be mitigated by design features, such as building water and energy-efficient building. The Tribe intends to adopt and implement

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[183] *Id.* at § 4.9.1; § 5.2.8

[184] FEIS vol. II § 4.11; § 5.2.10.

[185] *Id.* at § 4.13; § 5.2.12.

[186] *Id.* at § 4.12; § 5.2.11.

all of the mitigation measures recommended in the Final EIS. As discussed in Section 292.18(d) below, the Tribe has entered into binding and enforceable agreements with local governments that commit the Tribe to implementing measures to mitigate potential impacts.

(b) Anticipated impacts on the social structure, infrastructure, services, housing, community character, and land use patterns of the surrounding community.

Impacts on social structure

Crime:[187] The Final EIS examined the Preferred Alternative's impact on crime and concluded that no definitive link has been found between the presence of gaming facilities and an increase in regional crime rates. Similar to any other large-scale development, the Project would introduce a large number of patrons and employees into the community on a daily basis. As a result, criminal incidents are expected to increase in the Project area, particularly at the Site. However, increased tax revenues resulting from the Project and agreements between the Tribe, County, and City of Airway Heights would fund the expansion of law enforcement services required to accommodate planned growth. Tax revenues would also be generated for Federal, state, and local governments from activities including secondary economic activity generated by tribal gaming (*i.e.*, the indirect and induced effects of the economic impact analysis). The taxes on secondary economic activity include: corporate profits tax, income tax, sales tax, excise tax, property tax, and personal non-taxes, such as motor vehicle licensing fees, fishing/hunting license fees, other fees, and fines. Thus, the Preferred Alternative would not result in significant adverse effects associated with crime.

Problem Gambling and Age Limits: The Tribe is aware that the gaming activities may adversely impact individuals who suffer from problem or pathological gambling addiction disorders.[188] The Tribe is committed to supporting education, awareness, and treatment.[189] As set forth in the Tribe's Tribal-State Gaming Compact, the Tribe has set aside 0.13 percent of the gross gaming revenues for its class III gaming activities to contribute to problem gambling support services.[190] In addition, the Tribe will provide written information, including a list of professional gambling treatment programs and self-help groups available to casino customers, to the gaming public in key locations inside the casino and near all automated teller machines (ATMs). The Tribe will also implement procedures to allow for voluntary self-exclusion. Also, pursuant to the Tribal-State Compact, no person under the age of 18 shall be allowed to participate in any gaming operation, or be allowed on the gaming floor during actual hours of operation.[191]

Impacts on infrastructure

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[187] FEIS vol. II, § 4.7.1

[188] Spokane Tribe's First Supplement at 46.

[189] *Id.*

[190] Spokane Tribe's First Supplement at 46; Ex. 4, app. C (Compact, App. Spokane, § 3 at 4). This payment amount of 0.13% for problem gambling is similarly included in the Tribe's proposed Compact submitted to the Department on April 22, 2015.

[191] This provision is also included in the Amendment to the Compact submitted by the Tribe on April 22, 2015.

Utilities:[192] Inland Power and Light and Avista Utilities have the capacity to provide the Site with electricity and natural gas services, respectively. The Tribe would be responsible for payment of any fees charged by Inland Power and Light for services/electricity provided to the Site. Inland Power and Light will charge the Tribe directly for services rendered, and as a result, there will be no effect on existing rate payers. The Preferred Alternative would not result in detrimental impacts on electricity or natural gas services.

Water Supply and Wastewater Infrastructure:[193] Pursuant to Section 2.0 of the Intergovernmental Agreement, the City of Airway Height's public water and sewer services shall serve the Site through the City's municipal utilities.[194] Connections to the public water and sewer system will be provided to the Site at solely the Tribe's cost and expense. The design and construction of the sewer and water system for the Site shall be in reasonable conformity with Chapters 13.06 and 13.04 of the Airway Heights Municipal Code and the City's Public Works Standards. Upon connection to the City's sewer and water system, the Tribe will pay the current sewer and water capital connection charges, as well as the monthly service fees. Thus, the Preferred Alternative would not result in significant adverse effects on water supply and wastewater Infrastructure.

Transportation Infrastructure:[195] Pursuant to Section 3.0 of the Intergovernmental Agreement, the Tribe has agreed to make street and intersection improvements, as identified in the Final EIS, to provide for safe and efficient vehicle and pedestrian movements, as well as maintain traffic levels of service at their pre-development levels. Unless otherwise agreed by the City of Airway Heights or Spokane County, the Tribe has also agreed to be in reasonable conformity with applicable City or County standards. Under Section 2.4 of the Memorandum of Agreement, the City has agreed to provide routine maintenance and repair to the streets providing access to the property at the same level as provided for similar streets in the City. Payments to the City through the Memorandum of Agreement would offset the increased cost to the City for road maintenance. Thus, the Preferred Alternative would not result in significant adverse effects on transportation infrastructure.

Impacts on services

Public Services:[196] No potentially significant impacts to public services were identified in the Final EIS. Pursuant to the Tribal-State Compact for class Ill Gaming, the Intergovernmental Agreement between the Tribe, the City of Airway Heights, and Spokane County, and the Memorandum of Agreement, annual payments would be made by the Tribe to the State and local

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[192] FEIS vol. II, § 4.10.1.

[193] FEIS vol. II, § 4.10.1; § 5.2.9.

[194] *See* discussion of the Intergovernmental Agreement at § 292.18(d).

[195] *Id.* at § 5.2.7.

[195] *Id.*

[196] *Id.* at § 4.7.1

[196] *Id.* at § 4.7.1

governments to provide support for public services, community benefits, and utilities. A detailed discussion of payments to off-set the cost of providing public services to the Preferred Alternative in accordance with local governmental agreements is provided in Section 292.18(d) below.

Schools:[197] It is not anticipated that the population of the area would increase as a result of the Preferred Alternative because the available labor force is sufficient to fill the employment positions generated by the Project. It is expected that any increase in enrollment at local schools will be minimal. The Preferred Alternative would not result in detrimental impacts on schools.

Impacts on housing

In 2013, the Spokane County housing market was projected to have 211,307 total units and 14,185 vacant units.[198] Based on regional housing stock projections and current trends in Spokane County housing market data, there are anticipated to be more than enough vacant homes to support potential impacts to the regional labor market under the Preferred Alternative. The Preferred Alternative would not result in detrimental impacts on housing.

Impacts on community character and land use

The record demonstrates that development of the Preferred Alternative would not be disruptive to the existing character and existing and anticipated land use in the area. The majority of land uses to the north, west, and south of the site consist of rural residential, agricultural, and open space. The adjacent parcels to the southeast consist of commercial uses and light industrial. Land uses to the east of the Site include additional commercial uses and a single-family residential subdivision. The Fairchild AFB is located approximately 1.5 miles to the southwest of the Site, and the Spokane International Airport is located approximately 3 miles to the southeast. The Kalispel Tribe's Northern Quest Casino is located in the City of Airway Heights approximately 1 mile northeast of the Site.[199] The Preferred Alternative is compatible with nearby existing and planned land uses, and would not adversely impact nearby residential land uses with the implementation of mitigation measures recommended within the Final EIS.[200]

While the Site is not subject to state and local zoning laws subsequent to the United States' acquisition of the Site in trust for the Tribe in 2001, it is located within the City's urban boundaries. Planning documents prepared for the surrounding area show that at one point, the City considered using the Site for future commercial development by the City.[201] The presence of an upscale casino and hotel is not likely to adversely impact the community character surrounding the Site.

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[197] *Id.*

[198] FEIS vol. II, § 4.7.1.

[199] *Id. at* § 3.9.1

[200] *Id. at*, § 4.9.

[201] Spokane Tribe's First Supplement at 52.

In accordance with the Tribal-State Gaming Compact, the Tribe will contribute 2 percent of the gross gaming revenue from class III table games to an existing "Impact Mitigation Fund" for purposes of providing assistance to non-tribal service agencies.[202] Based on the financial projections provided by the Tribe, the Tribe would pay approximately (b) (4) into the Impact Mitigation Fund for the first year of Project operation.[203] Additionally, the Tribe will contribute funds towards Impact Costs, Charitable Donations, and Community Impacts as defined in Section 12.[204] Based on the financial projections provided by the Tribe, it would pay approximately (b) (4) for the first year of Project operation.[205]

Fairchild Air Force Base and Spokane International Airport: The Tribe began early discussions with Base Command to ensure the Preferred Alternative will not adversely affect Fairchild AFB Operations.[206] The U.S. Air Force and the Federal Aviation Administration (FAA) were cooperating agencies with BIA on development of the EIS. The Tribe participated in a Joint Land Use Study (JLUS), commissioned by the Spokane County Board of County Commissioners and funded by the Department of Defense to develop recommendations for land use restrictions designed to protect the integrity of Base Operations at Fairchild AFB. The proposed Preferred Alternative is consistent with JLUS recommendations.[207] Moreover, at the Tribe's request, FAA conducted an aeronautical study and determined that the Preferred Alternative would not be a hazard to air navigation.[208]

As described in the Final EIS, implementation of the Preferred Alternative would not encroach upon Fairchild AFB's available air space or impede its ability to implement the operational and training mission of the AFB. With the implementation of mitigation, the Preferred Alternative would not create an air navigation hazard or otherwise impede Fairchild AFB operations. Further, the Tribe has agreed to accept any inconveniences associated with AFB operations during operation of the Project. Additionally, although the FAA's No Hazard Determination allows for a building height of 140 feet on the Site, the Tribe has committed to limit the height of the hotel tower to only 60 feet and has enacted Resolution 2014-189 which confirms this commitment.[209] The Tribal Council likewise enacted Resolution 2012-146, which stated that the Tribe will accept, as normal and necessary, those impacts to its property arising from Fairchild AFB operations, including, but not limited to, air traffic, noise, fumes, dust, smoke, and the operation of machinery.[210]

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[202] *Id.* at Ex. 4, app. C (Tribal-State Compact for Class III Gaming Between the Spokane Tribe and the State of Washington, § XIV(C)(1) at 30-31). A substantially similar provision is included in the proposed Amendment to the Compact that the Tribe submitted to the Department on April 22, 2015.

[203] *Id.* at, Ex. 10 (Fixed Assets Accounting, Balance Sheet, Cash Flow Statement and Income Statement).

[204] *Id.* at, Ex. 4, app. C (Tribal-State Compact for Class III Gaming Between the Spokane Tribe and the State of Washington, app. X, § 12 at X-26).

[205] *Id.* at t, Ex. 10 (Fixed Assets Accounting, Balance Sheet, Cash Flow Statement and Income Statement).

[206] FEIS vol. II, § 4.9.1.

[207] *Id.*

[208] *Id.*

[209] Spokane Tribal Resolution 2014-189 (April 18, 2014).

[210] FEIS vol. II, § 4.9.1.

In 2013, the Spokane Tribe enacted its West Plains Development Code, which implements restrictions consistent with JLUS recommendations on the Site.[211] The West Plains Development Code incorporates mitigation measures recommended within the Final EIS to ensure the Project's consistency with Fairchild AFB operations including restrictions and requirements regarding building heights, density, sound attenuation, wildlife attractants, and light and glare. The West Plains Development Code also requires the incorporation of any additional mitigation measures set forth in the Record of Decision supporting this Secretarial Determination.[212]

In a March 31, 2014, letter to the Assistant Secretary – Indian Affairs, the Spokane County Commissioners submitted a request for a supplemental environmental impact statement.[213] The letter asserted a supplemental EIS was required to address outstanding questions regarding the safety of the Tribe's Project. Specifically, the County Commissioners asserted that the Accident Potential Zones (APZs) for Fairchild AFB be modified to improve safety and minimize encroachment conflicts. The County takes issue with the Air Force's 2007 Air Installations Compatibility Use Zone Study for Fairchild AFB because it does not reflect the operations the Air Force has described in the course of commenting on BIA's EIS for the Project.

In response to the letter from the County, the City of Airway Heights wrote a letter to the Assistant Secretary - Indian Affairs which urged the Department to rely on the Final EIS, the Air Force's 2013 EIS,[214] and the findings of the FAA which found no encroachment issues and which accurately reflect the realities surrounding the Project and should be considered in conjunction with the request for a supplemental analysis.[215] The City of Airway Heights noted that the development of the Airway Heights JLUS involved the participation of Fairchild AFB, Spokane International Airport, the City of Spokane, Spokane County, and other governmental jurisdictions. The JLUS led the City of Airway Heights to adopt laws protecting Fairchild AFB. During the development of the JLUS, the group decided against recommending altering the APZ's because the city's Ordinance C-771 best protects the long-term mission of Fairchild AFB.[216]

The letter from the City also stated Fairchild AFB was one of four bases evaluated in the USAF FEIS, which concluded that there is no increased safety hazard and that the Tribe's Project, along with the First MOB, would contribute substantial new direct and indirect revenue-generating

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[211] *Id.*

[212] FEIS vol. II, § 5.2.8.

[213] Letter from Al French, Chair, Todd Mielke, Vice Chair, Shelly O'Quinn, Commissioner, Spokane County, to Kevin Washburn, Assistant Secretary – Indian Affairs (March 31, 2014), in Office of Indian Gaming Binder Tab 6, (Attachment 8f of this Determination).

[214] The letter from Airway Heights notes that in 2013, the Air Force initiated an EIS to evaluate the impacts regarding the beddown of the Formal Training Unit and the First Main Operating Base (First MOB) missions for the KC-46A.

[215] letter from Patrick Rushing, Mayor, City of Airway Heights, to Kevin Washburn, Assistant Secretary – Indian Affairs (June 2, 2014), in Office of Indian Gaming Binder Tab 9, (Attachment 8g of this Determination).

[216] *Id.*

capacity to regional municipalities and Spokane County.[217] Additionally, the City explains that the Tribe's Project conforms to Airway Heights' regulations and that the expansion of APZ's to cover the area suggested by the County would result in the APZs covering most of the City of Airway Heights, effectively halting growth of the City. The City further notes that APZ's are rarely modified without a change in mission. Thus the modification of the APZ's suggested by the County would have a detrimental effect on the City's ability to comply with Washington State public policy requirements and enlarge the existing encroachment areas within Airway Heights to the potential future detriment of Fairchild AFB.

On February 3, 2015, the Principal Deputy Assistant Secretary of the Air Force (Installations, Environment and Energy), sent a letter to the Assistant Secretary – Indian Affairs.[218] The Principal Deputy Assistant Secretary stated that the implementation of agreed-upon mitigation measures in the Draft Mitigation Monitoring and Enforcement Plan, the understanding that Fairchild AFB cannot shift location of its flying operations even if future tribal governments request it, and the continued willingness of the Tribe to monitor the mitigation and modify them if necessary, are critical to ensuring the proposed development does not have a negative impact on the current and future flying operations at Fairchild.[219] The Principal Deputy Assistant Secretary closed by stating that the Tribe has the Air Force's commitment to work collaboratively.

(c) Anticipated impacts on the economic development, income, and employment of the surrounding community.

Economic Development and Income

Development, construction, and operation of the Project will have a beneficial impact on the surrounding community by stimulating economic development, creating jobs, and generating income.

Expenditures on goods and services for construction and operational activities are expected to generate substantial direct economic output, as well as indirect and induced economic output.[220] Output is defined as the total value of all goods and services produced at the establishment or construction site. Direct output would result from money spent on activities for construction and operational activities of the Project. Indirect output would result from expenditures on goods and services by businesses that receive funds directly from the construction and operation of the Project. Induced output would result from expenditures on goods and services by employees directly generated from construction and operation of the Project.

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[217] *Id.*

[218] Letter from Kathleen I. Ferguson, Principal Deputy Assistant Secretary of the Air Force (Installations, Environment and Energy) to Kevin Washburn, Assistant Secretary – Indian Affairs (Feb. 3, 2015), in Office of Indian Gaming Binder Tab 13, (Attachment 9 to this Determination).

[219] *See Id.* for list of eight mitigation measures.

[220] FEIS vol. II, § 4.7.

Construction and operation of the Project would generate substantial economic output for a variety of businesses in Spokane County. The direct one-time output for construction is estimated to total approximately $(b) (4), of which approximately $(b) (4) (98 percent) is attributed to the construction industry.[221] Indirect and induced outputs for construction were estimated to total (b) (4) and (b) (4), respectively.[222]

The direct annual output from operation is estimated to total approximately (b) (4), of which approximately (b) (4) would be attributed to the gaming and entertainment industry. Indirect and induced outputs for operation were estimated to total (b) (4) million and (b) (4) million, respectively.[223] Indirect and induced output would be dispersed and distributed among a variety of different industries and businesses throughout the County.

Because the Site is already held in trust for the benefit of the Tribe, no property taxes will be directly generated by the Project. However, the Project would indirectly generate substantial tax revenues for State, County, and local governments from economic activity associated with construction and operation of the Project.[224] Construction of the Project would result in a one-time generation of $8.6 million in Federal tax revenues, and $6.6 million in state/county/local tax revenues. Operation of the Project would generate annually $6.3 million in Federal tax revenues, and $4.7 million in state/county/local tax revenues from indirect and induced taxes. While tax revenues generated by existing gaming facilities would temporarily be reduced proportional to the estimated substitution effect described herein, the net impact to tax revenues as a result of the Project would be positive.

The Kalispel Tribe's Northern Quest Casino and Resort currently conducts class III gaming. Potential adverse impacts to the Kalispel Tribe's casino will be mitigated as described in the Final EIS. As discussed in more detail below, the Kalispel Tribe's Northern Quest Casino and Resort will experience some market decline, but that decline will be mitigated by the length of time it takes to construct and develop the Spokane Tribe's Project, and will likely recover over time as the market grows with the introduction of a second casino in the area.

Employment

The Project is expected to create substantial employment opportunities that will help reduce unemployment rates within the surrounding community. The construction phase will directly create approximately 2,216 employment positions within the County.[225] It will also induce another 561 positions, including 126 in health and social services for a projected total of approximately 2,154 positions.[226] These will generate approximately $102.4 million in wages.[227]

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[221] *Id.*

[222] *Id.*

[223] *Id.*

[224] *Id.* at § 4.7.

[225] *Id.*

[226] *Id.*

[227] *Id.*

The operation of the Project is projected to create 2,087 direct, 289 indirect, and 429 induced positions for a total of 2,805 positions that are projected to generate approximately $66.8 million in annual wages throughout Spokane County.[228] All together, the Project will likely create nearly 5000 jobs consisting of construction jobs and operational jobs.[229]

(d) Anticipated costs of impacts to the surrounding community and identification of sources of revenue to mitigate them.

The Tribe entered into 2 agreements with local governments on April 10, 2007, (amended on August 26, 2010) that include provisions compensating the City of Airway Heights and Spokane County for impacts to local government services from the Proposed Project: a Memorandum of Agreement (MOA) with Airway Heights, and an Intergovernmental Agreement (IGA) with Airway Heights and Spokane County.[230] These agreements include provisions relating to the nature and scope of compensation for local government services that would be affected by the Project.[231]

Memorandum of Agreement

The MOA identifies the payments that the Tribe will provide to the City, which will begin with the first full calendar quarter subsequent to commencement of any gaming activities under the Tribal-State Compact. The payments are as follows:[232]

- (b) (4) for the first full year
- (b) (4) for the second full year
- (b) (4) for the third full year
- (b) (4) for the fourth full year
- (b) (4) for the fifth full year
- (b) (4) for the sixth full year
- (b) (4) for the seventh full year

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[228] *Id.*

[229] Spokane Tribe's First Supplement at 42.

[230] FEIS vol. II, Appx. C. Pursuant to the MOA, Airway Heights and Spokane County entered into an Interlocal Agreement (ILA) on August 17, 2010, which outlined the terms and conditions by which Airway Heights was to share the MOA annual payments with Spokane County to compensate the County for additional costs incurred as a result of the gaming component of the Proposed Project. However, on January 25, 2013, the Spokane County Board of County Commissioners passed Spokane County Resolution No. 2013-0085, which terminated the ILA with Airway Heights. Termination of the ILA does not, however affect the validity or enforceability of the IGA or the MOA. Under Section 3.3 of the MOA, Airway Heights remains obligated to provide a share of MOA annual payments to the County. Pursuant to Section 3.3, Airway Heights and the County are expected to negotiate an agreement no later than the first full calendar quarter subsequent to the commencement of any gaming activities on the Site to ensure that the County will receive sufficient funds from the annual payments set forth in Section 6.0 of the MOA to mitigate impacts from the Proposed Project associated with law enforcement services and transportation planning and funding

[231] Spokane Tribe's First Supplement Ex. 4, app. C.

[232] Spokane Tribe's First Supplement at 45; *see* MOA § 6.1.1-6.1.9.

Beginning in year eight, and each year thereafter, the payment shall be increased by 3% per year.

Environment: In sections 1.20 of the MOA, the Tribe committed to providing timely mitigation of any significant effect on the environment on or near the Site where such effect is attributable in whole or in part, to the Project, unless the particular mitigation is infeasible.

Law Enforcement: Section 2.2 of the MOA outlines the security responsibilities of the Tribe and the law enforcement responsibilities of the City. The payments by the Tribe, outlined in section 6.0 of the MOA, would compensate the City for costs of impacts associated with increased police services. The on-site tribal police station would facilitate the security responsibilities of the Tribe, as outlined within the MOA and Tribal-State Compact. If additional services are needed from other law enforcement agencies, the Tribe shall provide for mitigation through the existing mechanisms set forth in the Tribal-State Compact.

Fire Protection: Section 2.3 of the MOA outlines the responsibilities of the Tribe and City regarding fire protection and emergency medical services to the trust property. The payments by the Tribe outlined in Section 6.0 of the MOA would compensate the City for costs of impacts associated with increased fire protection and emergency medical services. The increase in traffic through Fire District 10 – West Plains District as a result of the Project could increase call volume. The Tribe shall provide fair-share assistance to Fire District 10 through the existing mechanisms set forth in the Tribal-State Compact.

Routine Road Maintenance and Repair: In accordance with the Section 2.4 of the MOA, the City will provide routine maintenance and repair of streets that provide access to the Project.

Intergovernmental agreement

Pursuant to section 3.3 of the MOA, the City of Airway Heights and Spokane County entered into the IGA that provides a mechanism for ensuring adequate public services for the Project, including sewer and water service, stormwater, and street improvements to offset project-related traffic impacts.

Utilities: In accordance with Section 2.0 of the IGA, the City's public water and sewer services shall serve the Site through the City's municipal utilities with connections to be provided to the Site at the Tribe's sole cost and expense. Upon connection to the City's sewer and water system, the Tribe would pay the current sewer and water capital connection charges, as well as the monthly service fees.

Traffic Mitigation: Pursuant to Section 3.0 of the IGA, the Tribe agrees to make street and intersection improvements as identified in the traffic impact analysis in the EIS to provide for the safe and efficient vehicle and pedestrian movements and maintain traffic levels of service at their pre-development levels, unless otherwise agreed by the City or County, and be in reasonable conformity with applicable City or County standards. The Tribe shall contribute to the costs of street and intersection improvements through fair-share payments to the City and County as required by the IGA. These street and intersection improvements and the Tribe's estimated fair-

share payments, as identified in the traffic impact analysis, are listed within Section 5.2.7 of the Final EIS.

Off-site traffic and environmental mitigation are set forth in Section 5.0 of the Final EIS. Costs associated with these measures will be part of the overall development costs associated with the Project and will be paid pursuant to the Development Agreement between Warner Gaming and the Tribe.[233]

Tribal-State Compact for Class III Gaming

In February 2007, the Tribe and State entered into a Tribal-State Gaming Compact for the regulation of class III gaming.[234] The Compact includes mechanisms for the Tribe to contribute funding for purposes of providing assistance to non-tribal service agencies to address excessive and/or unanticipated increases in service demands as a result of the Project, including contributions dedicated to problem gambling support services.

In accordance with the Compact, the Tribe shall provide compensation for impacts to local community services that may arise as a result of the Tribe's gaming facilities.[235] The following payments would be made from revenues derived from Tribal Lottery System activities:

Impact Costs: Up to 0.5 percent of the net win derived from Tribal Lottery System activities shall be added to any amounts payable and distributable from other class III activities under the Compact in order to address community impacts, to the extent such Tribal-State Compact amounts are insufficient to meet actual and demonstrated impact costs.

Charitable Donations: 0.5 percent of the net win derived from the Tribal Lottery System activities shall be donated to non-tribal bona fide nonprofit and charitable organizations in the state of Washington.

Community Impacts: Up to 0.5 percent of the net win derived from the Tribal Lottery System determined by deducting from 1 percent of net win the amounts actually paid under Impact Costs and Charitable Donations, shall be applied to Tribal governmental programs that have an impact on the community by assisting the Tribe and its members in becoming self-sufficient, such as programs concerned with Tribal law enforcement, education, housing, health, elderly care, safety, and gaming regulation.[236]

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[233] Spokane Tribe's First Supplement at 44.

[234] Spokane Tribe's First Supplement Ex. 4, app. C (Tribal-State Compact). The compact outlines, among other things, the nature, size, and scope of class III gaming; the licensing and certification requirements and procedures; procedures regarding the enforcement of compact provisions; regulations for the operation and management of the tribal gaming operation; and tribal reimbursement of regulatory fees and expenses incurred by the state gaming agency.

[235] Spokane Tribe's First Supplement Ex. 4, app. C (Tribal-State Compact, app. X, § 12 at X-26). The Tribe submitted an Amendment to the Compact on April 22, 2015.

[236] *Id.* (Compact, app. X, §§ 12.1-12.3 at X-26).

Based on the financial projections provided by the Tribe, the Tribe would pay approximately (b) (4) to Impact Costs, Charitable Donations, and Community Impacts in the first year of Project operation.[237]

(e) Anticipated cost, if any, to the surrounding community of treatment programs for compulsive gambling attributable to the proposed gaming establishment.

The Tribe is aware that the gaming activities may adversely impact individuals who suffer from problem or pathological gambling addiction disorders.[238] The Tribe is committed to supporting education, awareness, and treatment.[239] As set forth in the Tribal-State Compact, the Tribe has set aside 0.13 percent of the gross gaming revenues for its class III gaming activities for contributions dedicated to problem gambling support services.[240]

The Tribe has also committed to providing written information to the gaming public, which will include a list of professional gambling treatment programs and self-help groups available to casino customers in key locations inside the casino and near all automated teller machines (ATMs), as well as implementing procedures to allow for voluntary self-exclusion.[241] Additionally, in accordance with the Tribal-State Compact, the Tribe shall determine the wager limit for any allowed higher stakes gaming stations, and only qualified patrons shall be allowed to play at higher stakes tables.[242] Also, pursuant to the Tribal-State Compact, no person under the age of 18 shall be allowed to participate in any gaming operation, or be allowed on the gaming floor during hours of operation.[243]

(f) If a nearby Indian tribe has a significant historical connection to the land then the impact on that tribe's traditional cultural connection to the land.

As defined in 25 C.F.R § 292.2, the term "significant historical connection" means "the land is located within the boundaries of the tribe's last reservation under a ratified or unratified treaty, or a tribe can demonstrate by historical documentation the existence of the tribe's villages, burial grounds, occupancy or subsistence use in the vicinity of the land."

In 1914, President Wilson set aside approximately 4,629 acres for the Kalispel Tribe in its aboriginal lands through Executive Order No. 1904.[244] This land is located approximately 55

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[237] *Id.* at Ex. 10.

[238] *Id.* at 46.

[239] *Id.*

[240] *Id.* (Compact, App. Spokane, § 3 at 4). A similar set aside of 0.13% is similarly included in the Tribe's proposed Amendment to the Compact submitted to the Department on April 22, 2015.

[241] Spokane Tribe's First Supplement at 46.

[242] *Id.* (Compact, App. Spokane, § 9 at 8-9).

[243] Spokane Tribe's First Supplement at 46.

[244] *See* Executive Order No. 1904 (March 23, 1914) in Kalispel Tribe of Indians: Comments on The Spokane Tribe's Request for a Two-Part Determination or the Proposed West Plains Casino Project (June 14, 2012) [hereinafter

miles north of Spokane near the City of Usk in Pend Oreille County, Washington.[245] The Kalispel Tribe has since acquired additional trust and fee land, including 300 acres of land in Airway Heights, 40 acres of which were acquired in trust in 1994 for non-gaming purposes, and later used for its current gaming establishment.[246] In 2006, 249.29 acres were acquired in trust in Airway Heights for the Kalispel Tribe.[247] The Kalispel Tribe currently has 289.29 acres of trust land in Airway Heights.

The Regional Director determined that there is no evidence of historical Kalispel presence in the West Plains area.[248] The Kalispel Tribe stated that although Airway Heights is not located within Kalispel aboriginal territory, it has a historical connection to the area primarily because the Kalispel traveled to the Spokane River for harvesting and fishing.[249] As discussed above in Section 292.17(i), travelling through the area for harvesting and fishing was permissive, occasional, limited, and not for subsistence activities. Particularly when compared to the extensive archeological and cultural resource evidence of Spokane occupation of the area surrounding the Site, the Kalispel Tribe is unable to show that it has a significant historical connection to the Site.[250]

(g) Any other information that may provide a basis for a Secretarial Determination whether the proposed gaming establishment would or would not be detrimental to the surrounding community, including memoranda of understanding and inter-governmental agreements with affected local governments.

Management of the gaming facility will be overseen by Warner Gaming.[251] Warner Gaming subsidiaries manage the tribal gaming operations for the Mescalero Apache Tribe of Indians in New Mexico, the Tribe's Chewelah Casino and Two Rivers Casino, and the Hard Rock Hotel and Casino in Las Vegas, Nevada.

Detriment to Surrounding Community Conclusion

Kalispel Tribe June 2012 Comments]) Tab 1, in Regional Director's Recommendation Ex. 13, (Attachment 10 to this Determination).

[245] Kalispel Tribe June 2012 Comments at 5.

[246] Regional Director's Recommendation at 40; *See also* Letter from Bruce Babbitt, Secretary of the Interior, to Gary Locke, Governor of Washington (August 19, 1997) (positive Secretarial Decision for 40 acres in Airway Heights), (Attachment 12 to this Determination). This land was land was proclaimed to be part of the Kalispel Reservation by the Assistant Secretary – Indian Affairs on October 19, 1996). *Id.*

[247] Regional Director's Recommendation Ex. 23 (Kalispel fee-to-trust conversion documents).

[248] *Id.* at 40.

[249] *See* Kalispel Tribe June 2012 Comments at 9, note 7.

[250] Spokane Tribe's First Supplement at 29-33 (a wealth of archaeology documents the presence of nearby Spokane permanent villages, burial sites and fishing stations—expert testimony established that the Kalispel and Spokane shared a common boundary on the west and north of Spokane territory and that at no point on that Spokane-Kalispell border did the Kalispel claim or use consistently any land south of that line).

[251] Spokane Tribe's First Supplement at 49.

The Tribe has submitted the required information under 25 C.F.R. § 292.18(a) regarding environmental impacts, including a Final EIS. Both the Draft EIS and the Final EIS considered reasonable alternatives addressing the purpose and need for the proposed Federal action and analyzing potential impacts. The Final EIS found that the issuance of a Secretarial Determination, and the development of the Project, did not significantly affect the quality of the human environment within the meaning of NEPA.

The Tribe has submitted the required information under 25 C.F.R. § 292.18(b) regarding anticipated impacts on the social structure, infrastructure, services, housing, community character, and land use patterns of the surrounding community. The Tribe entered into an Intergovernmental Agreement with the City of Airway Heights and Spokane County, and a Memorandum of Agreement with the City of Airway Heights. These agreements include provisions relating to the nature and scope of compensation for local government services that would be affected by the Project.

The Tribe has submitted the required information under 25 C.F.R. § 292.18(c) regarding the impacts to economic development, income, and employment in the surrounding community. Overall, it is projected that economic development and income in the local community will increase if the Project is built because employment from construction and operation will benefit local community members. Local employment is also projected to increase as ancillary services to the Project are provided by private businesses providing plumbing, heating, air conditioning, electrical, laundry, and food supply services. The Project will result in increased employment from spending for goods and services by the employees of the Project.

The Tribe has submitted the required information under 25 C.F.R. § 292.18(d) regarding anticipated costs of impacts to the surrounding community and identification of sources of revenue to mitigate them. As discussed above, the Tribe entered into an Intergovernmental Agreement with the City of Airway Heights and Spokane County, and a Memorandum of Agreement with the City of Airway Heights. These agreements include provisions relating to the nature and scope of compensation for local government services that would be affected by the Project.

The Tribe has submitted the required information under 25 C.F.R. § 292.18(e) regarding anticipated costs to the surrounding community of treatment programs for compulsive gambling attributable to the Project. The Tribe will provide financial support for the problem gambling organizations to provide problem gambling services up to .013 percent of gross gaming revenue through the Tribal-State Compact.

The Tribe has provided information under 25 C.F.R. § 292.18(f) regarding impact to the traditional cultural connection to the land. In this case, there is no nearby Indian Tribe (including the Kalispel Tribe, discussed above) with significant historical connection to the land, as that term is defined under the regulations. Since ground-disturbing activities have the potential to disturb unidentified subsurface cultural resources, the Final EIS identified mitigation measures to ensure no adverse effects would result from the Project.

The Tribe has submitted the required information under 25 C.F.R. § 292.18(g) regarding other information that may provide a basis for a determination that the Project would or would not be detrimental to the surrounding community.

Based on the application and the supporting documents submitted by the Tribe, the Final EIS, the consultation process, submissions by local units of government, the Kalispel Tribe, and the entire record before us, we conclude that gaming at the Site will not be detrimental to the surrounding community.

V. Consultation

Section 292.19 provides that in conducting the consultation process:

(a) *The Regional Director will send a letter that meets the requirements in section 292.20 and that solicits comments within a 60-day period from: (1) Appropriate State and local officials; and (2) Officials of nearby Indian tribes.*

First Consultation

On April 8, 2011, the Regional Director sent consultation request letters to the Governor, local governmental officials within a 25-mile radius of the proposed gaming establishment, and the Kalispel Tribe of Indians, which is the only nearby Indian tribe as defined in section 292.2.[252] Of the 77 consultation request letters that were sent, the Regional Director received written comments from 5 entities within the 60-day period: 1) Spokane County Fire District No. 10; 2) Board of Lincoln County Commissioners; 3) City of Spokane Valley; 4) City of Airway Heights; and 5) Kalispel Tribe of Indians. The Washington State Auditor also responded although that office was not directly solicited by the Regional Director.[253] The Acting Regional Director provided a copy of all comments received during the consultation process to the Tribe pursuant to section 292.19(c).[254] The Tribe submitted its response to the comment letters on August 31, 2011.[255]

Kalispel Tribe of Indians

On May 31, 2011, the Kalispel Tribe requested that the Northwest Regional Office withdraw the April 8, 2011, request for comments, and refrain from reissuing it again until after the Draft EIS

[252] Letter from Stanley M. Speaks, Northwest Regional Director, to Local Agency Official (Apr. 8, 2011), Regional Director's Recommendation Ex. 3; Letter from Stanley M. Speaks, Northwest Regional Director, to Glen Nenema, Chairman, Kalispel Tribe of Indians (Apr. 8, 2011), *Id.* "Nearby Indian Tribe" is defined in 25 C.F.R. § 292.2 as an Indian Tribe with tribal Indian lands located within a 25-mile radius of the location of the proposed gaming establishment, or if the tribe has not trust lands, within a 25-mile radius of its government headquarters.

[253] In addition, the BIA and the Tribe have received many written expressions of support from local leaders, labor unions, and business interests. *See* Spokane Tribe's First Supplement at 49.

[254] *See* Letter from Acting Regional Director, to Greg Abrahamson, Chairman, Spokane Tribe of Indians (Jun. 29, 2011), Regional Director's Recommendation Ex. 7.

[255] Letter from Gregory J. Abrahamson, Chairman, Spokane Tribe of Indians, to Stanley Speaks, Northwest Regional Director, Bureau of Indian Affairs (Aug. 31, 2011), Regional Director's Recommendation Ex. 8.

was publicly available.[256] On June 13, 2011, an attorney for the Kalispel Tribe requested 75 days after the publication of the Draft EIS to submit a response to the consultation request.[257] By letter dated June 17, 2011, the Regional Director responded stating that the Regional Office rescinded the April 8 letter sent to the Kalispel Tribe, and that it would submit a request to the Kalispel Tribe for comments after publication of the Draft EIS.[258]

Spokane County Fire District No. 10

The Spokane County Fire District No. 10 (Fire District) stated that the construction and operation of the casino will have significant impacts on the surrounding community including services by the Fire District.[259] The Fire District stated that there will be an increase in traffic and call volume, which will be generated by the increase in the population that must travel through the district to visit the casino. The Fire District also stated that the Kalispel Tribe's existing Northern Quest Casino and Resort has generated increased traffic and that the Fire District anticipates similar or greater impacts from the Tribe's Project.

In its letter, dated August 31, 2011, the Tribe agreed to provide assistance to the Fire District through the existing mechanism established within Section XIV, Public Health and Safety, of the Tribal-State Compact.[260]

Board of Lincoln County Commissioners

The Board of Lincoln County Commissioners responded by letter dated May 24, 2011, stating the County's eastern border is a few miles from the Project and Rearden, the town closest to the Project is 15 miles away. The Commissioners stated that they did not foresee any adverse environmental impacts to Lincoln County.[261] The Commissioners stated that as the City of Airway Heights and the West Plains area of Spokane County continue to grow and develop,

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[256] Letter from Glen Nenema, Chairman, Kalispel Tribe of Indians, to Stanley Speaks, Northwest Regional Director, Bureau of Indian Affairs, & B.J. Howerton, Northwest Regional Office, Bureau of Indian Affairs (May 31, 2011) at 2, Regional Director's Recommendation Ex. 4. The Kalispel Tribe stated, "[w]ithout the DEIS we have no access to crucial information which must necessarily inform our views as to whether and how the proposed Spokane gaming facility will affect us." *Id.*

[257] *See* Letter from Acting Northwest Regional Director, Bureau of Indian Affairs, to Glen Nenema, Chairman, Kalispel Tribe of Indians (May 3, 2012) at 1-2, Regional Director's Recommendation Ex. 11.

[258] Letter from Stanley Speaks, Northwest Regional Director, Bureau of Indian Affairs, to Glen Nenema, Chairman, Kalispel Tribe of Indians (June 17, 2011) in Regional Director's Recommendation Ex. 6. *See also* Letter from Stanley Speaks, Northwest Regional Director, Bureau of Indian Affairs, to Glen Nenema, Chairman, Kalispel Tribe of Indians (June 16, 2011) in Regional Director's Recommendation Ex. 5.

[259] Letter from Nick Scharff, Fire Chief Spokane County Fire District No. 10, to United States Department of Interior, Bureau of Indian Affairs (Feb. 25, 2011), Regional Director's Recommendation Ex. 4, (Attachment 8a to this Determination).

[260] Letter from Gregory J. Abrahamson, Chairman, Spokane Tribe of Indians, to Stanley Speaks, Northwest Regional Director (Aug. 31, 2011) at 3 in Regional Director's Recommendation Ex. 8.

[261] Letter from Dennis D. Bly, Chairman, Board of Lincoln County Commissioners, to B.J. Howerton, Bureau of Indian Affairs, (May 24, 2011), in Regional Director's Recommendation Ex. 4 (Attachment 8b to this Determination).

more individuals may seek housing and services in Lincoln County. Lincoln County supports all economic development that creates employment and housing, which in turn increases the tax base and stimulates the economy in Lincoln County.

City of Spokane Valley

The City Manager of the City of Spokane Valley responded by letter dated June 3, 2011, stating that the City of Spokane Valley had no comment on the Project.[262]

City of Airway Heights

The Mayor of the City of Airway Heights responded by letter dated June 7, 2011, and attached letters previously sent by him to Secretary Salazar and to Governor Gregoire that express "unwavering support" for the Project.[263] These letters also addressed the impacts to the local community and the commitment from both the Tribe and City to mitigate them.[264] The Mayor stated that the relationship that has been nurtured between the Tribe and the City should be recognized as the Project proceeds. The Mayor also stated that the Project is a prime example of "smart development that enhances the West Plains region while providing economic job growth."[265]

The Mayor stated that the Project will require services such as utilities, law enforcement, fire protection, road maintenance, and court services. The Mayor stated that in all respects, the Project improves the provision of services by providing mitigation to address the increased demand. The Mayor acknowledged that there will be positive and negative impacts on social structure. The Tribe, the City, and Spokane County have, however, entered into an agreement to mitigate these impacts. The Mayor stated that the development and agreements are benefits to the surrounding community, and that the mitigation provides funding for service impacts, as well as infrastructure improvements to support development of the Project.[266] The Mayor stated that the City supports the Project which will bring economic diversity and generate job opportunities for residents and businesses. The City anticipates that job opportunities will reduce the 34 percent local unemployment.

The Mayor stated that the anticipated cost of impacts to the surrounding community is difficult to define, but the City has an agreement with the Tribe for the revenue sources to mitigate

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[262] Letter from Mike Jackson, City Manager, City of Spokane Valley, to B.J. Howerton, Northwest Regional Office, Bureau of Indian Affairs (June 3, 2011), in Regional Director's Recommendation Ex. 4.

[263] Letter from Patrick D. Rushing, Mayor, City of Airway Heights, to B.J. Howerton, Northwest Regional Office, Bureau of Indian Affairs (June 7, 2011) (attaching Letter from Patrick D. Rushing, Mayor, City of Airway Heights, to Governor Gregoire, Office of the Governor (Feb. 4, 2011); Letter from Patrick D. Rushing, Mayor, City of Airway Heights, to Ken Salazar, Secretary, Department of the Interior (May 18, 2011)), in Regional Director's Recommendation Ex 4, (Attachment 8c to this Determination).

[264] *See also* letter from Patrick Rushing, Mayor, City of Airway Heights, to Kevin Washburn, Assistant Secretary – Indian Affairs (June 2, 2014), in Office of Indian Gaming Binder Tab 9, (Attachment 8g to this Determination).

[265] *Id.*

[266] *Id.*

development-related impacts. The City and the Tribe negotiated the agreement, which provides that as the impacts increase annually, the revenue may also increase to mitigate those impacts. The Mayor indicated that the initial revenue source for the Project is nearly double what the Kalispel Tribe is paying the City, and increases annually to provide services and offset any negative impacts that the residents may experience. The City does not anticipate any additional need for funding treatment programs for compulsive gambling addictions beyond what the Tribe has already agreed to provide.[267]

Washington State Auditor

The Washington State Auditor responded by letter dated June 27, 2011, stating that he was concerned about the precedent the Project would set which could lead to an "uncontrolled proliferation of casinos wherever trust lands exist throughout the state."[268] The letter stated that the proposed site is located 4 miles from the existing Kalispel Tribe's casino and could potentially affect the Kalispel Tribe's ability to thrive economically. The letter urged the careful evaluation of potential consequences as well as the possible economic harm to a neighboring tribe.

Second Consultation

On March 14, 2012, the Acting Regional Director reinitiated consultation with appropriate state and local agencies and the Kalispel Tribe following publication of the Notice of Availability of the Draft EIS and the submission by the Spokane Tribe of its First Supplement to its application, received by the Office of Indian Gaming on May 8, 2012.[269] The Regional Office provided copies of the Draft EIS and the Spokane Tribe's First Supplement (redacted to exclude confidential financial information). The Acting Regional Director provided the Spokane Tribe copies of the comments received from Spokane County and the City of Spokane and redacted comments from the Kalispel Tribe.[270] The Tribe submitted responses to the comments in two letters dated August 16, 2012.[271]

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[267] *Id.*

[268] Letter from Brian Sonntag, Washington State Auditor, to Stanley M. Sparks, Regional Director, U.S. Bureau of Indian Affairs, Northwest Office (June 27, 2011) in Regional Director's Recommendation Ex. 4, (Attachment 8d to this Determination).

[269] Letter from Acting Northwest Regional Director, Bureau of Indian Affairs, to Local Agency Official (Mar. 14, 2012) in Regional Director's Recommendation Ex. 9; Letter from Acting Northwest Regional Director, Bureau of Indian Affairs, to Glen Nenema, Chairman, Kalispel Tribe of Indians (Mar. 14, 2012) in Regional Director's Recommendation Ex. 9.

[270] *See* Letter from Acting Northwest Regional Director, Bureau of Indian Affairs, to Gregory J. Abrahamson, Chairman, Spokane Tribe of Indians (May 23, 2012) in Regional Director's Recommendation Ex. 12; Letter from Acting Northwest Regional Director, Bureau of Indian Affairs, to Gregory J. Abrahamson, Chairman, Spokane Tribe of Indians (June 18, 2012) in Regional Director's Recommendation Ex.14. By letter dated June 25, 2012, the Acting Regional Director provided a copy of a letter dated June 20, 2012, from the Kalispel Tribe to the Spokane Tribe. *See* Letter from Acting Northwest Regional Director, Bureau of Indian Affairs, to Gregory J. Abrahamson, Chairman, Spokane Tribe of Indians (June 25, 2012) in Regional Director's Recommendation Ex. 16.

[271] Letter from Rudy Peone, Chairman, Spokane Tribe of Indians, to Stanley Speaks, Area Director, Pacific Northwest Region, Bureau of Indian Affairs (Aug. 16, 2012) in Regional Director's Recommendation Ex. 22.

Spokane County

On March 15, 2012, Spokane County requested a 45-day extension. On April 11, 2012, the Regional Director granted an additional 30-day extension. On May 16, 2012, the Spokane County Commissioner discussed by letter a procedural question about the County's ability to comment on the Tribe's application, but provided no substantive comments on the Project.[272]

The County subsequently submitted substantive comments dated May 1, 2013, in which the County stated its opposition to the Project and its view that the Project will impair the County's ability to meet its obligations and will jeopardize the County's interests as a whole, detrimentally impacting the region.[273] The County focused its comments on potential impacts to Fairchild AFB and perceived inadequacies with the EIS regarding economic impacts and impacts to transportation and other public services. The County argued that the EIS did not consider a sufficient range of alternatives, and that BIA was required to prepare a supplemental EIS addressing significant new information that arose after the Draft EIS was circulated. Lastly, with respect to the proposed Secretarial Determination, the County stated that the Department was required to defer to the surrounding community's position that the Project will be detrimental to the surrounding community, while also citing "overwhelming" opposition to the Project. These concerns are addressed under Section 292.18(b) of this Secretarial Determination and in the accompanying Record of Decision. On March 31, 2014, the County requested a supplemental EIS to address its outstanding questions regarding the safety of the Project, based on information it acquired from its request for information to the U.S. Air Force and BIA under the Freedom of Information Act (FOIA).[274]

City of Spokane

The City of Spokane's views on the project have been mixed and evolved over time. The Mayor of the City of Spokane responded by letter dated May 15, 2012, expressing City of Spokane's concern that the Project would encroach on Fairchild AFB, and could impact the surrounding community negatively by jeopardizing the future of the community's largest employer.[275] . The Mayor enclosed and incorporated by reference the City of Spokane's comments on the Draft EIS dated May 11, 2012.[276]

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[272] Letter from Al French, Spokane County Commissioner, to Stanley Speaks, Northwest Region, Bureau of Indian Affairs (May 16, 2012) in Regional Director's Recommendation Ex. 10.

[273] Comments on the Final Environmental Impact Statement, Spokane Tribe of Indians West Plains Casino and Mixed Use Project prepared by Perkins Coie, LLP (May 1, 2013), in Office of Indian Gaming Binder Tab 4, (Attachment.8e of this Determiatnion).

[274] Letter from Al French, Chair, Todd Mielke, Vice Chair, Shelly O'Quinn, Commissioner, Spokane County, to Kevin Washburn, Assistant Secretary – Indian Affairs (March 31, 2014), in Office of Indian Gaming Binder Tab, (Attachment 8f to this Determination).

[275] Letter from David A. Condon, Mayor, City of Spokane, to Stanley Speaks, Northwest Regional Director, Bureau of Indian Affairs (May 15, 2012) in Regional Director's Recommendation Ex. 10, (Attachment 8h to this Determination).

[276] *See also* Letter from David A. Condon, Mayor, City of Spokane, to Stanley Speaks, Northwest Regional Director, Bureau of Indian Affairs (April 30, 2013) in Office of Indian Gaming Binder Tab 3.

The Mayor stated that the City was concerned that the Project could limit Fairchild AFB's current and future flight operations due to height, lighting and noise compliance, and safety. The City also expressed concern that the new flying missions that the region was then actively pursuing could be restricted or eliminated due to encroachment by the Project.[277]

In response to the Mayor's concerns regarding impacts to Fairchild AFB, the Tribe resolved these issues to the satisfaction of the Air Force as discussed above in section 292.18(b). The U.S. Air Force and FAA were cooperating agencies with BIA on the development of the EIS. Significantly, the Tribe participated in a Joint Land Use Study (JLUS), commissioned by the Spokane County Board of County Commissioners and funded by the Department of Defense to develop recommendations for land use restrictions designed to protect the integrity of Base Operations at Fairchild AFB. The proposed Project is consistent with JLUS recommendations.[278] Moreover, FAA conducted an aeronautical study at the Tribe's request and determined that the Project would not be a hazard to air navigation.[279] Additionally, as discussed above, although FAA's No Hazard Determination[280] allows for a building height of 140 feet on the Site, the Tribe has committed to limit the height of the hotel tower to 60 feet and has enacted Resolution 2014-189 which confirms this commitment.[281]

On February 25, 2014, the Spokane City Council submitted a letter notifying the Department that the City council rescinded a March 2012 resolution opposing the Project.[282] The letter stated that the March 2012 resolution was based on concerns about the Project's possible effect on Fairchild AFB and general impacts to the regions. The letter goes on to state that the City Council now recognizes that the Project will not impede existing or future operations at the AFB and that the Project is not detrimental to the surrounding community. Further, the City Council stated that the Project is extremely important to the Spokane region and that the region will not likely have another opportunity for private investment similar to the Project.[283]

The Kalispel Tribe

The Kalispel Tribe provided extensive comments on the Spokane Tribe's application, Draft EIS, and Final EIS in comments dated June 14, 2012, and April 30, 2013.[284] The Kalispel has

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[277] *Id.*

[278] FEIS vol. II, § 4.9.1.

[279] FEIS vol. II, § 4.9.1 FEIS App. S.

[280] Letter from Daniel Shoemaker, Specialist, Federal Aviation Administration, to Rhonda Thurman, Spokane Tribe of Indians (Dec. 12, 2013), on file with BIA.

[281] Spokane Tribal Resolution 2014-189 (April 18, 2014), in Office of Indian Gaming Binder Tab 9

[282] Letter from Ben Stuckart, Spokane City Council, to Kevin Washburn, Assistant Secretary – Indian Affairs (Feb. 25, 2014), Office of Indian Gaming Binder Tab 5, (Attachment 8i of this Determination).

[283] *Id.*

[284] Letter from Glen Nenema, Chairman, Kalispel Tribe of Indians, to Stan Speaks, Director, Northwest Regional Office (June 12, 2012) (attaching Kalispel Tribe of Indians: Comments on The Spokane Tribe's Request for a Two-Part Determination For the Proposed West Plains Casino Project (June 14, 2012)[hereinafter Kalispel Tribe June 2012 Comments]), in Regional Director's Recommendation Ex. 13, (Attachment 10 to this Determination); Letter

expressed numerous concerns about the competitive effects of a new casino and the resulting loss of market share that would significantly reduce Kalispel's annual revenues from its Northern Quest Resort and Casino (Northern Quest), which supports its tribal government and the provision of tribal services.

The Kalispel Tribe commented that the Draft EIS ignored the economic impact to their gaming facility by miscalculating the economic impact of the operation and assuming there will be little to no substitution effect.[285] The Kalispel Tribe also commented that the analysis is faulty and based on erroneous tax revenue and revenue sharing analysis, erroneous jobs analysis, and an erroneous definition of the gaming market.[286] In addition, the Kalispel Tribe's comments criticized the failure of the Final EIS to consider impacts to the surrounding community, as well as deficiencies in its analysis of other impacts to the human environment. These concerns are addressed both here and in the ROD.

The Kalispel Tribe described its reservation, near Usk, Washington, as being nearly undevelopable because of its geographic location, which is almost entirely within a flood plain between a mountainside and a river.[287] The Kalispel Tribe stated that Northern Quest is the single tribal business that drives the entire tribal economy.[288] The Kalispel Tribe further stated that, "no matter at what level of operation the Spokane Tribe chooses to build its proposed West Plains Casino Resort, the impact on the Kalispel Tribe's ability to fund its government will be catastrophic."[289] Also, the drop in revenues caused by the Project would force the Kalispel Tribe to substantially cut or eliminate governmental programs, including health care, educational assistance, child care, educational assistance, child care, elderly care, public safety, housing, social services, and public transportation.[290]

The Kalispel Tribe stated that the United States owes it a fiduciary duty, and that a fiduciary component of that trust responsibility is the obligation to preserve and protect trust assets from detrimental or negative impacts. The Kalispel Tribe stated that the Department should not take any action that will negatively affect the viability of its Airway Heights reservation.[291]

The IGRA does not, however, guarantee that tribes operating existing facilities will continue to conduct gaming free from both tribal and non-tribal competition.[292] When the Department issued a positive Secretarial Determination for the Kalispel Tribe's Airwsy Heights site in 1997,

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from Glen Nenema, Chairman, Kalispel Tribe of Indians, to Stanley Speaks, Regional Director, Northwest Regional Office (April 30, 2013) [hereinafter Kalispel Tribe April 2013 Comments], (Attachment 11 to this Determination).

[285] Kalispel Tribe June 2012 Comments at 20-29.

[286] *Id.*

[287] Kalispel Tribe June 2012 Comments at 5 - 9.

[288] *Id.* at 3.

[289] *Id.* at 19.

[290] *Id.* at 20.

[291] Kalispel Tribe June 2012 Comments at 15.

[292] *See Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 947 (7th Cir. 2000).

the Secretary expressly noted that the Spokane Tribe had a substantial investment in 3 casinos that would be impacted by competition from a Kalispel gaming establishment.[293] Nonetheless, the Secretary issued the Secretarial Decision for Kalispel and stated that, "intense competition can be expected" from a new Kalispel casino.[294] The Secretary ultimately determined that the Kalispel gaming establishment would not be detrimental to the surrounding community.[295] The Kalispel Tribe now operates a successful class III gaming facility in the Airway Heights. Mere competition to Kalispel's Northern Quest casino from the Spokane Tribe's proposed casino in an overlapping gaming market is not sufficient, in and of itself, to conclude that it would result in a detrimental impact on the Kalispel Tribe.[296]

Analysis of potential effects on the Kalispel Tribe

According to information provided by the Kalispel Tribe, profit earnings from the Northern Quest Casino and related development are the primary source of income for the Kalispel Tribe.[297] The second largest income source is Federal, state, and other grants. The remainder of the income is made up from other income such as fishing and hunting licensing fees, settlement payments, and rental and lease income.[298] Currently, the Kalispel Tribe allocates a portion of their net income from Northern Quest directly to tribal members in the form of per capita payments.[299]

The Kalispel Tribe submitted several financial reports, discussed in more detail below, to support its claim that the Spokane Tribe's proposed casino would negatively impact the Kalispel Tribe.

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[293] Letter from Bruce Babbitt, Secretary of the Interior, to Gary Locke, Governor of Washington (August 19, 1997) at 6, (Attachment 12 to this Determination).

[294] *Id.*

[295] *Id.* at 11.

[296] Similarly, on September 1, 2011, the Assistant Secretary – Indian Affairs stated in positive Secretarial Determination for the Enterprise Rancheria that, "[m]ere competition from the Tribe's proposed gaming facility in an overlapping gaming market is not sufficient, in and of itself, to conclude that it would result in a detrimental impact to [the opposing tribe]." Letter from Larry Echo Hawk, Assistant Secretary – Indian Affairs to Jerry Brown, Governor State of California (Sept. 1, 2011) at 50-51, available at http://bia.gov/cs/groups/public/documents/text/idc015015.pdf. Also, In the North Fork Rancheria of Mono Indians of California positive Secretarial Determination, the Assistant Secretary – Indian Affairs stated that the BIA must accord weight to the opposing tribe's concerns; however, "competition from the [Project] in an overlapping gaming market is not sufficient to conclude that it would be detrimental to the opposing tribe." Letter from Larry Echo Hawk, Assistant Secretary – Indian Affairs to Jerry Brown, Governor State of California (Sept. 1, 2011) at 50-51, available at http://bia.gov/cs/groups/public/documents/text/idc015016.pdf. *See also Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 947 (7th Cir. 2000).

[297] Ch. 3, General Response to Comments at 3-7, FEIS vol. I.

[298] *Id.*

[299] As part of the approval process to initiate direct payments to tribal members, the Kalispel Tribe submitted a tribal revenue allocation plan, which, in accordance with 25 C.F.R. 290.12, must "reserve an adequate portion of net gaming revenues from the tribal gaming activity for one or more of the following purposes: (i) to fund tribal government operations or programs; (ii) to provide for the general welfare of the tribe or its members; (iii) to promote tribal economic development; (iv) to donate to charitable organizations; or (v) to help fund operations of local government." This ensures that any reductions in gaming revenue would reduce the direct payments to tribal members before affecting the funding of the tribal government and its services.

PKF Financial Analysis Study

The Kalispel Tribe submitted the report *Financial Analysis Performance Study for Northern Quest Resort and Casino, Airway Heights, Washington* (March 27, 2012) by PKF Consulting USA (PKF Financial Analysis Study).[300] The PKF Financial Analysis Study evaluated how Northern Quest would likely perform with and without the Spokane Tribe's proposed casino. The PKF Financial Analysis Study contains financial performance projections for Northern Quest for fiscal years 2012 to 2021. The study examines the performance of Northern Quest assuming both no Project in operation during these years and with the introduction of the various alternatives analyzed in the EIS. The study concluded that the Spokane Tribe's Project would affect performance by Northern Quest in two ways: by reducing earnings before interest, taxes, depreciation, and amortization (EBITDA), and once the loss is incurred, by never recovering it in the future.[301] The PKF Financial Analysis Study stated that implementation of the first phase of the Project (EIS Alternative 2) would result in an approximately (b) (4) reduction in Northern Quest's EBITDA or (b) (4).[302] Full build out of the Project would decrease Northern Quest's total EBITDA by approximately (b) (4) or (b) (4).[303]

TFA Debt Service Letter

The Kalispel Tribe also submitted a letter from Tribal Financial Advisors (TFA Debt Service Letter) assessing the financial impact of the Project on the Kalispel Tribe.[304] Specifically, the TFA Debt Service Letter analyzed the impact of tribal government revenue losses on the Kalispel Tribe's ability to service its debt. According to the TFA Debt Service Letter, lost revenue projected by the PKF Financial Analysis Study would create a cash flow crisis that which would result in violating one or more of the covenants associated with the Kalispel Tribe's debt obligations.[305] The Kalispel Tribe would default on its current loans shortly after the Spokane Tribe completes the first phase of the Project.[306] The TFA Debt Service Letter concluded that this would cause a "downward spiral" from which the Kalispel Tribe may never recover. The TFA Debt Service Letter further stated that such a default could lead to more expensive high-yield bond debt, leaving the Kalispel Tribe with limited or no ability to ever repay, with no resources available for it to maintain or supply essential government services to its members.[307]

Nathan Associates Economic Impact Study

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[300] Kalispel Tribe June 2012 Comments Tab 5, in Regional Director's Recommendation Ex. 13.

[301] *Id.* at 17

[302] *Id.*

[303] *Id.*

[304] *Id.* at Tab 6.

[305] Kalispel Tribe June 2012 Comments at 18.

[306] *Id.*

[307] *Id.*

The Kalispel Tribe also provided a report entitled *The Potential Economic Impact of the Proposed Spokane Tribe Casino on the Kalispel Tribe of Indians* (May 6, 2012) (Nathan Associates Economic Impact Study).[308] The study considered the economic impact of the Spokane Tribe's casino on the Kalispel Tribe. The study analyzed the economic impact of two alternatives analyzed in the EIS, as well as one additional alternative representing the maximum number of gaming machines and table games allowed under the Spokane Tribe's gaming compact with the State of Washington.

The Nathan Associates Economic Impact Study factored in the debt service and capital reserve requirements identified in the TFA Debt Service Letter, plus the costs to regulate gaming, which is required under the IGRA.[309] Nathan Associates found that when the first phase of the proposed Spokane Tribe's facility (EIS Alternative 2) is completed, (b) (4) (net amount) will be available to distribute to the Kalispel Tribe to run its government and provide governmental services.[310] After the Spokane Tribe completes the second phase of its building plan (EIS Preferred Alternative), (b) (4) (after debt service and capital reserve contributions) would remain to distribute to the Kalispel tribal government to spend for tribal government operations, programs, and services.[311] This study concludes that this represents an approximately (b) (4) decline in funding.[312]

The Kalispel Tribe disputes EIS conclusions

In addition to submitting its own analysis, the Kalispel Tribe disputes the conclusions reached in the Draft EIS and Final EIS.[313] The Kalispel Tribe stated that there are many deficiencies in the Draft EIS socioeconomic analysis. For instance, the Kalispel Tribe stated that the Draft EIS ignores relevant data and fails to include necessary data, makes faulty assumptions, and reaches the unsupported conclusions that there will be no significant adverse impacts.[314] According to the PKF Financial Analysis Study, these deficiencies result in a failure to take into account significant economic impacts to the Kalispel Tribe.

The Kalispel Tribe stated that the Draft EIS miscalculates the economic impacts and assumes that there will be little or no substitution effect (the loss of customers at existing commercial businesses to the new business) on Northern Quest.[315] Further, the Kalispel Tribe stated that the Draft EIS assumes that the Project will create new economic activity, but does not acknowledge

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[308] Kalispel Tribe June 2012 Comments, Tab 7

[309] *Id.* at 18.

[310] *Id.*

[311] *Id.*

[312] *Id.* at Tab 6 at 15.

[313] *See* Kalispel Tribe Comments June 2012 and Kalispel Tribe Comments April 2013.

[314] Kalispel Tribe June 2012 Comments at 20-22.

[315] *Id.*at 21-23

that this activity will "cannibalize" the existing economic activity at Northern Quest.[316] The Kalispel Tribe also highlighted that the PKF Financial Analysis Study found that the proposed casino would take away business from existing businesses, but not create much new economic activity in the area.[317] In addition, the proposed casino would not significantly grow the existing gaming market, but take away business from Northern Quest.[318] The Kalispel Tribe provided similar comments on the Final EIS. The comments include additional critique of the economic analysis and analysis contained in the Final EIS.[319]

2011 Innovation Group Study and 2012 Innovation Group Response

Section 4.7 of the Draft EIS provided an analysis of the Project's anticipated competitive effect on the total projected gaming revenue for the Spokane regional gaming market, which included impacts to Northern Quest. The analysis was based on the anticipated effects of the Project discussed in the *Background Study and Competitive Effects Analysis: West Plains Mixed Use Development* conducted by the Innovation Group (2011) (2011 Innovation Group Study).[320] The analysis determined that the Spokane area is sufficiently large to support three casinos of the magnitude of Northern Quest.

Section 4.7 of the Final EIS was expanded to specifically describe the estimated reduction in revenues at Northern Quest resulting from the Project. The Innovation Group prepared the report entitled *Response to DEIS Comments by Kalispel Tribe: West Plains Mixed Use Development* (2012) (2012 Innovation Group Response) that served as the basis for the conclusions reached in section 4.7.[321]

The methodology used in the analysis included collecting background information and developing a gaming market "gravity model."[322] The gravity model is based on an assessment of overall gaming revenues supported by population, incomes, typical win per visit, and casino gaming participation both nationally and in the Pacific Northwest.[323] This methodology is an accepted and widely used form of market analysis for casino operators, public entities, and the financial sector, and is sufficient for the analysis of potential impacts on existing casinos and local tribal governments in the EIS.[324]

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[316] *Id.*at 21.

[317] Kalispel Tribe June 2012 Comments at 21.

[318] *Id.*at 22.

[319] *See* Kalispel Tribe April 2013 Comments at 2.

[320] *See* 2011 Innovation Group Report.

[321] *See* Response to DEIS Comments by Kalispel Tribe: West Plains Mixed Use Development (2012) [hereinafter 2012 Innovation Group Response] prepared by the Innovation Group, in Appendix V of the Final EIS, (Attachment 13 to this Determination).

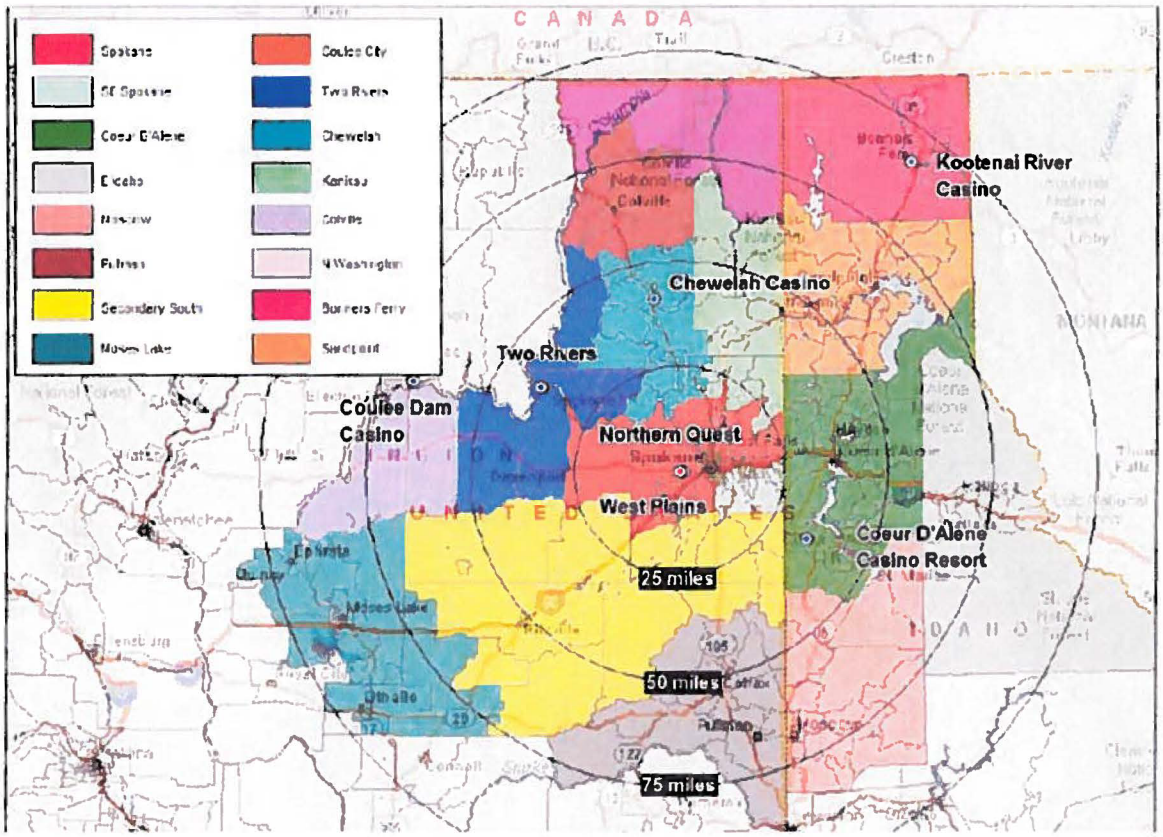
[322] 2012 Innovation Group Response at 11.

[323] 2011 Innovation Group Report at 15-16.

[324] *Id.*

As indicated by the study, existing regional gaming facilities with the greatest potential to be affected by the Project include: Northern Quest located approximately two miles from the Site; Coeur D'Alene Casino Resort located approximately 33 miles from the Site; the Spokane Tribe's Two Rivers Casino located approximately 38 miles from the Site; and its Chewelah Casino located approximately 40 miles from the Site.[325] Because Two Rivers and the Chewelah casinos are owned and operated by the Spokane Tribe, any potential impacts of the Project to these casinos would be offset by the anticipated revenue generated for the Spokane Tribe at the Site. A map identifying casino locations is included below.[326]

West Plains Market Areas and Competitive Sites



Existing tribal casino gaming market substitution effects

As described in detail in the 2011 Innovation Group Study, operation of Phase I of Alternative 1 in 2013 is anticipated to cause a (b) (4) [redacted] reduction in gaming revenues (*i.e.* gaming substitution effect) at Northern Quest.[327] In addition, as described in detail in the 2012 Innovation Group Response, based on analysis of comparable situations, the anticipated

[325] *Id.* at 2.

[326] *Id.* at 17.

[327] *Id.* at 22.

substitution effects (drop in annual revenue due to competition) are likely to diminish after the first year of the Phase I operation, once local residents experience the casino and return to more typical spending patterns. After this period, normative revenue growth for Northern Quest is expected to resume. The additional reduction in gaming revenues at Northern Quest in 2015 from the operation of the first and second phases of the Project was estimated to be (b) (4) in the 2011 Innovation Group Study. .[328] The combined effect of the Project, including all three phases of development, would be (b) (4) .[329] In PKF's analysis, gaming revenues at Northern Quest are projected to decline by (b) (4) in Alternative 1 and (b) (4) in Alternative 2. These are very aggressive impacts, with insufficient supporting analysis or evidence from other markets.[330]

However, as discussed in the 2012 Innovation Group Response, since build out of the Project is expected for 2020 rather than 2015, the original estimate of (b) (4) additional reduction in gaming revenues from the operation of Phases II and III would be reduced due to five years of population and income growth. Assuming population and income growth over this period as estimated by the Kalispel Tribe in its comments on the Draft EIS, the additional reduction in future gaming revenues from the operation of Phase II and III would be reduced to (b) (4) . This result i a combined reduction in future gaming revenues of approximately (b) (4) at the Northern Quest casino as a result of build out of the Project in 2020. This impact is also anticipated to diminish after the first year of the Project's operation at full build out.[331]

As described above, it was estimated that with the build out of the Project in 2020, revenues at Northern Quest would be reduced by (b) (4) when compared to future revenue projections based on the annual growth rate predicted by the PKF Financial Analysis Study in the absence of competition from the Spokane Tribe's casino.[332] The 2020 revenue projections for Northern Quest with competition from the Spokane Tribe's Project (described in the 2012 Innovation Group Response) would represent a (b) (4) reduction from 2011 revenues. The Kalispel Tribe currently allocates a portion of revenue from Northern Quest directly to tribal members. While these direct payments might be reduced or eliminated, the overall Kalispel tribal government budget in 2020 is not expected to be considerably reduced when compared to existing conditions (approximately (b) (4) reduction after elimination of direct payments to tribal members).[333] While the Kalispel tribal government's budget would be impacted by the Project, these effects are expected to dissipate over time due to market growth and would not prohibit the Kalispel tribal government from providing essential services and facilities to its membership.

The PKF Financial Analysis Study submitted by the Kalispel Tribe used a methodology to calculate market competition effects on Northern Quest that was determined to be unreliable and

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[328] 2012 Innovation Group Response at 21.

[329] *Id.* at 26.

[330] Innovation Group Response at 8.

[331] Response to Comment Letter 23 in FEIS vol. I, Section 2.0.

[332] 2012 Innovation Group Response at 26

[333] *Id.* at 25.

unsupported by available evidence for a variety of reasons as discussed in detail in the 2012 Innovation Group Response.[334] The PKF Financial Analysis Study speculated that the reduction in Northern Quest's revenue in 2020 would be (b) (4), or (b) (4) greater than the reduction anticipated in the 2011 Innovation Group Report and the 2012 Innovation Group Response. [335] The reduction in gaming revenue at Northern Quest from economic competition as a result of the Project will be ameliorated by market growth over time and would not prohibit the Kalispel tribal government from providing essential services and facilities to its membership.

Market saturation

On January 27, 2015, the Kalispel Tribe submitted a report entitled *Casino Gaming Market Saturation Analysis: Spokane Washington,* (Jan. 2015) (Market Saturation Analysis).[336] The Market Saturation Analysis concludes that the Spokane area gaming market is saturated and will not support another tribal casino. The Kalispel Tribe stated that the Market Saturation Analysis confirmed the analysis previously submitted by the Kalispel Tribe, and that it will experience a deeply negative and unrecoverable impact if the Spokane Tribe's application is approved.[337]

The Market Saturation Analysis was reviewed by BIA and the Innovation Group.[338] The BIA concluded that no changes to the EIS, including analysis of market conditions, financial projections and findings, are warranted because of the Market Saturation Analysis. The Innovation Group determined in its report entitled *Response to Nathan Associate Report: West Plains Mixed Use Development, Airway Heights, Washington* (March 2015) (2015 Innovation Group Response), that there were several flaws in the Market Saturation Analysis regarding its conclusions about the Spokane market.[339]

The 2015 Innovation Group Response determined that the Market Saturation Analysis relies on unjustified market comparables and market definitions.[340] As a result, the Market Saturation Analysis's conclusion that the Spokane market is saturated is based on a comparative analysis that contains three markets that are not analogous to Spokane, and two comparable markets that

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[334] 2012 Innovation Group Response at 3.

[335] 2012 Innovation Group Response at 8. Even with the (b) (4) reduction in profit at Northern Quest estimated in the PKF Report as a result of implementation of Phase I of Alternative 1 (identical to Alternative 2), the Kalispel Tribe would have (b) (4) more revenue available per tribal member for the provision of tribal government services and programs as is currently available to the Spokane Tribe.

[336] Letter from Glen Nenema, Chairman, Kalispel Tribe of Indians, to Kevin Washburn, Assistant Secretary – Indian Affairs (Jan. 22, 2015), attaching Casino Gaming Market Saturation Analysis: Spokane Washington (Jan. 2015), in Office of Indian Gaming Binder Tab 14, (Attachment 14 to this Determination).

[337] *Id.*

[338] Memorandum from Ryan Sawyer, Analytical Environmental Services, to B. J. Howerton, BIA Northwest Regional Office (March 18, 2015) (attaching Response to Nathan Associate Report: West Plains Mixed Use Development, Airway Heights, Washington (March 2015) prepared the Innovation Group [hereinafter 2015 Innovation Group Response]), in Office of Indian Gaming Binder Tab 15, (Attachment 15 to this Determination).

[339] 2015 Innovation Group Response at 1.

[340] *Id.* at 4.

are inconsistently and invalidly defined.[341] The 2015 Innovation Group Response stated that the 2 comparable markets, St. Louis and Kansas City, are defined in the Market Saturation Analysis by 60-minute travel rings, while the Spokane market is defined by a 120-minute travel ring.[342] By defining the Spokane market as 120-minute travel ring, the Market Saturation Analysis includes gaming positions in outlying areas, including Two Rivers, Coulee Dam, and Clearwater River, which add approximately 1,000 machines to the market but excludes the commensurate population increases from outside the defined area that are within the market area of those facilities.[343]

The 2015 Innovation Group Response also points out that the Market Saturation Analysis defines the Kansas City market so as to exclude 4 casinos that are outside the 60-minute drive time but which are within the 120-minute radius. This inclusion of demand but exclusion of supply dilutes the saturation ratios calculated in the Market Saturation Analysis.[344] Additionally, the 2015 Innovation Group Response faults the failure of the Market Saturation Analysis to acknowledge that the Spokane Tribe's Two Rivers casino is closed during the winter months and relies almost entirely on summer tourism and is thus not a drain on local market demand.[345]

We agree with the conclusions of the 2015 Innovation Group Response that the methodology used by in the Market Saturation Analysis mischaracterizes the market saturation of several markets, including Spokane, by including outlying gaming facilities but excluding commensurate population. Additionally, the market analyzed in the Market Saturation Analysis is defined by fluctuating jagged boundaries that includes other distant casinos but excludes population segments that are much closer to Spokane.[346] Thus the Market Saturation Analysis inaccurately includes more gaming positions for a smaller population. This approach over-inflates market saturation and fails to account for expected market growth.

VI. Conclusion

I have completed my review and analysis of the Tribe's application under 25 U.S.C. § 2719(b)(1)(A), including submissions by State and local officials and nearby tribes. For the foregoing reasons, I have determined that gaming on the proposed Site in Airway Heights, Spokane County, would be in the best interest of the Tribe and its members, and would not be detrimental to the surrounding community, including nearby Indian tribes.

I am requesting that you concur in this determination, pursuant to 25 U.S.C. § 2719(b)(1)(A). Under the Part 292 regulations, you have one year from the date of this letter to concur in my

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[341] *Id.* at 2.

[342] *Id.*

[343] *Id.*

[344] *Id.*

[345] *Id.*

[346] 2015 Innovation Group Response, Fig. 1.

determination. You may request an extension of this period for up to 180 days. The Tribe may also request an extension of this period for up to 180 days.

Should you decide not to concur in my determination, the Tribe may not use its trust land in Airway Heights for gaming purposes.

Should you concur in my determination, the Tribe may use the proposed Site for gaming after it has complied with all other requirements in IGRA and its implementing regulations.[347]

This letter and its attachments contain commercial and financial information that is protected from release under exemption 4 of the Freedom of Information Act (FOIA). Due to the sensitive nature of this information, it is the Department's practice to withhold it from the public under the FOIA, and to contact the Tribe anytime a member of the public requests it. I respectfully request that the State of Washington take appropriate steps to similarly protect the commercial interests of the Tribe.

I thank you for your consideration of this important matter. I have included copies of the record for your review and consideration.

[347] *See, e.g.* 25 C.F.R. § 559 (Tribe must submit to the NIGC a new facility license at least 120 days prior to opening a new gaming facility).

Spokane Tribe of the Spokane Reservation
Secretarial Determination
Attachments

1. **Updated Unmet Needs Report**

   Letter from Rudy Peone, Chairman, Spokane Tribe of Indians, to Kevin Washburn, Assistant Secretary – Indian Affairs (January 6, 2015), in Office of Indian Gaming Binder Tab 12

2. **Spokane Tribe's First Supplement**

   First Supplement to Spokane Tribe of Indians' Application for a Secretarial Determination, Spokane Tribe (Rec'd May 8, 2012), in Regional Director's Recommendation Ex. 2a

3. **Regional Director's Recommendation**

   Memorandum from Northwest Regional Director, to Director, Office of Indian Gaming (November 8, 2012)

4. **2011 Unmet Needs Report**

   Spokane Tribe of Indians Unmet Needs Report (November 17, 2011), Appendix A of the Final Environmental Impact Statement

5. **2011 Innovation Group Report**

   Background Study and Competitive Effects Analysis: West Plains mixed Use Development, conducted by the Innovation Group (2011), Appendix G of the Final Environmental Impact Statement

6. **Midnite Mine ROD**

   Midnite Mine Superfund Site, Spokane Indian Reservation Washington, Record of Decision (September 2006) in Letter from Rudy Peone, Chairman, Spokane Tribe of Indians, to Kevin Washburn, Assistant Secretary – Indian Affairs (January 6, 2015) (Updated Unmet Needs Report) Ex. 9

7. **BIA Labor Market Information for Spokane Tribe**

   Bureau of Indian Affairs Labor market Information on the Indian Labor Force, Calendar Years 2013 and 2014, in Letter from Rudy Peone, Chairman, Spokane Tribe of Indians, to Kevin Washburn, Assistant Secretary – Indian Affairs (January 6, 2015) (Updated Unmet Needs Report) Ex. 3

8. **Comment Letters**

a. Letter from Nick Scharff, Fire Chief Spokane County Fire District No. 10, to United States Department of Interior, Bureau of Indian Affairs (Feb. 25, 2011) in Regional Director's Recommendation Ex. 4

b. Letter from Dennis D. Bly, Scott M. Hutsell, Rob Coffman, Board of Lincoln County Commissioners, to B.J. Howerton, Bureau of Indian Affairs (May 24, 2011) in Regional Director's Recommendation Ex. 4

c. Letter from Patrick D. Rushing, Mayor, City of Airway Heights, to B.J. Howerton, Northwest Regional Office, Bureau of Indian Affairs (June 7, 2011) in Regional Director's Recommendation Ex. 4

d. Letter from Brian Sonntag, Washington State Auditor, to Stanley M. Sparks, Regional Director, U.S. Bureau of Indian Affairs, Northwest Office (June 27, 2011) in Regional Director's Recommendation Ex. 4

e. Comments on the Final Environmental Impact Statement, Spokane Tribe of Indians West Plains Casino and Mixed Use Project prepared by Perkins Coie, LLP (May 1, 2013), in Office of Indian Gaming Binder Tab 4

f. Letter from Al French, Chair, Todd Mielke, Vice Chair, Shelly O'Quinn, Commissioner, Spokane County, to Kevin Washburn, Assistant Secretary – Indian Affairs (March 31, 2014) in Office of Indian Gaming Binder Tab 6

g. Letter from Patrick Rushing, Mayor, City of Airway Heights, to Kevin Washburn, Assistant Secretary – Indian Affairs (June 2, 2014), in Office of Indian Gaming Binder Tab 9

h. Letter from David A. Condon, Mayor, City of Spokane, to Stanley Speaks, Northwest Regional Director, Bureau of Indian Affairs (May 15, 2012) in Regional Director's Recommendation Ex. 10

i. Letter from Ben Stuckart, Spokane City Council, to Kevin Washburn, Assistant Secretary – Indian Affairs (Feb. 25, 2014) in Office of Indian Gaming Binder Tab 5

9. **Letter from Kathleen I. Ferguson, Principal Deputy Assistant Secretary of the Air Force (Installations, Environment and Energy) to Kevin Washburn, Assistant Secretary – Indian Affairs (Feb. 3, 2015)** in Office of Indian Gaming Binder Tab 14

10. **Kalispel Tribe June 2012 Comments**

Letter from Glen Nenema, Chairman, Kalispel Tribe of Indians, to Stan Speak, Director, Northwest Regional Office (June 12, 2012) attaching Kalispel Tribe of Indians: Comments on The Spokane Tribe's Request for a Two-Part Determination for the Proposed West Plains Casino Project (June 14, 2012) in Regional Director's Recommendation Ex. 13

11. Kalispel Tribe April 2103 Comments

Letter from Glen Nenema, Chairman, Kalispel Tribe of Indians, to Stanley Speaks, Regional Director, Northwest Regional Office (April 30, 2013) in Office of Indian Gaming Binder Tab 2

12. Letter from Bruce Babbitt, Secretary of the Interior, to Gary Locke, Governor of Washington (August 19, 1997)

13. 2012 Innovation Group Response

Response to Draft EIS Comments by Kalispel Tribe: West Plains Mixed Use Development (2012) prepared by the Innovation Group, in Appendix V of the Final EIS

14. Letter from Glen Nenema, Chairman, Kalispel Tribe of Indians, to Kevin Washburn, Assistant Secretary – Indian Affairs (Jan. 22, 2015) attaching Casino Gaming Market Saturation Analysis: Spokane Washington (Jan. 2015), in Office of Indian Gaming Binder Tab 14

15. 2015 Innovation Group Response

Memorandum from Ryan Sawyer, Analytical Environmental Services, to B. J. Howerton, BIA Northwest Regional Office (March 18, 2015) attaching Response to Nathan Associate Report: West Plains Mixed Use Development, Airway Heights, Washington (March 2015) prepared the Innovation Group, in Office of Indian Gaming Binder Tab 15

RECORD OF DECISION

SECRETARIAL DETERMINATION PURSUANT TO THE INDIAN GAMING REGULATORY ACT FOR THE 145-ACRE SITE IN THE CITY OF AIRWAY HEIGHTS, WASHINGTON, FOR THE SPOKANE TRIBE OF INDIANS

U.S Department of the Interior
Bureau of Indian Affairs
May 2015

U.S. Department of the Interior

AGENCY: Bureau of Indian Affairs

ACTION: Issuance of a Record of Decision (ROD) for a Secretarial Determination pursuant to the Indian Gaming Regulatory Act (IGRA) to allow for the development of the 145-acre West Plains Casino and Mixed-Use Development Project in the City of Airway Heights, Washington, for the Spokane Tribe of Indians.

SUMMARY: On February 24, 2006, the Spokane Tribe of Indians (Tribe) submitted a request to the Bureau of Indian Affairs (BIA) asking that the Secretary of the Interior (Secretary) determine whether the site is eligible for gaming pursuant to Section 20 of IGRA, 25 U.S.C. § 2719. The Tribe seeks to develop a phased construction of a mixed-use development that includes a class II and class III casino and resort on a 145-acre site currently held in trust for the Tribe located in the City of Airway Heights, Washington (Site).

The issuance of a Secretarial Determination (Proposed Action) and the resulting West Plains Casino and Mixed-Use Development Project were analyzed in an Environmental Impact Statement (EIS) prepared pursuant to the National Environmental Policy Act under the direction and supervision of the BIA Northwest Regional Office. The Draft EIS was issued for public review and comment on March 2, 2012. After an extended comment period, public hearing, and consideration and incorporation of comments received on the Draft EIS, BIA issued the Final EIS on February 1, 2013. The Draft and Final EIS evaluated a reasonable range of alternatives that would meet the purpose and need for the Proposed Action, analyzed the potential effects of those alternatives, and identified feasible mitigation measures.

With this ROD, the Department of the Interior (Department) announces the issuance of the Secretary's Determination that the Tribe's proposed project would be in the best interest of the Tribal government and its members and not detrimental to the surrounding community. *See* 25 U.S.C. § 2719 (b)(1)(A); 25 C.F.R. Part 292 Subpart C. This ROD also announces that the action to be implemented is the Preferred Alternative (Alternative 1 in the Final EIS). The Preferred Alternative would allow the phased construction of a casino-resort facility, parking facilities, retail space, tribal cultural center, commercial space, a fire and police station, and corresponding mitigation measures.

The Secretary has determined that the Preferred Alternative will best meet the purpose and need for the Proposed Action by promoting long-term economic tribal self-sufficiency, self-determination, and self-governance. Implementing the Preferred Alternative will provide the Tribe with the best opportunity for developing and maintaining a sufficient, stable, long-term source of governmental revenue. Implementing the Preferred Alternative will also create the best

opportunity for developing and improving a wide range of tribal governmental programs, including health, education, housing, social, cultural, environmental remediation, and other tribal government programs, as well as employment and career development opportunities for its members.

The Department has considered potential effects to the environment, including potential impacts to local governments and other tribes, has adopted all practicable means to avoid or minimize environmental harm, and has determined that potentially significant effects will be adequately addressed by the mitigation measures, as described in this ROD.

This ROD is based on the thorough review and consideration of the Tribe's request for a Secretarial Determination, Supplemental Application, and materials submitted pursuant to IGRA; the applicable statutory and regulatory authorities governing the eligibility of the land for gaming; the Draft EIS; the Final EIS; administrative record; and comments received from the public, nearby Indian tribes, and Federal, state, and local agencies.

FOR FURTHER INFORMATION CONTACT:

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ATTACHMENTS

Attachment I Final EIS Notices
Attachment II Response to Comments on the Final EIS
Attachment III Mitigation Monitoring and Enforcement Plan
Attachment IV Secretarial Determination

1.0 INTRODUCTION

1.1 SUMMARY

On August 16, 2001, the United States acquired a 145-acre+/- parcel (Site) of land located in the City of Airway Heights, Spokane County, Washington, in trust for the Spokane Tribe of Indians (Tribe) for economic development purposes. On February 24, 2006, the Tribe submitted a request to the Bureau of Indian Affairs (BIA) asking that the Secretary of the Interior (Secretary) determine whether the Site is eligible for gaming pursuant to Section 20 of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2719. The Tribe seeks to develop a phased construction of a mixed-use development that includes a class II and class III casino and resort. The Proposed Action consists of the issuance of a Secretarial Determination finding that: 1) gaming on the newly acquired lands would be in the best interest of the tribe and its members, and 2) would not be detrimental to the surrounding community. The Secretarial Determination is provided in **Attachment IV** of this Record of Decision (ROD). Pursuant to IGRA, gaming may only occur if the governor of the state in which the gaming activity is to be located concurs in the Secretarial Determination.

The Tribe's request was analyzed in an Environmental Impact Statement (EIS) prepared by the BIA pursuant to the Council on Environmental Quality (CEQ) National Environmental Policy Act (NEPA) regulations located at 40 C.F.R. §§ 1500-1508. The Draft EIS, issued for public review on March 2, 2012, and Final EIS, issued February 1, 2013, considered various alternatives to meet the stated purpose and need for the Proposed Action, and analyzed in detail potential effects of various reasonable alternatives.

The Department of the Interior (Department) has determined that Alternative 1, consisting of a phased construction of a casino-resort facility, parking facilities, retail space, tribal cultural center, commercial space, a fire and police station, ancillary infrastructure, and mitigation measures presented in Section 5.0 of the Final EIS, is the Preferred Alternative to be implemented. The Secretary has determined that the Preferred Alternative would best meet the purpose and need for the Proposed Action. The decision to issue a Secretarial Determination for the Preferred Alternative is based on thorough review and consideration of the Tribe's request letter and Supplemental Application, and materials submitted therewith; the applicable statutory and regulatory authorities governing the eligibility of the land for gaming; the Draft EIS; the Final EIS; the administrative record; and comments received from the public, potentially affected Indian tribes, and federal, state, and local agencies.

1.2 DESCRIPTION OF THE PROPOSED PROJECT

Within the trust property, the Tribe seeks to develop a phased construction of a mixed-use development that includes a class II and class III casino and resort on the Site (Project). The Project will include approximately 2,500 electronic gaming devices, 50 table games, and 10 poker room tables within a 98,442 square foot (s.f.) gaming floor area. The facility will include a 300-room hotel with a fully enclosed 71,719 s.f. indoor swimming pool area, a spa and wellness center, and a fitness center. The facility will also include a cafe, steakhouse, three restaurants, food court, two bars, and a convention and banquet area. In addition, 96,634 s.f. of lifestyle retail (traditional retail combined with leisure amenities) will be

located on the southwest side of the casino-resort facility, and a 107,490 s.f. specialty retail box store (large retail establishment, usually part of a chain) with direct access to the casino floor will be constructed. An additional 155,145 s.f. of retail space would be included on the Site. A total of 4,753 surface parking spaces would be provided, and 1,500 parking spaces would be provided in a four-story concrete parking structure to be located on the west side of the casino-resort facility. The Tribe will construct a 10,480 s.f. tribal cultural center, a 14,036 s.f. tribal police and fire station, and a 41,633 s.f. two-story commercial building. A 13.25-acre area in the northwestern portion of the Site would be set aside as open space to protect the wetland/vernal pool located in that area. At final completion, the development will have a footprint of 986,366 s.f. excluding the parking structure.

1.3 PURPOSE AND NEED FOR THE PROPOSED ACTION (ISSUANCE OF A SECRETARIAL DETERMINATION)

The purpose and need for the Proposed Action, the issuance of a Secretarial Determination, is to enable the Tribe to meet its need for economic development, self-sufficiency, and self-governance, and to provide its rapidly growing Tribal member population with employment, educational opportunities, and needed social services. The Spokane tribal government is responsible for providing a full range of services to its members, including education, health and recreation, public safety and law enforcement, tribal court, public utilities, natural resources management and environmental remediation, economic development, and community assistance. In addition to overseeing governmental services, the Tribal Council charters and oversees the Tribe's economic enterprises. In particular, the Tribe's needs include improving its short-term and long-term economic condition and promoting self-sufficiency, both with respect to its government operations and its members.

The purpose and need for the Proposed Action are to:

- Improve the socioeconomic status of the Tribe by creating a sufficient and sustained income source that will enable the tribal government to fund programs and services necessary to improve the overall condition of the tribal membership, including social, housing, governmental, administrative, educational, health and welfare services.
- Enable the Tribe to become a completely self-sufficient entity, and eliminate reliance on grant funds from other sources.
- Provide employment opportunities for tribal members.
- Develop the Tribe's trust property within Airway Heights for tribal economic enterprises.
- Re-establish cash reserves to ensure the stability of the Tribe during difficult economic conditions.
- Improve services and quality of life for tribal members and their families.
- Help to improve local communities through job creation and providing economic opportunities.

1.4 PROCEDURAL BACKGROUND

The BIA published the Notice of Intent (NOI) to prepare an EIS for the Project in the *Federal Register* on August 19, 2009 that described the Proposed Action, announced BIA's intent to prepare an EIS for the Proposed Action, and invited public and agency comments

(74 Fed. Reg. 41,928 (Aug. 19, 2009).[1] The NOI comment period closed on October 31, 2009, and a scoping meeting was held in Airway Heights on September 16, 2009. A report outlining the results of scoping was issued in March 2011. The scoping report summarized the major issues and concerns from the comments received during the scoping process. Scoping comments were considered by BIA in developing the Proposed Project alternatives and analytical methodologies presented in the EIS. During the scoping process, BIA identified seven Cooperating Agencies: (1) the Tribe, (2) the Washington State Department of Transportation (WSDOT), (3) the National Indian Gaming Commission, (4) the City of Airway Heights, (5) Spokane County, (6) the Federal Aviation Administration, and (7) the U.S. Air Force.

The BIA circulated an administrative version of the Draft EIS the Cooperating Agencies in May 2011 for review and comment. The BIA took the Cooperating Agencies' comments into consideration and made revisions as appropriate prior to public release. In March 2012, BIA distributed the Draft EIS (EIS No. 20120047) to Federal, tribal, state, and local agencies and other interested parties for a 75-day review and comment period. The review and comment period for the Draft EIS began after the Notice of Filing with the Environmental Protection Agency (EPA) in the *Federal Register* on March 2, 2012 (77 Fed. Reg. 12835 (2012)). The BIA published a Notice of Availability (NOA) in the *Federal Register* on March 2, 2012 (77 Fed. Reg. 12873 (2012)) that provided information concerning the Proposed Project, the public comment period, and the time and location of the public hearing to receive comments concerning the Draft EIS. The BIA also published the NOA in *The Spokesman Review,* which circulated in Spokane County on March 2 and 4, 2012. The BIA also published the NOA on March 8, 2012, in *The Cheney Free Press,* which also circulated in the Spokane County area. The BIA held a public hearing at the Sunset Elementary School Gymnasium in Airway Heights on March 26, 2012. In response to public requests, the BIA re-opened the comment period on the Draft EIS on April 26, 2012 (77 Fed. Reg. 24976 (2012)), and closed it on May 16, 2012. The BIA published notice of the reopening of the comment period in *The Spokesman Review* on April 15 and 16, 2012, and in *The Cheney Free Press* on April 19, 2012. The total comment period for the Draft EIS was 75 days.

The BIA considered the public and agency comments it received during the comment period, including those submitted or recorded at the public hearing. The BIA received approximately 277 individual comment letters during the comment period for the Draft EIS. Substantive comments received on the Draft EIS during the comment period, including those submitted or recorded at the public hearing, are discussed and addressed in Volume I of the Final EIS. Volume II of the Final EIS is composed of the revised text of the EIS, as well as supplementary appendices. The BIA circulated an administrative version of the Final EIS to Cooperating Agencies in July 2012. The BIA considered all comments received from the Cooperating Agencies, and made changes to the Final EIS as appropriate. The BIA published the NOA for the Final EIS (EIS No. 20130018) in the *Federal Register* on February 1, 2013 (78 Fed. Reg. 7427 (2013)). The BIA also published the NOA for the Final EIS in local and regional newspapers, including *The Spokesman Review* on February 1 and 3, 2013, and *The Cheney Free Press* on February 7, 2013. The 30-day waiting period was formally extended by BIA to May 1,

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[1] The NOI published on August 19, 2009, contained incorrect dates for the close of the comment period and public scoping meeting. A corrected NOI was published on August 27, 2009. 74 Fed. Reg. 43,715 (Aug. 27, 2009).

2013, through the publication of a notice in the *Federal Register* on March 8, 2013 (78 Fed. Reg. 15040 (2013)). With the extension, the waiting period following the Final EIS totaled 90 days.

2.0 ANALYSIS OF ALTERNATIVES

2.1 ALTERNATIVE SCREENING PROCESS

A range of possible alternatives to meet the purpose and need for the Proposed Action were considered in the EIS, including non-casino alternatives, alternative development configurations, and alternative sites. As described above, the purpose and need for the Proposed Action is to enable the tribal government to engage in the economic development necessary to fund governmental programs, provide employment opportunities for its members, facilitate economic self-sufficiency, and achieve self-determination. Alternatives, other than the No Action Alternative, were screened to determine whether they met the purpose and need for the Proposed Action. Alternatives were selected for the EIS based on three criteria: 1) their ability to meet the purpose and need; 2) their feasibility; and 3) their ability to reduce environmental impacts.

Alternatives Eliminated from Further Consideration

The alternatives discussed below were considered and ultimately rejected from full EIS analysis because it was determined that these alternatives would not fulfill the purpose and need for the Proposed Action or were deemed to be infeasible.

Expansion of the Tribe's Existing Facilities

The expansion of the Tribe's existing gaming establishments, the Chewelah Casino and the Two Rivers Casino, were considered as possible alternatives. Feasibility studies were conducted for each facility to estimate the revenue potential of an expansion. The market assessment for the Chewelah facility concluded that the level of income resulting from the expansion would be insufficient to cover the costs of investment. Thus, the expansion of the Chewelah Casino was eliminated from further consideration, because it would not be economically viable and would fail to meet the purpose and need for the Proposed Action. The market assessment for the Two Rivers facility similarly concluded that an expansion would not be economically viable. This alternative was eliminated because it would fail to meet the purpose and need for the Proposed Action.

Off-site Locations for the Proposed Casino

Other properties currently owned by the Tribe were examined to determine their feasibility for development, including lands located within the Tribe's 157,376 acre Reservation. The potential revenue from a casino-resort located anywhere on the Reservation was found to be insufficient to meet the Tribe's unmet needs because these locations would be far from a profitable gaming market.

Additionally, the Tribe owns two properties in fee in the City of Spokane, located at 232 East Lyons Avenue and 1025 West Indiana Avenue. The facility on Lyons Avenue houses the Spokane Tribal Temporary Assistance for Needy Families Program and the facility on Indiana

Avenue houses the Center for School to Work. Development of a casino-resort at either of these two locations was found to be infeasible due to the limited area for development, potentially significant traffic and circulation restraints, and the displacement of existing charitable programs currently located at the sites. Further, these sites are not held in Federal trust for the Tribe. Therefore, these sites were eliminated from detailed evaluation within the EIS because they were determined to be infeasible and failed to meet the purpose and need for the Proposed Action.

2.2 REASONABLE ALTERNATIVES CONSIDERED IN DETAIL

The Draft EIS and Final EIS evaluated three development alternatives (Alternatives 1, 2, and 3) and a No-Action/No-Development Alternative (Alternative 4):

2.2.1 Alternative 1 (Preferred Alternative) – Proposed Casino and Mixed-Use Development

The Preferred Alternative consists of the issuance of a Secretarial Determination finding the Site to be eligible for gaming, and the development of the casino-resort facility, a retail, commercial building, tribal cultural center, and police and fire station. This alternative, which constitutes the Department's Preferred Alternative, most suitably meets all aspects of the purpose and need for issuing a Secretarial Determination by promoting the Tribe's long-term economic development and capability for self-governance. Additionally, the Preferred Alternative may include the National Indian Gaming Commission's (NIGC) approval of a gaming management contract, as well as BIA's approval of lease agreements between the Tribe and commercial developers for the purpose of allowing non-tribal commercial venues on trust land. Components of the Preferred Alternative are described below.

Secretarial Determination: The Preferred Alternative includes the issuance of a Secretarial Determination pursuant to Section 20 of IGRA finding that a gaming establishment on the trust lands would be in the best interest of the Tribe and its members would not be detrimental to the surrounding community. The Secretarial Determination is provided in **Attachment IV** of this ROD.

Proposed Facilities: Within the trust property, the Tribe seeks to develop a phased construction of a mixed-use development that includes a class II and class III casino and resort on the Site (Project). The Project will include approximately 2,500 electronic gaming devices, 50 table games, and 10 poker room tables within a 98,442 s.f. gaming floor area. The facility will include a 300-room hotel with a fully enclosed 71,719 s.f. indoor swimming pool area, a spa/wellness center, and a fitness center. The facility will also include a cafe, steakhouse, three restaurants, food court, two bars, and a convention/banquet area. In addition, 96,634 s.f. of lifestyle retail (traditional retail combined with leisure amenities) will be located on the southwest side of the casino-resort facility, and a 107,490 s.f. specialty retail box store (large retail establishment, usually part of a chain) with direct access to the casino floor will be constructed. An additional 155,145 s.f. of retail space would be included on the Site. A total of 4,753 surface parking spaces would be provided, and 1,500 parking spaces would be provided in a four-story concrete parking structure to be located on the west side of the casino-resort facility. The Tribe will construct a 10,480 s.f. tribal cultural center, a 14,036 s.f. tribal police and fire station, and a 41,633 s.f. two-story commercial building. A 13.25-acre area in the northwestern portion of the

Site would be set aside as open space to protect the wetland/vernal pool located in that area. At final completion, the development will have a footprint of 986,366 s.f. excluding the parking structure.

Gaming Development and Management Contract: The IGRA grants NIGC the authority to review and approve management contracts between tribal governments and outside management groups. Implementation of class III gaming operations under the Preferred Alternative may involve National Indian Gaming Commission approval of a proposed management contract between the Tribe and its management group.

Agreements with State and Local Agencies: The Tribe entered into two agreements with local governments on April 10, 2007, (amended on August 26, 2010) that include provisions compensating the City of Airway Heights and Spokane County for impacts to local government services from the Proposed Project: a Memorandum of Agreement (MOA) with Airway Heights, and an Intergovernmental Agreement (IGA) with Airway Heights and Spokane County (see Final EIS Appx. C).

The MOA identifies the payments that the Tribe will provide to the City, which will begin with the first full calendar quarter subsequent to commencement of any gaming activities under the Tribal-State Compact. The payments are as follows:[2]

- (b) (4) for the first full year
- (b) (4) for the second full year
- (b) (4) for the third full year
- (b) (4) for the fourth full year
- $(b) (4) for the fifth full year
- (b) (4) for the sixth full year
- $(b) (4) 0 for the seventh full year

Beginning in year 8, and each year thereafter, the payment shall be increased by 3 percent per year.

Environment: In Section 1.20 of the MOA, the Tribe committed to providing timely mitigation of any significant effect on the environment on or near the Site where such effect is attributable in whole or in part, to the Project, unless the particular mitigation is infeasible.

Law Enforcement: Law enforcement services and prosecution, court, and jail services for non-tribal offenders would be provided by Airway Heights pursuant to Section 2.2 of the MOA between the Tribe and City. The on-site tribal police station would facilitate the security responsibilities of the Tribe, as outlined within the MOA, including the Tribe's agreement to assist Airway Heights in any law enforcement matter where individuals pursued by Airway Heights flee to and/or take refuge within the trust property, up to and including detention of the individual.

[2] Spokane Tribe's First Supplement at 45; *see* MOA § 6.1.1-6.1.9.

Fire Protection: Fire protection services would be provided by the on-site Tribal fire station. In addition, Airway Heights would provide fire protection services pursuant to Section 2.3 of the MOA. As stated therein, the Tribe and Airway Heights agree to coordinate emergency service programs and exchange emergency response policies.

Pursuant to Section 3.3 of the MOA, the City of Airway Heights and Spokane County entered into the IGA that provides a mechanism for ensuring adequate public services for the Project, including sewer and water service, stormwater, and street improvements to offset project-related traffic impacts. The Tribe would provide annual compensation for non-gaming related impacts to the City and County. Since 2010, the Tribe has provided funding to the City of Airway Heights and Spokane County pursuant to the IGA. If gaming is conducted on the Site, annual payments under the MOA would replace the IGA annual payments.

Utilities: Pursuant to Section 2.0 of the IGA, the City's public water and sewer services shall serve the Site through the City's municipal utilities with connections to be provided to the Site at the Tribe's sole cost and expense. Upon connection to the City's sewer and water system, the Tribe would pay the current sewer and water capital connection charges, as well as the monthly service fees.

Traffic Mitigation: Pursuant to Section 3.0 of the IGA, the Tribe agrees to make street and intersection improvements as identified in the traffic impact analysis in the EIS to provide for the safe and efficient vehicle and pedestrian movements and maintain traffic levels of service at their pre-development levels, unless otherwise agreed by the City or County, and be in reasonable conformity with applicable City or County standards. The Tribe shall contribute to the costs of street and intersection improvements through fair-share payments to the City and County as required by the IGA. These street and intersection improvements and the Tribe's estimated fair-share payments, as identified in the traffic impact analysis, are listed within Section 5.2.7 of the Final EIS.

Pursuant to the MOA, Airway Heights and Spokane County entered into an Interlocal Agreement (ILA) on August 17, 2010, which outlined the terms and conditions by which Airway Heights was to share the MOA annual payments with Spokane County in order to compensate the County for additional costs incurred as a result of the gaming component of the Proposed Project. However, on January 25, 2013, the Spokane County Board of County Commissioners passed Spokane County Resolution No. 2013-0085, which terminated the ILA with Airway Heights. Termination of the ILA does not, however, affect the validity or enforceability of the IGA or the MOA. Under Section 3.3 of the MOA, Airway Heights remains obligated to provide a share of MOA annual payments to the County. Pursuant to this section, Airway Heights and the County would negotiate an agreement no later than the first full calendar quarter subsequent to the commencement of any gaming activities on the Site. Such an agreement would ensure that the County will receive sufficient funds from the annual payments set forth in Section 6.0 of the MOA to mitigate impacts from the Proposed Project associated with law enforcement services and transportation planning and funding.

In addition to these local agreements, the Tribal-State Compact for class III Gaming between the Tribe and the State of Washington includes mechanisms for the Tribe to contribute funding to

non-tribal service agencies to address excessive and/or unanticipated increases in service demands as a result of the Proposed Project, including contributions dedicated to problem gambling support services.[3]

Water Supply: Airway Heights' municipal public water system would supply the Proposed Project with water for domestic use, emergency supply, and fire protection in accordance with Section 2.0 of the IGA. Under the Preferred Alternative, the Proposed Project would connect to the existing Airway Heights' system at two locations: one at the west end of 6th Street and one near the intersection of 12th Street and Craig Road. This would allow the water system to be looped, providing both better flow capacity and better operating pressure throughout the Site. In accordance with Airway Heights' Municipal Code and Public Works Standards, a minimum pipe diameter of 8 inches would be installed throughout the Site for domestic and fire flow, with the exception of connection lines between mains and fire hydrants where 6-inch lines will be used. Each structure will have a separate fire supply line with appropriate appurtenances, as required by the Airway Heights' Fire Marshall and in accordance with Section 2.3 of the IGA. Moreover, booster pumps with standby emergency generators will be installed to ensure required pressure levels are met. In order to off-set the Proposed Project's impacts to Airway Heights' water system, the Tribe would either install an on-site water storage facility, or contribute funding towards the development of a City-owned and operated off-site storage tank. Upon connection to Airway Heights' water system, the Tribe would pay the current water capital connection charges prior to operation, as well as the monthly service fees pursuant to Section 2.3 of the IGA.

Recycled Water Supply: Airway Heights has recently constructed Phase I of the Wastewater Treatment, Reclamation, and Recharge Facility (WTRRF) to help meet future development growth, including the development of the Proposed Project on the Site. Recycled water would be utilized where appropriate to reduce the demand for water supply from Airway Heights. Recycled water would be used for landscape irrigation, the potential use of a water-cooling system for the central plant, and other uses.

Wastewater Treatment and Disposal: The projected average daily wastewater flow for the Proposed Project would be approximately 199,410 gallons per day. Consistent with the IGA, wastewater service for the Proposed Project would be provided through a connection to Airway Heights' WTRRF via a proposed pipeline at the Tribe's sole cost and expense. The proposed pipeline would be installed underground and would extend from a lift station on the eastern portion of the Site south where it would connect directly to the WTRRF. In accordance with the Airway Heights Municipal Code and Airway Heights' Public Works Standards, a minimum pipe diameter of 8 inches would be used for all pipes on-site for the proposed sewer system. A wastewater pretreatment system would be installed as part of the proposed on-site sewer system in accordance with Chapter 13.06, Article IV of the Airway Heights Municipal Code. Upon connection to Airway Heights' wastewater collection and treatment infrastructure, the Tribe would pay the current sewer capital connection charges prior to operation as well as the standard monthly service fees.

[3] The Tribe submitted an Amendment to the Compact April 22, 2015.

Site Drainage: Fourteen bio-filtration swales would be located within the Site to provide optimum drainage. The bio-filtration swales are considered a Low Impact Development technique to reduce impacts to surface waters. In accordance with Section 2.4 of the IGA, swales have been designed to ensure all runoff is contained within the Site during a 25-year storm event and to meet Airway Heights' storm water treatment criteria.

Best Management Practices: Construction and operation of the Proposed Project would incorporate a variety of Best Management Practices (BMPs) in accordance with industry standards. In many instances, such as the preparation of storm water pollution and prevention plans for issuance of National Pollutant Discharge Elimination System permits, certain BMPs are requisite conditions of permit approval.

Sound Attenuation: All buildings within the Site shall be constructed with appropriate sound attenuation features to achieve an average A-weighted day/night interior noise level (Ldn) of 45 decibels (dB). For the hotel structure, this shall be accomplished through the use of sound reduction materials with a Sound Transmission Class (STC) rating of 39 and exterior doors and windows with a STC rating of 25.

2.2.2 Alternative 2 – Reduced Casino and Mixed-Use Development

Alternative 2 is similar to the Preferred Alternative in most aspects, including the issuance of a Secretarial Determination and the potential federal approval of a gaming management contract and commercial lease agreements. Alternative 2 also consists of a mixed-use development similar to the Preferred Alternative, but on a reduced scale. Operation of the casino-resort facility, project construction, water supply, wastewater treatment and disposal, site drainage, BMPs, and sound attenuation would be otherwise identical to Phase I of the Preferred Alternative. Components of Alternative 2 are described below.

Proposed Facilities: Alternative 2 consists of the construction of a 214,107 s.f. casino-resort facility, parking facilities, 155,145 s.f. of retail space, a 10,480-square-foot tribal cultural center, 14,036-square-foot tribal police and fire station, and a 41,633-square-foot two-story commercial building to be constructed on the Site. As with the Preferred Alternative, a 13.25-acre area in the northwestern portion of the Site would be set aside as open space to protect the wetland/vernal pool located in that area. Under Alternative 2, the gaming component of the facility would consist of approximately 1,500 electronic gaming devices, 32 table games, and 10 poker tables within a 61,000 square-foot gaming floor area. Other facilities within the casino-resort facility include a cafe, a steakhouse, a food court, two bars, and a 12,600 square-foot multi-purpose bingo room. No hotel or parking structure is proposed under Alternative 2. No parking structure would be constructed, but a total of 4,624 surface parking spaces would be provided for Alternative 2.

Site Drainage: Under Alternative 2, only 13 bio-filtration swales would be located around the Site to take advantage of topography and building placement in order to provide optimum Site drainage. The bio-filtration swales are considered a Low Impact Development technique to reduce impacts surface waters. In accordance with Section 2.4 of the IGA, the swales have been designed to ensure all runoff is contained within the site during a 25-year storm event and to meet Airway Heights' treatment criteria.

Infrastructure and Public Health and Safety Services: Under Alternative 2, the infrastructure components related to water supply, recycled water supply, wastewater treatment, BMPs, law enforcement, and fire protection are similar to those described under the Preferred Alternative. However, due to the decreased size of this alternative, the demand for services would be proportionally reduced. For more detail, refer to the description of each component under the Preferred Alternative above (**Section 2.2.1** of this ROD).

2.2.3 Alternative 3 – Non-Gaming Mixed-Use Development

Under Alternative 3, the overall development would be similar in size to that of the Preferred Alternative. However, a casino would not be developed. Therefore, the issuance of a Secretarial Determination and potential approval of a gaming management contract would not be necessary. This alternative may require BIA's approval of lease agreements between the Tribe and commercial developers for the purpose of allowing non-tribal commercial venues on trust land. Project construction, water supply, wastewater treatment and disposal, site drainage, and sound attenuation would be similar to the Preferred Alternative. Components of Alternative 3 are described below.

Proposed Facilities: Alternative 3 consists of the construction of a mixed-use development complex, a 300-room hotel, parking facilities, 155,145 s.f. of retail space, a 10,480 s.f. tribal cultural center, 14,036 s.f. tribal police and fire station, and a 41,633 s.f. two-story commercial building to be constructed on the Site. At build-out, the entertainment components would consist of a 55,850 s.f. children's arcade, a 45,202 s.f. bowling alley, and an 8,593 s.f. lounge area. Food facilities within the complex would include a coffee shop, a food court with 10 venues, a steakhouse, 2 specialty restaurants, and a retail restaurant. Other facilities within the complex include a convention/banquet area and a 96,634 s.f. lifestyle retail component located on the southwest side of the complex. As described under the Preferred Alternative, the hotel tower would be less than 60 feet in height (see Tribal Resolution No. 2014-189 dated April 18, 2014), and would include a fully enclosed 71,719 s.f. indoor swimming pool area, a spa/wellness center, and a fitness center. A four-story concrete parking structure would be located on the west side of the mixed-use development complex and would include 1,500 parking spaces. A total of 4,753 surface parking spaces would be provided for Alternative 3.

Site Drainage: Under Alternative 3, fourteen bio-filtration swales would be located around the Site to take advantage of topography and building placement in order to provide optimum Site drainage. The bio-filtration swales are considered a Low Impact Development technique to reduce impacts surface waters. In accordance with Section 2.4 of the IGA, the swales have been designed to ensure all runoff is contained within the Site during a 25-year storm event and to meet Airway Heights' storm water treatment criteria.

Law Enforcement and Fire Protection: No agreement with Airway Heights has been made at this time to provide law enforcement and fire services to the Site under Alternative 3; however, it is assumed that an agreement similar to the MOA would be executed prior to construction of Alternative 3. As with Alternatives 1 and 2, the proposed on-site tribal police and fire station would provide additional law enforcement and fire protection services to Alternative 3.

Infrastructure and Public Health and Safety Services: Under Alternative 3, the infrastructure components related to water supply, recycled water supply, wastewater treatment, and BMPs are similar to those described under the Preferred Alternative. For more detail, refer to the description of each component under the Preferred Alternative above (**Section 2.2.1** of this ROD).

2.2.4 Alternative 4 – No Action/No Development

Under the No Action/No Development Alternative, none of the three development alternatives (Alternatives 1, 2, and 3) considered within this EIS would be implemented. The No Action/No Development Alternative assumes that existing uses on the Site would not change in the near term.

3.0 ENVIRONMENTAL IMPACTS AND PUBLIC COMMENTS

3.1 ENVIRONMENTAL IMPACTS IDENTIFIED IN THE FINAL EIS

A number of specific issues were raised during the EIS scoping process and through public and agency comments on the Draft EIS. Each of the alternatives considered in the Final EIS were evaluated relative to these and other issues. The categories of issues evaluated in the EIS include:

- Geology and Soils
- Water Resources
- Air Quality
- Biological Resources
- Cultural and Paleontological Resources
- Socioeconomic Conditions and Environmental Justice
- Transportation/Circulation
- Land Use
- Public Services
- Noise
- Hazardous Materials
- Aesthetics
- Indirect Effects
- Cumulative Effects

The evaluation of project-related impacts included consultation with entities that have jurisdiction or special expertise to ensure that the impact assessments for the Final EIS were accomplished using accepted industry standard practices, procedures, and the most currently available data and models for each of the issues evaluated in the Final EIS at the time of preparation. Alternative courses of action and mitigation measures were developed in response to the identified environmental concerns and substantive issues raised during the EIS process. The effects of the development Alternatives 1 through 3 (development alternatives) as determined through the EIS process are described below.

3.1.1 Geology and Soils

Topography: The topography of the Site is irregular with rocky outcroppings, shallow depressions, and enclosed basins. The topographic features of the Site would be altered by earthwork under all of the development alternatives. Grading would consist primarily of excavating for project components and filling where cut slopes necessitate additional leveling. The development alternatives would balance on-site cut and fill with the exception of approximately 78,730 cubic yards of structural fill that will be imported to meet engineering requirements for roadways, parking areas, and building footings. While some cut-and-fill slopes would be noticeable on the Site, the project design would preserve the most significant topographic features by avoiding approximately 13.25 acres in the northwest corner of the Site. In addition, the finished grade would not be completely level, preserving some of the existing slopes. Development and operation of the development alternatives would result in a less-than-significant effect on topography.

Soils/Geology: All development alternatives could potentially impact soils due to erosion during construction, operation, and maintenance activities, including clearing, grading, trenching, and backfilling. Disturbance of the soils could result in loss of topsoil and a degradation of air quality through wind erosion. An Erosion Control Plan shall be prepared and implemented prior to the start of any site disturbance related to the development alternatives. A General Construction National Pollutant Discharge Elimination System (NPDES) permit shall be obtained from EPA under the Federal requirements of the Clean Water Act. As required by the NPDES permit, a Storm Water Pollution Prevention Plan (SWPPP) shall be prepared and implemented to avoid potential water quality impacts associated with construction and operation of the development alternatives. The SWPPP shall describe construction practices, stabilization techniques, and structural BMPs that are to be implemented to prevent erosion and minimize sediment transport. Mitigation measures related to Soils/Geology discussed in Section 5.2.1 of the Final EIS and **Section 6.0** of this ROD would reduce impacts to a less-than-significant level.

Seismicity: No known fault traces are mapped in the vicinity of the Site; therefore, the potential for surface rupturing along an on-site fault trace is low and should not be considered a constraint for the development alternatives. Additionally, the Tribe has committed in its Tribal-State Compact to develop the property consistent with the International Building Code (IBC) (formerly the Uniform Building Code), which includes provisions for design and construction of structures in each seismic zone. Through compliance with IBC requirements, impacts from seismicity under the development alternatives would be less-than-significant.

Mineral Resources: Because there are no known or mapped mineral resources in the Proposed Project area, alteration in the land use under the development alternatives would not result in a loss of economically viable aggregate rock or diminish the extraction of important ores or minerals. Project-related impacts to mineral resources under the development alternatives would be less than significant.

3.1.2 Water Resources

Flooding: The Site is located outside of the 100-year and 500-year floodplains. Thus, no impacts from flooding are expected to occur as a result of the development alternatives.

Surface Water Quality: Construction of the Proposed Project could result in sedimentation and discharges of pollutants to surface waters through storm water runoff. Implementation of the mitigation measures related to geology and soils presented in Section 5.2.1 of the Final EIS and **Section 6.0** of this ROD would reduce potential impacts to the local and regional watershed from construction activities to a less-than-significant level.

After development of the Site, all storm water would be contained within the Site through use of bio-filtration swales. These detention facilities are considered Low Impact Development strategies recommended by the EPA and would filter contaminants from run-off prior to percolation into the groundwater basin. Through Section 2.4 of the IGA, the Tribe is required to design storm water facilities in reasonable conformity with the Airway Heights Public Works Standards. Therefore, impacts to hydrology and water quality during operation of the development alternatives would be less than significant.

Groundwater: Because the development alternatives would not require the use of on-site groundwater, there would be no impact to existing wells in the immediate vicinity of the Site. Airway Heights obtains its primary water supply from groundwater, and has agreed to provide potable water service to the Proposed Project, and has indicated it has sufficient capacity to do so under existing conditions.

Wastewater generated by the development alternatives would also be treated off-site by Airway Heights. Airway Heights' Wastewater Treatment, Reclamation, and Recharge Facility uses percolation ponds as a means of disposal for treated wastewater. The increased drawdown of groundwater associated with water demand from the development alternatives would be off-set by groundwater re-charge from the increased use of percolation ponds. Therefore, the operation of the development alternatives would result in a less-than-significant impact on groundwater levels.

Although the development alternatives would introduce large areas of impermeable surfaces, the use of bio-filtration swales for storing storm water would allow collected storm water to percolate into the groundwater table. Therefore, the introduction of impermeable surfaces on the Site would have a less-than-significant impact on groundwater levels.

Groundwater Quality: Although storm water would not flow offsite to impact surface water quality, the bio-filtration swales would percolate some of the accumulated storm water into the shallow unconfined alluvial aquifer, potentially transporting dissolved chemical contaminants into the groundwater. As required by Section 2.4 of the IGA, several features designed to filter surface runoff have been incorporated into the Proposed Project design in accordance with the Airway Heights Public Works Standards. Thus, the impact to ground water quality from storm water runoff would be less-than-significant. Implementation of the mitigation measures related to geology and soils presented in Section 5.2.1 of the Final EIS and **Section 6.0** of this ROD would further reduce potential impacts to groundwater quality from construction activities.

Wastewater generated by the Preferred Alternative would be treated and disposed through connection to Airway Heights' Wastewater Treatment, Reclamation, and Recharge Facility

which would discharge treated wastewater to percolation ponds. Potential effects to groundwater quality and quantity are discussed in Section 4.2 of the Final EIS and **Section 3.1.13** of this ROD.

3.1.3 Air Quality

Construction Emissions: Construction of the development alternatives would not cause an exceedance of National Ambient Air Quality Standards (NAAQS) for criteria air pollutants; however, dust and emissions of diesel particulate matter (DPM) during construction could impact sensitive receptors. Mitigation measures presented in Section 5.2.3 of the Final EIS and **Section 6.0** of this ROD related to fugitive dust and DPM emissions would reduce impacts associated with construction emissions to a less-than-significant level.

Operation Emissions: The Site is in a region of attainment for all criteria pollutants; however, the Site is located two miles east of a maintenance area for particulate matter 10 microns in size (PM_{10}) and Carbon Monoxide (CO). Under the federal Clean Air Act and its implementing regulations at 40 C.F.R. Part 93, if a region is in attainment for all criteria pollutants, then the region meets the NAAQS and there are no *de minimis levels* or "thresholds" for a project's emissions. Because project-related indirect emissions from vehicle travel would occur in the adjacent maintenance area, a general conformity analysis for PM_{10} and CO was conducted in accordance with the Clean Air Act regulations at 40 C.F.R. § 93.158 (a)(4)(ii)), and in consultation with the EPA, Region 10, and the Spokane Regional Clean Air Agency.
In accordance with the regulations, a Draft Conformity Determination was released on January 15, 2013, with publication of a notice in the local papers which began a 30-day public review and comment period ending on February 15, 2013. A Final Conformity Determination was issued on August 12, 2013, which confirmed that the Preferred Alternative would not cause an exceedance of the NAAQS; therefore, the Preferred Alternative would be considered to conform to the State Implementation Plan for CO (see 40 C.F.R. § 93.158 (a)(4)(i)). No new impacts were identified in the Final Conformity Determination that were not disclosed in the Final EIS. Sufficient opportunities for public and agency review of the Draft and Final conformity determinations were provided in accordance with the regulations.

Mitigation measures related to air quality presented in Section 5.2.3 of the Final EIS and **Section 6.0** of this ROD would minimize criteria air pollutant emissions from operation of the development alternatives. Utilizing mitigation measures to minimize emissions of criteria pollutants, the development alternatives would have a less-than-significant impact on regional air quality.

3.1.4 Biological Resources

Habitats: None of the habitats that would be affected by the implementation of the development alternatives are considered sensitive communities; therefore, no impacts to sensitive habitats would occur.

Federally Listed Species: No federally listed wildlife species occur within the Site; therefore, no impact to federally listed wildlife would result from the implementation of the development alternatives.

Migratory Birds: Construction of the development alternatives could result in impacts to species protected under the Migratory Bird Treaty Act if active nests are present within shrubs and/or ornamental trees within the Site. Mitigation measures presented in Section 5.2.4 of the Final EIS and **Section 6.0** of this ROD related to migratory birds would reduce potential impacts to less-than-significant levels.

Wetlands and/or Waters of the United States: Approximately 0.70 acres of vernal wetlands are located within the Site. The U.S. Army Corps of Engineers issued a Jurisdictional Determination on May 17, 2011, confirming that the wetlands located within the Site are not jurisdictional waters of the United States, and thus are not subject to regulation by the federal government under the Clean Water Act. The Proposed Project footprints associated with the development alternatives were designed to avoid the vernal wetlands; therefore, the development alternatives will have no impact on these habitat features.

3.1.5 Cultural and Paleontological Resources

The development alternatives avoid any known cultural or paleontological resources; however, previously unknown cultural and paleontological resources may be encountered during ground disturbing activities. If such resources or remains are encountered, then all work within 50 feet of the find shall be halted until a Tribal Historic Preservation Office officer and the BIA Northwest Regional Office (BIA NWRO) archaeologist assess the significance of the find. Procedures for post-review discoveries without prior planning pursuant to the National Historic Preservation Act and its implementing regulations at 36 C.F.R. § 800.13 shall be followed to mitigate potential impacts to unknown cultural resources. If determined to be significant, the Tribe shall work with the BIA NWRO archaeologist to develop a Treatment Plan. Through compliance with applicable regulations, which are included in Section 5.2.5 of the Final EIS and **Section 6.0** of this ROD, impacts to cultural and/or paleontological resources would be less-than-significant.

3.1.6 Socioeconomic Conditions and Environmental Justice

Economic Effects: Potential substitution effects (the loss of customers at existing commercial businesses to a new business) of Tribal casinos on existing restaurant, recreation, and retail establishments were analyzed within the EIS. As concluded therein, anticipated substitution effects would not result in the closure of any of the competing gaming facilities. In fact, it is likely that existing regional casinos would continue to generate positive cash flows. Research summarized in Appendix V of the Final EIS indicates that there would not be significant quantifiable non-gaming substitution effects as a result of the development alternatives. Generally, the EIS concluded that the construction and operation of all the development alternatives would generate substantial economic output for a variety of businesses in Spokane County and substantial tax revenues for state, county, and local governments. In accordance with federal law, tribes do not pay taxes on tribal lands. However, the Proposed Project will result in increased local, state, and federal tax revenues as a result of construction and operation of the development alternatives. Overall, the Preferred Alternative would result in the greatest beneficial impact to the local economy in Spokane County.

As a result of competitive effects to the Kalispel Tribe's Northern Quest Casino, the development alternatives could result in economic impacts to the Kalispel Tribe. The Kalispel tribal government's budget may be impacted by the Proposed Action; however, these effects are expected to dissipate over time due to market growth and marketing strategy adjustments, and would not cause such a reduction in income as to keep the Kalispel tribal government from providing essential services and facilities to its membership. Therefore, the development alternatives would not result in significant adverse effects to minority or low-income communities. See the Secretarial Determination in **Attachment IV** to this ROD for an in-depth analysis and discussion of economic impacts to the Kalispel Tribe.

Employment: Construction and operation of the development alternatives would generate substantial temporary and ongoing employment opportunities and wages that would be primarily filled by the available labor force in Spokane County. Given the projected unemployment rate, and the dynamics of the local labor market, Spokane County is anticipated to easily accommodate the increased demand for labor during the construction and operation of the development alternatives. While employment opportunities at existing gaming facilities may temporarily be reduced proportionally to the estimated substitution effect described above, the net impact to employment opportunities as a result of the Proposed Project would be positive. Overall, the Preferred Alternative would result in the greatest beneficial impact to local employment opportunities in Spokane County.

Housing: Based on regional housing stock projections described in the Final EIS and current trends in Spokane County housing market data, there are anticipated to be more than enough vacant homes to support potential impacts to the regional labor market under the development alternatives. Therefore, a less-than-significant impact to the housing market would occur under the development alternatives.

Social Effects: Because 4 existing casinos are located within 50 miles of the Site, including the existing Kalispel Tribe's Northern Quest Casino located approximately two miles from the Site, the gaming development alternatives would not introduce a new use to the community. Therefore, there would be no anticipated significant increase to problem gambling rates in the local area. Additionally the Tribe would make annual payments to the state, county, and local governments per the Tribal-State Compact and local agreements as described in Section 5.1 of the IGA, Section 1.5.2 of the Final EIS, and **Section 6.0 and Attachment IV** of this ROD. These annual payments would provide support for public services and community benefits, including problem gambling services, throughout the region. Thus, potential impacts to problem gambling as a result of the Proposed Project would be less-than-significant.

All of the development alternatives would introduce a large number of patrons and employees into the community on a daily basis. As with any other development of this size, criminal incidents would be expected to increase in the project area, particularly at the Site. Local agreements between the Tribe, County, and Airway Heights and increased tax revenues resulting from the development alternatives would fund expansion of law enforcement services required to accommodate planned growth. Thus, the development alternatives would result in a less-than-significant effects associated with crime.

Community Impacts: Employees that relocate to the project area to accept a position at the Site may increase the number of kindergarten through 12th grade students enrolled in the Cheney School District. However, due to the small number of employees that are expected to relocate to the project area as a result of the development alternatives, it is expected that these effects would be minimal.

Effects to area libraries and parks could occur if the employees or patrons of the development alternatives significantly increase the demand on these resources. Due to the limited number of employees that are expected to relocate to the project area, it is expected that these effects would be negligible. Therefore, there would be a less-than-significant effect to libraries and parks.

Environmental Justice: No low-income or minority communities reside in the vicinity of the Site. By generating new income to fund the operation of the tribal government and provide jobs to tribal members, the development alternatives would have a beneficial impact on the Tribe. Overall, the Preferred Alternative would have the greatest beneficial impact on the Tribe. Effects on environmental justice be a less-than-significant.

3.1.7 Transportation/Circulation

Potential impacts to transportation from construction activities would be concentrated on U.S. 2 in the immediate vicinity of the Site, and would include temporary traffic delays due to slower moving construction trucks and the increase in worker vehicles on area roadways. During construction of the selected development alternative, the Tribe will comply with all WSDOT requirements for work within federal and state rights-of-way. Prior to construction, the Tribe will prepare a traffic management plan for submittal to Airway Heights, Spokane County, and WSDOT. Because traffic due to construction would be temporary, significantly less than operational traffic, and would occur outside of the peak traffic hours, significant adverse effects would not occur with the mitigation described in Section 5.2.7 of the Final EIS and **Section 6.0** of this ROD.

The increase in traffic generated by buildout of the development alternatives would contribute to unacceptable traffic operations at several study intersections, causing them to operate below acceptable level of service (LOS) standards. In accordance with the IGA, the Tribe shall implement and/or pay a fair share contribution to traffic improvements detailed within the Traffic Impact Analysis and Addendums for intersections adversely affected by the selected alternative. Mitigation measures provided in Section 5.2.7 of the Final EIS and **Section 6.0** of this ROD would restore the impacted intersections to acceptable operating conditions in accordance with applicable agency requirements, or would restore operating conditions to pre-development levels. These mitigation measures were developed in consultation with WSDOT, Airway Heights, and Spokane County.

Pursuant to Section 3.3 of the MOA, Airway Heights is responsible for payments to the County. Under the MOA, the City would negotiate an agreement no later than the first full calendar quarter subsequent to the commencement of any gaming activities on the Site. This agreement would ensure that the County will receive sufficient funds to mitigate impacts from the Preferred Alternative associated with transportation planning and funding. With mitigation, impacts to transportation/circulation during operation would be less-than-significant.

Facilities to accommodate bicycle and pedestrian circulation, such as bike lanes and sidewalks, are limited in the vicinity of the Site. The Proposed Project would not impede bicycle and pedestrian circulation. Mitigation measures provided in Section 5.2.7 of the Final EIS and **Section 6.0** of this ROD would improve bicycle and pedestrian circulation facilities in the vicinity of the Site in accordance with local and regional plans.

Currently, the Spokane Transit Authority (STA) operates the only bus line to and from the Site (Route 61). The analysis within the EIS concluded that the additional ridership from the development alternatives would not exceed the capacity of STA's existing facilities and, therefore, a less-than-significant impact would occur. However, in light of new information submitted by STA to BIA after release of the Final EIS concerning *existing* budget and capacity deficiencies, Mitigation Measure G5 has been added to Section 5.2.7 of the Final EIS and **Section 6.7** of this ROD to ensure that STA is compensated for any costs associated with increased ridership as a result of the Preferred Alternative. Additional mitigation measures provided in Section 5.2.7 of the Final EIS and **Section 6.0** of this ROD would further reduce potential effects to public transit facilities. Thus, effects to transportation and circulation would be less-than-significant.

3.1.8 Land Use

The Tribe currently operates a Spoko Fuel gas station and convenience store on the southwestern portion of the site. The remainder of the site is primarily undeveloped with occasional areas of disturbance. The majority of land uses to the north, west, and south of the site consist of rural residential, agricultural, and open space. Properties to the north, south, and west of the project site are located within unincorporated Spokane County (County).

The adjacent parcels to the southeast consist of commercial uses and include an auto care center and a rental center. Land uses to the east of the project site include additional commercial uses and a single-family residential subdivision. Properties to the south are zoned Regional Commercial and Light Industrial. "Regional Commercial" designates intensive commercial areas and allows regional shopping centers, some residences and multifamily developments, and small-scale industrial. "Light Industrial" is intended for industrial areas that strive to have minimal impacts to surrounding areas in regards to noise, odor, and aesthetics. This designation allows light industry, office, and commercial uses. The properties immediately north and west of the project site are zoned Rural Traditional, which allows large-lot residential, resource-based industries, rural-oriented recreation, and some new non-resource-related industry.

The Fairchild Air Force Base (Fairchild AFB) is located approximately 1.5 miles to the southwest of the project site, and the Spokane International Airport (SIA) is located approximately 3.0 miles to the southeast. The Airway Heights Correction Center, Off-Road Vehicle Park, and Spokane County Raceway are located approximately 2.5 miles northeast of the project site. The Kalispel Tribe of Indians' Northern Quest Casino and Resort is located in the City approximately 1.0 mile northeast of the project site, along Hayford Road, approximately 0.5 miles north of US-2.

Prior to its annexation into Airway Heights, the 145-acre property was located within the County's designated Urban Growth Area (UGA) and Joint Planning Area (JPA) with Airway Heights. As described in Section 3.9.1 of the Final EIS, UGAs within the County have been established in accordance with the State Growth Management Act (GMA) to assist in focusing urban growth in urban areas and to ensure that new construction has appropriate provisions for public services and facilities. The JPA's are lands located within the Spokane County UGA but outside of the existing city limits of Airway Heights and are considered potential annexation areas of Airway Heights. Therefore, the annexation and extension of public services to the 145-acre trust property was consistent with the future land use plans of Spokane County and Airway Heights.

Although state and local land use plans do not apply to tribal trust lands, the development alternatives would be compatible with local zoning and land use policies as well as policies related to land use in the vicinity of Fairchaild AFB and the SIA. The Federal Aviation Administration (FAA) conducted an aeronautical study at the Tribe's request and determined the Proposed Project would not be a hazard to air navigation (Final EIS Appx. S).

Mitigation measures to minimize the potential for compatibility issues associated with Fairchild AFB operations (noise, dust, fumes, etc.) are provided in Sections 5.2.8, 5.2.10, and 5.2.12 of the Final EIS and **Section 6.0** of this ROD. The mitigation measures require that the Tribe:

1. Make a good faith effort to enter into a memorandum of understanding with Fairchild AFB, or adopt a tribal ordinance that acknowledges that the subject property is located in an area impacted by aircraft noise and that discharges Fairchild AFB from liability for damages to the Proposed Project associated with noise, vibrations, odors, vapors, exhaust, smoke, and dust caused by the passage of aircraft over the Site.

   In accordance with the recommended mitigation, the Tribal Council enacted Resolution 2012-146, dated February 29, 2012, in which the Tribe agreed to accept any inconveniences associated with Fairchild AFB operations during operation of the Proposed Project (Final EIS Appendix W). Furthermore, in 2013, the Tribal Council enacted the West Plains Development Code, which incorporates mitigation measures recommended in the Final EIS to ensure the Preferred Alternative's consistency with Fairchild AFB operations, including restrictions and requirements regarding building heights, land density, sound attenuation, wildlife attractants, and light and glare. The West Plains Development Code also requires the incorporation of any additional mitigation measures set forth in this ROD. Additionally, although the FAA No Hazard Determination allows for a building height of 140 feet on the Site, the Tribe has committed to limit the height of the hotel tower to 60 feet and has enacted Resolution 2014-189 (April 18, 2014) which confirms this commitment.

2. Incorporate appropriate sound attenuation measures into the design and construction of all buildings within the Site, including the proposed hotel tower and casino, to reduce indoor noise from Fairchild AFB operations and the potential for complaints from patrons

3. Implement measures to prevent the attraction of birds to the Site.

4. Make information available to patrons and employees regarding the potential to see and hear military air craft flying over the Site through the use of signs and/or information pamphlets.

5. Develop procedures for managing patron/lessee concerns/complaints regarding military aircraft noise.

6. Commit to ongoing coordination with Fairchild AFB regarding the implementation of applicable mitigation measures to ensure compatibility with Fairchild AFB operations. Should the Tribe enter into lease agreements for commercial/retail uses within the property, such agreements will acknowledge the potential for military aircraft operations in the Site vicinity.

The U.S. Air Force's (USAF) Final EIS for the KC-46A Formal Training Unit and First Main Operating Base (MOB 1) Beddown,[4] which evaluated the Fairchild AFB as a potential location for the MOB 1 mission, confirmed that the Tribe has coordinated with the USAF on compatible development at the Site. It also confirmed that the West Plains Development Code was enacted by the Tribe to implement the recommendations of the Joint Land Use Study. The USAF's Final EIS concluded that continued coordination between Fairchild AFB and local governments, including the Tribe, and implementation of mitigation measures outlined in the Final EIS on the Preferred Alternative would minimize potential cumulative land use effects. Fairchild AFB has also confirmed that it will not alter its flight patterns in the unlikely event that the Tribe issues a complaint related to issues that may be caused by Fairchild AFB operations (noise, dust, fumes, etc.) on the Site. Additionally, in a letter dated February 3, 2015, the Principal Deputy Assistant Secretary of the USAF to the Assistant Secretary – Indian Affairs reiterated that the Proposed Project is outside the Fairchild AFB noise zones and accident potential zones and that the mitigation measures identified and agreed to by the Spokane Tribe in the Final EIS would protect the mission success of USAF operations at Fairchild AFB. The Department has fully addressed USAF's issues through the NEPA process and associated mitigation.

3.1.9 Public Services

All development alternatives would increase demands for services related to water supply, wastewater, solid waste, law enforcement, fire protection, emergency medical response, electricity and natural gas.

Water Supply: In accordance with Section 2.0 of the IGA, the Airway Heights' public water system will serve the Site through connections to be provided to the Site at the Tribe's sole cost and expense. Airway Heights has expanded its water supply by constructing an additional water reservoir with at least one million gallons of capacity, making reclaimed water available for irrigation and industrial uses, which will reduce the demand for potable water, and construction of a new 3,000 gallons per minute (gpm) well (previously anticipated to have a capacity of 1,200 gallons per day). Century West, on behalf of Airway Heights, completed a water capacity

[4] The Notice of Availability for the USAF's Final EIS was published on March 21, 2014 (79 Fed. Reg. 15741). The USAF's Final EIS and associated documents are available at: http://www.kc46abeddown.com/index.aspx.

analysis for the Proposed Project in 2011. The analysis concluded that, with the addition of a 1,200 gpm well and the use of reclaimed water from the City's Wastewater Treatment, Reclamation, and Recharge Facility, Airway Heights would have sufficient capacity to serve the projected demands of the selected development alternative. The Tribe would pay the current water capital connection charges and monthly service fees, and will provide fair share payments to extend the municipal water system to the Site. This fair share compensation would allow Airway Heights to expand its water supply infrastructure as necessary to serve the proposed development. With implementation of the conditions of the IGA, provided in Section 1.5.2 of the Final EIS and **Section 6.0** of this ROD, impacts to Airway Heights' public water system and level of service would be less-than-significant.

Airway Heights has an intertie agreement with the City of Spokane in which the City of Spokane agrees to sell water at established city rates to Airway Heights when conditions exist whereby the Airway Heights' water system cannot furnish adequate water. Although the use of reclaimed water from the WTRRF is anticipated to reduce Airway Heights' demand for potable water from the City of Spokane, there is a potential for the Proposed Project to utilize water under this agreement. Pursuant to the agreement, Airway Heights pays for supplied water at the established City of Spokane rates. The monthly service fees paid by water users served by Airway Heights, including the Tribe, will fund payments from Airway Heights to the City of Spokane. Furthermore, should the demands of the Airway Heights exceed the City of Spokane's capacity to meet its needs, the City of Spokane has the right to temporarily discontinue water service. With implementation of the conditions of the IGA, provided in Section 1.5.2 of the Final EIS and **Section 6.0** of this ROD, impacts to the City of Spokane's public water system and level of service would be less-than-significant and in line with the intent of the Growth Management Act.

Wastewater Service: In accordance with Section 2.0 of the IGA, Airway Heights' public sewer and wastewater treatment system shall serve the Site through connections to be provided at the Tribe's sole cost and expense. The Washington Department of Ecology requires construction of subsequent phases of a planned wastewater treatment system when the previous phase operates at or above 80% of its design capacity. As of June 2012, Phase I of Airway Heights' WTRRF was operating at approximately 50 percent of its design capacity. According to information provided by Airway Heights, additional wastewater flows resulting from the development alternatives in conjunction with other growth expected in Airway Heights would likely cause the existing treatment facility to operate at or above 80 percent of its design capacity, thus triggering the construction of the Phase II expansion of the WTRRF. Phase II of the WTRRF would have ample capacity to treat wastewater generated under the development alternatives. The WTRRF was designed to have the flexibility to provide increased treatment capacity to meet future demands through construction of additional modular units. Therefore, impacts to Airway Heights' public sewer and wastewater treatment system would be less-than-significant.

Solid Waste Service: Construction waste will be recycled or disposed of at the Waste to Energy Recycling Center/Disposal Site, the Northside Landfill, or the Roosevelt Regional Landfill. Because solid waste generated during the operation of the development alternatives would represent a small percentage of the capacity at these facilities, it would be a less-than-significant impact.

Law Enforcement: Pursuant to Section 2.2 of the MOA, law enforcement services and prosecution, court, and jail services would be provided by Airway Heights Police Department. Payments by the Tribe outlined in Section 6.0 of the MOA would compensate Airway Heights for costs of impacts associated with increased police services. An on-site tribal police station would facilitate the security responsibilities of the Tribe. If additional services are needed from other law enforcement agencies, the Tribe shall provide fair-share assistance through the existing mechanisms established within the Tribal-State Gaming Compact. With implementation of conditions set forth in the MOA and the Tribal-State Gaming Compact, which are included as mitigation in Section 1.5.3 of the Final EIS and **Section 6.0** of this ROD, impacts to public law enforcement services would be less-than-significant.

Fire Protection and Emergency Medical Services: Pursuant to Section 2.3 of the MOA, fire protection and emergency medical services would be provided by Airway Heights Fire Department. Additional fire protection services would be provided by the on-site tribal fire station. The payments by the Tribe outlined in Section 6.0 of the MOA would compensate Airway Heights for costs of impacts associated with increased fire protection and emergency medical services. The increase in traffic through Fire District 10 West Plains District as a result of the development alternatives could increase the District's call volume. The Tribe shall provide fair-share assistance to District 10 through the existing mechanisms established within the Tribal-State Gaming Compact. In the unlikely event of a catastrophic emergency at the Site, the Tribe shall provide fair-share assistance to municipal emergency response services through the existing mechanisms established within the Tribal-State Gaming Compact. Implementation of conditions contained in the MOA and the Tribal-State Gaming Compact, which are included as mitigation measures in Section 1.5.2 of the Final EIS and **Section 6.0** of this ROD, will reduce impacts to fire protection and emergency services to less-than-significant.

Electricity and Natural Gas: Pursuant to "will serve letters" included as Appendix L and Appendix M of the Draft EIS, Inland Power and Light and Avista Utilities have the capacity to provide the Site with electricity and natural gas services, respectively. The Tribe would be responsible for payment of any fees charged by Inland Power and Light and Avista Utilities for services/electricity provided to the Site. The Tribe will be directly charged for services rendered and there will be no effect on existing ratepayers. Therefore, all development alternatives would have a less-than-significant impact on electricity or natural gas services.

3.1.10 Noise

During the construction phase, noise levels from equipment and vehicles may at times exceed federal noise abatement criteria standards used by the Federal Highway Administration and Washington State Department of Transportation. Mitigation measures listed in Section 5.2.10 of the Final EIS and **Section 6.0** of this ROD would reduce these impacts to less-than-significant levels. An analysis was conducted of ambient noise levels and estimated increases in noise from project-related sources, including traffic, heating ventilation and air conditioning systems, parking structure and parking lots, and deliveries. The analysis concluded that the Proposed Project would not increase noise levels above federal noise abatement criteria; therefore, noise generated by operation would be less-than-significant. The western half of the Site is located within a Military Influence Area as defined by the Fairchild AFB Joint Land Use Study, the boundaries of which were determined based on the primary areas of aircraft over flight and

potential for exposure to noise and vibrations. Because exposure of hotel patrons to noise from aircraft could create the potential for annoyance, mitigation measures listed in Section 5.2.10 of the Final EIS and **Section 6.0** of this ROD would ensure that appropriate sound attenuation methods are utilized to reduce the potential for noise complaints to less-than-significant levels.

3.1.11 Hazardous Materials

Although not anticipated, construction personnel could encounter contamination during earth moving activities that may pose a risk to human health and/or the environment. If contamination is encountered and determined to be hazardous, mitigation measures listed in Section 5.2.11 of the Final EIS and **Section 6.0** of this ROD require the Tribe to consult with the EPA and to comply with all federal hazardous materials regulations in the removal and disposal of any contaminated soil or water. Hazardous materials used during construction of the Proposed Project could pose a risk to human health and/or the environment. Mitigation measures listed in Section 5.2.11 of the Final EIS and **Section 6.0** of this ROD require construction personnel follow BMPs to prevent the release of hazardous materials used during construction into the environment. During operation, hazardous materials would be stored, handled, and disposed of according to state, Federal, tribal, and manufacturer's guidelines. Therefore, construction and operation of development alternatives would result in a less-than-significant impact associated with hazardous materials.

3.1.12 Aesthetics

The Preferred Alternative conforms with Spokane County standards for development adjacent to U.S. 2, a designated aesthetic corridor. Development of the Proposed Project would alter views of the Site. While the site-specific visual effects may be considered significant, the context of the development alternatives in relation to the larger landscape would be less-than-significant (as additional development within a highly developed region). Mitigation measures in Section 5.2.12 of the Final EIS and **Section 6.0** of this ROD require screening features and natural elements to be integrated into the landscaping design to screen the view of the facilities from existing residences directly adjacent to the Site.

Development alternatives would produce shadow, light, and glare in the project vicinity. Mitigation measures listed in Section 5.2.12 of the Final EIS and **Section 6.0** of this ROD require implementation of BMPs and compliance with applicable light and glare controls developed to protect the operational environment near Fairchild AFB, including Unified Facilities Criteria 3-530-01 and International Dark-skies Association Model Lighting Ordinance criteria. Mitigation measures include use of shielded and downcast lighting and the use of non-reflective low-glare glass to reduce off-site light and glare. Mitigation would reduce impacts to aesthetics to less-than-significant levels.

3.1.13 Indirect Effects

Indirect effects include effects that may be caused by the proposed action that are later in time or farther removed in the distance, but are still reasonably foreseeable. Indirect effects may include effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on natural systems.

Indirect Effects from Off-Site Traffic Mitigation Improvements: As described in detail in Section 4.14.1 of the Final EIS, construction activities associated with off-site traffic improvements to be implemented as a result of project mitigation may indirectly affect the environment. Effects could occur from operation of construction equipment, grading, and the introduction of fill material. Construction activities associated with off-site traffic improvements would be regulated by WSDOT, Airway Heights and/or the County, and would be required to comply with applicable Federal, state, and local laws, policies, and ordinances related to the protection of natural resources. Indirect effects resulting from off-site traffic improvements would be less-than-significant.

Indirect Effects from Water/Wastewater Infrastructure Improvements: As described in Section 4.14.2 of the Final EIS, construction of off-site water/wastewater infrastructure improvements may indirectly affect the environment. Construction activities associated with off-site infrastructure improvements would be regulated by Airway Heights and/or WSDOT and would be required to comply with applicable federal, state, and local laws, policies, and ordinances related to the protection of natural resources. Indirect effects resulting from off-site infrastructure improvements would be less-than-significant.

Growth-Inducing Effects: As discussed in Section 4.14 of the Final EIS and above in **Section 3.1.6**, given the projected unemployment rate and housing stock, the development alternatives are not expected to stimulate regional housing development. The potential for commercial growth throughout Spokane County is tied to the direct, indirect, and induced economic activity resulting from the development alternatives. Businesses would experience growth in the form of indirect output resulting from expenditures on goods and services. In addition, project employees would generate growth through expenditures on goods and services at area businesses. The increase in demand for goods and services would be diffused and distributed among a variety of different sectors and businesses in Spokane County. As such, significant regional commercial growth would not be anticipated to occur. Any growth induced by the development alternatives in Airway Heights or other cities within Spokane County would be subject to the constraints of their respective general plans and local ordinances, as well as the Washington Growth Management Act. New development would be required to comply with applicable federal, state, and local laws, policies, and ordinances related to the protection of natural resources. Because no significant growth is anticipated under the development alternatives, indirect effects from growth inducement would be less-than-significant.

3.1.14 Cumulative Effects

With the implementation of mitigation measures listed in Section 5.0 of the Final EIS and in **Section 6.0** of this ROD, the development alternatives would not contribute to cumulative effects associated with geology and soils, water resources, biological resources, cultural resources, socioeconomic conditions, land use, public services, noise, hazardous materials, and aesthetics.

Air Quality and Climate Change / Greenhouse Gas (GHG): In the cumulative year 2032, with the implementation of mitigation measures listed in in Section 5.0 of the Final EIS and **Section 6.0** of this ROD, no intersection would have a traffic level of service (LOS) or an increase in traffic delay that would warrant a carbon monoxide Hot Spot Analysis. Development and

operation activities would result in emissions of criteria pollutants and GHGs primarily due to emissions from project-related traffic. With mitigation, project-related emissions of criteria pollutants would not contribute to a significant cumulative effect to air quality in the year 2032, and would not conflict with the applicable State Implementation Plan under the federal Clean Air Act. Estimated emissions of GHGs are well below the Council on Environmental Quality reporting standard of 25,000 metric tons of CO2e per year. Mitigation measures presented in in Section 5.0 of the Final EIS and **Section 6.0** of this ROD would ensure compliance with applicable the Washington Climate Advisory Team GHG reduction strategies; therefore, the proposed development alternatives would have a less-than-significant cumulative effects associated with GHG emissions and climate change.

Transportation: In the cumulative year 2032, the increase in traffic generated by proposed development alternatives would contribute to unacceptable traffic operations at several study intersections, causing them to operate below acceptable LOS standards. In accordance with the IGA and mitigation measures set forth in in Section 5.0 of the Final EIS and **Section 6.0** of this ROD, the Tribe shall implement and pay a fair share contribution to traffic improvements detailed within the Traffic Impact Analysis and Addenda for intersections adversely affected by the selected alternative. Mitigation measures would restore the impacted intersections to acceptable operating conditions in accordance with applicable agency requirements, or would restore operating conditions to pre-development levels. With mitigation, cumulative effects on to transportation/circulation during operation would be less-than-significant.

4.0 ENVIRONMETALLY PREFERRED ALTERNATIVE(S)

The Reduced Casino and Mixed-Use Development (Alternative 2) or the No-Action/No-Development Alternative (Alternative 4) would result in the fewest effects to the natural and human environment. The No-Action Alternative would be environmentally preferred. However, the No-Action Alternative would not meet the purpose and need for the Proposed Action. Specifically, it would not provide the Tribe with an opportunity to engage in economic development to generate sustainable revenue to allow the Tribe to achieve self-sufficiency, self-determination, and a strong Tribal government. The No-Action/No-Development Alternative would also likely result in substantially less economic benefits to Airway Heights and Spokane County.

Of the development alternatives, Alternative 2 would result in the fewest adverse effects on the human environment. Alternative 2 would have the fewest effects due to a lesser amount of development. However, Alternative 2 would generate less revenue and, therefore, limit the number of programs and services the Tribal Government could offer tribal citizens and neighboring communities. Alternative 2 is the Environmentally Preferred Development Alternative, but it would not fulfill the purpose and need for the Proposed Action.

5.0 PREFERRED ALTERNATIVE

For the reasons discussed herein, the Department has determined that Alternative 1 is the Preferred Alternative because it meets the purpose and need for the Proposed Action. Of the alternatives evaluated within the EIS, Alternative 1 would facilitate the Spokane tribal government's ability to establish, fund, and maintain governmental programs in light of

existing budget shortfalls that offer a wide range of health, education, environmental remediation measures, and welfare services to tribal citizens, as well as provide the Tribe, its citizens and local communities with greater opportunities for employment and economic growth. Alternative 1 would also allow the Tribe to implement the highest and best use of the trust property. Under Alternative 1, potential environmental impacts are adequately addressed by the mitigation measures adopted in this ROD.

Alternative 2, while less intensive than Alternative 1, would require similar levels of mitigation for identified impacts; however, the economic returns would be smaller than under Alternative 1 and the more limited development is not the most effective use of either the land or the Tribe's capital resources. See Section 4.7.2 of the Final EIS.

Due to the similarity in size to Alternative 1, Alternative 3 would have similar impacts as Alternative 1. Implementation of mitigation adopted in this ROD would reduce these potentially adverse effects. The substantially lower profitability of retail development in comparison to gaming operations make Alternative 3 less attractive than Alternative 1 from the standpoint of securing a long term, sustainable revenue stream for the Tribe. See Section 4.7.3 of the Final EIS

Alternative 1 is the alternative that best meets the purpose and need for the Proposed Action while preserving the key natural resources of the Site. Therefore, Alternative 1 is the Department's Preferred Alternative.

6.0 MITIGATION MEASURES

All practicable means to avoid or minimize environmental harm from the Preferred Alternative have been identified and adopted. The following mitigation measures, related enforcement, and monitoring programs have been adopted as a part of this decision. Where applicable, mitigation measures will be monitored and enforced pursuant to federal law, tribal ordinances, agreements between the Tribe and appropriate governmental authorities, and as identified this decision. Relevant regulatory requirements, conditions of the IGA, the MOA, best management practices (BMPs) and recommended mitigation measures are summarized below. Specific best management practices and mitigation measures adopted pursuant to this decision are set forth below and included in the Mitigation Monitoring and Enforcement Plan in **Attachment III** of this ROD.

6.1 GEOLOGY AND SOILS

The following BMP shall be implemented for the Preferred Alternative:

A. An Erosion Control Plan (ECP) shall be created and implemented prior to start of any site disturbance. The ECP shall identify the locations of erosion control features recommended to direct and filter storm water runoff. The features used during construction include, but are not limited to, silt fences, fiber rolls, and rock bag dams. The locations of permanent erosion control features such as sediment/grease traps, vegetated drainage swales, and riprap shall also be identified. The ECP would be

implemented during project construction and operation, thus assuring that adverse effects resulting from erosion are minimized.

The following mitigation measure shall be implemented in accordance with federal regulatory requirements for the Preferred Alternative:

B. A General Construction National Pollutant Discharge Elimination System (NPDES) permit shall be obtained from the EPA under the requirements of the federal Clean Water Act. As required by the NPDES permit, a Storm Water Pollution Prevention Plan (SWPPP) shall be prepared that addresses potential water quality impacts associated with construction and operation of the project alternatives. The SWPPP shall make provisions for erosion prevention and sediment control and control of other potential pollutants. The SWPPP shall be submitted to the EPA as part of the notice of intent that will be filed by the Tribe to obtain coverage under the General Construction NPDES Permit.

   The SWPPP shall describe construction practices, stabilization techniques and structural BMPs that are to be implemented to prevent erosion and minimize sediment transport. The BMPs shall consist of the most effective and efficient measures known at the time of construction. BMPs shall be inspected, maintained, and repaired to assure continued performance of their intended function. Reports summarizing the scope of these inspections, the personnel conducting the inspection, the dates of the inspections, major observations relating to the implementation of the SWPPP, and actions taken as a result of these inspections shall be prepared and retained as part of the SWPPP.

   The BMPs specified in the SWPPP to minimize the potential for erosion and prevent sedimentation to surface waters, shall include, but not be limited to, the following:

   1. Stripped areas shall be stabilized through temporary seeding using dryland grasses.
   2. Conveyance channels and severe erosion channels shall be mulched or matted to prevent excessive erosion.
   3. Exposed stockpiled soils shall be covered with plastic covering to prevent wind and rain erosion.
   4. The construction entrance shall be stabilized by the use of riprap, crushed gravel, or other such material to prevent the track-out of dirt and mud.
   5. Construction roadways shall be stabilized through the use of frequent watering, stabilizing chemical application, or physical covering of gravel or riprap.
   6. Filter fences shall be erected at all onsite storm water exit points and along the edge of graded areas to stabilized non-graded areas and control siltation of onsite storm water.
   7. Dust suppression measures included in **Section 6.3** below, Air Quality, Mitigation Measure A, shall be implemented to control the production of fugitive dust and prevent wind erosion of bare and stockpiled soils.

6.2 WATER RESOURCES

Construction Impacts

The following mitigation measure shall be implemented in accordance with federal regulatory requirements for the Preferred Alternative:

A. As described under **Section 6.1** above, Geology and Soils, Mitigation Measure B, prior to construction, an NPDES permit shall be obtained from the EPA and a SWPPP shall be prepared. The SWPPP shall describe construction practices, stabilization techniques, and structural BMPs that are to be implemented to prevent erosion and minimize sediment transport as outlined above.

Operational Impacts

The following project design measures shall be implemented in accordance with Section 2.4 of the IGA for the Preferred Alternative:

B. The following measures shall be implemented in conformance with Airway Heights' Public Works Standards:

    1. Storm water conveyance shall be designed to limit the flow capacity to 70 percent to allow for settling of sediment and debris.
    2. Catch basins shall be designed in a "sump" condition to allow for greater inlet capacity.
    3. Detention swales shall be designed to allow for a minimum of 1.0 foot of freeboard, and shall be vegetated with a grassy bottom with enough area to provide "bio-filtration."
    4. Storm water shall be routed from poorly drainable soils to those areas with higher infiltration and permeability rates for better disposal of storm water.
    5. Conveyance channels shall be designed at "non-erosive" velocities to eliminate soil erosion, and shall have at a minimum 12 inches of freeboard to minimize overtopping and out of channel flow.

6.3 AIR QUALITY

Construction

The following BMPs shall be implemented for the Preferred Alternative:

A. The following dust suppression measures shall be implemented by the Tribe to control the production of fugitive dust (PM10) and prevent wind erosion of bare and stockpiled soils:

    1. Spray exposed soil with water or other suppressant at least twice a day.
    2. Minimize dust emissions during transport of fill material or soil by wetting down loads, ensuring adequate freeboard (space from the top of the material to the top of the truck bed) on trucks, and/or covering loads.
    3. Promptly clean up spills of transported material on public roads.

4. Restrict traffic on-site to reduce soil disturbance and the transport of material onto roadways.
5. Locate construction equipment and truck staging areas away from sensitive receptors as practical and in consideration of potential effects on other resources.
6. Provide wheel washers to remove particulate matter that would otherwise be carried off-site by vehicles to decrease deposition of particulate matter on area roadways.
7. Cover dirt, gravel, and debris piles as needed to reduce dust and wind-blown debris.

B. The following measures shall be implemented by the Tribe to reduce emissions of criteria pollutants, greenhouse gases (GHGs) and diesel particulate matter (DPM) from construction of the Preferred Alternative:

1. Control criteria pollutants and GHG emissions whenever reasonable and practicable by requiring all diesel-powered equipment be properly maintained and minimize idling time to 5 minutes when construction equipment is not in use, unless per engine manufacturer's specifications or for safety reasons more time is required. Since these emissions would be generated primarily by construction equipment, machinery engines shall be kept in good mechanical condition to minimize exhaust emissions. The Tribe shall employ periodic and unscheduled inspections to accomplish the above mitigation.
2. Require all construction equipment with a horsepower rating of greater than 50 be equipped with diesel particulate filters, which would reduce approximately 85 percent of DPM.

Operation and Climate Change

The following BMPs shall be implemented for the Preferred Alternative:

C. The Tribe shall reduce emissions of criteria air pollutants and GHGs during construction and operation through the following actions, as applicable:

1. Use clean fuel vehicles in the vehicle fleet where practicable, which would reduce criteria pollutants and GHG emissions within the Spokane region.
2. Provide preferential parking for vanpools and carpools, which would reduce criteria pollutants and GHGs.
3. Use low-flow appliances where feasible and utilize both potable and non-potable water to the extent practicable. The project proponent shall use drought resistant landscaping where practicable and provide "Save Water" signs near water faucets throughout the development.
4. Control criteria pollutants, GHG, and DPM emissions during operation whenever reasonable and practicable by requiring all diesel-powered vehicles and equipment be properly maintained and minimizing idling time to five minutes at loading docks when loading or unloading food, merchandise, etc. or when diesel-powered vehicles or equipment are not in use; unless per engine manufacturer's specifications or for safety reasons more time is required. The Tribe shall employ periodic and unscheduled inspections to accomplish the above mitigation.

5. Use energy efficient lighting, which would reduce indirect criteria pollutants and GHG emissions. Using energy efficient lighting would reduce the project's energy usage, thus, reducing the project's indirect GHG emissions.
6. Install recycling bins throughout the hotel and casino for glass, cans and paper products. Decorative trash and recycling receptacles shall be placed strategically outside to encourage people to recycle.
7. Use environmentally preferable materials to the extent practical for construction of facilities.
8. Plant trees and vegetation on-site or fund such plantings off-site. The addition of photosynthesizing plants would reduce atmospheric carbon dioxide (CO_2), because plants use CO_2 for elemental carbon and energy production. Trees planted near buildings would result in additional benefits by providing shade to the building; thus reducing heat absorption, reducing air conditioning needs and saving energy.
9. Use energy efficient appliances in the hotel and casino.
10. Incorporate advanced lighting design and include day lighting, where appropriate. Advanced lighting design and day lighting would reduce project related GHG emissions by reducing electrical energy usage.
11. Use solar hot water heaters where appropriate. The use of solar hot water heaters would reduce project related GHG emissions by reducing electrical energy usage.
12. Provide shuttle service to and from the Spokane area in accordance with **Section 6.7** below, Transportation/Circulation, Mitigation Measure J, which would reduce criteria pollutants and GHG emissions within the Spokane region.

6.4 BIOLOGICAL RESOURCES

The following mitigation measures shall be implemented in accordance with federal regulatory requirements for the Preferred Alternative:

A. In accordance with the Migratory Bird Treaty Act, a qualified biologist will conduct a preconstruction survey within 100 feet around the vicinity of the project site for active nests if construction activities commence during the nesting season for birds of prey and migratory birds (between February 15 and September 15). The preconstruction survey will be conducted within 14 days prior to commencement of construction activities for each phase of project development. If surveys show that there is no evidence of nests, then no additional mitigation will be required. If active nests are identified, a 100-foot buffer zone should be established around the nests. A qualified biologist should monitor nests weekly during construction to evaluate potential nesting disturbance by construction activities. The biologist should delimit the buffer zone with construction tape or pin flags within 100 feet of the active nest and maintain the buffer zone until the end of breeding season or the young have fledged. Guidance from the U.S. Fish and Wildlife Service (USFWS) will be requested if establishing a 100-foot buffer zone is impractical.

B. Ornamental trees designated for removal will be removed between September 15 and February 15, prior to the nesting season. If trees are anticipated to be removed during the nesting season, a preconstruction survey will be conducted by a qualified biologist. If the survey shows that there is no evidence of active nests, then the tree will be removed within 10 days following the survey. If active nests are located within trees identified for

removal, a 100-foot buffer will be installed around the tree and guidance from the USFWS will be requested.

C. A focused botanical survey will be conducted within the evident and identifiable blooming period for Spalding's silence. If the survey shows that there is no evidence of this species, then no additional mitigation will be required. In the unlikely event that this species is detected, then a 50-foot buffer zone should be established around the individual plants to ensure that construction activities would not result in take. The Tribe will refrain from installing the ornamental landscaping within the established buffer area.

6.5 CULTURAL AND PALEONTOLOGICAL RESOURCES

The following mitigation measures shall be implemented in accordance with federal regulatory requirements for the Preferred Alternative:

A. In the event of any inadvertent discovery of prehistoric or historic archaeological resources or paleontological resources during construction-related earth-moving activities, all such finds shall be subject to Section 106 of the National Historic Preservation Act and its implementing regulations at 36 C.F.R. Part 800. Specifically, procedures for post-review discoveries without prior planning pursuant to 36 C.F.R. § 800.13 shall be followed. All work within 50 feet of the find shall be halted until a professional archaeologist can assess the significance of the find. If a find is determined to be significant by the archaeologist, then representatives of the Tribe shall meet with the archaeologist to determine the appropriate course of action, including the development of a Treatment Plan, if necessary. All significant cultural materials recovered shall be subject to scientific analysis, professional curation, and a report prepared by the professional archaeologist according to current professional standards.

B. If human remains are discovered during ground-disturbing activities on Tribal lands, the Tribal Official and BIA representative shall be contacted immediately. No further disturbance shall occur until the Tribal Official and BIA representative have made the necessary findings as to the origin and disposition. If the remains are determined to be of Native American origin, the BIA representative shall notify a descendant in accordance with applicable law, including the Native American Grave Protection and Repatriation Act, who will be responsible for recommending the appropriate disposition of the remains and any grave goods.

C. In the event of accidental discovery of paleontological materials during ground-disturbing activities, a qualified paleontologist shall be contacted to evaluate the significance of the find and collect the materials for curation as appropriate.

6.6 SOCIOECONOMIC CONDITIONS

As discussed above in Section 4.7 of the Final EIS and **Section 2.2.1,** implementation of the following provision of the Intergovernmental Agreement would avoid, minimize, or mitigate adverse socioeconomic effects under the Preferred Alternative:

A. In accordance with Section 5.1 of IGA, Annual Payment, the Tribe agreed to pay Airway Heights and the County an aggregate total payment of (b) (4) (4) before the date upon which Airway Heights receives the Agreement by the United States to Annexation of the Property (hereinafter "the effective date"). On or before the effective date of each subsequent year for the following 14 years, the aggregate joint payment shall be increased by (b) (4) per year. The annual (b) (4) payment increases shall end at Year 15. Beginning in Year 11, and each year thereafter, the aggregate joint payment shall be increased by 3 percent. Additionally, the Tribe agrees to meet at Year 25 to reconsider the annual payment amounts and to adjust such amounts, as necessary to reasonably approximate actual impacts to Airway Heights and the County. If within six months of initiating negotiation of such adjustment the parties do not agree to an adjustment, either party may initiate binding arbitration as provided by the IGA. The arbitrators shall make an award that adjusts such annual payment amount as necessary to reasonably approximate actual impacts to Airway Heights and the County, including, if the arbitrators so determine, annual adjustments based on reasonable estimates of annual increases in costs of such impacts. Each 25 year anniversary thereafter, the Tribe, City, and County shall meet and reconsider the annual payment amounts.

Implementation of the following provision of the Memorandum of Agreement would avoid, minimize, or mitigate adverse socioeconomic effects under the Preferred Alternative:

B. In accordance with Section 6.1 of the MOA, beginning with the first full calendar quarter subsequent to commencement of any gaming activities authorized under the Tribal – State Compact, the Tribe agrees to supplant the annual payment to Airway Heights set forth in Section 5.1 of the IGA as follows, provided such payment exceeds the annual payment:

1. (b) (4) for the first full year.
2. (b) (4) for the second full year.
3. (b) (4) for the third full year.
4. (b) (4) for the fourth full year.
5. (b) (4) for the fifth full year.
6. (b) (4) for the sixth full year.
7. (b) (4) for the seventh full year, and for each year thereafter.
8. Beginning in Year 8, and each year thereafter, the payment shall be increased by 3 percent per year.
9. Upon the annual payment exceeding (b) (4), the parties pursuant to Section 8.0 of the MOA shall review the terms of the MOA and Annual Payment and upon mutual agreement modify the same. If the parties do not agree to modify the MOA, the annual payment shall continue in the above amount plus each year be adjusted by the annual consumer price index for the Western United States as reported by the U.S. Department of Commerce, instead of the 3 percent annual increase set forth above.

Implementation of the following provisions of the Tribal-State Compact would avoid, minimize, or mitigate adverse socioeconomic effects under the Preferred Alternative:

C. In accordance with the Tribal-State Compact, the Tribe recognizes that the operation of class III gaming activities may adversely impact individuals who suffer from problem or pathological gambling addiction disorders. Moreover, the Tribe is committed to supporting problem gambling education, awareness, and treatment for such individuals. The Tribe shall set aside 0.13 percent of the gross gaming revenues from its class III gaming activities for contributions dedicated to problem gambling support services. Contributions shall be made to the Washington State Department of Social and Health Services' Division of Alcohol and Substance Abuse (DSHS/DASA). The Tribe shall be credited for payments, if any, made to other organizations that are directly related to helping to reduce problem gambling. The balance of the 0.13 percent of gross gaming revenues shall be paid to DSHS/DASA annually, starting with the 12-month anniversary of the Compact's effective date, and shall be paid by the 15th day of the month following said effective date.

D. In accordance with the Tribal-State Compact, the Tribe shall determine the wager limit for any allowed higher stakes gaming stations, and only qualified patrons shall be allowed to play at higher stakes tables. Also, pursuant to the Tribal-State Compact, no person under the age of 18 shall be allowed to participate in any gaming operation, or be allowed on the gaming floor during hours of operation.

The following optional mitigation measures shall be implemented for the Preferred Alternative at the Tribe's discretion:

D. The Tribe shall adopt a policy statement on problem gambling.

E. Written information that includes a list of professional gambling treatment programs and self-help groups shall be made available to casino customers. Brochures shall be made available in prominent locations inside of the casino and near all automated teller machines.

F. Procedures shall be implemented to allow for voluntary self-exclusion, enabling gamblers to ban themselves from the gaming establishment for a specified period of time.

6.7 TRANSPORTATION/CIRCULATION

Construction

The following mitigation measure shall be implemented in accordance with regulatory requirements for the Preferred Alternative:

A. The following measures shall be implemented in conformance with the WSDOT requirements for work within Federal and state right-of-ways:

1. Proposed changes to state facilities must be designed to current WSDOT standards and specifications.
2. Plans for any proposed access or construction within U.S. 2 right-of-way must be reviewed and approved by WSDOT prior to beginning work.

3. Engineering calculations, plans and reports submitted for review and approval must bear the seal and original signature of a professional engineer.
4. Construction must be done in accordance with the current WSDOT Standard Specifications for Road, Bridge, and Municipal construction manual.
5. Construction inspection will be performed by WSDOT at the Tribe's expense.
6. A Traffic Management Plan (TMP) shall be prepared to identify where construction routes are proposed, and other standards set forth in the 2009, Federal Highway Administration, *Manual on Uniform Traffic Control Devices for Streets and Highways*. The TMP shall be submitted to Airway Heights, Spokane County and the Washington State Department of Transportation.

Operational Traffic

In accordance with the IGA between the Tribe, City and County, the following traffic mitigation measures shall be implemented as identified within the Traffic Impact Analysis (TIA) and Addendums for the Preferred Alternative.

B. Traffic volumes in the build out year for each project phase shall be monitored and the traffic impact analysis shall be updated to assess the necessity for mitigation outlined below. If the results of the updated TIA determine that the traffic mitigation identified below should be adjusted due to changes in future traffic background conditions, the recommendations shall be subject to review and approval by WSDOT and Airway Heights prior to any modifications to the traffic mitigation plan. Any modifications to the mitigation plan for work within County owned right-of-ways shall be subject to Spokane County approval.

C. Prior to operation of the Preferred Alternative, Phase I, the Tribe shall implement and/or pay a fair share/proportional share contribution to the following mitigation measures, which would result in a less-than-significant effects at all study intersections:

1. <u>From U.S. 2/Craig Road to Western Site boundary</u>: The Tribe shall fully fund the construction of a roundabout at the Craig Road intersection and two site access intersections with roundabout intersection control. The roundabouts shall have multiple lanes. The location of access intersections shall be reconfigured as follows: the three roundabouts should be equally spaced, with the western access positioned near the property boundary and the main access located in the center of the property. Frontage improvements shall be constructed along the northern side of U.S. 2 including curbing, drainage improvements, and pedestrian facilities as applicable. With implementation of this measure, the U.S. 2/Craig Road intersection would function at a Level of Service (LOS) A, and the access intersections would function at LOS B. The Tribe's calculated fair share contribution to the Craig Road/U.S. 2 intersection is approximately 44.4 percent; therefore, funding contributed by the Tribe in excess of this percentage shall be credited towards fair share mitigation requirements at other impacted facilities or reimbursed by Airway Heights to the extent feasible through traffic impact fees or latecomer agreements.

2. Craig Road from U.S. 2 to 6th Avenue: Widen Craig Road to accommodate a three lane roadway section and bike lanes. Install access driveways as indicated in the site plan and ensure that none of these accesses align with 12th Avenue. Construct frontage improvements along the western side of Craig Road including curbing, drainage improvements, and pedestrian facilities as applicable. The Tribe's fair share contribution to this mitigation measure would be 100 percent.
3. U.S. 2/Hayford Road: The Tribe shall fund a proportional share (based on project and phase generated traffic) to improvements to the 21st Ave./18th Ave. corridor at the time of construction of said improvements. In the event that the 21st Ave./18th Ave. corridor is not incorporated into state and/or local improvement plans, the Tribe shall provide fair share payment to an equivalent alternative traffic improvement measure that shall be approved by WSDOT and Airway Heights.
4. Craig Road/State Route 902: The Tribe shall fully fund the construction of a traffic signal which would result in LOS B, or construction of a roundabout which would result in LOS A. The Tribe's calculated fair share contribution to this mitigation measure is approximately 22.6 percent for signalization or 29.7 percent for a roundabout; therefore, funding contributed by the Tribe in excess of this percentage shall be credited towards fair share mitigation requirements at other impacted facilities or reimbursed by Airway Heights to the extent feasible through traffic impact fees or latecomer agreements.
5. 6th Street: In the event that the 6th Street extension is not completed prior to project implementation, the Tribe shall fully fund development of the unfinished portion of the 6th Street extension from approximately South Aspen Street to Craig Road. Airway Heights shall enter into an agreement with the Tribe to reimburse the Tribe for cost of development of the 6th Street extension through development of local traffic impact fee assessment areas.
6. 12th Avenue: The Tribe shall fully fund the posting of a sign for the eastbound traffic on 12th Avenue and Craig Road stating "Local Access Only." Twelfth Avenue shall be considered within the future traffic impact analysis described under Traffic Mitigation Measure B. If the results of the updated TIA determine that the traffic mitigation identified for 12th Avenue should be adjusted due to changes in future traffic background conditions, the recommendations shall be subject to review and approval by Airway Heights prior to any modifications to the traffic mitigation plan.
7. Flint Road/U.S. 2: Signalize the intersection. WSDOT signal warrant has been met at this intersection. Signalization of this intersection would result in a LOS B, delay 15.6 seconds. The Tribe's fair share contribution to this mitigation measure would be 17.6 percent.
8. Deer Heights Road/U.S. 2: Signalize the intersection. WSDOT signal warrant has been met at this intersection. Signalization of this intersection would result in a LOS C, delay 20.9 seconds. The Tribe's fair share contribution to this mitigation measure would be 19.8 percent.
9. Spotted Road/U.S. 2: Restrict NB left turn. This mitigation measures is incorporated in the U.S. 2 Route Development Plan. Restriction of the NB left turn lane would result in a LOS C, delay 17.7 seconds. The Tribe's fair share contribution to this mitigation measure would be 16.3 percent.

D. In order to provide a consistent and conservative analysis of potential effects, the analysis of the Preferred Alternative at Phase II used the assessment criteria for the arterial intersections as they currently exist today. Therefore, the analysis did not incorporate the mitigation provided in Mitigation Measure C for the Preferred Alternative at Phase I. Prior to operation of the Preferred Alternative at Phase II, the Tribe shall implement and/or pay a fair share contribution to the following mitigation measures, which would result in a less-than-significant impact at all study intersections:

1. U.S. 2/Craig Road: Improvements installed as a result of Phase I mitigation would result in LOS B. No additional measures are necessary.
2. U.S. 2/Lundstrom Road: Restripe and widen approaches to accommodate exclusive NB and SB right turn lanes, which would result in LOS F, delay 63.3 seconds. The Tribe's fair share contribution to this mitigation measure would be 29.8 percent. Alternatively, the Tribe may contribute a proportional share to improvements to the 21st Ave./18th Ave. corridor or equivalent alternative route approved by Airway Heights and WSDOT, which will relieve traffic from U.S. 2, eliminating the need for improvements to the intersection. Funding in excess of the project's proportional share for Phase I mitigations shall be applied to offset this requirement.
3. U.S. 2/Hayford Road: The Tribe shall fund a proportional share (based on project and phase generated traffic) to improvements to the 21st Ave./18th Ave. corridor at the time of construction of said improvements. In the event that the 21st Ave./18th Ave. corridor is not incorporated into local traffic improvement plans, the Tribe shall provide fair share payment to an equivalent alternative traffic improvement measure that shall be approved by WSDOT and Airway Heights.
4. Craig Road/State Route 902: Improvements installed as a result of Phase I mitigation would result in LOS A. No additional measures are necessary.
   U.S. 2/Access Intersections: Improvements installed as a result of Phase I mitigation would result in LOS B at the western access and LOS C at the eastern access. No additional measures are necessary.
5. Flint Road/U.S. 2: Improvements installed as a result of Phase I mitigation would result in LOS C. No additional measures are necessary.
6. Deer Heights Road/U.S. 2: Improvements installed as a result of Phase I mitigation would result in LOS D, delay 41.7 seconds. No additional measures are necessary.
7. Spotted Road/U.S. 2: Improvements installed as a result of Phase I mitigation would result in LOS C, delay 19.4 seconds. No additional measures are necessary.

E. In order to provide a consistent and conservative analysis of potential effects, the analysis of the Preferred Alternative at Phase III used the assessment criteria for the arterial intersections as they currently exist today. Therefore the analysis did not incorporate the mitigation provided in Mitigation Measure C and D for the Preferred Alternative at Phases I and II. Prior to operation of the Preferred Alternative at Phase III, the Tribe shall implement and/or pay a fair share contribution to the following mitigation measures, which would result in a less-than-significant impact at all study intersections:

1. U.S. 2/Craig Road: Improvements installed as a result of Phase I mitigation would result in LOS D. No additional measures are necessary.

2. U.S. 2/Lundstrom Road: Restripe and widen approaches to accommodate exclusive NB and SB right turn lanes resulting in LOS F, delay 179.6 seconds, which is less than the "without project" delay. The Tribe's fair share contribution to this mitigation measure would be 29.4 percent. Alternatively, the Tribe may contribute a proportional share to improvements to the 21st Ave./18th Ave. corridor or equivalent alternative route approved by Airway Heights and WSDOT, which will relieve traffic from U.S. 2, eliminating the need for improvements to the intersection. Funding in excess of the project's proportional share for Phase I mitigations shall be applied to offset this requirement.
3. U.S. 2/Garfield: Optimize signal timing, which would result in a LOS D. The Tribe's fair share contribution to this mitigation measure would be 89.7 percent. Alternatively, the Tribe may contribute a proportional share to improvements to the 21st Ave./18th Ave. corridor or equivalent alternative route approved by Airway Heights and WSDOT, which will relieve traffic from U.S. 2, eliminating the need for improvements to the intersection. Funding in excess of the project's proportional share for Phase I mitigations shall be applied to offset this requirement.
4. U.S. 2/Hayford Road: The Tribe shall fund a proportional share (based on project and phase generated traffic) to improvements to the 21st Ave./18th Ave. corridor at the time of construction of said improvements. In the event that the 21st Ave./18th Ave. corridor is not incorporated into local traffic improvement plans, the Tribe shall provide fair share payment to an equivalent alternative traffic improvement measure that shall be approved by WSDOT and Airway Heights.
5. Craig Road/State Route 902: Improvements installed as a result of Phase I mitigation would result in LOS B. No additional measures are necessary.
   U.S. 2/Access Intersections: Improvements installed as a result of Phase I mitigation would result in LOS D at each access intersection. No additional measures are necessary.
6. Craig Road/6th Avenue: Widen the intersection approach to provide an exclusive NB right turn lane, which would result in LOS D, or installation of a roundabout which would result in LOS E. The Tribe's fair share contribution to this mitigation measure would be 43.6 percent.
7. Flint Road/U.S. 2: Improvements installed as a result of Phase I mitigation would result in LOS C, delay 25.8 seconds. No additional measures are necessary.
8. Deer Heights Road/U.S. 2: Improvements installed as a result of Phase I mitigation would result in LOS D, delay 52.4 seconds. No additional measures are necessary.
9. Spotted Road/U.S. 2: Improvements installed as a result of Phase I mitigation would result in LOS C, delay 22.8 seconds. No additional measures are necessary.
10. Deno Road/Hayford Road: Install storage for SB and WB turning lanes. Installation of storage would result in a LOS D, delay 32.8 seconds. The Tribe's fair share contribution to this mitigation measure would be 79.5 percent.

Cumulative

F. In order to provide a consistent and conservative analysis of potential cumulative effects, the analysis of the Preferred Alternative, in the cumulative year 2032, used the assessment criteria for the arterial intersections as they exist in the cumulative year 2032. Therefore the analysis did not incorporate the mitigation provided in Mitigation Measure C, D, or E

for the Preferred Alternative in the phased build out years. The Tribe shall implement and pay a fair share contribution to the following mitigation measures for the Preferred Alternative (2032), which would result in a less-than-significant effects at all study intersections:

1. U.S. 2/Craig Road: Improvements installed as a result of Phase I mitigation would result in LOS F, delay 94.9 seconds, which is less than the "without project" delay. No additional measures are necessary.
2. U.S. 2/Lundstrom Road: Restripe and widen approaches to accommodate exclusive NB and SB right turn lanes resulting in LOS F, delay exceed model output value, which is equal to the "without project" delay, or restriction of NB and SB left turn movements, which would result in LOS E. The Tribe's fair share contribution to this mitigation measure would be 25.5 percent. Alternatively, the Tribe may contribute a proportional share to improvements to the 21st Ave./18th Ave. corridor or equivalent alternative route approved by Airway Heights and WSDOT, which will relieve traffic from U.S. 2, eliminating the need for improvements to the intersection.
3. U.S. 2/Lawson: Modify the signal timing and modify and widen NB and SB approaches as needed to provide dedicated left turn lanes, which would result in LOS D. The Tribe's fair share contribution to this mitigation measure would be 78.2 percent. Alternatively, the Tribe may contribute a proportional share to improvements to the 21st Ave./18th Ave. corridor or equivalent alternative route approved by Airway Heights and WSDOT, which will relieve traffic from U.S. 2, eliminating the need for improvements to the intersection.
4. U.S. 2/Garfield: Optimize signal timing, resulting in a LOS F, delay 131.5 seconds, which is greater than the "without project" delay or modify signal timing and add third EB and WB auxiliary through lanes, which would result in a LOS C. The Tribe's fair share contribution to this mitigation measure would be 43.0 percent. Alternatively, the Tribe may contribute a proportional share to improvements to the 21st Ave./18th Ave. corridor or equivalent alternative route approved by Airway Heights and WSDOT, which will relieve traffic from U.S. 2, eliminating the need for improvements to the intersection.
5. U.S. 2/Hayford Road: The Tribe shall fund a proportional share (based on project and phase generated traffic) to improvements to the 21st Ave./18th Ave. corridor at the time of construction of said improvements. In the event that the 21st Ave./18th Ave. corridor is not incorporated into local traffic improvement plans, the Tribe shall provide fair share payment to an equivalent alternative traffic improvement measure that shall be approved by WSDOT and Airway Heights.
6. Craig Road/State Route 902: Improvements installed as a result of Phase I mitigation would result in LOS B. No additional mitigation is necessary.
7. US 2/Access Intersections: Improvements installed as a result of Phase I mitigation would result in LOS D. No additional measures are necessary.
8. Road/6th Avenue: Widen the intersection approach to provide an exclusive NB right turn lane, which would result in LOS E, or install a roundabout which would result in LOS C. The Tribe's fair share contribution to this mitigation measure would be 89.3 percent for turn lane and 56.3 percent for roundabout.

9. Craig Road/North Driveway: Add second NB through lane from Highway 2 to 6th Avenue, which would result in LOS E, or install a roundabout, which would result in LOS B. The Tribe's fair share contribution to this mitigation measure would be 100 percent.
10. In order to provide sufficient access/connectivity to adjacent properties, the Tribe shall provide cross connections with adjacent properties and construct a future North-South road located along the western property line to provide access to the properties to the west as well as connectivity to a future extension of 6th Avenue.
11. Flint Road/U.S. 2: Improvements installed as a result of Phase I mitigation would result in LOS D, delay 45.0 seconds. No additional measures are necessary.
12. Deer Heights Road/U.S. 2: Improvements installed as a result of Phase I mitigation would result in LOS F, delay 144.6 seconds, which is less than the "without project" delay. Further reduction in traffic volumes on U.S. 2 from construction of 21st Avenue corridor results in an LOS F, delay 94.3 seconds. Construct NB dual left turn lanes. This mitigation results in an LOS D, delay 54.0 seconds. The Tribe's fair share contribution to this mitigation measure would be 24.1 percent.
13. Spotted Road/U.S. 2: Restrict NB left turn. This mitigation measures is incorporated in the U.S. 2 Route Development Plan. Restriction of the NB left turn lane would result in a LOS F, delay 68.9 seconds, which is less than the "without project" delay. The Tribe's fair share contribution to this mitigation measure would be 26.7 percent.
14. Deno Road/Hayford Road: Install 200 foot storage for SB and WB right turning pocket and 200 foot SB left turn pocket. Installation of storage would result in a LOS E, delay 41.1 seconds. The Tribe's fair share contribution to this mitigation measure would be 92.7 percent.
    I-90 Medical Lake Interchange Eastbound Ramps: Contribute a fair share payment towards future improvements to be developed by WSDOT to increase the operational capacity of the intersection. The Tribe's fair share contribution of this mitigation measure would be 5.2 percent of the local match for the project (not the entire project cost).
15. I-90 Medical Lake Interchange Westbound Ramps: Contribute a fair share payment towards future improvements to be developed by WSDOT to increase the operational capacity of the intersection. The Tribe's fair share contribution of this mitigation measure would be 6.5 percent of the local match for the project (not the entire project cost).

Pedestrian and Transit Facilities

G. The Tribe shall implement and pay a fair share contribution to the following mitigation measures for all alternatives in the build out and cumulative years (2032), which would reduce effects associated with pedestrian and transit facilities:

1. The Tribe shall work with the Spokane Transit Authority to provide adequate and safe public transportation to and from the Site as needed. This may include the use of shuttles or the relocation of the existing inbound and outbound bus stop at the Craig Road/U.S. 2 intersection. Bus stop improvements shall be developed in accordance with the WSDOT Traffic Manual M 51-02.03 and other relevant requirements, and shall be satisfactory to the Spokane Transit and WSDOT.

2. The Tribe shall install pedestrian pathways and bike lanes along U.S. 2 and Craig Road Site frontages in accordance with applicable requirements of WSDOT, City of Airway Heights and Spokane County in order to comply with local bike/pedestrian plans developed by WSDOT and/or Airway Heights in the vicinity of the Proposed Project. Pedestrian facilities along the frontage of U.S. 2 shall consist of a separated multi-use pathway that aligns with other planned and existing pedestrian pathways along the U.S. 2 corridor consistent with the Spokane Regional Transportation Council "Smart Routes" regional planning process.
3. Sidewalks and pathways shall be planned and constructed on the Site to connect development to transit stops and public path and bikeways to encourage and facilitate use of transit and non-motorized travel modes. This includes a safe pedestrian crossing to the bus stop in the eastbound direction of U.S. 2 in the vicinity of Craig Road. The construction and implementation of this crossing shall provide for safe passage across U.S. 2 wherein the right-of- way of the pedestrian is protected through grade separation, or signalized traffic control.
4. The Tribe shall implement the regional Commute Trips Reduction programs already in place in the Spokane Region, including employee trip reductions programs, employee shuttles and other similar means of achieving commute trip reduction.
5. In accordance within the State Gaming Compact (Part XIV, Section C; Appendix Spokane, Section 2, Appendix X, Section 12), the Spokane Tribe will provide for programs that benefit tribal and nontribal members through community investments and contributions to support transit service programs. This shall include fair share compensation to STA for costs associated with the provision of public transit to serve the Proposed Project. The fair share contribution would be based on the actual increase in ridership due to the Proposed Project, and associated STA costs, minus the increase in revenue generated from fares and sales tax.

6.8 LAND USE COMPATIBILITY

The following mitigation measures shall be implemented for the Preferred Alternative and would minimize potential land use compatibility issues with Fairchild AFB:

H. The Tribe shall make a good faith effort to enter into a memorandum of understanding, or similar agreement, with the Fairchild AFB that addresses compatibility issues associated with potential issues that may be caused by AFB operations (noise, dust, fumes, etc.) on proposed land uses within the Site. In the event that an agreement cannot be negotiated, the Tribe may adopt a tribal ordinance as an alternative mechanism for implementation of equivalent mitigation commitments. The MOU, agreement and/or Tribal Ordinance shall contain the following acknowledgements and commitments:

In accordance with the recommended mitigation, the Tribal Council enacted Resolution 2012-146, dated February 29, 2012, in which the Tribe agreed to accept any inconveniences associated with Fairchild AFB operations during operation of the Proposed Project (Final EIS Appx. W). Furthermore, in 2013, the Tribal Council enacted the West Plains Development Code, which incorporates mitigation measures recommended in the Final EIS to ensure the Preferred Alternative's consistency with Fairchild AFB operations, including restrictions and requirements regarding building heights, land density, sound attenuation, wildlife attractants, and light and

glare. The West Plains Development Code also requires the incorporation of any additional mitigation measures set forth in this ROD. Additionally, although the FAA No Hazard Determination allows for a building height of 140 feet on the Site, the Tribe has committed to limit the height of the hotel tower to 60 feet and has enacted Resolution 2014-189 (April 18, 2014) which confirms this commitment.

Additionally, in a letter dated February 3, 2015, the Principal Deputy Assistant Secretary of the USAF to the Assistant Secretary – Indian Affairs reiterated that the Proposed Project is outside the Fairchild AFB noise zones and accident potential zones and that the mitigation measures identified and agreed to by the Spokane Tribe in the Final EIS would protect the mission success of USAF operations at Fairchild AFB. The Department has fully addressed USAF's issues through the NEPA process and associated mitigation.

1. The Tribe shall acknowledge that the subject property is located in an area impacted by aircraft noise and that present and future aircraft noise may interfere with the unrestricted use and enjoyment of the subject property. The Tribe shall further acknowledge that aircraft noise may change over time by virtue of greater numbers of aircraft, louder aircraft, variations in airfield operations, and changes in airfield and air traffic control procedures.
2. The Tribe shall discharge the Fairchild AFB from any liability for injuries to persons or damages to the Site by reason of noise, vibrations, odors, vapors, exhaust, smoke, dust or other effects that may be inherent in the operation of aircraft, caused or created by the flight or passage of aircraft in or through the airspace above the Site. Nothing in the agreement shall operate to preclude claims by the Tribe for any physical injuries or damages caused by aircraft crashing into or otherwise coming into direct physical contact with the Site or persons located thereon. Although the Site is located outside the geographic areas of highest accident potential for Fairchild AFB, and the development is considered compatible based on the Air Force Air Installation Compatible Use Zones program, any site located in close proximity to an airfield, such as this, has a greater chance of having an aircraft incident on the property than locations away from the airfield.
3. The Tribe shall not request Fairchild AFB alter its flight activities in relation to the Site.
4. The Tribe shall acknowledge that Fairchild AFB will not change current or future flight operations for current or future aircraft even if new aircraft are assigned to the installation or attempts to minimize noise impacts through sound attenuation mitigation measures are ineffective at avoiding complaints from patrons.

I. The Tribe shall incorporate appropriate sound attenuation measures into the design and construction of all buildings within the Site, including the proposed hotel tower and casino. Refer to **Section 6.10**, Noise.

J. The Tribe shall implement measures to prevent the attraction of birds within the Site. As recommended by Fairchild AFB, measures will include, but are not limited to, the installation of a natural, man-made or vegetative cover/netting over the proposed bio-filtration swales, designing the swales so that they drain within 48 hours, designing

the swales to be narrow, and/or alternative mechanism to prevent open water within the Site. The Tribe will consult with Fairchild AFB during the design phase to ensure the new drainage features within the Site do not attract birds to the Site.

K. The Tribe shall make information available to patrons and employees regarding the potential to see and hear military aircraft flying over the Site through the use of signs and/or information pamphlets. Should the Tribe enter into lease agreements for commercial/retail uses within the property, such agreements will acknowledge the potential for military aircraft operations in the Site vicinity.

L. The Tribe will develop procedures for managing patron/retail manager concerns/complaints regarding military aircraft noise and will provide a copy of that process to Fairchild AFB.

M. The Tribe shall continue to coordinate with USAF regarding the implementation of applicable mitigation measures specified within Sections **6.8**, **6.9**, **6.10**, and **6.12** to ensure compatibility with Fairchild AFB operations, and facilitate appropriate monitoring and reporting of these measures, so as to determine if any modifications of these measures are necessary.

6.9 PUBLIC SERVICES

The following provisions of the IGA are applicable to the Preferred Alternative, and would avoid, minimize, or mitigate adverse effects associated with public services:

A. The Tribe shall make payments to Airway Heights as specified within **Section 6.6** above, Socioeconomic Conditions, Mitigation Measures A and B. These payments are intended to compensate Airway Heights and/or the County for upgrades to facilities and any additional staffing as needed to serve development of the property, allowing Airway Heights to maintain public services at existing levels or better.

B. The final design of the sewer and water system shall be in reasonable conformity with Chapters 13.06 and 13.04, respectively of the Airway Heights Municipal Code and Airway Heights Public Works Standards.

C. Upon connection to Airway Heights sanitary and water systems, the Tribe shall pay the current water and sewer capital connection charge, as established by City Council Resolution and Ordinance. The Tribe shall additionally pay monthly service fees for water and sewer service based upon rates adopted annually by the City Council.

The following provisions of the MOA are applicable to the Preferred Alternative, and would avoid, minimize, or mitigate adverse effects associated with public services:

D. The Tribe shall provide an adequate level of on-site security at the Site during all hours of operation.

E. The Tribe shall use best efforts to assist Airway Heights in law enforcement matters and to detain individuals when requested by Airway Heights, to the extent allowable under applicable law.

F. The Tribe shall meet with Airway Heights at least once a year to discuss ways to improve police services and prosecution of crimes associated with the Proposed Project.

G. The Tribe shall have medical technicians on staff at the Site.

H. The Tribe will provide medical and fire training to staff.

I. The Tribe shall maintain standards no less stringent than any City or County ordinances and Washington State Law addressing fire safety, including applicable building code provisions.

J. The Tribe will make a good faith effort to enter into mutual aid agreements with local municipal emergency responders, including Fairchild AFB.

The following provision of the Tribal-State Compact is applicable to the Preferred Alternative and would minimize and/or mitigate adverse effects associated with public services:

K. In accordance with Item C-1 Section XIV, Public Health and Safety, of the Tribal-State Compact, the Tribe shall continue to contribute to an existing fund for purposes of providing assistance to non-tribal service agencies. This "Impact Mitigation Fund" shall provide fair share assistance to Fire District 10 – West Plains District or any other applicable public service agency to address excessive and/or unanticipated call volumes.

6.10 NOISE

The following BMPs shall be implemented during construction for the Preferred Alternative:

A. Construction using heavy equipment shall not be conducted between 9:00 p.m. and 7:00 a.m.

B. All engine-powered equipment shall be equipped with adequate mufflers. Haul trucks shall be operated in accordance with posted speed limits. Truck engine exhaust brake (a.k.a. "Jake Brake") use shall be limited to emergencies.

C. Loud stationary construction equipment shall be located as far away from residential receptor areas as feasible.

D. All diesel engine generator sets shall be provided with enclosures.

E. The Tribe shall ensure through contractual obligations that contractors construct exterior walls and roof/ceiling assemblies on all buildings within the Site, including the hotel tower and casino, to achieve an interior noise level of 45 dB Ldn. For the proposed hotel under Alternatives 1 and 3, this shall be accomplished through the use of sound reduction

materials with a Sound Transmission Class (STC) rating of 39 and exterior doors and windows with a STC rating of 25 as recommended in the 2009 Fairchild JLUS and the 2005 Guidelines for Sound Insulation of Residences Exposed to Aircraft Operations, U.S. Navy.

6.11 HAZARDOUS MATERIALS

The following construction BMPs shall be implemented for the Preferred Alternative and will minimize potential effects associated with hazardous materials:

A. Personnel shall follow BMPs for filling and servicing construction equipment and vehicles. The BMPs, that are designed to reduce the potential for incidents involving the hazardous materials, shall include the following:

   1. To reduce the potential for accidental release, fuel, oil, and hydraulic fluids shall be transferred directly from a service truck to construction equipment and shall not be stored on-site.
   2. Catch-pans shall be placed under equipment to catch potential spills during servicing.
   3. Refueling shall be conducted only with approved pumps, hoses, and nozzles.
   4. All disconnected hoses shall be placed in containers to collect residual fuel from the hose.
   5. Vehicle engines shall be shut down during refueling.
   6. No smoking, open flames, or welding shall be allowed in refueling or service areas.
   7. Refueling shall be performed away from bodies of water to prevent contamination of water in the event of a leak or spill.
   8. Service trucks shall be provided with fire extinguishers and spill containment equipment, such as absorbents.
   9. If a spill contaminates soil, the soil shall be put into containers and disposed of in accordance with local, state, and federal regulations.
   10. All containers used to store hazardous materials shall be inspected by the Tribe at least once per week for signs of leaking or failure. All maintenance, refueling, and storage areas shall be inspected monthly by the Tribe.
   11. Results of inspections shall be recorded in a logbook that shall be maintained on-site.

B. If contaminated soil and/or groundwater is encountered during construction related earth-moving activities, all work shall be halted until a professional hazardous materials specialist or other qualified individual assesses the extent of contamination. If contamination is determined to be hazardous, representatives of the Tribe shall consult with the EPA to determine the appropriate course of action, including development of a Sampling and Remediation Plan if necessary. Any and all contaminated soils that are determined to be hazardous shall be disposed of in accordance with federal regulations.

6.12 AESTHETICS

The following BMPs shall be implemented by the Tribe for the Preferred Alternative and will minimize potential effects associated with lighting and views of the Site:

A. Placement of lights on buildings shall be designed in accordance with Unified Facilities Criteria (UFC) 3-530-01, Interior, Exterior Lighting, and Controls so as not to cast light or glare offsite. No strobe lights, spotlights, or floodlights will be used within the Site. Any use of fireworks shall adhere to Chapter 15.12 of the Airway Heights Municipal Code.

B. Shielding, such as with a horizontal shroud, shall be used in accordance with UFC 3-530-01 for all outdoor lighting so as to ensure it is downcast.

C. In accordance with UFC 3-530-01, the Tribe shall limit lighting in the Tribal Cultural Center and commercial areas to regular business hours to reduce light-related impacts to nearby sensitive receptors.

D. All exterior glass shall be non-reflective low-glare glass. The Tribe shall consult with Fairchild AFB to ensure that glare does not create an operational hazard for aircraft.

E. Screening features and natural elements should be integrated into the landscaping design of the alternatives to screen the view of the facilities from existing residences directly adjacent to the Site.

F. Comply with any applicable light and glare controls developed to protect the operational environment near the Fairchild AFB established prior to project construction, including UFC 3-530-01 and International Dark-skies Association (IDA) Model Lighting Ordinance criteria. The Site should meet the equivalent of the Department of Defense UFC and IDA ratings of Lighting Zone 1 as much as possible, while ensuring compliance with national and local code standards. The Tribe will consult with Fairchild AFB during the design phase to develop a lighting plan that is compatible with Fairchild AFB operations.

7.0 DECISION TO IMPLEMENT THE PREFERRED ALTERNATIVE

The Department has determined that it will implement the Preferred Alternative (Alternative 1). This decision has been made based upon the environmental impacts identified in the Final EIS and corresponding mitigation, a consideration of economic and technical factors, as well as the identified purpose and need for the Proposed Action. Of the alternatives evaluated in the EIS, Alternative 1 would provide the Tribe with the best opportunity for securing a viable means of attracting and maintaining a long-term, sustainable revenue stream for its tribal government. This would enable the Tribe to establish, fund, and maintain governmental programs that offer a wide range of health, education and welfare services to tribal members, as well as provide the Tribe, its members and local communities with greater opportunities for employment and economic growth. Accordingly, the Department will implement the Preferred Alternative subject to implementation of the mitigation measures identified in **Section 6.0** and **Attachment III** of this ROD.

7.1 THE PREFERRED ALTERNATIVE RESULTS IN SUBSTANTIAL BENEFICIAL EFFECTS

The Preferred Alternative is reasonably expected to result in beneficial effects for Spokane County, the City of Airway Heights, and the Tribe. Key beneficial effects include generation of:

- Government revenues for the Tribe that will allow the Tribe be self-sufficient and fund needed governmental programs for its members, including health care, education, social services, elder services, housing, public utilities, transportation facilities, cultural planning and preservation, and environmental protection.
- Construction costs of $404.3 million, which is expected to generate a one-time total output of approximately $301.9 million within Spokane County.
- Approximately 1,225 direct jobs over the entire construction period with a total payroll of $66.6 million.
- Approximately 2,087 direct jobs with a total annual payroll of $39.9 million.
- Approximately $8.6 million in one-time federal tax revenues from construction, and $6.6 million in one-time state, county, and local tax revenues. Operation of the Preferred Alternative would generate approximately $6.3 million in annual federal tax revenues, and $4.7 million in annual state, county, and local tax revenues from indirect and induced taxes.
- Substantial annual and one-time revenues to the City of Airway Heights and Spokane County through the IGA and MOA.
- Recurring revenues to the City of Airway Heights, Spokane County, and state and local agencies and bona fide nonprofits through the Tribal-State Gaming Compact.

7.2 ALTERNATIVE 2 RESTRICTS BENEFICIAL EFFECTS

Due to a lesser amount of new development, the effects on the natural and physical environment would be slightly less under the Reduced Casino and Mixed-Use Development Alternative (Alternative 2) than those created by the Preferred Alternative. However, Alternative 2 would generate substantially less revenue than the Preferred Alternative. As a result, Alternative 2 would materially restrict the Tribe's ability to meet its needs and to foster Tribal economic development, self-determination, and self-sufficiency. The BIA believes the reduced economic and related benefits of Alternative 2 make it a less viable operation in fulfilling the purpose and need for the Proposed Action. See Section 4.7.2 of the Final EIS. Accordingly, the BIA has selected the Preferred Alternative over Alternative 2.

7.3 ALTERNATIVE 3 SEVERELY RESTRICTS BENEFICIAL EFFECTS

The Non-Gaming Mixed-Use Development (Alternative 3) would have essentially the same construction footprint as the Preferred Alternative; therefore, Alternative 3 is reasonably expected to result in similar impacts to the natural and human environment. However, Alternative 3 does not include the operation of a casino and, therefore, would generate far less revenue than the Preferred Alternative. As a result, it would severely restrict the Tribe's ability to meet its needs and to foster tribal economic development, self-determination, and self-sufficiency. The BIA believes the reduced economic and related benefits of Alternative 3 make it a less viable operation in fulfilling the purpose and need for the Proposed Action. See Section 4.7.3 of the Final EIS. Accordingly, the BIA has selected the Preferred Alternative over Alternative 3.

7.4 ALTERNATIVE 4 FAILS TO MEET PURPOSE AND NEED OF PROPOSED ACTION

The No-Action/No-Development Alternative (Alternative 4) would not meet the purpose and need for the Proposed Action. Specifically, Alternative 4 would not provide the Tribe with any additional source of income to allow the Tribe to achieve self-sufficiency, self-determination, and a strong tribal government. Additionally, Alternative 4 would result in substantially less economic benefits to the surrounding communities than the development alternatives. Accordingly, the BIA has selected the Preferred Alternative over Alternative 4.

8.0 SIGNATURE

By my signature, I indicate my decision to issue a Secretarial Determination pursuant to 25 U.S.C. § 2719(b)(1)(A), finding that the Preferred Alternative would: 1) be in the best interest of the Tribal government and its members; and 2) would not be detrimental to the surrounding community.

Kevin K. Washburn
Assistant Secretary – Indian Affairs

6/15/2015
Date