

CHAPTER 3.0

GENERAL RESPONSE TO COMMENTS

CHAPTER 3.0

GENERAL RESPONSE TO COMMENTS

This section contains general comments and responses received on the Draft Environmental Impact Statement (EIS), broken down by issue areas of concern. If necessary, the chapters in the Final EIS have been modified in response to comments, and the nature and the location of the modification is identified in the response. A complete copy of all comment letters received on the Draft EIS is maintained by the BIA as part of the administrative record for this project. The Comment Letters Log is included as **Appendix Q** of this Final EIS for reference.

3.1 NEPA PROCEDURAL ISSUES

3.1.1 EXTENSION OF THE COMMENT PERIOD

Summary of Comments: The Bureau of Indian Affairs (BIA) received several comments requesting an extension of the original comment period.

Response: The original comment period for the Draft EIS was from March 2, 2012 to April 16, 2012 for a total of 45 days as required by the National Environmental Policy Act (NEPA) (40 CFR 1506.100). This comment period was announced in the Federal Register with publication of the Notice of Availability (NOA) on March 2, 2012 (77 FR 12873) in the Spokesman Review on March 2 and 4, 2012, and in the Cheney Free Press on March 8, 2012. In response to public requests, this comment period was extended by the BIA for an additional 30 days. A notice of the reopening of the comment period was announced in the Federal Register on April 26, 2012 (77 FR 24976), in the Spokesman Review on April 15 and 16, 2012, and in the Cheney Free Press on April 19, 2012. The extended comment period ended on May 16, 2012. The total comment period for the Draft EIS was 75 days.

3.2 NON-NEPA ISSUES

3.2.1 EXPRESSIONS OF OPINION AND NON-SUBSTANTIVE COMMENTS

Summary of Comments: Some of the comments received were expressions of opinion either for or against the Proposed Project. Other comments summarized the alternatives and/or findings of the Draft EIS. Additional comments did not raise any substantive environmental issue.

Response: Federal agencies must follow the requirements in the President's Council on Environmental Quality (CEQ) NEPA Regulations, 40 CFR Part 1500, when responding to comments. The CEQ Regulations generally recommend that comments be addressed if they are: "1) Substantive and relate to inadequacies or inaccuracies in the analysis or methodologies used; 2) Identify new impacts or recommend reasonable new alternatives or mitigation measures; 3) Involve substantive disagreements on interpretations of significance and scientific or technical conclusions." According to 40 CFR 1500.1 and 1500.4, the goal of NEPA is to improve decision-making by providing decision makers and the public

with pertinent and accessible information on potential project impacts on the environment. Comments received that further NEPA's purposes are included in the Final EIS. Responses are not required for comments that do not raise a substantive environmental issue, such as comments merely expressing an opinion. However, such comments have been included within the administrative record and thus will be considered by the BIA in its decision on the project.

3.2.2 COMPLIANCE WITH GAMING REGULATIONS AND LEGISLATION (MATTERS BEYOND THE SCOPE OF THE EIS)

Summary of Comments: A number of comments raised concerns regarding the legality of gaming on the project site, and whether or not the circumstances of the Spokane Tribe of Indians (Tribe) warrants an exception to the requirements of federal Indian law including the Indian Gaming Regulatory Act (IGRA). Several comments were received stating that the Proposed Action will set a precedent for other Indian tribes to conduct off-reservation gaming and establish casinos in urban areas in the future. Other comments expressed opinions regarding the ability of Indian tribes to practice gaming on reservation and/or trust lands and the exemption of Indian tribes from paying state and local taxes on reservation/trust lands.

Response: As discussed in Section 1.1 of the EIS, the Tribe is seeking to establish a gaming facility within a 145-acre site acquired into trust after 1988. The proposed federal action triggering NEPA and preparation of this EIS includes the decision by the Secretary of the Interior (Secretary) to issue a two-part determination under Section 20 of the IGRA that the project site is eligible for gaming.

IGRA sets the criteria under which gaming activities can occur on Indian lands. Under Section 20 of IGRA, 25 U.S.C. § 2719(b) (1) (A), off-reservation gaming must be expressly authorized by the Secretary. Section 20 states that gaming shall not be conducted "on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988," unless certain limited conditions are met. 25 U.S.C.A. § 2719(a). Under the exceptions to § 2719(a), gaming on newly acquired trust lands may be conducted, pursuant to a "two-part determination" when:

"[t]he Secretary, after consultation with the Indian tribe and appropriate State, and local officials ... determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian Tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination."

As discussed in detail within Section 1.1 of the Draft EIS, a Secretarial two-part determination may only be made after consultation with the Tribe and appropriate state and local officials, including officials of other nearby tribes. This process is independent from the NEPA process. As stated within 40 CFR 1500.1(c), "the NEPA process is intended to help public officials make decisions that are based on understanding of *environmental consequences*, and take actions that protect, restore, and enhance the environment" (*emphasis added*). In order to fully analyze the potential physical environmental effects of the Proposed Action, the EIS must assume that the proposed project site can be utilized for gaming in accordance with federal law.

Although the EIS will provide the Secretary information on the potential physical environmental effects of the proposed federal action which must be considered in its decision, further evidence to support or reject a “two-part determination” will be obtained through the mandatory consultation with the Tribe and appropriate state and local officials in accordance with IGRA Section 20. The EIS is not the decision document which concludes whether or not the project will be detrimental to the surrounding community or beneficial to the Tribe. These determinations require consideration of a number of economic and social effects that are beyond the scope of NEPA. **General Response 3.2.1** above explains that responses are not required for comments that do not raise a substantive environmental issue. Accordingly, no responses are required for comments related to compliance with the provisions of IGRA.

Regarding the claim that the approval of the proposed action would lead to other tribes seeking to develop off-reservation gaming facilities closer to favorable market environments, NEPA requires the analysis of reasonably foreseeable effects. It does not require the consideration of remote, speculative, or worst case effects. The decision to allow gaming within the Spokane’s Tribe’s 145-acre trust parcel located within its aboriginal territory adjacent to the City of Airway Heights is governed by federal statutes and regulations, and concerns raised about policy implications or legal precedent created by that decision are speculative.

3.3 PURPOSE AND NEED

Summary of Comments: Several comments were received that addressed the issue of the project’s purpose and need. Some comments indicated the purpose and need was too narrowly defined and had been designed to ensure that only a gaming alternative could meet the need. Other comments opined that because the Tribe has existing economic enterprises, including two casinos and a timber business, and undeveloped lands within its existing reservation, the Tribe has sufficient revenue sources and opportunity to sustain its tribal government without the Proposed Project.

Response: As stated in 40 CFR 1502.13, an EIS “shall briefly specify the underlying purpose and need to which an agency is responding in proposing the alternatives including the proposed action.” The underlying purpose and need for the Proposed Action is to advance the BIA’s “Self Determination” policy by promoting the Spokane Tribe’s self-governance capability and to assist it in maintaining a tribal government which can provide necessary governmental services to the tribal membership. To do so, the Tribe requires an adequate revenue source on lands over which it exerts civil jurisdiction. In IGRA, Congress recognized the importance of tribal gaming as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments.

The purpose and need for the Proposed Action is clearly stated within Section 1.2 of the Draft EIS. The Tribe is in need of a reliable, significant revenue source that would be used to maintain programs and services necessary to improve the overall condition of the tribal membership; eliminate reliance on grant funding so that the Tribe can become a completely self-sufficient entity; provide employment opportunities for tribal members; and re-establish cash reserves to ensure the stability of the Tribe through tough economic times in the future.

The specific unmet needs of the Tribe and its anticipated cost were presented in detail in the Spokane Tribe of Indians Unmet Needs Report (AES, 2011) included as Appendix A to the Draft EIS. This report was prepared at the direction of the BIA in consultation with the Spokane Tribe. The results of the report have been reviewed and verified as accurate by the BIA and the Spokane Tribal Council. As detailed in the Unmet Needs Report (Appendix A of the Draft EIS) and summarized in Section 1.2 of the Draft EIS, operating income at the two existing casinos (Two Rivers Resort Casino and Chewelah Casino) has significantly decreased since 2006. As a result of the decline in operating income from the casino enterprises, the necessary transfer of revenues to the Tribe to fund government programs has dropped precipitously from approximately \$7.0 million in 2005 to less than \$20,000 in 2009. Despite reduced spending, the Tribe has used its cash reserves to supplement the tribal budget for necessary programs and services maintained by the tribal government. As a result cash reserves have decreased from approximately 10.7 million in 2005 to 4.4 million in 2010 and continue to fall.

The Tribe, as the applicant, has preferences as to the means of providing an adequate revenue source. When a proposed action is triggered by an application from a private applicant, it is appropriate for the lead agency to give substantial weight to the goals and objectives of that private actor. In this instance the lead agency is the BIA and the applicant is the Spokane Tribe of Indians. The purpose of the lead agency, the BIA, is to assist the Tribe in meeting its needs and promoting the Tribe's acquisition of meaningful self determination, which includes the maintenance of a tribal government that can provide a full range of services to its members as stated above. It would not be consistent with the government-to-government relationship, or the basic fiduciary responsibilities of the federal government, for the BIA to ignore the purposes of the tribal government and substitute purposes that it feels are more appropriate.

In addition for the need of a reliable and significant revenue source, the Tribe expressed the need to further develop the proposed project site, which is held in trust on its behalf by the United States, with tribal economic enterprises. 25 CFR 151.3 provides that land may be taken into trust when the Secretary determines that the "acquisition is necessary to facilitate tribal self determination, economic development, or Indian housing." Such a determination was made regarding the proposed project site and consequently, after due process, the land was taken into trust for the benefit of the Tribe. Therefore, economic development of the project site is consistent with the reasons for taking the land into trust. Comments regarding the scope of alternatives are addressed under **General Response 3.4**, below.

3.4 ALTERNATIVES

Summary of Comments: Several comments were received concerning the alternatives addressed in the Draft EIS. Generally these comments were directed to the following areas: 1) the Purpose and Need Statement within Section 1.2 of the Draft EIS unduly restricted the alternatives considered; 2) the elimination of alternatives to expand the Tribe's existing casinos was unsupported; 3) some alternatives addressed were not viable, specifically Alternative 3; and 4) an off-site alternative should have been addressed. Comments made on the Draft EIS indicated that sites located outside of the flight path of Fairchild Air Force Base (AFB) should be investigated because commenters believed these alternative sites were less controversial and would have fewer impacts on the local community.

Response: Refer to **General Response 3.3** regarding the defined purpose and need for the Proposed Action. As discussed therein, the purpose and need for the Proposed Action is to assist the Tribe in meeting its needs and promoting meaningful self determination, which includes the maintenance of a tribal government that can provide a full range of services to its members. The Tribe, as the applicant, has preferences as to the means of providing an adequate revenue source. In addition, the BIA must rigorously explore and objectively evaluate all reasonable alternatives (40 CFR 1502.4). “Reasonable alternatives” include those that are practical or feasible from a technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant (CEQ 40 FAQs).

The BIA has selected alternatives in a manner that promotes informed public participation and informed decision-making. Several critical factors were considered in determining which alternatives should be subjected to detailed analysis and review. First, alternatives that do not accomplish the purpose of an action are by definition not reasonable and should not be studied in detail. Secondly, alternatives that do not significantly differ in impacts from other alternatives do not extend the range of alternatives.

The Draft EIS and Final EIS present a reasonable range of alternatives: (1) the Proposed Casino and Mixed-Use Development, (2) the Reduced Casino and Mixed-Use Development, (3) the Non-Gaming Mixed-Use Development, and (4) the No Action/ No Development Alternative. As noted within the BIA NEPA Handbook Section 6.4 E (6), “Differences in the proposed action, such as size or location, are appropriate alternatives to consider, but by themselves are not sufficient to meet CEQ regulations. Viable alternatives are other possible means to meet the purpose and need, such as a sports complex instead of a casino to meet the need for tribal income.” While the potential income from the non-gaming development, Alternative 3, would be inherently less likely to fully meet the purpose and need, the BIA determined that a non-gaming alternative would be a reasonable alternative (see definition above) and that presentation of that alternative significantly expanded the range of alternatives considered.

Pursuant to 40 CFR 1502.14(c), Section 2.4 of the Draft EIS provided a discussion of alternatives that were considered but eliminated from further study and the reasons for their having been eliminated. This section included a discussion of potentially expanding the Chewelah Casino and Two Rivers Casino. In both cases, the BIA referred to a gaming market analysis which analyzed the feasibility of expanding the respective casinos and a more recent economic study which evaluated the findings of the original market analyses and adjusted the findings as necessary to reflect present conditions. As stated within the *Economic Background Study and Competitive Effects Analysis* included as Appendix G to the Draft EIS and summarized in Section 2.4 of the Draft EIS, the return on investment of expanding either the Chewelah or Two Rivers Casino would be marginal at best, and likely negative. Furthermore, since the economy has worsened since the completion of the Chewelah and Two Rivers studies, the anticipated return would be less than previously estimated. Because the expansion of either the Chewelah or Two Rivers Casino would result in minimal income, if any, the BIA determined these alternatives failed to meet the purpose and need for the Proposed Action and were unreasonable; therefore, alternatives involving expansion of the Tribe’s existing gaming facilities were eliminated from further consideration.

As described in **General Response 3.3**, the Tribe expressed the need to further develop the proposed project site, which was taken into trust by the United States for the purpose of establishing economic developments to facilitate the Tribe’s self-determination. Any off-site alternative would inherently fail to

meet that need. As discussed in detail in Section 2.4 of the Draft EIS, several off-site locations for the proposed casino were considered and determined to be unreasonable alternatives. As stated therein, the potential revenue from a casino-resort located anywhere on the reservation was found to be insufficient to meet the Tribe's unmet needs as it would be far from a profitable gaming market; and development of a casino-resort at either of the two properties within the City of Spokane owned in fee by the Tribe was found to be infeasible due to the limited area for development, potentially significant traffic and circulation restraints, and displacement of existing charitable programs currently located at the sites.

General Response 3.6.1 below clarifies that development of the Proposed Project within the project site would not result in conflicts with Fairchild AFB operations with the addition of mitigation recommended by the U.S. Air Force during cooperating agency consultation. Because all potential conflicts with AFB operations can be reduced to less than significant in accordance with regional planning documents and Department of Defense (DOD) recommendations, consideration of an off-site alternative to avoid land use conflicts is not warranted.

In conclusion, the BIA does not believe that detailed evaluation of an off-site gaming alternative would add in expanding the range of reasonable or feasible alternatives, nor would their consideration further the objectives and goals of the Tribe, to which BIA gives substantial weight and deference in light of the Tribe's role as applicant. Such deference is particularly appropriate where, as here, the Tribe is requesting to utilize its existing trust land over which it exercises jurisdiction for tribal economic development and government purposes. Consideration of off-site alternatives would require the BIA to defer meeting the Tribe's urgent needs, while speculating that the Tribe could successfully purchase, acquire into federal trust, and develop these parcels. Therefore, based on guidance provided by CEQ, off-site alternatives were determined not to be within the range of "reasonable alternatives", as they are not practical or feasible from a technical and economic standpoint (CEQ 40 FAQs).

3.5 SOCIOECONOMIC CONDITIONS

3.5.1 ECONOMIC COMPETITION AND EFFECTS TO THE KALISPEL TRIBE

Summary of Comments: Several commenters were concerned that the competitive effects of a new casino, and the resulting loss of market share, would significantly reduce the Kalispel Tribe's annual revenues from its Northern Quest Casino which is used to support the tribal government and the provision of tribal services. Commenters requested that an analysis of potential effects of the Proposed Action on the ability of the Kalispel tribal government to provide essential services and facilities to its membership be completed within the Final EIS. Other commenters questioned the adequacy of the existing analysis of potential effects to the Kalispel Tribe. Commenters also stated that a reduction in revenues at the Northern Quest Casino could have a detrimental impact to local communities and non-profit organizations that receive donations from the Kalispel Tribe.

Response:

Analysis of potential effects on the Kalispel Tribe

Section 4.7 of the Draft EIS provided an analysis of the Proposed Action'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 Proposed Action discussed in the *Background Study and Competitive Effects Analysis* conducted by the Innovation Group (2011), included as Appendix G of the Draft EIS. The analysis determined that “Spokane [area] is sufficiently large to support three casinos of the magnitude of Northern Quest and Coeur D’Alene”. The analysis included collecting background information and developing a gaming market gravity model. 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.

The critical factor in determining significance is the question of whether the loss in market share will affect the ability of the Kalispel tribal government to continue to provide governmental services. As part of its comments on the Draft EIS, the Kalispel Tribe provided detailed information regarding its present economic situation and tribal revenue allocation plan to aid the BIA’s assessment of potential impacts on the Kalispel tribal government’s ability to provide essential services and facilities to its membership. Section 4.7 of the Final EIS has been expanded to specifically describe the estimated reduction in revenues at the Northern Quest Casino resulting from the Proposed Project as concluded within Appendix G of the Draft EIS and **Appendix V** of the Final EIS.

As described in detail in Appendix G of the Draft EIS, operation of Phase I of Alternative 1 in 2013 is anticipated to cause a 29.5 percent reduction in gaming revenues (i.e. gaming substitution effect) at the Northern Quest Casino. As described in detail in **Appendix V** of the Final EIS, based on analysis of comparable situations, the anticipated 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 in 2015 from the operation of Phases II and III of Alternative 1 was estimated to be 20.9 percent in Appendix G of the Draft EIS. The estimated combined effect of Alternative 1, including all three phases of development, in the year 2015 would be 44.2 percent. However, as discussed in **Appendix V** to the Final EIS, since buildout of Alternative 1 is expected for 2020 and not 2015, the original estimate of 20.9 percent 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 (Comment Letter 23 in Section 2.0 of Volume I of this Final EIS), the additional reduction in future gaming revenues from the operation of Phase II and III would be reduced to 5.1 percent. This results in a combined reduction in future gaming revenues of approximately 33 percent at the Northern Quest casino as a result of buildout of Alternative 1 in 2020. This impact is also anticipated to diminish after the first year of Phase III operation.

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. 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. Currently, the Kalispel Tribe allocates a portion of its net income from Northern Quest directly to tribal members rather than governmental operations and programs. 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 CFR 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.

As described above, it was estimated that with the buildout of Alternative 1 in 2020, revenues at the Northern Quest Casino would be reduced by 33 percent when compared to future revenue projections based on the annual growth rate predicted by PKF Consulting in the absence of competition from the Spokane Tribe’s casino. The 2020 revenue projections for Northern Quest with competition from the Spokane Tribe’s Alternative 1 (described in **Appendix V** of the Final EIS) would represent a 13.8 percent reduction from 2011 revenues. Based on a review of financial information provided by the Kalispel Tribe (Comment Letter 23 in **Section 2.0** of Volume I of this Final EIS), a certain portion of revenue from the Northern Quest Casino is currently allocated 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 6.7 percent reduction). While the Kalispel tribal government’s budget would be impacted by the Proposed 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 Financial Performance Analysis: Northern Quest Resort and Casino (PKF Consulting, 2012) submitted by the Kalispel Tribe used a methodology to calculate market competition effects on the Northern Quest Casino which was determined to be unreliable and unsupported by available evidence for a variety of reasons (discussed in detail in **Appendix V** of the Final EIS). The report speculated that the reduction in Northern Quest’s revenue in 2020 would be 44 percent, or 11 percentage points greater than the reduction anticipated in Appendix G of the Draft EIS and **Appendix V** of the Final EIS. Even with the 37.4 percent reduction in profit at the Northern Quest Casino estimated in the PKF Financial Performance Analysis as a result of implementation of Phase I of Alternative 1 (identical to Alternative 2), the Kalispel Tribe would have 14 times more revenue available per tribal member for the provision of tribal government services and programs as is currently available to the Spokane Tribe (Innovation Group, 2012). The reduction in gaming revenue at Northern Quest from economic competition as a result of Alternative 1 would not prohibit the Kalispel tribal government from providing essential services and facilities to its membership. When effects are solely economic and do not result in physical environmental effects, as they are in this case, NEPA does not require mitigation.

Adequacy of Methodology for Analyzing Potential Economic Effects

The methodology for analyzing potential competitive effects is discussed in detail in Appendix G of the EIS and summarized within Section 4.7 of the EIS. As described therein, the analysis included collecting background information and developing a gaming market gravity model. 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. This methodology is an accepted and widely used form of market analysis for 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. Responses to specific questions and concerns regarding the methodology are provided in individual responses to comments, **Section 4.0** of Volume I of the Final EIS.

Indirect Impacts on Local Communities and Non-Profit Organizations

As stated above, the critical factor in determining significance is the question of whether the loss in market share will affect the ability of Kalispel Tribe to continue to provide essential governmental services. Whether or not the Kalispel Tribe makes monetary donations to local community groups and other non-profit organizations is at the sole discretion of the Kalispel tribal government. As such, the decision of which charities will receive donations and how much each donation will be can significantly vary from year to year. The variable nature of charitable donations makes it a difficult area to accurately predict and, therefore, analyze how they may be impacted by the reduction in revenue at Northern Quest as a result of the Proposed Project.

As suggested by the commenters, the ability of any corporation to donate funds to charitable organizations is typically tied to its profit margins. As described in detail in **Appendix V** of the Final EIS, based on analysis of comparable situations, any anticipated gaming substitution effects from the Proposed Project are likely to diminish after the first year of the project's operation, after which normative revenue growth at Northern Quest Casino is expected to resume. Therefore, any potential reduction in charitable donations as a result of the Proposed Project would likely be short term. Additionally, with the operation of the Proposed Project, the gaming market for the region would be expanded and the Spokane Tribe may also be able to increase its charitable donations. Therefore, the overall economic effect to local communities and non-profit organizations will be positive.

3.5.2: NON-GAMING SUBSTITUTION EFFECTS – IMPACTS TO LOCAL BUSINESSES

Summary of Comments: Commenters expressed concern that the proposed hotel and non-gaming uses would result in a loss of business to local restaurants, theaters, and other activity venues. A related comment was that the proposed retail component would adversely affect retail owners in the City of Spokane.

Response:

Non-gaming substitution effects were addressed within Section 4.7 of the Draft EIS and further analysis is included within **Appendix V** of the Final EIS. **Appendix V** evaluates two separate theoretical issues involving non-gaming competitive effects. First is the highly disputed substitution impact that spending on casino gaming has on other consumer spending options such as retail and restaurants and bars, i.e. “substitution effects”. A review of the substantial body of research on this subject suggests that what appears to be a reasonable supposition actually has very little basis in evidence. The following is a summary of findings from the various studies discussed in **Appendix V** of the Final EIS:

- Clyde Barrow, Director for the Center of Policy Analysis at the University of Massachusetts Dartmouth, traced the theory that, through cannibalization, casinos will devastate local businesses, especially smaller “mom and pop” retail, restaurant and entertainment businesses to a misinformation campaign by the Atlantic City Restaurant and Tavern Association “to win more concessions for its members from the city’s casino hotels.” Barrow cites research by Kathryn

Hashimoto and George Fenich, which found that, contrary to a negative impact, casinos in Atlantic City actually reversed a downward trend. The research also revealed a motivating factor in local business opposition: “It is not because they will go out of business, but because they will have to offer its employees better wages and benefits.”¹

- The research division of the Federal Reserve Bank of St. Louis examined research from across the country and concluded that the evidence is generally positive as it relates to the impact of casinos on local businesses. The study also states “casinos located in larger cities that offer relatively more amenities than rural areas will tend to attract casino patrons from outside the area more so than rural casinos will.”²
- Hashimoto and Fenich’s 1997 research shows that “in jurisdictions from the seashore to the riverfront to rural areas, north and south, east and west, local restaurants tended to thrive after a casino opened nearby.” Furthermore, Hashimoto and Fenich conclude: “When casinos are developed, all aspects of the local food and beverage business increase: the number of establishments increases, the number of people employed increases and payroll increases at an even greater rate than the first two.”³
- Research conducted in 1996 by Nancy Reeves and Associates for the Mille Lacs Band of Ojibwe, concluded that the local hospitality industry grew after the opening of the Grand Casino Mille Lacs and Grand Casino Hinckley.⁴
- In a 2004 study by the Center for Policy Analysis, University of Massachusetts Dartmouth, found that after the introduction of riverboat casinos “the net economic welfare benefit is better quality, wider selection, increased overall sales and employment in eating and drinking establishments.” Furthermore the study found that the number of restaurants also increased.⁵
- Even after accounting for the substitution effect, economists at the University of Missouri and Washington University concluded that casino gambling in Missouri had a net positive annual impact on Missouri output of \$759 million, corresponding to a continuing higher level of employment of 17,932 jobs generating \$508 million more in personal income.⁶
- A multijurisdictional analysis of retail spending found that in Biloxi/Gulfport, Mississippi, annual retail sales growth rates increased an average of 3 percent per year from 1990 to 1992, the year when casinos were introduced. Between 1993 and 1995, retail sales jumped 13 percent. In Will County, Illinois, retail sales growth trailed statewide trends until 1992, when riverboat casinos were introduced in the local economy. But each year between 1992 and 1995, retail sales growth in Will County exceeded the state rate. In Shreveport/Bossier City, Louisiana, retail sales

¹ Barrow, Clyde and Mathew Hirshy. “The Persistence of Pseudo-Facts in the U.S. Casino Debate: The Case of Massachusetts” *Gaming Law Review and Economics* Volume 12, Number 4, 2008.

² Thomas A. Garrett, Senior Economist, Federal Reserve Bank of St. Louis, *Casino Gambling in America and Its Economic Impacts*, August 2003.

³ George Fenich and Kathryn Hashimoto, “The Effects of Casinos on Local Restaurant Business,” paper presented at the International Conference on Gambling and Risk-Taking, Montreal, 1997.

⁴ Nancy Reeves and Associates for the Mille Lacs Band of Ojibwe. “The Economic Impact of Grand Casino Mille Lacs and Grand Casino Hinckley on Their Surrounding Areas.” 1996.

⁵ Center for Policy Analysis University of Massachusetts Dartmouth. “Economic and Fiscal Analysis for a West Warwick Resort Casino” Volume 2, May 2004.

⁶ Charles Leven et al., “Casino Gambling and State Economic Development,” paper presented at the Regional Science Association, 37th European Congress, Rome, Aug. 26-29, 1997.

increased by more than 10 percent during 1994, the year that riverboat casinos opened, as the region enjoyed the highest retail sales increase in more than a decade.⁷

As indicated in **Appendix V** of the Final EIS and summarized above, there is a wealth of evidence contradicting the proposition that gaming permanently substitutes for other expenditures.

The second issue involving non-gaming competitive effects associated with the Proposed Project is the potential for the retail component of the proposed Spokane facility to affect local retailers. As discussed in the Draft EIS, the 2009 Civics Economics report (**Appendix U** of the Final EIS) showed a significant gap in the spending of west Spokane residents versus retail sales in west Spokane (retail sales in west Spokane are less than projected based on population and average incomes). This implies that residents in west Spokane are traveling outside of the region for retail and entertainment. The retail component of the Proposed Project would increase retail opportunities in the west Spokane area and reduce the spending gap. According to the Civics Economics report (**Appendix U** of the Final EIS), west Spokane has 50,000 residents, or 10.7 percent of the County population of 468,000. For Alternative 1, the Economic Impact and Growth Inducing Study (Appendix J of the Draft EIS) estimated retail sales of \$94.4 million or 26 percent of the estimated \$351 million retail spending gap (opportunity) in western Spokane County⁸. Therefore, no local substitution effect is projected in west Spokane County. Retail sales at the Proposed Project would represent just 1.65 percent of total retail demand in Spokane County. Therefore, potential impacts on retailers outside of the primary market area in central and eastern Spokane would be highly diffuse.

3.5.3: LOCAL ECONOMIC EFFECTS

Summary of Comments: Several comments stated that the proposed West Plains Casino would not add to the local economy. Commenters stated that the proposed Spokane Tribe West Plains Casino would not increase total revenue generated by gaming, but would merely take business away from the Kalispel Tribe Northern Quest Casino. This transfer would cause adverse economic effects to local economy as two casinos struggle to cover double management and overhead costs with unchanged revenue. One commenter stated that “Money is exchanged but nothing is returned.” A related comment was that “if casinos improve the economy of an area, why does Clark County (Las Vegas) Nevada have more foreclosures, lower wages, and higher unemployment than Spokane County?” Several commenters expressed concern that the proposed West Plains Casino would require increased spending on social programs, including Problem Gaming, Alcohol Abuse, and Child Services.

Response: Based upon analysis in Section 4.7 and Appendix G of the Draft EIS, the proposed West Plains Casino would increase tourism and, thereby, add to the local economy. Please refer to Section 4.7 of the Final EIS and **General Response 3.5.1** regarding potential substitution effects of the Proposed Project on other local gaming facilities and the likelihood that the Proposed Project would expand the gaming market for the region as a whole.

⁷ Arthur Andersen, *Economic Impacts of Casino Gaming in the United States, Volume 2: Micro Study* (Washington, D.C.: American Gaming Association, May 1997).

⁸ Civics Economics, *West Plains Retail Development Opportunities*, July 30, 2009. Included as **Appendix U** of the Final EIS

Everything else being equal, areas with a wide range of recreational choices are more likely to attract businesses, such as manufacturing or industrial sectors. Additionally, developing the West Plain Casino does not preclude development of other manufacturing or industrial sector businesses.

It would not be appropriate to compare the economies of Clark County (Las Vegas), Nevada with Spokane County, Washington. The economy of the greater Spokane area is based on primary production of agriculture, wood products, and mining, as well as the processing and transshipment of these goods. The regional economy benefits from the influx of tourism revenues, as well as the presence of the federal government, including the military. The economy of Las Vegas is based on tourism from throughout the United States and the world. The recent economic troubles in Las Vegas are due to speculative development and overbuilding of the housing market. Developing the proposed Spokane Tribe West Plains Casino would not affect the strength and diversity of the economy, but would provide an additional recreational amenity in the area.

Section 4.7 of the Draft EIS notes that there are currently four casinos operating within 50-miles of the Northern Quest site and that the new casino is not expected to significantly increase problem gambling because of the existing accessibility to gaming facilities. As outlined in Section 5.2.6 of the EIS, the Tribe would make annual payments to the State, County, and local governments per the tribal state compact and local agreements. These annual payments would provide support for public services and community benefits, including problem gambling services, throughout the region.

3.5.4: IMPACTS TO THE SPOKANE TRIBE

Summary of Comments: Several comments stated that the Spokane Tribe may not realize the financial gains stated in the Draft EIS. A number of commenters questioned whether the Spokane Tribe would actually gain financially from the Proposed Project due to poor management or a weak market for gaming. Some commenters identified the decline in the Tribe's existing casinos as evidence of weak gaming market.

Response: As explained in Appendix G of the Draft EIS and **Appendix R** of the Final EIS, the Spokane area market shows a strong potential for growth in future gaming revenues. This analysis confirms the Spokane Tribe's proposal that the Proposed Project would benefit the Tribe through increased Tribal Government income to fund the provision of essential services to its members. As shown in Appendix G of the Draft EIS and **Appendix V** of the Final EIS, total gaming revenues in Washington have grown from \$170.5 million in 1998 to \$1.57 billion in 2009. For the decade (2000-2009), gaming revenues grew by an average of 21 percent annually. Even in the recent economic climate, annual growth in gaming revenues averaged 8 percent (2007 to 2009). As concluded within Appendix G of the Draft EIS and summarized within Section 4.7 of the Draft EIS, "Spokane [metro area] is sufficiently large to support three casinos of the magnitude of Northern Quest and Coeur D'Alene". Therefore, the addition of one casino in Spokane metro area would likely expand the gaming market for the region as a whole (Innovation Group, 2011).

Section 1.2 and Appendix G of the EIS address the reasons why the two Spokane Tribal casinos (Chewelah and Two Rivers) are not producing sufficient revenues to fulfill the unmet needs of the Tribe. Both facilities are located in sparsely populated areas that do not provide a large potential client base and the newer, larger, and more convenient Kalispel Tribe's Northern Quest Casino presents strong competition. The adverse effects of the more advantageously located Northern Quest Casino on the Tribe's more rural casinos are evidenced within Appendix G of the EIS. As stated therein, the opening of Northern Quest in fiscal year 2001 resulted in a revenue decline of 21.4 percent (approximately \$1.6 million) at the Two Rivers Casino. While the gaming revenues at Chewelah Casino increased between 2001 and 2009, it only increased by approximately 5.1 percent annually, which is not consistent with the growth in gaming revenues in Washington discussed above. This discrepancy illustrates the reduction in revenues resulting from the opening of Northern Quest Casino. Further expansions at Northern Quest in 2007 resulted in a 15.1 percent reduction in revenue at Two Rivers and 1.6 percent reduction in revenue at Chewelah (2007 – 2008). Developing the Proposed Project would position the Spokane Tribe to capture a large enough share of the regional gaming market so that it can realize the gains of the growing gaming market stated in the EIS, and improve the ability of the tribal government to provide essential services to its membership as discussed in Section 1.2 of the Final EIS.

3.6 LAND USE

3.6.1 COMPATIBILITY WITH AIR FORCE BASE OPERATIONS

Summary of Comments: Numerous comments were received concerning the compatibility of the Proposed Project with Fairchild AFB operations. Commenters stated that the proposed development would restrict current and future missions at Fairchild AFB due to concerns regarding population density, noise levels, and safety. Commenters stated that flight patterns due to training operations at Fairchild AFB result in a high volume of air traffic directly over the project site, and expressed concern that complaints by the Tribe and/or casino patrons may cause the base to change its flight patterns. Commenters stated that development of the Proposed Project would be an “encroachment” that would be a negative factor considered during Base Closure and Realignment Commission (BRAC) evaluations, making the base vulnerable to closure. Commenters indicated that closure of Fairchild AFB would jeopardize national defense and significantly impact the region's economy.

Response: The BIA has given significant consideration to comments raised by the local community concerning potential encroachment on Fairchild AFB. At the invitation of the BIA, the United States Air Force (USAF) is participating in the NEPA process for the Proposed Project as a cooperating agency for the EIS. Representatives from both the Tribe and the BIA have met with representatives of the USAF and Fairchild AFB on multiple occasions to address potential issues associated with compatibility of the Proposed Project with Fairchild AFB operations. As a result of these on-going consultation efforts, the Final EIS has been clarified to note that the Tribal Council enacted Resolution 2012-146, dated February 29, 2012, which acknowledges that existing and future operations at Fairchild AFB may pose inconveniences to property owners, including but not limited to air, traffic, noise, fumes, dust, and smoke, and confirms the Tribe's commitment to “accept such inconveniences or discomfort as normal and necessary aspect of operating a Class III gaming facility and resort near an Air Force Base that serves as a critical economic engine for the Region.” This Resolution has been included in the Final EIS as

Appendix W. Additionally, in response to input provided by the USAF, the Final EIS has been revised to clarify that Fairchild AFB will not change current or future flight operations to accommodate requests by the Tribe even if new aircraft are assigned to the installation. A detailed analysis of land use compatibility effects is included in Section 3.9 and Section 4.9 of the Final EIS, and mitigation measures are recommended in Section 5.2.8 of the Final EIS to avoid potential land use compatibility issues with Fairchild AFB.

As stated in Section 4.9 of the EIS, the project is consistent with applicable policies of the Final Fairchild Joint Land Use Study (JLUS), dated September 2009. The JLUS was prepared by Spokane County in collaboration with Fairchild AFB, Spokane International Airport, local jurisdictions, and tribal governments, including representatives from the Spokane Tribe and Kalispel Tribe. The JLUS was developed by two committees, one made up of policy leaders (the JLUS Policy Steering Committee) and one of technical staff from the region (Technical Advisory Group). In addition to these committees, public forums were held during the development of the JLUS. The DOD defines a Joint Land Use Study as an “Analytical planning study of civilian development patterns and land use activities in the vicinity of a military installation that result in recommendations for instituting compatible civilian land use activities and development patterns that protect and preserve the utility and the operational effectiveness of military installations.”⁹

As described in Section 4.9 of the Final EIS under Consistency with Fairchild JLUS Strategies and Recommendations, with the implementation of mitigation recommended in Section 5.0 of the Final EIS, including measures to avoid creation of hazardous wildlife attractants and minimize light and glare, the Proposed Project would not create an air navigation hazard or otherwise impede Fairchild AFB operations. Compliance with the recommended strategies of the JLUS demonstrates that the Proposed Project would be consistent with development patterns that protect and preserve the utility and the operational effectiveness of Fairchild AFB. Therefore, the Proposed Project would not create a safety hazard to air navigation or otherwise impede base operations.

Further, the Proposed Project is consistent with the recommendations of the 2007 Air Installation Compatible Use Zone (AICUZ) Study prepared by the DOD for Fairchild AFB, which provides land use compatibility guidelines and recommendations for properties adjacent to the Fairchild AFB. Airfield planning within the AICUZ Study considers three primary aircraft operational/ land use determinants: (1) accident potential to surrounding land uses, (2) aircraft noise, and (3) hazards to operations from land uses (e.g. height obstruction) (Fairchild AFB, 2007).

Key issues raised in public comments concerning compatibility between the Proposed Project and Fairchild AFB operations are discussed below.

Accident Potential, Population Density, and Public Safety

The Proposed Project complies with the density recommendations included within the final JLUS and AICUZ. The intent of JLUS Strategy 50 is to prevent large concentrations of people (defined in Strategy

⁹ Department of Defense, 2004. Department of Defense Instruction Number 3030.3, Joint Land Use Study Program. Dated July 13, 2004.

50 as more than 150 person per gross acre) within areas impacted by aviation operations (defined in Strategy 50 as MIA 4). The area proposed for development within the project site consists of approximately 121 acres (not including the pre-existing Spoko Fuel and wetland preservation area). Assuming a maximum occupancy of 150 persons per gross acre, approximately 18,150 persons would be allowed within the project site under the recommendations of this strategy. As noted within Table 4.9-1 of the Draft EIS, under full build-out conditions, Alternative 1 would employ 2,087 persons, and is expected to experience an average of 7,734 patrons per day. Using an overly conservative assumption that all patrons and employees would be present within the site at the same time, the total number of people within the site would be 9,821 under Alternative 1, which is well below the maximum occupancy level recommended by JLUS Strategy 50.

Official DOD recommendations for density restrictions are limited to areas within Accident Potential Zones (APZs). The location of the proposed casino and hotel is more than 4,400 feet (0.85 miles) from the DOD defined APZs, which designate areas that have a measurably higher potential for aircraft accidents¹⁰. Therefore, the Proposed Project would not locate people within an area that is considered to have a level of risk associated with accident potential that warrants land use and density restrictions in accordance with DOD recommendations.

Perceived Nuisances From Aircraft Operations and Noise

According to a study prepared for the U.S. Navy, a large number of noise studies on the physical effect of aircraft noise have come to the general conclusion sensitive noise receptors located near airports are not exposed to high enough sound levels to cause physical health effects¹¹. However, the maximum exterior and interior single event noise levels from aircraft flying over the project site may cause periodic annoyance. As determined by the 2007 AICUZ and discussed in Section 4.11 of the EIS, the project site is outside the existing 65 Ldn noise contour of the Fairchild AFB and Spokane International Airport (SIA). Therefore, the proposed project site is within the recommended average noise limits for the proposed land uses, including commercial, retail, entertainment, and hotel. However, as depicted in Figure 3-21 of the final JLUS, the project site is located within the predicted 65-70 Ldn noise contour for potential *future* mission scenarios at Fairchild AFB. While commercial and retail uses are both considered acceptable uses within the 65-70 Ldn noise contour, the JLUS and AICUZ both recommend that sound attenuation measures be incorporated into the hotel to reduce the risk of complaints from hotel patrons. Mitigation consistent with JLUS Strategies 23 and 27 was provided in Section 5.2.8 and 5.2.10 of the Draft EIS to ensure appropriate sound attenuation methods are utilized during construction of the hotel to minimize the potential for nuisance to hotel patrons. The Tribe has since committed to using noise attenuation construction techniques within all of the buildings on the project site. A description of noise attenuation features incorporated into the project design has been provided in Section 2.0 of the Final EIS.

¹⁰ Department of Defense, 2011. Department of Defense Instruction Number 4165.57, Air Installations Compatible Use Zones, Date May 2, 2011.

¹¹ U.S. Department of the Navy, 2005. Guidelines for Sound Insulation of Residences Exposed to Aircraft Operations. Naval Facilities Engineering Command, Washington Navy Yard, Washington D.C. Available online at: http://www.fican.org/pdf/Wyle_Sound_Insulation.pdf. Accessed January 2012.

The Tribe currently operates commercial businesses on the project site, including the Spoko Fuel Station, and to date has never issued any complaints against Fairchild AFB. As described above, on February 29, 2012, the Tribal Council enacted Resolution 2012-146, which acknowledges that existing and future Fairchild AFB operations may pose inconveniences to property owners, including noise, and confirms the Tribe's commitment to "accept such inconveniences or discomfort as normal and necessary aspect of operating a Class III gaming facility and resort near an Air Force Base that serves as a critical economic engine for the Region," (**Appendix W** of the Final EIS). In accordance with mitigation set forth in Section 5.2.10 of the Final EIS, all buildings within the project site, including the hotel and casino, would incorporate sound attenuation features to minimize interior noise levels and reduce the risk of nuisance complaints from patrons.

Based upon the findings of the EIS, while Fairchild AFB operations may result in noise levels or odors on the site that may be perceived as a nuisance, such nuisances would not cause physical harm or health related threats to tribal employees or patrons visiting the proposed facilities, and the Tribal resolution ensures that the Tribe will not file complaints against Fairchild AFB operations.

Hazards to Aircraft Operations (Wildlife Attractants, Light and Glare, Height of Buildings)

With the incorporation of mitigation measures in Section 5.0 of the EIS, the Proposed Project would not cause a hazard to aircraft operations. These mitigation measures were developed in cooperation with Fairchild AFB and the USAF, and include measures to prevent the attraction of birds and wildlife to the project site, and the use of downward directed lighting. As discussed in Section 4.9 of the Final EIS, consistent with Strategy 53 of the Fairchild JLUS, the Federal Aviation Administration (FAA) conducted an aeronautical study in November 2010 under the provisions of Title 49 USC, Section 44718, and Title 14 CFR Part 77, which concluded that the height of the proposed 145-foot hotel tower would not be a hazard to air navigation (Appendix K of the Draft EIS). In April 2012, the FAA reviewed the 2010 aeronautical study in light of current operations and found that no significant aeronautical changes have occurred which would alter the determination previously issued by FAA for the Proposed Project. The FAA's "Determination of No Hazard to Air Navigation" extension notice, dated April 17, 2012, is provided in **Appendix S** of the Final EIS. The FAA determination and extension will expire on October 17, 2013, 36 months after the original notice was issued. In the event that construction of the hotel tower is not completed prior to the expiration of the determination, a new aeronautical study will be completed by FAA prior to construction.

Base Realignment and Closure Process (BRAC)

The BRAC process is a congressionally authorized process the DOD has previously used to reorganize its base structure to more efficiently and effectively support forces, increase operational readiness and facilitate new ways of doing business.¹² There have been five previous BRAC rounds, with the most recent completed and entered into law in November 2005. The 2005 BRAC Commission recommended that congress authorize another BRAC round in 2015, and then again every 8 years (BRAC Commission,

¹² Department of Defense (DOD), 2012. U.S. Department of Defense Base Realignment and Closure Website FAQs. Accessed June 13, 2012

2005)¹³. At this time, it is unclear if the 2015 BRAC will occur. The 2005 BRAC Commission used the following criteria to evaluate and make recommendations for base realignment and closure:

Military Value (Given Priority Consideration)

1. The current and future mission capabilities and the impact on operational readiness of the total force of the DOD, including the impact on joint warfighting, training, and readiness.
2. The availability and condition of land, facilities, and associated airspace (including training areas suitable for maneuver by ground, naval, or air forces throughout a diversity of climate and terrain areas and staging areas for the use of the Armed Forces in homeland defense missions) at both existing and potential receiving locations.
3. The ability to accommodate contingency, mobilization, surge, and future total force requirements at both existing and potential receiving locations to support operations and training.
4. The cost of operations and the manpower implications.

Other Considerations

5. The extent and timing of potential costs and savings, including the number of years, beginning with the date of completion of the closure or realignment, for the savings to exceed the costs.
6. The economic impact on existing communities in the vicinity of military installations.
7. The ability of the infrastructure of both the existing and potential receiving communities to support forces, missions, and personnel.
8. The environmental impact, including the impact of costs related to potential environmental restoration, waste management, and environmental compliance.

According to the 2005 BRAC Recommendations Report Appendix E, the criteria above are consistent with the criteria historically used by previous BRAC committees with only minor clarifications and adjustments; therefore, it is reasonable to assume that the same or very similar criteria will be utilized during the next BRAC process, whenever that may be.

For the reasons described above and in Section 4.9 of the Final EIS, the Proposed Project would have no impact on Fairchild AFB's military value based on the evaluation criteria historically used by past BRAC committees to develop recommendations for base realignment and closure. As described in Section 4.9 of the Final EIS, implementation of the Proposed Project would not encroach upon Fairchild AFB's available air space or impede its ability to implement the operational and training mission of the installation because: 1) with the implementation of mitigation recommended in Section 5.0 of the Final EIS the Proposed Project would not create an air navigation hazard or otherwise impede Fairchild AFB operations; 2) the Tribe has agreed to accept any inconveniences associated with AFB operations during operation of the Proposed Project; and 3) the Fairchild AFB has confirmed that it will not alter its flight patterns in response to complaints from the Tribe related to nuisances on the project site. Therefore, with identified mitigation measures contained in Section 5.0, the Proposed Project is not considered an "encroachment" that would make Fairchild AFB vulnerable to closure.

¹³ Base Closure and Realignment (BRAC) Commission, 2005. 2005 Defense Base Closure and Realignment Commission Report. Signed September 8, 2005.

Summary/Conclusions Regarding Compatibility with Base Operations

Based upon the evidence in the record, including the results of consultation with Fairchild AFB and the USAF, the analysis and conclusions within the EIS concerning the Proposed Project's compatibility with Fairchild AFB operations as well as its consistency with the Fairchild JLUS and AICUZ are adequate and supported.

3.6.2 CONSISTENCY WITH LOCAL ZONING CODES

Summary of Comments: A number of commenters indicated that the Proposed Project was not in compliance with various codes adopted by local jurisdictions in an effort to implement the recommendations of the JLUS, including the Airport Overlay Zones adopted by the City of Spokane and Spokane County. Commenters stated that compliance with the County's and City of Airway Heights' Airport Overlay Zones was required through the terms of the agreement between the Tribe, County, and City.

Response: The project site is not located within or adjacent to the City of Spokane; therefore, an evaluation of project consistency with City of Spokane land use regulations is not warranted.

As discussed in Section 3.9 of the Draft EIS, the project site is currently held in trust by the United States for the benefit of the Tribe and, therefore, is not subject to state or local land use regulations. The Tribe and BIA have jurisdictional authority over land use matters on the federal trust lands held on the Tribe's behalf. The Tribal Council desires to work cooperatively with local and state authorities on land use matters. In furtherance of that goal, the Tribe committed in the Intergovernmental Agreement (IGA) between the City, County, and Tribe to develop the project site in a manner that best serves the interests of the parties and the interest of the public health and safety. While the project site has been annexed into the City of Airway Heights, within Amendment No 1 of the IGA the Tribe committed to preparing a Master Plan for proposed uses within the property that complies with the County's Airport Overlay Zone (Chapter 14.702) and any similar City regulation.

As noted in both the **General Response 3.6.1** and Section 4.9 of the Final EIS, the Proposed Project is compliant with the applicable policies and recommended strategies of the final JLUS and the AICUZ, as well as the City and County Airport Overlay Zones effective at the time the Draft EIS was published (March 2, 2012).

On May 1, 2012, two months after public release of the Draft EIS, Spokane County adopted an amendment to the Spokane County Zone Code to include a new chapter for a Fairchild AFB Overlay Zone (2012 Fairchild AFB Overlay Zone). The 2012 Fairchild AFB Overlay Zone includes land use regulations that limit development in certain areas within the County. These include a number of regulations that are more stringent than those recommended within the final JLUS. Specifically, the County's 2012 Fairchild AFB Overlay Zone extends the boundaries of Military Influence Area (MIA) 4 to be coterminous with the boundaries of MIA 3 and prohibits development of "high-intensity non-residential uses" within MIA 3/4 defined as concentrations of more than 180-persons per net acre, as well as the following land uses regardless of whether or not they are below the maximum allowable density:

non-aviation related museums, libraries, race tracks, hotels, motels, resorts, group camps, non-aviation related colleges and universities participant sports and recreation, amusement parks, recreational vehicle parks, entertainment uses, cultural facilities, public assembly facilities (concert halls, theaters, stadiums, amphitheaters, arenas, community centers, churches and similar facilities)

While Spokane County has jurisdiction to determine the appropriate land use regulations for areas within its jurisdiction, the newly adopted amendment to the Airport Overlay Zone includes restrictions that are a significant departure from the recommendations of the JLUS, which was prepared in collaboration with policy leaders and technical staff from Fairchild AFB, Spokane International Airport, local jurisdictions, and tribal governments, as well as the policies of the AICUZ prepared by the Department of the Defense. These departures are not universally accepted by all of the local jurisdictions that participated in preparation of the JLUS, including the City of Airway Heights¹⁴, the City of Medical Lake¹⁵, and the Spokane Tribe. For instance, on December 17, 2012, nine months after public release of the Draft EIS, the City of Airway Heights adopted an amendment to the City of Airway Heights Zoning Code which replaced Chapter 17.16 entitled ‘Air Installation Compatible Use Zone (AICUZ)’ with a new chapter entitled ‘JLUS Protections for Fairchild Air force Base’ (2012 JLUS Protections for Fairchild AFB). The purpose of the 2012 JLUS Protections for Fairchild AFB is to reduce the potential for military aviation hazards, prevent incompatible uses, optimize the potential mission profile, and protect the health and safety of persons within the MIA. While the City also extends the boundaries of MIA 4 to be coterminous with the boundaries of MIA 3, it does not prohibit the development of “high-intensity non-residential uses.” Section 17.16.140(B)(3) of the 2012 JLUS Protections for Fairchild AFB states that:

Amusement parks, resorts, group camps, public assembly, concert halls, colleges and universities, religious institutions, hotels and motels, entertainment uses and cultural facilities are not permitted within the LdN 75 or higher contours and require a conditional use permit. All other High Intensity Uses are allowed when permitted by the underlying zoning at a net density not exceeding one hundred eighty persons per acre, calculated by dividing the building code occupancy of all structures on the site by the acreage of the subject site, not including property that has been dedicated as right-of-way.

In its comments on the Draft EIS, the Spokane Tribe addressed compliance with the County Airport Overlay Zone:

The DEIS also contains an analysis of the Tribe’s agreements to comply with the Airport Overlay Zone Requirement of Spokane County and the City of Airway Heights. We wish to clarify that, under the IGA and the Memorandum of Agreement (MOA) (“Agreements”), the Tribe retains its authority to determine underlying land uses for the Project Site. Under the Agreements, the Tribe will implement County and City Airport Overlay Zone Requirements to the extent they do not undermine the Tribe’s sovereign right to determine the underlying permitted land uses on the Project Site.

¹⁴ Eik, 2012a. Airway Heights Council Turns Down Full County JLUS Draft. *Cheney Free Press*. March 22, 2012.

¹⁵ Eik, 2012. Medical Lake Planning Commission says No to JLUS. *Cheney Free Press*. April 19, 2012.

The Tribe's comments also reaffirm its commitment to implement "all design and mitigation measures identified in the Draft EIS – including [City of Airway Heights] and [Spokane County] Airport Overlay Requirements that do not result in a rezone of the Project site – to ensure that the construction and operation of the project will not adversely impact [Fairchild AFB] operations."

Section 4 of the amended IGA required the Tribe to prepare a "Master Plan" that complies with County and City Airport Overlay Zone Requirements. Use of the term "Master Plan" instead of "Project" reflects the Parties' intent to determine compliance with overlay zone requirements at a particular point in time: the submission of the completed Master Plan. Under the amended IGA, the City of Airway Heights then has thirty days to comment on those plans: again suggesting consistency review at a particular point in time. The interpretation of IGA § 4.1 that the Project comply with City of Airway Heights and County overlay zone amendments in perpetuity is not supported by the agreements when read as a whole.

In accordance with Section 4.1 of the amended IGA, executed August 26, 2010, the Tribe prepared a Master Plan setting forth the proposed land uses within the property, which was identified as Alternative 1 within the Administrative Draft EIS. The City was provided a copy of the Administrative Draft EIS on May 20, 2011, and was allowed more than 30 days to comment, consistent with the requirement under Section 4.2 of the IGA. As detailed in Section 4.9 of the Draft EIS, the proposed land uses identified within Alternative 1, or the "Master Plan", comply with both the County and the City's Airport Overlay Zones in effect at the time the Master Plan was prepared. Because the Tribe prepared and submitted its Master Plan in accordance within the terms of the agreement prior to adoption of the County's 2012 Fairchild AFB Overlay Zone and City's 2012 JLUS Protections for Fairchild AFB, the new land use restrictions are not interpreted to apply under the terms of the IGA.

Section 1.0 of the IGA executed between the Tribe, County, and City states that the project site is suitable for development beyond its present use for the benefit of the Tribe and the surrounding community and that the purpose of the agreement is to "partner in the development of the Tribe's property in a manner that best serves the interests of the parties and the interest of the public health and safety...". Section 8.0 of the IGA goes on to state that the City and County acknowledge that class III gaming will provide numerous employment and economic benefits to the County, and that the County and City agree to negotiate in good faith with the Tribe in regards to development of the site with a Class III gaming facility. Due to new density restrictions, application of the County's recently adopted 2012 Fairchild AFB Overlay Zone restrictions to the project site would prohibit development of an entertainment facility, hotel, and cultural center on the project site, which would be contrary to the intent of the IGA.

The IGA and the MOA acknowledge the Tribe's sovereign right to determine appropriate land uses for the project site (Section 1.3 of the IGA and Section 1.2 and 1.15 of the MOA). Both agreements specifically acknowledge that the Tribe intends to develop a casino on the project site (Section 8 of the IGA and Section 1.12 of the MOA). The agreements, when read as a whole, do not support an interpretation of Amendment 1 to the IGA that would enable the County to determine the underlying land uses at the project site under the requirement to comply with amendments to the Airport Overlay Zone enacted after submission of the Master Plan.

The BIA's task in the NEPA process is to assess potentially significant impacts and to determine whether they may be appropriately mitigated. Provided the Tribe complies with proposed mitigation measures, the BIA may determine that the Proposed Project would not result in "encroachment" upon either the Spokane International Airport or Fairchild AFB. For its part, the Tribe has reaffirmed its commitment to comply with all mitigation measures proposed in the Draft EIS, including "Airport Overlay Zone Requirements to the extent they do not undermine the Tribe's sovereign right to determine the underlying permitted land uses on the Project Site."

Official DOD recommendations related to population density and associated safety concerns are limited to areas within APZs. JLUS recommendations related to population density prohibit concentrations of people in excess of 150 persons per gross acre within MIA 4. As discussed in **General Response 3.6.1**, the Proposed Project would not locate people within an area that is considered to have a level of risk associated with accident potential that warrants land use and density restrictions in accordance with DOD and JLUS recommendations. Further, implementation of the Proposed Project would not encroach upon Fairchild AFB's available air space or impede its ability to implement the operational and training mission of the installation. Therefore, the inconsistency with the newly adopted County Fairchild AFB Overlay Zone (2012) would not translate into an adverse environmental effect.

3.7 WATER SUPPLY

Summary of Comments: Several comments were received concerning potential impacts to water supply. Some comments stated that because the City of Airway Heights relies, in part, on the City of Spokane to supplement its water capacity, potential impacts to the City of Spokane's water facilities should be addressed. Other comments were raised on the sufficiency of the local wells and aquifers to supply potable water to the Proposed Project and the feasibility and effectiveness of recharging those aquifers through percolation of treated wastewater from the City of Airway Heights' Wastewater Treatment, Reclamation, and Recharge Facility (WTRRF) as well as percolation of storm water through on-site detention ponds.

Response: Section 3.10.1 of the Final EIS has been revised to reflect that the intertie agreement between the City of Airway Heights and the City of Spokane, originally signed in November 1984, was amended in December 1989 to permit the City of Spokane to provide water, at established city rates, to the City of Airway Heights when "conditions exist whereby the [City's] water system cannot furnish adequate water."

An analysis of potential impacts to the City of Spokane's water facilities has been added to Section 4.10 of the Final EIS. As described therein, although the use of reclaimed water from the WTRRF for irrigation and industrial purposes is anticipated to reduce the City of Airway Heights' demand for potable water from the City of Spokane, there is a potential for the project to utilize water under the intertie agreement. Pursuant to the intertie agreement, the City of Airway Heights shall pay for supplied water at the established city rates. These payments will be funded by the monthly service fees paid by water users served by the City of Airway Heights, including the Tribe. The payments to the City of Spokane would allow the City of Spokane to maintain its water supply infrastructure as necessary to serve the proposed development. Additionally, should the demands of the City of Airway Heights exceed the City of

Spokane's capacity to meet its needs, the City of Spokane has the right to temporarily discontinue providing water service; thereby preventing significant impacts to the City of Spokane's water supply system. With implementation of the conditions of the IGA, as discussed in Section 5.2.9 of the EIS, no significant adverse effects to the City of Spokane's public water system and level of service would occur.

Sections 3.10 and 4.10 of the Draft EIS accurately describe the current and anticipated water supply capacity of the City of Airway Heights. As described in Section 4.10.1 of the Draft EIS, with the addition of the proposed 1,200 gallons per minute (gpm) well and the use of reclaimed water from the WTRRF, the City of Airway Heights would have sufficient capacity to serve the projected demands of Alternative 1. However, as described in Section 4.15.3 of the Draft EIS, in order to meet the water demands of projected future growth within the City of Airway Heights' service area under cumulative conditions, the City of Airway Heights would need to acquire additional domestic water capacity. Additional long-term water supply sources identified within the Draft EIS as being pursued by the City of Airway Heights included, but were not limited to, the additional surface water supplies through the pending amendment to the Intertie Agreement with the City of Spokane. The amendment to the intertie agreement has not been finalized and, therefore, the additional capacity expected from the amendment was not assumed within the analysis of the Draft EIS. "Fair share compensation" from projects approved for connection to the City of Airway Heights' water system would allow the City of Airway Heights to expand its water supply infrastructure as necessary to serve other proposed projects. Terms and conditions of the pending amendment to the intertie agreement are outside of the scope of the EIS.

3.8 MITIGATION ENFORCEABILITY

Summary of Comments: A number of commenters questioned the commitment and specificity of the proposed mitigation measures. Some comments indicated the Draft EIS relies improperly on the agreements between the Spokane Tribe, the City of Airway Heights, and Spokane County to ensure that mitigation is conducted and enforced. These comments questioned the sufficiency of the payments outlined within the agreements as well as the ability of the terms to be renegotiated; and indicated that because of these questions the agreements cannot be used to ensure enforceability of potential mitigation measures discussed in the Draft EIS.

Response: The EIS is not the document that commits the agency to mitigation; it is the Record of Decision (ROD) that does so. As required by 40 CFR 1505, the BIA or other appropriate consenting agency shall be responsible for ensuring that mitigation adopted within the ROD is implemented. 40 CFR 1505.2 [c] states, where applicable, a Mitigation Monitoring and Enforcement Plan (MMEP) shall be adopted and summarized within the ROD. Mitigation enforceable by parties other than the BIA, e.g. permits (i.e. the National Pollutant Discharge Elimination System [NPDES] permit) or enforceable agreements (i.e. the IGA and MOA), may not require a monitoring and enforcement program. See the expanded discussion of NEPA procedural requirements for adopting the ROD in Section 1.3 of the Final EIS. Although the EIS may set forth potential measures for consideration; it does not adopt them. As stated in Section 5.0 of the Draft EIS, all mitigation listed within that section is enforceable because it is 1) inherent to the project design; 2) under terms of the IGA or MOA, which were included within Appendix C of the Draft EIS; and/or 3) required through provisions of federal or state statute, where applicable.

As detailed within Section 5.0 of the Draft EIS, several mitigation measures are enforceable through the terms of the IGA or MOA. Both the IGA and MOA contain terms regarding dispute resolution, including but not limited to, mediation and arbitration. The parties of each agreement waived their respective immunities “solely for the limited purpose of enforcing the parties’ agreement to arbitrate and the final decision of the arbitrator.” This enforcement mechanism ensures that any and all terms within the agreements, including mitigation measures associated with the project and annual payments by the Tribe, are legally binding and, therefore, enforceable.

In regards to the sufficiency of the payments to compensate the City of Airway Heights for public services to be provided to the Tribe as a consequence of the Proposed Project, the payments listed in Section 6.0 of the MOA were agreed to by the City of Airway Heights and the Tribe as appropriate compensation for law enforcement, fire protection, emergency medical services, routine road maintenance and repair, and any other public services to be provided by the City to the Tribe (see Section 1.25 of the MOA). As stated in Section 8.1 of the MOA, either party may request that the terms of the agreement be renegotiated if there is a significant change in circumstances. As defined in Section 8.2 of the MOA, a “significant change in circumstances” includes “evidence from the City that the cost of providing the services described [within the MOA] exceeds the payments by the Tribe pursuant to Section 6.0.” If the City of Airway Heights and Tribe are unable to reach agreement concerning the need to renegotiate pursuant to Section 8.0 of the MOA, such disagreement shall be subject to dispute resolution set forth in Section 4.0 of the MOA, including the legally enforceable arbitration discussed above. Because the compensation for public services is considered sufficient by the City of Airway Heights and because the payments can be adjusted should the actual cost of providing such services be greater than currently anticipated, the mitigation set forth in the Draft EIS is sufficient.

In regards to the ability of the respective parties to renegotiate the terms of the IGA and MOA, this does not weaken the agreements as an enforcement mechanism as all of the respective parties must agree to any amendments; thus ensuring that any one party cannot unfairly alter the agreement in its favor. Furthermore, as discussed above, the ability to renegotiate the terms of the agreement allows the parties to account for unforeseen circumstances in which more or less mitigation/public services/compensation is appropriate.