

# ***ATTACHMENT II***

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***RESPONSE TO COMMENTS ON THE FINAL EIS***

# ATTACHMENT II

## SUPPLEMENTAL RESPONSES TO FINAL EIS COMMENTS

### 1.0 INTRODUCTION

This attachment to the U.S. Department of Interior's (DOI's) Record of Decision (ROD) for the Secretarial Determination (Proposed Action) for the Spokane Tribe of Indian's (Tribe's) West Plains Development Project (Preferred Alternative) contains supplemental responses to comments that were received during and after the 90-day review period on the Final Environmental Impact Statement (Final EIS) following the publication of the Notice of Availability (NOA) in the *Federal Register* on February 1, 2013 [78 Fed. Reg. 15040 (2013)]. A total of 31 letters were received during this review period and were considered by the DOI during the decision making process for the Proposed Action. The commenters for these 31 letters are indexed in **Table 1** and copies of the comment letters are provided in **Exhibit 1** of this document. General issues within the letters are summarized and responded to within **Section 2.0** of this Attachment, and specific responses to each of the 31 comment letters are provided in **Section 3.0** of this Attachment.

**TABLE 1**  
INDEX OF COMMENT LETTERS ON FINAL EIS

Comment Letter No.	NAME	AGENCY/ORGANIZATION
1	Spokane County Commissioners	Spokane County
2	Mayor Tom Truelove	City of Cheney
3	Christine B. Reichgott, Manager	U.S. Environmental Protection Agency
4	Tyler G. Welti	Perkins Coie on behalf of Spokane County
5	Albert Tripp, City Manager	City of Airway Heights
6	E. Susan Meyer, CEO and Karl Otterstrom, Director of Planning	Spokane Transit Authority
7	Mayor David A. Condon	City of Spokane
8	Spokane County Commissioners	Spokane County
9	Mayor Tom Truelove	City of Cheney
10	Gerald F. Pease, Jr. SES, Deputy Assistant Secretary of the Air Force	Department of the Airforce
11	Chairman Glen Nenema	Kalispel Tribe of Indians
12	Chairman Glen Nenema	Kalispel Tribe of Indians
13	Chairman Rudy Peone	Spokane Tribe of Indians
14	Bruce and Pam Brown	
15	Lonnie Hutchinson	
16	Mark E. Weadick, President	Friends of Spokane House

Comment Letter No.	NAME	AGENCY/ORGANIZATION
17	Tim and Chris Wade	
18	Douglas and Claire Holland	
19	David A. Sowinski	
20	Cathy McMorris Rodgers	Member of Congress
21	Laura Brown	
22	John D. Clark	
23	Kenneth Johansen	
24	Bill Johns	
25	John Roskelley	
26	G. Simchuk	
27	Karol Moss	
28	Cathy McMorris Rodgers	Member of Congress
29	Tyler G. Welti	Perkins Coie on behalf of Spokane County
30	E. Susan Meyer, CEO	Spokane Transit Authority
31	Spokane County Commissioners	Spokane County

## 2.0 GENERAL RESPONSES TO COMMENTS ON THE FINAL EIS

During the 90-day review period following issuance of the Final EIS on February 1, 2013, the BIA received 30 comment letters from agencies and other interested parties. During the decision making process for the Proposed Action, all comment letters on the Final EIS were reviewed and considered by the BIA and are included within the administrative record. A list of comment letters is included in **Table 1** above, and a copy of each letter received is included within **Exhibit 1**. Specific responses to these letters are included in **Section 3.0**. A summary and general discussion of the key issue areas raised in comments on the Final EIS is provided below.

### 2.1 NON-NEPA MATTERS

#### 2.1.1 Expressions of Opinion and Non-Substantive Comments

**Summary of Comments:** Some of the comments were expressions of opinion either for or against the Preferred Alternative. Other comments summarized the alternatives and/or findings of the Final EIS. Additional comments did not raise any substantive environmental issue.

**Response:** When responding to comments, federal agencies must follow the requirements in the President’s Council on Environmental Quality (CEQ) NEPA regulations, 40 C.F.R. Part 1500. 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. Pursuant to 40 C.F.R. §§ 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 this Attachment. 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 were considered by the Department.

### **2.1.2 Comments on Specific Factors for Consideration in the Secretary's Two-Part Determination**

**Summary of Comments:** Several comments addressed the Department's Secretarial Determination. Specifically comments questioned the ability of the Department to issue a Secretarial Determination in light of opposition from the surrounding communities. Other comments stated that the project would be detrimental to the surrounding community due to impacts to Spokane County, Fairchild AFB, and the Kalispel Tribe.

**Response:** Section 20 of IGRA generally prohibits Indian gaming on lands acquired in trust after October 17, 1988, subject to several exceptions. One exception, known as the "Secretarial Determination" or "two-part determination" permits a tribe to conduct gaming on lands acquired in trust for an Indian tribe after October 17, 1988, where the Secretary of the Interior, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that: 1) a gaming establishment on the trust lands would be in the best interest of the tribe and its members; and 2) that gaming on the trust lands would not be detrimental to the surrounding community. The governor of the state in which the gaming activity is to be conducted must concur in the Secretary's two-part determination before the tribe may operate gaming on the proposed site. The Secretarial Determination is found in Attachment IV of the ROD.

The Final EIS concludes that with mitigation, Alternative A will not result in significant adverse environmental consequences. Although some of the surrounding communities expressed opposition to the Preferred Alternative, none provided sufficient analysis that explains how the Preferred Alternative would result in a detrimental impact on their respective communities. Furthermore, contrary to the assertions made by some of the commenters, the BIA and the Tribe have received many written expressions of support from local leaders, labor unions, business interests, and the general public. Refer to **Section 2.10.2** of this Attachment regarding the potential for effects to the County, **Section 2.6.2** of this Attachment regarding the potential for effects associated with Fairchild AFB, and **Section 2.10.1** of this Attachment regarding the potential for effects to the Kalispel Tribe.

## **2.2 NEPA PROCEDURAL COMMENTS**

### **2.2.1 Extension of Final EIS Review Period**

**Summary of Comments:** Several comments requested an extension of the review period for the Final EIS.

**Response:** The required 30-day waiting period following the publication of the Notice of Availability for the Final EIS (EIS No. 20130018) in the *Federal Register* on February 1, 2013, (78 Fed. Reg. 7427 (2013)) was formally extended to May 1, 2013, through a 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. Accordingly, the public was afforded three times the review time required by federal law. In its discretion, the BIA had previously extended the comment period for the Draft EIS an additional 30 days, resulting in a total comment period of 75-days.

In sum, the public was allowed 165 days to comment on the EIS for the Spokane Tribe's West Plains Development Project. Further, cooperating agencies were provided additional opportunities to comment on administrative drafts prior to the public release of the Draft EIS and Final EIS. A number of public comments on both the Draft EIS and Final EIS were submitted and considered by the BIA. The BIA has determined that the opportunity for public comment on the Final EIS was sufficient to allow meaningful input and comments from the public and agencies for consideration of the BIA in making its decision on the proposed action. The public and agency input provided during the EIS process has allowed the BIA to make meaningful revisions in response to comments.

## 2.2.2 Requests for Supplemental EIS or Re-Circulation of the EIS

**Summary of Comments:** A number of comments stated that preparation of a Supplemental EIS is necessary to provide adequate information for the Secretary's consideration of the Proposed Action. Generally, comments cited the following reasons for the need: 1) the Final EIS did not reflect the termination of the Inter Local Agreement between the City of Airway Heights and Spokane County on January 25, 2013; 2) the EIS does not address the County's recent public declaration of opposition and concerns regarding the Preferred Alternative; 3) the EIS has a narrow purpose and need statement; 4) Spokane County's adoption of an amendment to the Spokane County Zone Code; 5) Spokane Tribe's implementation of JLUS recommendations through the adoption of its West Plains Development Code; 6) potential growth inducement which could occur as a result of the annexation of the project site; 7) the EIS contains factual errors and does not provide the information needed to understand the impacts of the project.

**Response:** Implementing regulations for NEPA at 40 C.F.R. § 1502.9(c) provide guidance on circumstances under which a lead agency should prepare a Supplemental Final EIS. These regulations provide that the agency should prepare a supplement to the Draft EIS if the agency makes substantial changes in the proposed action that are relevant to environmental concerns, or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. The agency may also prepare supplements when the agency determines that the purposes of NEPA will be furthered by doing so.

The Department has determined that preparation of a supplemental EIS and/or re-circulation of the EIS is not necessary to fulfill NEPA procedural requirements as discussed below.

***Termination of the Interlocal Agreement (ILA)***

Refer to **Section 2.5.1** regarding the termination of the ILA. As described therein, adverse impacts to the County arising from gaming activities on the trust property continue to be mitigated under the existing agreements and no new impacts have arisen as a result of the termination of the ILA. Therefore, the BIA determined that the termination of the ILA does not constitute significant new information or facts that demonstrate the Preferred Alternative would result in significant environmental effects not already considered within the EIS. The termination of the ILA does not constitute significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

***Spokane County's Opposition to the Preferred Alternative***

See **Sections 2.1.2 and 2.2.3** of this Attachment. The expression of opposition to a project by an agency or person does not in itself constitute significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. The BIA determined that, in expressing its opposition to the Preferred Alternative, Spokane County has not provided any new information or facts that demonstrate that the Preferred Alternative would result in significant environmental effects not already considered within the EIS. Refer to **Section 3.0** of this Attachment for responses to the comments submitted by Spokane County on the Final EIS.

***Narrow Purpose and Need Statement***

See **Section 2.3** of this Attachment.

***Spokane County 2012 Fairchild AFB Overlay Zone***

See **Section 2.6.2** of this Attachment. Spokane County's 2012 Fairchild AFB Overlay Zone was discussed and considered within Section 3.6.2 of Volume I of the Final EIS; therefore, supplemental analysis is not warranted.

***Spokane Tribe 2013 West Plains Development Code***

See **Section 2.6.1** of this Attachment. The Spokane Tribe's 2013 West Plains Development Code is consistent with JLUS recommendations and incorporates the mitigation measures recommended in the Final EIS relative to Fairchild AFB. Therefore, the Tribe's enactment of the 2013 West Plains Development Code does not constitute significant new information or facts that demonstrate the Preferred Alternative would result in significant environmental effects not already considered within the EIS.

***Annexation of 145-acre Property***

The annexation of the project site within Airway Heights' city limits was described and evaluated as a foreseeable action within the Draft EIS, and the current status of the project site with respect to its location within Airway Heights' city limits was accurately described within the FEIS. No new information or facts have been provided that demonstrate the Preferred Alternative would result in significant environmental effects not already considered within the EIS.

### *Inadequate Analysis*

As described in the responses to technical issues raised in comments on the Final EIS (**Section 2.3** through **Section 2.10** and **Section 3.0** of this Attachment, the BIA has determined that analysis and conclusions within the EIS are adequate and thoroughly supported by evidence in the record.

#### **2.2.3 Ability for Spokane County to Comment during the NEPA Process**

**Summary of Comments:** Several comments stated that the County was previously constrained from commenting on the EIS by a neutrality provision in the Interlocal Agreement (ILA) between the City of Airway Heights and the County and, therefore, the County was not able to provide input during the NEPA public review process or fulfill its role as a cooperating agency.

**Response:** As stated by the commenters, the County agreed in Section 3.0 of the ILA that it would remain neutral in conjunction with the Spokane Tribe's application to Department, and the Spokane Tribe's seeking the concurrence of the Governor in a Secretarial Determination. In Section 3 of the ILA, the term "neutral" was defined to mean that the County could not submit written comments "taking a position in support or opposition to gaming activities on the Trust Property." The terms of the ILA did not preclude the County from providing comments on environmental issues in accordance with NEPA. In fact, the County actively participated as a cooperating agency in the NEPA process as evidenced by letters submitted by the County's planning and transportation departments to the BIA during the cooperating agency review period for the Administrative Draft EIS and public review period for the Draft EIS. The comments submitted by the County during the cooperating agency review period for the Administrative Draft EIS provided substantive comments regarding the analysis of potential impacts to transportation/circulation and the proposed mitigation, the Preferred Alternative's consistency with the Joint Land Use Study (JLUS), as well as concerns regarding effects to Fairchild AFB. The BIA considered all of the comments made by cooperating agencies, including the County, and made revisions to the Draft EIS, as appropriate. In addition, in accordance with the guidelines in the BIA's NEPA Handbook (59 IAM 3-8), Spokane County, as a cooperating agency, was provided an opportunity to review and submit comments on the preliminary Final EIS. Because the County was able to, and did, submit substantive comments on the EIS, NEPA procedural requirements regarding agency cooperation have been fulfilled. Finally, the Department carefully considered and responded to all substantive comments set forth within the County's April 30, 2013, comments on the Final EIS.

The Department notes that the County did not submit comments during the scoping process for the EIS, which occurred between August 19 and October 31, 2009, before the County entered into the ILA.

#### **2.2.4 BIA's Perceived Failure to Address USAF's Concerns Regarding the Preferred Alternative**

**Summary of Comments:** Several comments asserted that the U.S. Air Force (USAF) has concerns regarding the Proposed Action that have not been acknowledged and/or adequately addressed in the Final EIS. As evidence of USAF's alleged unresolved concerns, many of these

comments reference editorials and other public communications from individuals currently and formerly associated with USAF, but not officially representing the opinions of the USAF in the development of the EIS.

**Response:** As stated in the Final EIS, at the invitation of the BIA, the USAF has participated in the NEPA process as a cooperating agency. Pursuant to 40 C.F.R. § 1501.6, USAF comments were related to its jurisdiction by law over Fairchild AFB and its special expertise with respect to AFB operations including, but not limited to, air traffic patterns, accident potential zones (APZs), encroachment conflicts, public safety, and aircraft noise. Official comments provided by the USAF on the Draft EIS and the Preliminary Final EIS were thoroughly considered, and in many instances changes were made to the Final EIS as a result of these comments. BIA representatives coordinated directly with USAF representatives to ensure that the concerns raised in the comments have been satisfactorily addressed. The effectiveness of coordination between the BIA and USAF is illustrated by the USAF's comment letter on the Final EIS dated April 30, 2013 (**Exhibit I**, Comment Letter 10), which was limited to recommendations for minor clarifications to mitigation language. The clarifications to the mitigation recommended by the USAF have been made, and are set forth in Section 6.0 of the ROD. Additionally, in a letter dated February 3, 2015 from Ms. Kathleen Ferguson, Principal Deputy Assistant Secretary of the USAF, to Kevin Washburn, the USAF reiterates 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.

It should be noted that opinions expressed by an agency's personnel, both current and former, are not necessarily the opinions held by the agency itself. Therefore, the BIA cannot consider the editorials and other public communications referenced by the commenters as the official opinions of the USAF. However, in accordance with NEPA, the BIA has considered and/or provided responses to all substantive comments concerning the environmental effects of the alternatives submitted during the NEPA process. Refer to **Section 2.6.1** of this Attachment regarding the Preferred Alternative's compatibility with USAF operations.

## 2.3 PURPOSE AND NEED

**Summary of Comments:** Several comments 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 development of the project site could meet the need. Comments stated that the purpose and need statement cannot cite an applicant's preference only, it must also take into account its own statutory mandate.

**Response:** Comments related to the defined purpose and need for the Proposed Action have been thoroughly responded to in Section 3.3 of Volume I of the Final EIS. Refer to **Section 2.4** regarding the range of alternatives.

## 2.4 ALTERNATIVES ANALYSIS

**Summary of Comments:** A number of commenters stated that the Final EIS did not analyze an adequate range of alternatives. Commenters stated that an alternative to relocate to an area that would not jeopardize Fairchild AFB operations should have been analyzed in the EIS.

**Response:** Comments related to the range of alternatives in the EIS and the need to evaluate an off-site alternative have been thoroughly responded to in the Section 3.4 of Volume I of the Final EIS.

Under NEPA, the BIA is entitled to give substantial weight to the needs and goals of the applicant as well as the ability to define criteria for generating a reasonable range of alternatives. The criteria used to develop the range of alternatives analyzed in the EIS were properly based on the purpose and need for the project.

As discussed in detail in **Section 2.6.1** of this Attachment, the record before the BIA indicates that development of the Preferred Alternative, with the addition of mitigation recommended by the USAF during cooperating agency consultation, would not result in conflicts with Fairchild AFB operations. All potential conflicts with Fairchild AFB operations can be reduced to less than significant or eliminated in accordance with regional planning documents and Department of Defense recommendations. Therefore, consideration of an off-site alternative to avoid potential land use conflicts is not warranted.

The FEIS, Volume II, Section 2.4, discusses off-site locations owned by the Tribe that were considered but eliminated from detailed consideration due to development and environmental constraints. It should be noted that no other specific sites were identified or offered as suitable off-site location alternatives during the NEPA process, which included scoping, Draft EIS comment period, and cooperating agency review. As discussed in the FEIS, Volume I, Section 3.4, the BIA determined that detailed evaluation of an off-site alternative would not add in expanding the range of reasonable or feasible alternatives, nor would it meet the purpose and need for action. Given that no suitable off-site location was identified during the NEPA process, and 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).

## 2.5 LOCAL JURISDICTIONAL ISSUES

### 2.5.1 Termination of Interlocal Agreement between City of Airway Heights and Spokane County

**Summary of Comments:** Several comments addressed the recent termination of the Interlocal Agreement (ILA) between Airway Heights and the County and the effects the termination has on the analysis within the EIS. Specifically, commenters state that because the ILA has been terminated, impacts to the County are no longer mitigated and, therefore, significant effects would occur that were not previously disclosed.

**Response:** Termination of the ILA does not affect the validity or enforceability of the Intergovernmental Agreement (IGA) between Airway Heights, the County, and the Tribe or the Memorandum of Agreement (MOA) between Airway Heights and the Tribe. The IGA and

MOA set forth terms and conditions regarding the provision of services by Airway Heights and the County to the Tribe's 145-acre trust property and the compensation for those services by the Tribe. Additionally, the termination of the ILA does not affect the Tribe's obligation to provide impact mitigation funds under the Tribal-State Gaming Compact and does not prevent the County from applying for those funds.

### *Intergovernmental Agreement*

In exchange for an annual payment by the Tribe, Section 5.0.1 of the IGA states that the County shall continue to provide the Tribe's trust property with the same general county services it provides properties of similar density, use, and location. Section 5.0.3 of the IGA goes on to states that Airway Heights and the County, not the Tribe, are to confer and determine the fair and equitable portion of the Tribe's annual payment to be received by each party. In accordance with Section 5.0.3 of the IGA, the County and Airway Heights entered into the MOU on August 17, 2010, which states that after the consent of the United States to annexation of the property by Airway Heights (signed on March 2, 2011), the County shall be allocated 20% of the annual payment made under the IGA. This MOU is still in effect and shall remain in effect for the term of the IGA. Airway Heights and the County currently receive annual payments from the Tribe pursuant to the IGA.

Section 8.1 of the IGA states that upon development of a gaming facility, payments by the Tribe to Airway Heights pursuant to the MOA shall supplant the annual payment set forth in the IGA. In addition to agreeing to the provisions in Section 8.1 of the IGA, the County agreed to, and is contractually obligated to meet its responsibilities under, the following sections of the IGA:

Section 8.3: The City and County agree to negotiate in good faith with the Tribe to determine appropriate mitigation for any adverse impacts arising from gaming activities on the Property.

Section 8.4: The City and County further agree to negotiate in good faith with the Tribe to provide additional services to the Property as a result of gaming activities in exchange for Impact Mitigation Funds allocated according to the form and methodology set forth in the Compact existing by and between the Spokane Tribe and the State of Washington and as set forth in the Memorandum of Agreement between the parties.

As described in Section 1.5.4 of the Final EIS, the purpose of the ILA was to outline in writing the terms and conditions by which Airway Heights was to provide compensation to the County using the annual payments by the Tribe pursuant to Section 6.0 of the Airway Heights/Tribe MOA. The ILA was the culmination of negotiations carried out by Airway Heights and the County pursuant to Section 8.3 and 8.4 described above.

The termination of the ILA does not affect the Tribe's contractual obligation under the IGA to provide compensation to Airway Heights and the County for non-gaming related impacts caused by development of a gaming facility on the 145-acre trust property. If gaming is approved for the site, then Section 3.3 of the MOA obligates Airway Heights to provide the County with additional compensation from annual payments made by the Tribe pursuant to Section 6.0 of the

MOA. The termination of the ILA simply means that Airway Heights and the County must reenter good faith negotiations pursuant to the IGA and the MOA.

### ***Memorandum of Agreement***

Although the County is not a party to the MOA, Section 3.2 of the MOA states that it is the intent of the Tribe and Airway Heights that the terms of the IGA remain in full force and effect, including those in Sections 5.0 and 8.0 which provide for compensation to the County, with the exception that the amounts paid by the Tribe pursuant to IGA shall be supplanted by the payments made under Section 6.0 of the MOA. MOA Section 3.3 establishes that Airway Heights shall be responsible for payments to the County pursuant to an agreement between Airway Heights and the County. This payment method is consistent with the approach agreed to by the County in Section 5.0.3 of the IGA.

Section 8.0 of the MOA contains a reopener stating that if there is a significant change in circumstances that directly or indirectly relate to the parties expectations under this MOA and that change materially impacts the part. In its letter dated May 1, 2013, (Comment Letter 13), the Tribe stated that it “would view the County’s failure to receive any portion of the MOA annual payment as a significant change of circumstances – particularly if demonstrated impacts to the County are not fully compensated for under the Gaming Compact. In such an event the MOA annual payment would be adjusted to ensure the County receives compensation for any demonstrated impacts.”

Termination of the ILA does not affect the Tribe’s contractual obligation under the MOA to provide compensation to Airway Heights and the County for impacts caused by gaming and non-gaming development on the 145-acre trust property; nor does the termination of the ILA affect Airway Heights’ obligation under the IGA and MOA to pay the County its share of the Tribe’s annual payment. Termination of the ILA does not preclude Airway Heights and the County from entering into another funding agreement for services.

### ***Tribal-State Gaming Compact***

Section XIV (C) of the Tribal-State Gaming Compact provides a mechanism for fair-share assistance to non-tribal law enforcement, emergency services, and/or service agencies, including the County, impacted by the class III gaming facilities. The County’s eligibility for these funds is confirmed in Section 8.4 of the IGA. The termination of the ILA does not affect the Tribe’s obligation to provide for an impact mitigation fund under the Tribal-State Gaming Compact and does not alter the County’s eligibility to receive impact mitigation funding.

### ***Conclusion***

Compensation for impacts to the County as a result of the Preferred Alternative will continue to be provided for in the IGA, the MOA, and the Tribal-State Compact. Pursuant to Sections 5.0.3, 8.3, and 8.4 of the IGA and Section 3.3 of the MOA, Airway Heights and the County must reenter into good faith negotiations to determine appropriate mitigation for impacts arising from gaming activities on the trust property because the ILA has been terminated at the request of the County. Should a dispute arise during negotiations, such disagreement shall be subject to mediation and arbitration pursuant to Sections 9.2 and 9.3 of the IGA. The arbitrator’s decision

shall be final and binding on the parties involved in the arbitration. 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. The IGA and MOA sufficiently ensure that the County will be adequately compensated for impacts arising from the Preferred Alternative. As a result, no new impacts will result from termination of the ILA.

It is important to note that neither the BIA, the Tribe, nor Airway Heights have the ability to make the County accept any mitigation. Under NEPA, the BIA has an obligation to disclose potential environmental impacts and identify feasible mitigation to reduce the impacts of proposed actions. The BIA also has an obligation to fairly review the Tribe's application, support Tribal sovereignty and the Tribe's efforts to exercise its legal rights. In this case, the BIA has disclosed the potential for effects and identified potential mitigation, and believes that the Tribe has made, and is continuing to make, good faith effort to provide mitigation.

## 2.6 LAND USE

### 2.6.1 Compatibility with Air Force Base Operations

**Summary of Comments:** Several comments expressed continued concerns regarding the compatibility of the Preferred Alternative with Fairchild AFB Operations. Many of these comments referenced a PowerPoint presentation released by the Director of Fairchild AFB Encroachment Management Team on February 6, 2013, as evidence in support of these concerns (see Exhibit 8 of the Spokane County comments on the Final EIS Dated April 30, 2013 for a copy of the PowerPoint presentation). Slide 7 of the PowerPoint referenced by the commenters lists four issues which have been addressed through the EIS process: noise complaints associated with aircraft flights below 1,000 feet over the project site; light pollution from the Preferred Alternative which could affect pilots' night vision; potential hazards to aircraft operations from the Preferred Alternative's proximity to Fairchild AFB traffic patterns; and potential for aircraft crash/mishaps.<sup>1</sup> Commenters also state that mitigation measures proposed to reduce these impacts are inadequate to mitigate concerns. Other comments stated the EIS should have analyzed a possible closure of Fairchild AFB and its impact on the surrounding communities.

**Response:** Comments on the Draft EIS regarding the Preferred Alternative's compatibility with Fairchild AFB operations were thoroughly responded to in the Final EIS, Volume I, Section 3.6.1. As stated therein, with the implementation of mitigation measures, 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 Installation. In addition to responding to general concerns regarding consistency, General Response 3.6.1 provided a detailed discussion regarding the key issues raised in public comments on the Draft EIS which included: accident potential, population density, and public safety; perceived issues from aircraft operations (dust,

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<sup>1</sup> In a letter to the NWRO dated July 29, 2014, the USAF confirms that the PowerPoint presentation released by the Director of Fairchild AFB Encroachment Management Team summarized concerns previously addressed in the USAF November 2011 and April 2012 cooperating agency comments, and "does not contain any new information". As described in **Section 2.2.4** of this Attachment, the USAF's cooperating agency comments have been satisfactorily addressed.

fumes, etc.) and noise; hazards to aircraft operations (wildlife attractants, light and glare, height of buildings); and the Base Realignment and Closure (BRAC) process. Comments submitted following release of the Final EIS did not raise any new concerns that have not already been disclosed and thoroughly analyzed within the Final EIS Volume I, Section 3.6.1 and Volume II, Section 4.9.

In its official comments on the Final EIS (**Exhibit I**, Comment Letter 10), the USAF requested minor clarifications to the mitigation language. As described in **Section 2.2.4** of this Attachment, the clarifications to the mitigation recommended by the USAF in Comment Letter 10 have been made; therefore, the mitigation measures listed in Section 6.0 of the ROD adequately address USAF concerns.

In 2013, the Spokane Tribe enacted the West Plains Development Code, which implements restrictions consistent with JLUS recommendations on the 145-acre trust property. The West Plains Development Code is included as Attachment 1 to the May 1, 2013, letter submitted to the BIA by the Spokane Tribe (Comment Letter 13). The West Plains Development Code incorporates mitigation measures recommended within the Final EIS to ensure the Preferred Alternative'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 incorporation of any additional mitigation measures set forth in the ROD, which include the clarifications requested by the USAF in its FEIS comment letter. Additionally, although the Federal Aviation Administration's No Hazard Determination allows for a building height of 140 feet on the project 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.

As discussed within the Final EIS, closure of Fairchild AFB is not a reasonably foreseeable consequence of the Preferred Alternative; therefore, analysis of impacts from its closure is not warranted. To ensure the Preferred Alternative's compatibility with Fairchild AFB operations, BIA consulted with USAF throughout the NEPA process.

## 2.6.2 Consistency with Local Zoning Codes

**Summary of Comments:** Some comments expressed continued concerns regarding the Preferred Alternative's consistency with local zoning codes. Specifically commenters stated that the Preferred Alternative would be prohibited under the Spokane County 2012 Fairchild AFB Overlay Zone.

**Response:** BIA provided a thorough response to comments on the Draft EIS concerning the Preferred Alternative's consistency with local zoning codes in the Final EIS, Volume I, Section 3.6.2. Although state and local zoning and land use plans do not apply to tribal lands, the Preferred Alternative would be consistent with local policies related to land use in the vicinity of the Fairchild AFB and Spokane International Airport. As discussed, Section 4 of the IGA (as revised by IGA Amendment 1 executed by Airway Heights, the Tribe and the County on August 26, 2010) requires 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; i.e., determination of compliance at the time of submission of the completed Master Plan. Under the amended IGA, the City of Airway Heights then has thirty days to comment on the Master Plan.

In accordance with the amended IGA, 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. Both the City and County were provided a copy of the Master Plan within the Administrative Draft EIS on May 20, 2011, and were allowed more than 30 days to comment, consistent with the requirement under Section 4.2 of the IGA. The Preferred Alternative Master Plan complied with both the County and the City's Airport Overlay Zones in effect at the time the Master Plan was prepared and submitted to the City and County for review. The Tribe moved forward with its application for the Preferred Alternative relying on no conflict with local zoning requirements.

In 2012, the County changed its zoning requirements through adoption of the 2012 Fairchild AFB Overlay Zone which would exclude development of the Tribe's Preferred Alternative. As discussed in **Section 2.6.1** of this Attachment, the Preferred Alternative is compatible with Fairchild AFB operations. Therefore, inconsistency with the County's 2012 AFB Overlay Zone would not result in adverse physical effects.

As discussed in **Section 2.6.2** of this Attachment, the Spokane Tribe recently enacted the West Plains Development Code which implements restrictions consistent with JLUS recommendations on the 145-acre property. The Preferred Alternative would be required to be developed in compliance with this code.

## **2.7 AIR QUALITY GENERAL CONFORMITY DETERMINATION PURSUANT TO THE CLEAN AIR ACT**

**Summary of Comments:** Several comments stated that the general conformity determination should have been completed prior to the release of the FEIS to allow sufficient opportunity for public comment and consideration.

**Response:** A conformity review is required if a project's direct or indirect emissions would occur in a nonattainment or maintenance area. As stated in the FEIS, the project site is located in an attainment area for all criteria pollutants. The Spokane CO and PM<sub>10</sub> maintenance areas are located approximately 2 miles from the site; therefore, project related mobile emissions may occur within a maintenance area. As a result of consultation with the EPA and the Spokane Regional Clean Air Agency following release of the Draft EIS, a conformity review and determination was conducted for project-related mobile emissions occurring in the Spokane CO and PM<sub>10</sub> maintenance areas.

General Conformity Regulations at 40 C.F.R. Part 93, Subpart B do not specify the timing of a conformity determination. Under the conformity regulations, completion of the conformity process is required prior to a decision on the proposed action and not prior to issuance of a FEIS. 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 thirty day public review and comment period ending on February 15, 2013. A Final Conformity Determination was

issued on August 12, 2013. As described in Section 3.1.3 of the ROD, it was confirmed that the Preferred Alternative would not cause an exceedance of the National Ambient Air Quality Standards (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 FEIS. Sufficient opportunities for public and agency review of the Draft and Final conformity determinations were provided in accordance with the regulations.

## 2.8 PUBLIC SERVICES

### 2.8.1 Water Supply

**Summary of Comments:** Several comments expressed continued concerns regarding potential impacts to water supply. Some comments stated that Airway Heights does not have adequate water resources to serve the Preferred Alternative. Other comments stated that the Final EIS did not consider potential impacts to the City of Spokane's water facilities.

**Response:** Regarding the current and anticipated water supply capacity of Airway Heights and potential impacts to the City of Spokane's water facilities, the BIA provided a thorough response in the Final EIS, Volume I, Section 3.7 (General Response 3.7) and Volume II, Section 4.10.

With the addition of the proposed 1,200 gallons per minute (gpm) well and the use of reclaimed water from the Water Treatment, Reclamation, and Recharge Facility (WTRRF), Airway Heights would have sufficient capacity to serve the projected demands of the Preferred Alternative. In a letter dated April 22, 2013, (Comment Letter 5), Airway Heights stated that the new well has an actual capacity of more than 3,000 gallons per minute, more than twice what was anticipated in the water capacity analysis completed by the City for the Preferred Alternative (see Section 4.10.1 of Volume II of the Final EIS). This new well replaces the Parkwest well, the use of which caused drawdown in surrounding wells due to its location in a bowl-like aquifer, which can only be recharged through groundwater recovery. Unlike the Parkwest well, the new well withdraws water that percolates into the aquifer through the infiltration basins at the recently-completed WTRRF. The treated water produced at the WTRRF is also piped to commercial, industrial, mining, and parks, in addition to being injected into the aquifer. Additionally, Airway Heights completed the 1,000,000-gallon water reservoir (see Comment Letter 5). These projects reduce demand on the potable water system and were described and considered in Final EIS, Volume II, Sections 3.10 and 4.10.

As described above and within the Final EIS, Airway Heights has made several improvements to its water supply infrastructure to independently provide for its future water needs and reduce the demand of potable water from the City of Spokane. However, as acknowledged in the Final EIS, there is a potential for some of the water obtained by Airway Heights through the intertie agreement to be utilized at the project site. Potential impacts to the City of Spokane's water facilities from the development of the Preferred Alternative were considered and addressed in Final EIS, Volume II, and Section 4.10. As discussed therein, Airway Heights shall pay the City of Spokane for supplied water at the rates established within the intertie agreement. The payments under the intertie agreement are funded by the monthly service fees paid by water users served by Airway Heights, including the Tribe in accordance with Section 2.0 of the IGA.

Therefore, as concluded within the Final EIS, with implementation of the conditions of the IGA, as discussed in Final EIS, Volume II, Section 5.2.9, no significant effects to the City of Spokane's public water system and level of service would occur. Further, as discussed in the Final EIS, under the intertie agreement, if water demands exceed the City of Spokane's capacity to meet its own needs, the City of Spokane has the right to temporarily discontinue furnishing water to Airway Heights.

## 2.8.2 Impacts to Public Services Associated with Responding to a Catastrophic Emergency at the Project Site

**Summary of Comments:** Comments addressed the provision of emergency services in the event of an aircraft crash/mishap or other catastrophic emergency at the project site. Commenters acknowledged that the Airway Heights Fire Department and Spokane Fire District 10 – West Plains District possess adequate resources to respond to routine medical and fire incidents. However, commenters expressed concerns that because there is a heightened risk for aircraft crash/mishaps due to regular flights occurring over the project site, there is a corresponding heightened potential for impacts to municipal emergency response services of surrounding communities.

**Response:** As described in the Final EIS, City of Airway Heights Fire Department (AHFD) would provide fire protection and emergency medical services with additional fire protection services provided by the on-site tribal fire station. As detailed below, the AHFD is trained and prepared to respond to a variety of events, including the unanticipated event of a plane crash on the 145-acre trust property. Pursuant to Section 2.3.2(a) of the MOA, the Tribe and Airway Heights shall coordinate emergency service programs to facilitate public safety in the event of an emergency. Additionally, in response to official comments on the Final EIS by the USAF (Comment Letter 10) the following language has been added to Section 6.9 of the ROD: "The Spokane Tribe's fire department will make a good faith effort to enter into mutual aid agreements with local municipal emergency responders, including Fairchild AFB." Should an emergency occur on the trust property which requires assistance from surrounding fire service agencies pursuant to AHFD's automatic and mutual aid agreements, described below, and/or agreements entered into by the Tribe, the following mitigation measure included within Section 6.9 of the ROD will minimize and or eliminate adverse effects associated with impacts to the surrounding communities' emergency response services:

In accordance with Item C-1 Section XIV, Public Health and Safety, of the Tribal-State Compact for class III Gaming, the Tribe shall continue to contribute to an existing fund for purposes of providing assistance to non-tribal service agencies. The 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. Therefore, in the event that another public service agency experiences excessive or unanticipated call volumes, it would be compensated through the Tribal-State Compact.

The AHFD is an all-hazard emergency response organization in service since 1963. It utilizes the Incident Command System/National Incident Management System to organize and direct emergency scenes throughout the community. As described in Final EIS, Volume II, Section 3.10.5, the AHFD has two Structural Engines with 2000 GPM pumps, one 75 foot Aerial Ladder

Truck with a 1500 GPM pump, one Attack Engine, and one Brush Truck staffed 24 hours a day 7 days a week by mostly volunteer members and a minimum staffing of three. The AHFD trains their volunteer members to the International Fire Service Accreditation Congress (IFSAC) Firefighter I and IFSAC HAZMAT Operations level. In addition 83% of members are certified EMT-B with five members trained to the EMT-P level.

AHFD is dispatched through the countywide Combined Communications Center. Computer Aided Dispatch has pre-set response parameters for each type of situation up to and including aircraft calls. As with the development of the Northern Quest Resort and Casino and Washington State Department of Corrections Center in AHFD's jurisdiction, a new run card will be developed for the Preferred Alternative's specific property and needs that will detail which fire companies and equipment will respond to the different types of incidents that could potentially occur at the casino.

Spokane County also has established two All Hazard Type III Incident Management Teams (IMT). Two members of the AHFD are on each of these teams. In the event of a large scale or long time frame emergency the IMT will respond and through the National Incident Management System and a declaration of authority will help the Incident Commander mitigate the situation. Spokane County also has an Urban Search and Rescue team established that can be utilized Nationwide if needed. Additionally, AHFD has automatic and mutual aid agreements with all fire service agencies within Spokane County including Spokane International Airport and Fairchild AFB, as well as agreements with all of the surrounding Counties including Kootenai County, Idaho.

In an event such as an aircraft crash, the initial Company Officer on the AHFD Engine would assume command and begin the planning for mitigating immediate needs. The first arriving Chief Officer will assume command from AHFD Engine 1 and depending on the situation, upgrade the call to a Second or Third Alarm adding additional resources and Chief Officers. The Spokane County Field Operations Guide sets the groundwork for managing catastrophic events, including a hotel/high rise emergency, and would be utilized as the starting point for mitigation of the scene.<sup>2</sup>

## 2.9 PROBLEM GAMBLING, ALCOHOL ABUSE, AND CHILD SERVICES

**Summary of Comments:** A number of commenters raised concerns that operation of the Preferred Alternative could result in increased rates of problem or pathological gambling. Many comments also brought up the societal costs of problem gambling and its relation to alcohol abuse and domestic violence.

**Response:** As noted in Section 4.7 of the Final EIS, the American Psychiatric Association describes pathological gambling as an impulse control disorder characterized by "persistent and recurrent maladaptive gambling behavior that disrupts personal, family, or vocational pursuits."<sup>3</sup> According to the National Council on Problem Gambling, casinos and lotteries do not cause

<sup>2</sup> Email correspondence with Albert Tripp, City Manager of City of Airway Heights on July 8, 2013.

<sup>3</sup> National Gambling Impact Study Commission (NGISC), 1999 *Final Report*. Available at: <http://govinfo.library.unt.edu/ngisc/>. Accessed June 4, 2013.

problem gambling, but merely provide an outlet for a person's addiction.<sup>4</sup> Section 4.7 of the Final EIS cites studies that show that the probability of being a problem or pathological gambler roughly doubles for those living within ten miles of a casino compared with those who do not. There are four casinos within 50 miles of the project site, including one existing casino located approximately two miles from the project site. The area has numerous gaming facilities that provide gambling opportunities to local patrons. Construction of the Preferred Alternative will not create more problem gamblers, but may alter the distribution of gambling in the area. However, there will not be a significant impact on the overall rate of problem or pathological gambling.

Although the Preferred Alternative will not impact problem gambling levels in the Spokane area, the Spokane Tribe, in accordance with the Tribal-State Compact, recognizes that the operation of class III gaming activities may adversely affect individuals who suffer from problem or pathological gambling addiction disorders. As detailed in Section 6.6.E of the ROD, the Tribe will provide written information that includes a list of professional gambling treatment programs and self-help groups to casino customers at the project site. Brochures will be made available in prominent locations inside of the casino and near all automated teller machines (ATMs). In accordance with Section 6.6.C of the ROD, the Tribe is committed to supporting problem gambling education, awareness, and treatment for such individuals to offset the societal costs of problem gambling. In accordance with the Tribal-State Compact, Appendix Spokane, Section 3.0, the Tribe shall set aside 0.13% of the gross gaming revenues from its class III gaming activities for contributions dedicated to public support services through the Washington State Department of Social and Health Services' Division of Alcohol and Substance Abuse (DSHS/DASA), with a credit to the Tribe for contributions made to other organizations that are directly related to helping reduce problem gambling. Contributions made to the DSHS/DASA will augment programs relating to Problem Gaming, Alcohol Abuse, and Child Services in the Spokane region.

## 2.10 SOCIOECONOMIC CONDITIONS

### 2.10.1 Economic Competition and Effects to the Kalispel Tribe

**Summary of Comments:** Numerous comments asserted that the Final EIS either did not address the issue of socioeconomic impacts to the Kalispel Tribe, or that the assumptions underlying the socioeconomic impact analysis in the Final EIS were incorrect.

**Response:** Comments received on the Draft EIS related to economic competition and effects to the Kalispel Tribe were thoroughly responded to in Final EIS, Volume I, Section 3.5.1. Issues and information submitted in comments on the Final EIS that were not previously responded to are addressed below.

#### *Revised PKF Analysis*

The Kalispel Tribe re-engaged PKF (Revised PKF Analysis) to re-model the market analysis to accommodate for the various inputs that the Innovation Group included in Final EIS, Appendix

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<sup>4</sup> National Council on Problem Gambling, 2013. Problem Gamblers Frequently Asked Questions. Available at: <http://www.ncpgambling.org/i4a/pages/index.cfm?pageid=3390>. Accessed June 3, 2013.

V. As described in the Kalispel Tribe's comment letter (Comment Letter 12), "[a]fter adjusting for the re-definition of relevant inputs and any anomalies found in the original analysis, PKF again used actual market data to analyze the market impact of the introduction of the preferred alternative described in the FEIS. The new analysis found only marginal differences from the original. The original analysis found a revenue decrease for Northern Quest of 41.5% with a resulting decrease in earnings before interest, taxes depreciation and amortization (EBITDA) of 59.5%. The new, adjusted analysis found decreases of 41.0% and 59.1% in revenue and EBITDA, respectively." An evaluation of the information presented in the Revised PKF Analysis was conducted and is provided in **Exhibit 2** of this Attachment. The evaluation concluded the Revised PKF Analysis presents conclusions that are unsupported, and that the analysis and conclusions within the Final EIS are accurate.

The Revised PKF Analysis, which was limited to tables and contained no explanatory text, made significant changes in the population estimates and visitor frequencies applied. As a result of the dramatic difference in population estimates and frequencies applied, the assumed 2020 gaming visits from the surrounding areas are different from the original PKF Report in total and in distribution. The inconsistency having the largest effect in the Revised PKF Analysis is the change in capture rate for the Kalispel Tribe's Northern Quest Resort and Casino (NQRC) areas east/southeast of NQRC (designated Zone 4) from 85% to 70%. There is no explanation offered in the revised PKF analysis as to why the capture rate for Zone 4 was adjusted but not for Zones 1-3. If the gaming capture rates were kept consistent with the original analysis, NQRC would receive \$16.1 million more in revenue than projected in the Revised PKF Analysis. This would bring PKF's estimation of NQRC gaming revenues in 2020 with build-out of the Preferred Alternative to \$131.7 million instead of \$115.6 million as projected in the Revised PKF Analysis, reducing the impact to NQRC revenues to 35.7%, which is 2.7% greater than the reduction anticipated in Final EIS, Appendices G and V.

Regarding EBITDA margins, both the PKF Report and the Revised PKF Analysis assume a relatively constant "base case" EBITDA margin in a range of 39.4% and 39.6% during the years of 2014 – 2020 (PKF Report, pgs. 13-14). During this same period, total NQRC revenues are projected to increase from \$207.5 million to \$247.9 million. However, with the build-out of the Preferred Alternative in 2020, the revised PKF Analysis predicts total revenue and EBITDA margin would decrease to \$146.2 million and 27.4%, respectively (Revised PKF Analysis, pgs. 1 and 2). The Kalispel Tribe's estimate of a significant decline in EBITDA margin is presumably due to an assumption of a large fixed cost component of the NQRC expense structure. However, as described in the Final EIS, the three phases of the Preferred Alternative would occur over a number of years, not simultaneously, and there would be a lead-time of more than one year between the announcement of construction of each phase and opening. The Kalispel Tribe would have a period of time to anticipate the opening of each phase, and to rationalize expenses to match the anticipated post substitution revenues. Consequently, the substantial decline in the EBITDA margin included in the PKF analyses associated with the opening of the Preferred Alternative phases is not warranted.

Regardless, the estimated baseline income projection for 2020 in the Revised PKF Analysis remains consistent with the projection in the original PKF Report. Therefore the conclusion described in Final EIS, Volume I, Section 3.5.1 continues to be accurate. Specifically, the 2020

revenue projections for NQRC with competition from the Preferred Alternative (described in Final EIS, Appendix V) would represent a 13.8% reduction from 2011 revenues. Based on a review of financial information provided by the Kalispel Tribe (Comment Letter 23 in Final EIS, Volume I, Section 2.0), a certain portion of revenue from NQRC 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% reduction).<sup>5</sup> This income does not appear to be factored into the revenue projections considered in the Nathan Associates Report. 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.

### ***TFA Debt Service Letter***

The TFA Debt Service Letter includes projected amounts of distributions to the Kalispel Tribe under the Preferred Alternative and Alternative 2. The TFA Debt Service Letter uses the EBITDA estimations from the original PKF Report. As described above, when aggregated, the conservative assumptions that are included in the PKF Report and Revised PKF Analysis culminate in a significantly higher estimate of the substitution effect to Northern Quest EBITDA during the year 2020. The TFA letter does not incorporate the timing of cash flows to the Kalispel Tribe, which would allow the Kalispel Tribe to pay down its outstanding debt balance during the years between the phases of the Preferred Alternative, or the fact that under its current loan, the Kalispel Tribe is paying down 5% of the outstanding balance each year, which has a significant effect on the outstanding Kalispel Tribe's debt service in the year 2020.

Significantly, the TFA Debt Service Letter assumes that all 3 phases of the Preferred Alternative would occur in the year 2014, a major assumption that significantly overstates the substitution effects on the Kalispel Tribe's EBITDA and funds available for discretionary purposes after the payment of debt service. In order to adjust for this assumption, an independent estimate of the Kalispel Tribe's debt service obligations and discretionary income available to fund tribal governance programs was conducted and is provided in **Exhibit 3** of this Attachment. The analysis used the Revised PKF Report estimates for "base case" and post substitution effects EBITDA, notwithstanding the issues associated with the underlying assumptions contained therein. However, the analysis assumed that the phases would occur over time as described in the Final EIS, not simultaneously in the year 2014. The analysis concluded that even with the overly conservative EBITDA assumptions in the revised PKF analysis, the Preferred Alternative would not have a significant effect on the ability of the Kalispel Tribe to provide essential government services to its members.

Phasing of the Preferred Alternative is proposed to provide flexibility to add capacity in a sequence permitted by economic growth, population growth and the market opportunity. Although the Final EIS presents a discrete sequence of timing for purposes of analysis, this could

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<sup>5</sup> Further, as indicated by the Chief Operating Officer for the Kalispel Tribal Economic Authority, the Kalispel Tribe has and is currently developing alternative sources of income through economic diversification and business ventures (Parish, L. (February 27, 2014). Kent Caputo, of the Kalispel Tribal Economic Authority: Betting on Diversification. *Spokane Journal of Business*. Retrieved from <http://www.spokanejournal.com/local-news/betting-on-diversification/>)

change depending on specific circumstances. Consultants of the Kalispel Tribe state that future phases of the Proposed Project would have a detrimental impact on the Kalispel Tribe, including its ability to service its debt and leave enough cash flow to provide governmental services. However, such future phases of the Preferred Alternative would only be constructed if they were sufficiently profitable to enable the Spokane Tribe to service debt incurred to fund construction. The occurrence of such a scenario, one in which the Kalispel Tribe would default on its casino related debt while the Spokane Tribe would successfully service its debt, is not reasonably foreseeable given the similarity in location and quality of the two gaming venues, and the fact that the Kalispel Tribe would have a multi-year head start in paying down its debt obligations. Therefore, the information provided in the TFA letter does not alter the conclusions of the Final EIS that the Preferred Alternative will not impede the Kalispel Tribal Government from continuing to fund essential services and programs.

### **2.10.2 Economic Effects on Spokane County**

**Summary of Comments:** Some comments noted that the Preferred Alternative would not directly generate tax revenues during operation. Commenters stated that local governments, specifically Spokane County and the City of Spokane, would experience adverse economic effects from the provision of services to the project. Commenters expressed concern that the Proposed Project would result in a loss of business to local restaurants, theaters and other retail and commercial venues, including retail operators in the City of Spokane, and that such sales declines would adversely affect tax revenues and fees that would accrue to the County.

#### **Response:**

##### ***Direct Impacts on Tax Revenues***

Direct impacts on tax revenues from the Preferred Alternative were analyzed in Final EIS, Volume II, Section 4.7.1. As stated therein, the Tribe currently does not pay property taxes or corporate income taxes on revenue on the 145-acre property because the property is already held in trust by the federal government. Consequently, the Preferred Alternative would not result in a loss of property tax. The Final EIS concludes that the loss of tax revenues to state and local governments resulting from the operation as a sovereign nation on trust land would be offset by increased local, state and federal tax revenues resulting from construction and operation of the Preferred Alternative, and from revenue sharing programs per the Tribal-State Compact and local agreements. Revenue sharing payments made in accordance with the Tribal-State Compact, the IGA, and the MOA would be supplemented through mitigation measures outlined in Section 6.0 of the ROD that would be funded by the Tribe, such as the construction of certain roadway improvements and payments for water and wastewater service. Refer to the discussion below regarding economic effects to local agencies from the provision of services and **Section 2.5.1** of this Attachment regarding the termination of the ILA.

##### ***Economic Effects to Local Agencies from the Provision of Services***

As described in the FEIS, Volume II, Section 4.10, in accordance with the IGA and MOA Airway Heights would provide the majority of public services needed to accommodate the increase in demands resulting from the Preferred Alternative. Airway Heights has indicated in

comments to the BIA that the terms of the IGA and MOA are sufficient to compensate the City for the cost of providing these services to the Preferred Alternative.

Refer to **Section 2.5.1** regarding payments to Spokane County for provision of services. Any increase in service calls from increased visitation to the County or travel on County roadways would be offset through the increase retail and sales tax collected by the County from direct, indirect, and induced output resulting from the Preferred Alternative (see Final EIS, Volume II, Section 4.7), as well as revenue sharing payments through the Tribal-State compact, the IGA, the and MOA.

***Potential substitution effects on non-tribal businesses***

Substitution effects that may impact local and regional governments, including the County, were analyzed in the Final EIS, Volume I, Section 3.5.2 and Volume II, Section 4.7. Tax revenues related to the construction of the Preferred Alternative would flow directly to local, regional, state and federal governments, and would not be reduced by any significant substitution effect.

As discussed in Final EIS, Appendix U, there is a significant retail opportunity gap in the local area that is being fulfilled by retailers outside of the local market. Therefore, adding retail supply would retain a significant proportion of those consumer expenditures within the geographic area, as opposed to resulting in a substitution effect that would decrease patronage to retail establishments that are in the vicinity of the Preferred Alternative.

Given the proximity of the Preferred Alternative to NQRC, the net impact to County tax revenue from the diversion of patrons from NQRC to the Proposed Project should have no effect on non-tribal businesses. Businesses surrounding NQRC and near the Proposed Project would continue to be patronized. As described in Final EIS, Appendix G, page 20, a large portion of gaming patrons are anticipated to come from outside of the County. These patrons will, in turn, patronize local businesses in Airway Heights and the County. The Preferred Alternative will provide a more attractive value proposition to visitors from outside the County, and therefore will likely to draw visitors to the area that would not otherwise patronize the area.

It should also be noted that the population and economy of Spokane County continues to grow and will likely continue to growth through the projected opening date of the Preferred Alternative. Even in the absence of an opportunity gap, current and projected increases in the population and gross domestic product of Spokane County would easily facilitate the addition of the retail component of the Preferred Alternative without an adverse effect on local businesses.

As discussed in Final EIS, Appendix V, numerous studies show that casinos increase overall consumer activity in an area. Local hotels benefit by overflow when the casino hotel is full. Patrons and vendors from outside the area need to fill up on gas; some patrons and vendors prefer to eat at non-casino restaurants; some patrons and vendors will want to visit attractions in downtown Spokane.

*Potential effects on Spokane County from Substitution Effects on Kalispel Tribe.*

Refer to **Section 2.10.1** of this Attachment regarding economic competition and effects to the Kalispel Tribe. The payments outlined in the agreements between the Spokane Tribe and the City/County are similar to agreements between the Kalispel Tribe and the City/County. Because of this similarity, payments collectively made to the City and County under the two tribes revenue sharing agreements would translate into a net increase because only a portion Preferred Alternative's projected revenue is anticipated to be generated from substitution effects that would decrease revenues at NQRC.

### **3.0 RESPONSES TO SPECIFIC COMMENTS ON THE FINAL EIS**

Each of the bracketed comments within the 31 comment letters contained in **Exhibit 1** of this document are responded to below. If a response to a specific comment or issue has been provided within the ROD, the appropriate section of the ROD is referenced. Additionally, once an issue has been addressed in a response to a comment, subsequent responses to similar comments reference the initial response.

#### **COMMENT LETTER 1: SPOKANE COUNTY COMMISSIONERS, FEBRUARY 4, 2013**

##### **Response to Comment 1-1**

Refer to **Section 2.2.1** of this Attachment regarding the extension of the Final EIS review period.

#### **COMMENT LETTER 2: MAYOR TOM TRUELOVE, CITY OF CHENEY, FEBRUARY 12, 2013**

##### **Response to Comment 2-1**

Refer to **Section 2.2.1** of this Attachment regarding the extension of the Final EIS review period. In addition to the notices discussed in **Section 2.2.1** of this Attachment, the BIA sent a letter dated March 7, 2013 directly to Mayor Truelove announcing the extension to the date of the ROD for all interested parties to review and consider the Final EIS.

#### **COMMENT LETTER 3: MANAGER CHRISTINE B. REICHGOTT, U.S. ENVIRONMENTAL PROTECTION AGENCY, MARCH 4, 2013**

##### **Response to Comment 3-1**

The U.S. Environmental Protection Agency's (USEPA's) conclusion that the Final EIS addressed the USEPA's previous comments on the Draft EIS is noted. Refer to **Section 2.7** of this Attachment regarding the Conformity Determination.

#### **COMMENT LETTER 4: TYLER G WELTI, PERKINS COIE ON BEHALF OF COUNTY OF SPOKANE, MARCH 4, 2013**

##### **Response to Comment 4-1**

The County's acknowledgement of the BIA's extension of the Final EIS review period is noted. Refer to **Section 2.2.1** of this Attachment regarding the extension of the Final EIS review period.

**COMMENT LETTER 5: CITY MANAGER ALBERT TRIPP, CITY OF AIRWAY HEIGHTS,  
APRIL 22, 2013**

**Response to Comment 5-1**

The letter has been added to the administrative record for the Secretary's review and consideration of the Proposed Action.

**Response to Comment 5-2**

The purpose and scope of the letter is noted.

**Response to Comment 5-3**

The range of services provided by the City of Airway Heights to its residents is noted.

**Response to Comment 5-4**

Airway Heights' support of the Preferred Alternative and summary of agreements is noted. Refer to the responses to Comment Letter 8 regarding Spokane County's official concerns about the Preferred Alternative. Refer to **Section 2.5.1** of this Attachment regarding the termination of the ILA between Airway Heights and Spokane County.

**Response to Comment 5-5**

The beneficial impact on Airway Heights from the Northern Quest Resort & Casino (Northern Quest) and other developments undertaken by the Kalispel Tribe is noted. Potential impacts to Northern Quest and the Kalispel Tribe as a result of the Proposed Action are discussed in **Section 2.10.1** of this Attachment and Final EIS, Volume I, Section 3.5.1 and Final EIS, Volume II, Section 4.7.

**Response to Comment 5-6**

The recent water/wastewater infrastructure improvements undertaken by Airway Heights to meet current and future growth demands are noted. These and other potential improvements were considered in the analysis of potential impacts to water/wastewater service as a result of the Proposed Action, which is included in Final EIS, Volume II, Section 4.10. Refer to **Section 2.8.1** of this Attachment regarding concerns about Airway Heights' capacity to supply water/wastewater services to the Preferred Alternative.

**Response to Comment 5-7**

Airway Heights' conclusion that the Preferred Alternative is consistent with Chapter 17.16 of the Airway Heights Municipal code (adopted December 17, 2012) and does not encroach upon existing or future missions at Fairchild AFB is noted. The Preferred Alternative's consistency with local zoning codes is discussed in Final EIS, Volume I, Section 3.6.2 and Final EIS, Volume II, Section 4.9. Refer to **Section 2.6.2** of this Attachment regarding concerns about the Preferred Alternative's consistency with local zoning codes.

## Response to Comment 5-8

The Mayor of Airway Heights' beliefs that the Preferred Alternative is an "important part of the future development of the City of Airway Heights and the Spokane region" and that the Spokane region can support another casino is noted. Local economic effects of the Proposed Action, including gaming market substitution effects, are discussed in Final EIS, Volume I, Section 3.5 and Final EIS, Volume II, 4.10.

## COMMENT LETTER 6: E. SUSAN MEYER, CEO AND KARL OTTERSTROM, DIRECTOR OF PLANNING, SPOKANE TRANSIT AUTHORITY, APRIL 30, 2013

### Response to Comment 6-1

Comment noted. Refer to **Response to Comment 6-2** of this Attachment.

### Response to Comment 6-2

As shown in Section 4.8, page 4.8-11 of the Final EIS, the analysis of effects to public transit assumes a capacity limit of 39 seats per bus. It should be noted that route 61 buses operated by the Spokane Transit Authority (Spokane Transit) have additional standing capacity, because they are equipped with rails and hand straps for standing riders. As noted in the Spokane Transit bus schedule, during the peak hour (3:00 pm to 4:00 pm) buses operate every 30 minutes or at the top of each hour and at the half hour. In a presentation to BIA NWRO staff on May 28, 2013, Spokane Transit confirmed that in fact three buses operate during the peak hour<sup>6</sup>. Therefore, it was appropriate to use three buses per peak hour in the Final EIS analysis. However, the May 28, 2013 presentation provided new information to the BIA which was not made available prior to the release of the Final EIS concerning Spokane Transit's existing budget and capacity deficiencies. As noted in the spreadsheet submitted by Spokane Transit titled Spokane Tribe Final EIS Preferred Alternative Transit System Impacts, the capacity of buses serving the project area is currently exceeded under existing conditions. Existing deficiencies in the regional transit system are not considered a project related impact and do not warrant mitigation from the Tribe. Refer to the Final EIS, Volume I, Section 4.0, Response to Comment 13-2 concerning fiscal impacts to Spokane Transit. In light of new information submitted by Spokane Transit after release of the Final EIS, Mitigation Measure G5 has been added to Section 6.7 of the ROD to ensure that Spokane Transit is compensated for any costs associated with increased ridership as a result of the Preferred Alternative. With mitigation, adverse effect on public transportation would not occur.

## COMMENT LETTER 7: MAYOR DAVID CONDON, CITY OF SPOKANE, APRIL 30, 2013

### Response to Comment 7-1

Comment Noted. The comments received on the Draft EIS from the City of Spokane were considered in the Final EIS and detailed responses are provided in Final EIS, Volume I, Section 4.0, Response to Comments 14-1 through 14-13. Responses to the commenter's specific comments are provided below.

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<sup>6</sup> Spokane Transit Presentation to BIA NWRO staff, May 28, 2013.

### **Response to Comment 7-2**

Comment Noted. Final EIS, Volume II, Section 4.9 includes an analysis of whether the Preferred Alternative is consistent with each of the applicable 2009 Joint Land Use Study (JLUS) Strategies, including JLUS Strategy 50, which is intended to prevent large concentrations of people within areas impacted by aviation operations. The commenter does not state why they disagree with the conclusions of the Final EIS. Refer to **Section 2.2.4** of this Attachment regarding the U.S. Air Force's (USAF's) perceived concerns regarding the Preferred Alternative and **Section 2.6.1** of this Attachment regarding the Preferred Alternative's compatibility with Air Force Base operations.

### **Response to Comment 7-3**

Refer to **Section 2.2.4** of this Attachment regarding the USAF's perceived concerns regarding the Preferred Alternative and **Section 2.6.1** of this Attachment regarding the Preferred Alternative's compatibility with Fairchild Air Force Base (AFB) operations.

### **Response to Comment 7-4**

Refer to **Section 2.2.3** of this Attachment regarding coordination with the USAF throughout the NEPA process, and **Section 2.6.1** of this Attachment regarding the Preferred Alternative's compatibility with Fairchild AFB operations.

An analysis of impacts to Fairchild AFB as a result of lighting and glare was provided in the Final EIS, Volume II, Sections 4.9 and 4.13. Mitigation to address compatibility effects with Fairchild AFB as a result of project lighting was developed in consultation with the USAF, and included within the Final EIS, Volume II, Section 5.2.12. In response to comments provided by the USAF following release of the Final EIS (refer to Comment Letter 10), this mitigation has been further clarified within Section 6.12 of the ROD.

### **Response to Comment 7-5**

Refer to **Section 2.8.2** of this Attachment regarding potential impacts to public service agencies in the event of a catastrophic emergency. Refer to Final EIS, Volume I, Section 3.6.1 and Volume II, Section 4.9 regarding the Preferred Alternative's consistency with the density recommendation included within the final JLUS and Air Installation Compatible Use Zone (AICUZ). As stated therein, the total daily population of approximately 9,821 persons referenced by the commenter is well below the maximum occupancy level of 18,150 persons recommended by JLUS Strategy 50. The commenter estimation of 22,000 persons is not consistent with the occupancy estimation

### **Response to Comment 7-6**

Refer to **Section 2.8.2** of this Attachment regarding potential impacts to public service agencies in the event of a catastrophic emergency. As discussed therein, the Tribe shall provide fair-share assistance to any applicable public service agency through the existing mechanism established within Section XIV, Public Health and Safety, of the Tribal-State Compact for Class III Gaming to address impacts incurred as a result of an unanticipated catastrophic emergency at the project site.

### **Response to Comment 7-7**

Refer to **Section 2.8.1** of this Attachment regarding current and anticipated water supply capacity of Airway Heights and potential impacts to the City of Spokane's water facilities. As noted therein, the Final EIS acknowledges that the City of Spokane has the right to temporarily discontinue the furnishing of water service under the intertie agreement. Therefore, contrary to assertions made by the commenter, the Final EIS does not assume that the City of Spokane is obligated to provide water to Airway Heights indefinitely or without limitation.

The Final EIS acknowledged that Airway Heights' 2009 Comprehensive Water System Plan identified that improvements to its water supply infrastructure was necessary to supply/service projected growth. As noted in **Section 2.8.1** of this Attachment, Airway Heights has completed a number of projects since 2009 to independently provide for its future water needs and reduce the demand of potable water from the City of Spokane. Therefore, the conclusions made in the 2009 Comprehensive Water System Plan no longer accurately represent Airway Heights' water supply system or capacity.

### **Response to Comment 7-8**

Refer to **Section 2.8.1** of this Attachment. As detailed therein, Airway Heights has made several improvements to its water supply infrastructure to independently provide for its future water needs and reduce the demand of potable water from the City of Spokane. However, as acknowledged within the Final EIS, there is a potential for some of the water obtained by Airway Heights through the intertie agreement to be utilized at the project site. As discussed in the Final EIS, the City of Spokane has the right to temporarily discontinue the furnishing of water service under the intertie agreement if water demands exceed the City of Spokane's capacity to meet its own needs.

### **Response to Comment 7-9**

Comment noted. Responses to the commenter's specific comments are provided above.

## **COMMENT LETTER 8: SPOKANE COUNTY COMMISSIONERS, APRIL 30, 2013**

### **Response to Comment 8-1**

Comment noted. The comments submitted by Spokane County have been considered by the Secretary in his determination on the Preferred Alternative.

### **Response to Comment 8-2**

The summary of Spokane County's comments on the Proposed Action/Project is noted. Please refer to the responses below which address the County's specific comments.

### **Response to Comment 8-3**

The County states that the Preferred Alternative would strain the resources of the County, and that the Tribe has made no effort to reach out to the County to mitigate impacts. To the contrary, the record indicates that the Tribe has conducted extensive outreach to the County as evidenced through the 2010

Intergovernmental Agreement (IGA) described in the Final EIS, Volume II, Section 1.5.2. An analysis of impacts to public services was provided in the Final EIS, Volume II, Section 4.10. Refer to **Sections 2.2.3 and 2.5.1** of this Attachment regarding the County's ability to comment during the NEPA process and the termination of the ILA between the City of Airway Heights and Spokane County.

The County states that the Preferred Alternative is not supported by the local community. The BIA notes that the 145-acre trust property/project site is located within the jurisdictional boundaries of the City of Airway Heights, which has expressed its support for the project through multiple letters to the BIA and agreements with the Tribe. Refer to **Section 2.1.2** of this Attachment regarding the potential for detriment to the surrounding community and support for the Preferred Alternative.

Refer to **Sections 2.2.4 and 2.6.1** of this Attachment regarding compatibility with Fairchild AFB operations and the results of extensive consultation between the BIA and the USAF through the cooperating agency review process.

Refer to **Section 2.4** of this Attachment regarding the range of alternatives in the EIS, **Section 2.2.2** of this Attachment regarding the need to supplement the EIS, and **Section 2.1.2** of this Attachment regarding the potential for detriment to the surrounding community.

#### **Response to Comment 8-4**

Refer to **Section 2.1.2** of this Attachment. Section 7.0 of the ROD includes a discussion of local support and opposition to the Preferred Alternative under 25 CFR §292.18(g) and a summary of the consultation process for the Secretarial Determination under 25 CFR §292.19.

#### **Response to Comment 8-5**

Comment noted. Refer to **Response to Comment 8-15** of this Attachment regarding the increase in revenue at the Spokane Tribe's existing casinos. The fact that the 145-acre property is currently held in trust is an existing condition and is not under NEPA review. As stated by the commenter, the United States acquired the site in Trust for the benefit of the Tribe on August 16, 2001. Additionally, the Statutory Warranty Deed in which the United States accepted legal ownership of the 145-acre property in trust for the Spokane Tribe, a corrected Statutory Warranty Deed, and a Title Status Report generated on February 16, 2012 was included as Exhibit 5 to the First Supplement to the Spokane Tribe of Indians' Application for a Secretarial Determination which was transmitted to Spokane County on March 16, 2012.

#### **Response to Comment 8-6**

Comment Noted. Responses to all comments received on the Draft EIS are provided in Final EIS, Volume I, Sections 3.0 and 4.0. See **Section 2.10.1** of this Attachment regarding potential effects to the Northern Quest Casino.

### **Response to Comment 8-7**

Comment noted. Refer to **Section 2.6.1** of this Attachment regarding the Preferred Alternative's compatibility with Fairchild AFB.

### **Response to Comment 8-8**

Refer to **Section 2.6.1** of this Attachment regarding the Preferred Alternative's compatibility with Fairchild AFB. As noted by the commenter, the Final EIS discloses the location of the Preferred Alternative in relation to the Fairchild AFB and considers this information in its analysis of the Preferred Alternative's compatibility with air force base and airport operations provided in Final EIS, Volume II, Section 4.9.1. As concluded therein, the final JLUS does not prohibit the use and density levels proposed by the Preferred Alternative.

The BIA provided thorough response to comments on the Draft EIS regarding the Preferred Alternative's consistency with local zoning codes in Final EIS, Volume I, Section 3.6.2. As discussed therein and in Final EIS, Volume II, Sections 3.9 and 4.9, 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. Nevertheless, the Preferred Alternative is compliant with the applicable policies and recommended strategies of the final JLUS and the AICUZ, as well as the City of Airway Heights and County Airport Overlay Zones effective at the time the Draft EIS was published. As noted in Final EIS, Volume I, Section 3.6.2 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 a regional study funded by the USAF intended to limit encroachment of Fairchild AFB, 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 Heights which adopted Ordinance C-771, Joint Land Use Regulations (JLUS Regulations) on December 17, 2012 replacing the Air Installation Compatible Use Zone (AICUZ) contained within Chapter 17.6 of the Airway Heights Municipal Code. In its letter dated April 22, 2013 (Comment Letter 5), Airway Heights states that "... the project is consistent with our JLUS regulations and does not encroach upon existing or future missions at Fairchild."

### **Response to Comment 8-9**

Refer to **Section 2.4** of this Attachment regarding the range of alternatives in the EIS, and **Section 2.1.2** of this Attachment regarding the potential for detriment to the surrounding community.

### **Response to Comment 8-10**

Refer to **Section 2.4** of this Attachment regarding the range of alternatives in the EIS.

### **Response to Comment 8-11**

Refer to **Section 2.3** of this Attachment regarding the purpose and need for the proposed action, and **Section 2.4** of this Attachment regarding the range of alternatives in the EIS.

### **Response to Comment 8-12**

Refer to **Section 2.3** of this Attachment regarding the purpose and need for the proposed action, and **Section 2.4** of this Attachment regarding the range of alternatives in the EIS.

The purpose and need statement in the EIS is properly defined. It cites both the needs of the Spokane Tribe, and the BIA's need to advance the agency's "Self Determination" policy of promoting the Tribe's self-governance capability. The comment appears to have confused the definition of the proposed action with the purpose and need for the proposed action. In this case, the proposed action of determining that the project would not result in detrimental effect to the community is not driven by the need to not cause detrimental effect to the community.

### **Response to Comment 8-13**

Refer to **Section 2.3** of this Attachment regarding the purpose and need for the proposed action, and **Section 2.4** of this Attachment regarding the range of alternatives in the EIS.

As discussed in the Final EIS, Volume I, Section 3.3, the Tribe has 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.

### **Response to Comment 8-14**

Refer to **Section 2.3** of this Attachment regarding the purpose and need for the proposed action, and **Section 2.4** of this Attachment regarding the range of alternatives in the EIS.

### **Response to Comment 8-15**

Please see Final EIS, Volume I, General Responses 3.4 and 3.5.4 which addressed the issue of why expansions of the Tribe's two existing casinos were not included in the range of alternatives analyzed in the EIS. The commenter's statement regarding the recent recession and its effects on the Spokane Tribe's existing casinos was previously addressed in Final EIS, Volume I, Responses to Comments 23-56 through 23-58. Additionally, the commenter's allegation that the revenue from the Tribe's existing casinos increased in 2009 was previously proved incorrect in Final EIS, Appendix V, Response to Comment 23-58. As discussed therein, the net gaming revenues from the Spokane Tribe's existing casinos declined by 12.6 percent in 2009.

### **Response to Comment 8-16**

Refer to **Section 2.3** of this Attachment regarding the purpose and need for the proposed action, and **Section 2.4** of this Attachment regarding the range of alternatives in the EIS. Refer to **Section 2.2.2** of this Attachment regarding the need to supplement the EIS.

### **Response to Comment 8-17**

As discussed in **Section 2.2.2** of this Attachment, the Department has determined that preparation of a supplemental EIS and/or re-circulation of the EIS is not necessary to fulfill NEPA procedural requirements. Contrary to the assertions made by the commenter, the BIA did thoroughly analyze the significance of new information received on the Draft and Final EIS before concluding that the information does not result in changes substantial enough to warrant preparation of a supplemental EIS.

### **Response to Comment 8-18**

Refer to **Sections 2.2.3, 2.5.1, 2.6.1, and 2.8.2** of this Attachment.

### **Response to Comment 8-19**

Refer to **Sections 2.1.2, 2.2.2, and 2.5.1** of this Attachment.

The BIA does not assert that the annual payment defined in Section 5.1 of the IGA was intended to mitigate the impacts of a gaming facility at the project site. As discussed in Section 2.5.1 of this Attachment, Section 8.1 of the IGA states that upon development of a gaming facility/casino, payments by the Tribe to Airway Heights pursuant to the MOA shall supplant the annual payment set forth in the IGA. Because the Preferred Alternative includes the development of a gaming facility/casino, the annual payments described in Section 6.0 of the MOA were used to analyze potential impacts to Airway Heights and the County. Furthermore, the BIA acknowledges that both the MOA and IGA contain provisions to review and reconsider the annual payment amounts and to adjust such amounts, as necessary, by mutual agreement (see Section 5.1.5 of the IGA and Section 6.1.9 of the MOA). Additionally, Section 8.0 of the MOA contains a reopener “if there is a significant change in circumstances that directly or indirectly relate to the parties expectations under this MOA and that change materially impacts the party.” In its letter dated May 1, 2013 (Comment Letter 13), the Tribe stated that it “would view the County’s failure to receive any portion of the MOA annual payment as a significant change of circumstances – particularly if demonstrated impacts to the County are not fully compensated for under the Gaming Compact. In such an event the MOA annual payment would be adjusted to ensure the County receives compensation for any demonstrated impacts.”

Although the IGA and MOA states that the payments under the MOA shall supplant the annual payment set forth in the IGA, Section 3.2 of the MOA states that it is the intent of the Tribe and Airway Heights that the terms of the IGA remain in full force and effect. This includes Section 2.0 and 3.0 of the IGA which contains provisions for utilities to the 145-acre property and street improvements. Therefore, even after the payments under the MOA supplant those in the IGA, the IGA continues to provide a mechanism for ensuring adequate public services for the Preferred Alternative.

As described in Section 3.1.6 of the ROD, the analysis contained within Final EIS, Volume II, Section 4.7 clearly finds that the Preferred Alternative would result in a beneficial impact to the local economy and employment opportunities in Spokane County.

It should be noted that, as described in Final EIS, Volume I, Section 3.6.2, the Master Plan was provided to Airway Heights within the Administrative Draft EIS provided for their review as a cooperating agency under NEPA. Therefore, although the IGA (to which the County is a voluntary party) did not provide for the County's review and consideration of the Master Plan, the County was afforded opportunity to comment through the NEPA process. Additionally, it should be noted that the County did not submit comments during the scoping for the Preferred Alternative which occurred between August 19 and October 31, 2009, before the County entered into the ILA. The NOI which was published in the Federal Register, Spokesman Review, and Cheney Free Press described the project as being a "mixed-use development that may include a casino resort and hotel, commercial retail uses, offices, medical facilities, recreational, cultural, and entertainment facilities, and related parking.

### **Response to Comment 8-20**

Refer to **Sections 2.2.2, 2.2.3, and 2.5.1** of this Attachment and **Response to Comment 8-19** of this Attachment.

### **Response to Comment 8-21**

Refer to **Sections 2.2.2 and 2.6.2** of this Attachment.

### **Response to Comment 8-22**

Refer to **Section 2.2.2 and 2.6.1** of this Attachment.

### **Response to Comment 8-23**

Comments regarding JLUS Strategy 36 were thoroughly discussed in Final EIS, Volume I, Section 3.6.1 and Final EIS, Volume I, Section 4.0, Response to Comment 14-4. This comment does not include any new information that was not already considered and addressed within the Final EIS.

Contrary to the assertions made by the commenter, as described in detail in Final EIS, Volume I, Section 3.6.1 and Volume II, Section 4.9, the BIA calculated the density of the proposed casino-resort with reference to only 121 acres of the 145-acre property (the BIA excluded the pre-existing Spoko Fuel and wetland preservation area).

### **Response to Comment 8-24**

As noted by the commenter, the Final EIS accurately states that the project site is located between the 65 dB and 70 dB Ldn contours of the potential future mission scenario involving a mix of next generation air refueling aircraft (KC-767A) and B-52 aircraft (referred to as Scenario 3 in the JLUS). As shown in Figure 4 of the Fairchild JLUS Noise Technical Report included as Appendix L of the JLUS, the 70dB

contour of Scenario 3 is located near the northeast corner of the 145-acre property. Therefore, the hotel component, proposed for the central portion of the property, was accurately described as being within the 65-69 dB noise contours for Scenario 3. As discussed in Final EIS, Volume I, Section 4.0, Response to Comment 14-4, the U.S. Air Force Recommended Land Use Compatibility Guidelines provided in Table 3-1 of the AICUZ indicate that hotels, which would be classified as “transient lodging” (Standard Land Use Coding Manual No. 15), are an acceptable use within the 65-69 dB noise contour with the inclusion of measures to achieve outdoor to indoor noise level reduction. Mitigation in Section 6.0 of the ROD would result in the use of sound attenuation materials for construction of the proposed hotel that would achieve a maximum interior noise level of 45 dB Ldn.

### **Response to Comment 8-25**

Refer to **Sections 2.6.1** and **2.6.2** of this Attachment.

### **Response to Comment 8-26**

In its letter dated March 4, 2013 (Comment Letter 3), the USEPA stated that the Final EIS was responsive to its comments on the Draft EIS. As described in Final EIS, Volume I, Section 4.0, Response to Comment 23-2, in response to comments received on the Draft EIS, the EIS was supplemented, improved, and modified its analysis and made factual corrections. While new information was presented, the information has not resulted in substantial changes in the EIS’s conclusions regarding the environmental impacts of the Proposed Action; therefore a supplemental Draft EIS was not warranted.

### **Response to Comment 8-27**

Refer to **Section 2.2.2** of this Attachment. Additionally, 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 Final EIS, Volume II, Section 3.9.1, 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. Furthermore, the growth-inducing and cumulative effects of the Preferred Alternative were analyzed in Final EIS, Volume II, Sections 4.14.3 and 4.15.3.

### **Response to Comment 8-28**

Final EIS, Volume I, Section 3.5.1 regarding the analysis included in Appendix G of the Draft EIS.

Economic competition and effects on the Kalispel Tribe’s Northern Quest Casino from the Preferred Alternative were thoroughly addressed in Final EIS, Volume I, Section 3.5.1. As described therein, Final EIS, Volume II, Section 4.7 was expanded to specifically describe the estimated reduction in revenues at

the Northern Quest Casino resulting from the Preferred Alternative as concluded within Final EIS, Appendices G and V. No supplementation is necessary.

### **Response to Comment 8-29**

See Final EIS, Volume I, Section 3.3 and Volume II, Section 1.2 for a discussion of the purpose and need for the Preferred Alternative. As described therein, the unmet needs of the Tribe are presented in the Spokane Tribe of Indians Unmet Needs Report (Final EIS, Appendix A). Contrary to the assertion by the commenter, the unmet needs listed within the report were based on the basic needs associated with providing 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. The Tribe is seeking a more stable and diversified source of revenue 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. Even if the commenter is correct and the recent recession is now over, the current and projected needs of the Tribe listed in the Unmet Needs Report continue to be unmet; therefore, the Unmet Needs Report is not outdated.

### **Response to Comment 8-30**

The commenter is correct the Final EIS show a doubling of project-related ridership over that analyzed in the Draft EIS. The change was at the request of the Spokane Transit Authority in its comment letter submitted during the Draft EIS review period. Refer to **Response to Comment 6-2**.

### **Response to Comment 8-31**

Refer to **Section 2.6.1** of this Attachment. As discussed therein, the Spokane Tribe recently enacted the West Plains Development Code which incorporates mitigation measures recommended within the Final EIS to ensure the Preferred Alternative's consistency with Fairchild AFB operations.

### **Response to Comment 8-32**

Refer to **Section 2.7** of this Attachment regarding the timing of the conformity determination.

### **Response to Comment 8-33**

Refer to **Section 2.6.1** of this Attachment. The BIA's conclusion that the Preferred Alternative would be compatible with Fairchild AFB operations was largely based on the results of consultation with the USAF as well as the thorough analysis within Final EIS, Volume II, Section 4.9 which considered, in part, the recommendations within the JLUS and AICUZ. As described in detail in Final EIS, Volume II, Section 3.9.2, Accident Potential Zones (APZ) are defined by the Department of Defense. Contrary to the statement made by the commenter, there is no special APZ defined for Fairchild AFB which extends north from the east end of the runway. Regardless, the BIA acknowledges throughout the Final EIS that the project site is located under a frequently used flight path.

### **Response to Comment 8-34**

Refer to **Section 2.6.1** of this Attachment and **Response to Comment 2-23** of this Attachment.

### **Response to Comment 8-35**

Refer to **Section 2.6.1** of this Attachment and **Response to Comment 2-23** of this Attachment.

### **Response to Comment 8-36**

Comment noted. Refer to **Section 2.6.2** and **2.4** of this Attachment.

### **Response to Comment 8-37**

Comment noted. Refer to **Section 2.6.2** of this Attachment.

As described by the commenter and in Final EIS, Volume II, Section 3.9, Section 17.15.100 of the Airway Heights Airport Overlay Zone specifically lists certain sensitive uses that are prohibited in the Substantial Noise Impact Area. These include churches, hospitals, libraries, manufactured (mobile) home parks, nursing homes, all residential areas, and schools. According to Section 17.04.030 C of the Airway Heights Airport Overlay Zone, “Church” means a permanent, fully enclosed building, portion of a building, or group of buildings used for religious worship and instruction, including schools operated by the religious institution on the same site, but excluding facilities for training of religious orders. The proposed tribal cultural center would not be used for “religious worship and instruction” and therefore is not considered a “church” under the regulations. According to Section 17.04.080 of the Airway Heights Airport Overlay Zone, “Hotel/motel” means one or more attached or detached building(s) designed or used for the transient rental of six or more units for sleeping purposes. Although Section 17.04.030 of the Airway Heights Airport Overlay Zone does not specify that a hotel is not considered a residential use, Section 17.05.30 does state that hotel/motels are not permitted in residential zones. Therefore, hotels do not fall within the purview of “all residential uses.”

As noted by the commenter, Airway Heights recently adopted Ordinance C-771, Joint Land Use Regulations (JLUS Regulations) on December 17, 2012 which replaced the Air Installation Compatible Use Zone (AICUZ) contained within Chapter 17.16 of the Airway Heights Municipal Code (not the Airport Overlay Zone which is codified in Chapter 17.15 as asserted by the commenter). In its letter dated April 22, 2013 (Comment Letter 5), Airway Heights states that “... the project is consistent with our JLUS regulations and does not encroach upon existing or future missions at Fairchild.”

### **Response to Comment 8-38**

Refer to **Section 2.6.1** of this Attachment. As stated therein and Final EIS, Volume I, Section 3.6.1, 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 installation.

### Response to Comment 8-39

As discussed in detail in **Sections 2.2.4** and **2.6.1** of this Attachment, the BIA has consulted with Fairchild AFB, and all corresponding concerns have been addressed within the EIS and mitigation measures adopted within the ROD. As described in the FEIS, Volume II, Section 4.8 and Section 4.15, implementation of the Preferred Alternative would not result in increased traffic delay at any of the study intersections after implementation of mitigation; therefore, with the implementation of mitigation, project related traffic would not impact the operational mobility of Fairchild AFB.

The FEIS, Volume II, Section 4.15, Transportation analyzes the cumulative effects of project-related traffic in the cumulative year 2032. Baseline traffic volumes were calculated using a regional growth rate; therefore, traffic impacts took into account the potential for growth in the West Plains region. Growth rates used in the Traffic Impact Analysis are shown on page 28 of the Traffic Impact Study provided as Appendix D of the DEIS. Mitigation measures G, H, and I provided in the FEIS, Volume II, Section 5.2.7, mitigate traffic impacts in the cumulative year 2032 to less than significant. Refer to the FEIS, Volume I, Section 4.0, Response to Comment 23-37 concerning the feasibility and enforceability of traffic mitigation and FEIS, Volume I, Section 4.0, Response to Comment 23-38 regarding the potential impacts to the operational mobility of Fairchild AFB. Mitigation measures have been adopted by the BIA in Section 6.0 of the ROD.

### Response to Comment 8-40

The Final EIS, Volume II, Section 4.11 states that noise levels from aircraft flying over the project site do not produce vibrations that would considerably affect structures or result in health effects. Therefore, the potential for effects from aircraft noise is limited to annoyance from patrons due to short-term exposure and associated nuisance complaints. As stated in the Final EIS, Volume II, Section 4.11, page 4.11-5, typical building materials provide a sound attenuation of approximately 25 dB, resulting in a maximum interior single event level (SEL) noise from routine passing aircraft of 70 dB, and from less frequent transient aircraft of 80 dB. The commenter is incorrect that the analysis consistently evaluates noise at 70 dB and lower. The Final EIS discloses potential SEL noise from aircraft flying over the site and analyzes SEL noise in comparison to the FAA threshold for speech interference of 60 dB. Final EIS, Volume II, Section 5.2.10, Mitigation Measure E provides for construction of exterior walls and roof/ceiling assemblies on all buildings within the project site, including the hotel tower and casino, to achieve an interior noise level of 45 dB Ldn. This mitigation measure would reduce SEL noise and is consistent with Strategies 23 and 27 of the Fairchild JLUS. This interior noise reduction mitigation measure applies to all buildings on the project. There are no feasible mitigation measures to reduce outdoor SEL noise. However, the potential consequences of exposure of patrons to outdoor aircraft noise levels, i.e. annoyance and nuisance complaints, are minimized to the extent feasible through mitigation measures developed in consultation with the USAF, including education and management procedures. These mitigation measures, outlined in Section 6.8 of the ROD, have been incorporated by the Tribe into its West Plains Development Ordinance and thus are enforceable by the tribal council.

### Response to Comment 8-41

Refer to **Section 2.6.1** of this Attachment and **Response to Comment 8-33** of this Attachment.

### Response to Comment 8-42

Refer to **Section 2.8.2** of this Attachment regarding impacts to public services associated with responding to a catastrophic emergency at the 145-acre property.

### Response to Comment 8-43

Refer to **Section 2.2.4** and **2.6.2** of this Attachment.

Contrary to the assertion by the commenter, the BIA did not solely direct the Tribe to consult with Fairchild AFB as mitigation for light-related concerns. The complete mitigation measure quoted by the commenter is as follows “*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.*” (*emphasis added*). The consultation portion of this mitigation was meant to further ensure the minimization of potential effects. As discussed in **Section 2.2.4** of this Attachment, the clarifications to the mitigation recommended by the USAF in Comment Letter 10 have been made in Section 6.0 of the ROD. Similar to the mitigation listed in the Final EIS, the mitigation in Section 6.0 of the ROD relating to light and glare specify the design criteria recommended by the USAF for the Preferred Alternative (DOD Unified Facilities Criteria (UFC) 3-530-01). The mitigation measures included in Section 6.0 of the ROD will sufficiently minimize potential effects associated with lighting and views of the project site.

### Response to Comment 8-44

Refer to **Section 2.5.1** of this Attachment.

### Response to Comment 8-45

Please see **Section 2.10.2** of this Attachment for further information regarding economic effects to Spokane County.

The analysis cited by the commenter is the Economic Impact and Growth Inducing Study included in Draft EIS Appendix J. As described therein, the IMPLAN model employs an input-output/social accounting matrix to determine the anticipated effects of development projects on the regional economy. To accomplish this, the IMPLAN model includes a dataset supplied by MIG, the company that supports IMPLAN. This dataset is intended to reflect the local and regional economies analyzed by the model, but is not intended to be a perfect representation of such economies. Included in the model are certain assumptions regarding how much tax revenues accrue from both the construction and operation of the alternatives that are analyzed in the EIS. Although the IMPLAN model does allow users to adjust the general assumptions, such changes can reduce the perceived objectivity of the model.

The IMPLAN model is commonly used by universities, government agencies, corporations and private consultants. The IMPLAN model is widely used and is commonly accepted in inter-agency analysis. The IMPLAN model does not typically calculate the impact of substitution affects on local and regional tax revenues. Those effects, if applicable, are calculated separately.

The commenter is correct that there may be an operations related substitution effect that will affect local and regional tax revenues. This is stated in Final EIS, Volume II, Section 4.7.1. Refer to Section 2.5.1 regarding payments to the Spokane County for provision of services.

### **Response to Comment 8-46**

Anticipated substitution affects are thoroughly analyzed in Final EIS Volume II, Section 4.7; Final EIS, Volume I, General Response 3.5.1; and Final EIS, Appendix V, Response to Comment 23-17. As discussed within **Section 2.10.1** of this Attachment, the payments outlined in the agreements between the Spokane Tribe and the City/County are similar to agreements between the Kalispel Tribe and the City/County. Because of this similarity, payments collectively made to the City and County under the two tribes revenue sharing agreements would translate into a net increase because only a portion Preferred Alternative's projected revenue is anticipated to be generated from substitution effects that would decrease revenues at Northern Quest.

A review of the ECONorthwest study was undertaken and is provided in **Exhibit 2** of this Attachment. The following is a summary of that review:

#### ***Impact on the Northern Quest Resort & Casino***

ECONorthwest's study on behalf of Spokane County states that it is based on "a review of the Draft and Final Environmental Impact Statements." However, one of the findings in the study is inconsistent with information presented in the Final EIS and Appendix V. Table 2 presents an estimate of impacts on Northern Quest Resort & Casino (Northern Quest), Coeur d'Alene, and Chewelah/Two Rivers from the Preferred Alternative. It should be noted that Coeur d'Alene, Chewelah, and Two Rivers are not located in Spokane County. As described in **Section 2.10.1** of this Attachment, the phases are projected to occur over a number of years and the Preferred Alternative is scheduled to be completed and fully open in 2020, not 2015. Please see **Section 2.10.1** of this Attachment and **Exhibit 2** of this Attachment regarding the proper methodology to analyze these revenue substitution effects.

It should also be noted that Comment Letter 8, Exhibit 10 characterizes the economic impacts to the Northern Quest and Coeur d'Alene as "losses" of \$65.8 million and \$32.8 million, respectively. Rather, Exhibit 10 includes estimates for "revenues" not "losses." A loss would presumably be defined as either earnings before interest, taxes, depreciation and amortization (EBITDA), earnings before interest and taxes (EBIT) or net income. By definition, EBITDA is typically the highest of these three measures for most businesses, and a typical EBITDA margin would be approximately 50 percent for a tribal casino. Thus, the future "losses" would be approximately half of the related impacts to revenues.

#### ***Impact on Card Rooms***

ECONorthwest claims that Northern Quest has caused revenue to decline at commercial card rooms in Spokane County, and that "A new casino would likely result in further gambling tax revenue erosion." *Id.* 16. However, this conclusion relies on some assumptions that may be speculative. The first potentially speculative assumption in this analysis is to attribute card room revenue growth in 2004, 2005, and 2006 to the closing of some small casinos on the Spokane Indian reservation. However, the timeline

of casino closures do not coincide with the changes in card room revenues. Spokane County card room revenue began to grow in 2004, not 2006. Secondly, the Spokane tribal casinos that closed in late 2005 are not located in Spokane County, although there may be some market overlap, it would be minimal. Also, the closed casinos were relatively small individually owned casinos located on the Spokane reservation. They were not operated by the Spokane Tribe. Their closure was in response to actions by the National Indian Gaming Commission (NIGC) during the period the Tribe was negotiating its state compact.<sup>7</sup>

Moreover, it appears speculative to state that three years of growth is “short-lived.” In fact, it is a significant trend that provides validation of the premise that normative growth resumed after the impact of Northern Quest was absorbed. By 2006, Spokane County card rooms had recovered to their pre-impact level.

Another potentially speculative assumption is to attribute revenue declines in 2007-2012 to the opening of Northern Quest in 2001. There is no causative explanation offered as to why revenue would grow for three years then decline again as a result of Northern Quest’s opening that occurred six years in the past. Furthermore, there is no mention of the Great Recession in ECONorthwest’s trend analysis. It would be reasonable to assume that the Great Recession would have materially impacted revenues during the period analyzed in the analysis.

Please see **Exhibit 2** of this Attachment for further details regarding employment in the State of Washington between 2006 and 2012.

According to **Exhibit 2** of this Attachment, card room revenue has declined in other counties not affected by tribal gaming. Card room revenues declined in Grant County (Moses Lake) in 2010, 2011 and 2012. Grant County is located in central Washington. Tribal casinos do not constitute a large share of gaming revenue in Grant County. Nevertheless, card room revenue in Grant County began to decline during 2009, and such decline coincided with the recent national recession. The evidence from Grant County would imply that the largest causal factor in recent card room revenue declines was the national recession. Please see **Exhibit 2** of this Attachment for further information.

### ***Impact on Employment and Population***

Please see **Response to Comment 8-56** regarding impacts to employment, population and housing.

### ***Impact on Visitation***

Exhibit 10, page 18 states that the Preferred Alternative will draw more out-of-area residents, that that these visitors will result in a net demand for County services. Specifically, ECONorthwest states that:

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<sup>7</sup> NIGC, "Grandfathered" Status of Card Games at the Double Eagle Casino, Spokane Reservation, October 2005, [http://www.nigc.gov/Reading\\_Room/Game\\_Classification\\_Opinions-old/Grandfather\\_Clause/Grandfather\\_Clause-01.aspx](http://www.nigc.gov/Reading_Room/Game_Classification_Opinions-old/Grandfather_Clause/Grandfather_Clause-01.aspx); Kevin Graman, "Casino owner files suit against Spokane Tribe," *Spokesman Review*, October 6, 2005, <http://m.spokesman.com/stories/2005/oct/06/casino-owner-files-suit-against-spokane-tribe/>.

*“The Draft EIS shows that the average gaming visitor spends \$65.59 (2013 baseline data) and that the Spokane casino would have gaming revenues of \$141 million.<sup>67</sup> Therefore, ECONorthwest calculates there would be 2,149,718 gaming visitors (141 million divided by \$65.59).”*

*This represents a large influx of visitors, in addition to an influx of population and employment into Spokane County. This should result in a corresponding increase in the demand for county services.”*

As noted in Final EIS, Appendix V, a portion of visitors to West Plains represent diverted visits from Northern Quest. However, it is correct that a large number of these patrons are new visitors to the area. It is reasonable to assume that these visitors would represent a net positive to County resources because these visitors will make significant expenditures, a portion of which will occur offsite of the Preferred Alternative, and therefore tax revenues related thereto would accrue directly to governments and agencies, including the County. In addition, the economic activity of the Preferred Alternative will result in significant economic activity, the indirect and induced effects related thereto, will generate significant tax revenue. Please see **Section 2.10.2** of this Attachment regarding substitution effects to the County’s tax revenue stream.

### **Response to Comment 8-47**

Refer to **Exhibit 2** of this Attachment and **Response to Comment 8-46**. Card room revenue in Spokane County decreased from \$17,881,963 in fiscal year 2000 to \$13,979,605 in fiscal 2003, a drop of 21.8 percent. It is reasonable to attribute a significant component of this decrease to the impact of the opening of Northern Quest. However, a second casino would not be expected to have this large of an impact. Many of the table game players who prefer a tribal casino over a card room have likely already diverted to the Northern Quest.

Nevertheless, the commenter is theoretically correct that there could be operationally related substitution effects from tax revenues collectively remitted to the County by gaming operations. However, this would occur only if net remittances by the Tribe (including remittances received by the County indirectly from the City and the State) and indirect remittances from other third parties (described as indirect and induced impacts in the socioeconomic study included as Final EIS Appendix J) would not be adequate to offset the collective remittances to the County from the Northern Quest. As described in **Section 2.10.2** of this Attachment, this is not anticipated. Furthermore, there is no substitution effect for indirect and induced taxation benefits that will accrue to the County as a result of the Preferred Alternative because these affects are unaffected by the tax status of the Tribe.

### **Response to Comment 8-48**

The issue of potential substitution effects on retail establishments was thoroughly addressed in Final EIS, Volume I, General Response 3.5.2. Furthermore, Comment Letter 8, Exhibit 10 addresses the impact on Northern Quest but not the purported impact to County via the purported non-gaming impact. The commenter’s statements are not supported by the discussion in Exhibit 10 that states that the Preferred Alternative will lead to “a large influx of visitors.” *Id.* at 18.

It should also be noted that the Northern Quest also offers an array of restaurants, retail, and other services. It is not clear in Comment Letter 8 or Exhibit 10 why the Preferred Alternative would have a different non-gaming impact in comparison with Northern Quest.

Please See **Section 2.10.2** of this Attachment for further information.

### **Response to Comment 8-49**

The Final EIS does not state or imply that \$94.4 million in retail sales projected under the Preferred Alternative would come at the cost of retailers across the larger community. The Final EIS states the opposite. Specifically, the gap analysis contained in Final EIS Exhibits G and U indicates that there is a significant opportunity gap in the local area that is being fulfilled by retailers outside of the local market. Therefore, adding retail supply would retain those consumer expenditures within the geographic area. It represents a retention of spending that otherwise would flow outside the area, not a substitution effect of existing retail supply within the defined area.

The commenter also states that "...Therefore, potential impacts on retailers *outside of the primary market area* in central and eastern Spokane would be highly diffuse.") (emphasis added)..." The point of emphasis indicated by the commenter was not intended in the Final EIS. Rather, the Final EIS statement was intended to communicate that the impact of retaining spending within west Spokane that would otherwise flow to central and eastern Spokane would be spread throughout a large market. The retail sales projected for the Preferred Alternative represents approximately 1.65 percent of total retail demand in Spokane County. Therefore, the substitution effect on retail businesses or jobs would be highly diffuse and not concentrated in any one particular geographic area of the County.

Please See **Section 2.10.2** of this Attachment and **Response to Comment 8-48** for further information.

### **Response to Comment 8-50**

Refer to **Sections 2.10.1** and **2.10.2** of this Attachment regarding impacts to Kalispel Tribe and Spokane County.

Refer to **Section 2.6.1** of this Attachment. As stated therein, the closure of Fairchild AFB is not a reasonably foreseeable consequence of the Preferred Alternative; therefore, the analysis of impacts from its closure is not warranted.

### **Response to Comment 8-51**

Comment noted. The commenter states that local roadways could be significantly impacted due to patrons seeking alternative route, specifically Deno Road from Craig Road to Hayford Road and Craig Road from US- 2 to US-902. Deno Road is a east/west aligned divided roadway with a broken yellow line from Craig Road to West Trails Road. Deno Road has no curves, a gravel shoulder, and line of site that is generally unimpeded by the topography of the landscape. Craig Road is a north/south aligned divided roadway with a mostly broken yellow line from Craig Road to US-902. Craig Road has a solid yellow line from US-2 to 21<sup>st</sup> Street and near the intersections of the three intersecting roadways south of

21<sup>st</sup> Street. Craig Road has no curves, a gravel shoulder, and line of site that is generally unimpeded by the topography of the landscape. The configuration of these roadways allows for safe travel even with increased traffic from the Preferred Alternative.

The Airway Heights/County/Tribe MOA and the Airway Heights/Tribe MOA provide funding for roadway maintenance. Refer to **Response to Comment 8-52** regarding construction truck routes.

### **Response to Comment 8-52**

Final EIS, Volume II, Section 5.2.7, Mitigation Measure A6 requires the Tribe to provide Airway Heights, Spokane County and the Washington State Department of Transportation with a Traffic Management Plan (TMP) 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 (Manual). These standards require the TMP start with the planning phase and end with the restoration phase. Therefore, per the Manual's requirements, the TMP will include a requirement for restoration of roadways deteriorated by construction activities.

### **Response to Comment 8-53**

Refer to **Response to Comment 12-50** and the FEIS, Volume I, Section 4.0, Response to Comment 23-37 concerning the feasibility and enforceability of traffic mitigation.

### **Response to Comment 8-54**

Comment noted. Refer to Response to Comment 8-30 and Response to Comment 6-2 regarding potential effects to public transportation. Refer to Response to Comment 8-39 regarding potential effects to the operational mobility of Fairchild AFB.

### **Response to Comment 8-55**

Under the IGA and MOA, the public services listed by the commenter would all be provided by Airway Heights, which has not raised any concern regarding the level of payments under the respective agreements. Additionally, as stated within Final EIS, Volume I, Section 3.8 of Volume I, either party MOA 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 [of Airway Heights] that the cost of providing the services described [within the MOA] exceeds the payments by the Tribe pursuant to Section 6.0." 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 BIA concludes that the mitigation set forth in the Final EIS is sufficient.

Refer to **Section 2.5.1** of this Attachment regarding the termination of the ILA. As stated therein, the termination of the ILA does not affect the validity or enforceability of the IGA (to which the County remains a party) or the MOA which set forth terms and conditions regarding the provision of services by the County and Airway Heights to the 145-acre trust property and the compensation for those services by

the Tribe. The BIA has determined that the IGA and MOA sufficiently ensure that the County will be adequately compensated for adverse impacts to the County arising from the Preferred Alternative.

### **Response to Comment 8-56**

Contrary to the assertions made by the commenter, the Final EIS did assume that some employees of the Preferred Alternative would relocate to Spokane County. As stated in Final EIS, Volume II, Section 4.14.3, the BIA determined that the employment impact would result in an annual total of approximately 2,805 employment opportunities, including direct, indirect, and induced opportunities. Given the projection of approximately 20,290 unemployed persons in the County in 2013, the majority of the 2,805 employment opportunities are anticipated to be filled with people already residing within the region and would, therefore, not require new housing. However, 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 new residents that would be relocated to Spokane County as a result of the Preferred Alternative.

Refer to **Section 2.5.1** of this Attachment regarding the termination of the ILA.

### **Response to Comment 8-57**

Refer to **Sections 2.1.2, 2.2.2, 2.5.1, and 2.6.1** of this Attachment.

### **Response to Comment 8-58**

Comment noted. Refer to **Section 2.1.2** of this Attachment. The comments submitted by the surrounding communities, including Spokane County, have been considered by the Secretary in his determination on the Preferred Alternative.

### **Response to Comment 8-59**

Comment noted. Refer to **Section 2.1.2** of this Attachment. The comments submitted by the surrounding communities, including Spokane County, have been considered by the Secretary in his determination on the Preferred Alternative.

### **Response to Comment 8-60**

Comment noted. Refer to **Section 2.1.2** of this Attachment.

It should be noted that, as described in Final EIS, Volume I, Section 3.6.2 of Volume I, Section 1.0 of the IGA (to which the County remains a party) 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...” Furthermore, Section 8.0 of the IGA, specifically acknowledge that the Tribe intends to develop a casino on the project site.

### **Response to Comment 8-61**

The County's opposition to the Preferred Alternative is noted. Refer to **Section 2.1.2** of this Attachment.

### **Response to Comment 8-62**

Comment noted. Refer to **Section 2.1.2** and **2.5.1** of this Attachment.

### **Response to Comment 8-63**

Comment Noted. Refer to **Sections 2.1.2, 2.2.3,** and **2.5.1** of this Attachment.

While the IGA may not be evidence of County support for the Preferred Alternative, it along with the MOA is evidence that the County will be adequately compensated for adverse impacts to the County arising from the Preferred Alternative.

It should be noted that while the ILA was in place, there was no need for the Tribe to enter into a separate agreement with the County. Furthermore, in its letter dated May 1, 2013 (Comment Letter 13), the Tribe stated that it “would view the County’s failure to receive any portion of the MOA annual payment as a significant change of circumstances – particularly if demonstrated impacts to the County are not fully compensated for under the Gaming Compact. In such an event the MOA annual payment would be adjusted to ensure the County receives compensation for any demonstrated impacts.”

### **Response to Comment 8-64**

Comment noted. Refer to **Section 2.5.1** of this Attachment.

### **Response to Comment 8-65**

Refer to **Section 2.2.2** of this Attachment.

### **Response to Comment 8-66**

Comment noted. Refer to **Section 2.1.5** of this Attachment and Final EIS, Volume I, Section 3.8. As discussed in the latter, the IGA contains terms regarding dispute resolution, including but not limited to, mediation and arbitration. The parties of the IGA 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 IGA, including mitigation measures associated with the project and annual payments by the Tribe, are legally binding and, therefore, the County has an enforceable legal recourse.

### **Response to Comment 8-67**

Comment noted. Refer to **Section 2.5.1** and **2.8.2** of this Attachment.

### **Response to Comment 8-68**

Comment noted. The IGA, to which the County and Tribe are a party, includes provisions for street improvements to off-set project-related traffic impacts. Refer to Final EIS, Volume I, Section 3.8 and **Response to Comment 8-66** of this Attachment regarding the enforceability of the IGA.

### **Response to Comment 8-69**

Refer to **Response to Comment 6-1** and **6-2** regarding impacts to the STA.

### **Response to Comment 8-70**

The County's statement that it takes a very active role in overseeing housing opportunities is acknowledged. The County's commitment to overseeing the activities funded with community Development Block Grant (CDB) funds and Home Investment Partnerships (HOME) funds is also acknowledged.

Refer to **Response to Comment 8-56** regarding impacts on housing.

In regards to the commenter's statement that the jobs created by the Preferred Alternative would be low paying, the Final EIS Appendix J, pages 4 and 5 estimates that total wages and jobs created by the construction of the Preferred Alternative would be approximately \$102.4 million and 2,154 jobs, respectively. These figures imply average annual wages of approximately \$47,500. Furthermore, Final EIS Appendix J, pages 9 and 10 estimate that total wages and jobs created by the operation of the Preferred Alternative would be approximately \$66.8 million and 2,805 jobs, respectively. These figures imply average annual wages of approximately \$23,800. It should be noted that the IMPLAN model in Final EIS Appendix J does not distinguish between part-time and full-time jobs. It also includes contract positions. For these reasons, the number of jobs estimated by the IMPLAN model will usually exceed the number of full-time equivalent (FTE) employment positions that will result from the construction and operation of a project. In other words, the full-time equivalent wages would be higher than the estimated construction and operations wages of \$47,500 and \$23,800, respectively, that are described above. The estimates above also exclude the value of benefits associated with these positions as well as tips for dealers, bartenders, and wait staff.

As a point of comparison, according to the Washington State Employment Security Department (updated May 2012), the County's average annual wage and per capita income during 2010 was \$38,697 in 2010 and \$34,498, respectively. Consequently, the average wages related to the construction of the Preferred Alternative is higher than the County average, and the wages of the operations phase are lower. However, both the construction wages and operational wages are consistent with employment of "moderate" income workers.

Please see **Exhibit 2** of this Attachment for further information.

### **Response to Comment 8-71**

See **Response to Comment 8-56** regarding the Preferred Alternative's anticipated impact on in-migration and housing.

The commenter states that numerous studies conclude that the construction and operations of casinos showed no statistically significant increase in employment and that some studies actually show a decrease in employment. The commenter's statement appears to have been sourced directly from Comment Letter 8, Exhibit 36, page 22. The statements made on Exhibit 36, page 22, is virtually identical to the language in the comment, and does not appear cite the specific studies. Rather, Exhibit 36, page 22 refers to these sources as an "Illinois study" and as "Another study, conducted by the New York Times." Nevertheless, it would not be surprising to find that the construction and operation of a casino would not have a statistically significant increase in employment in some markets, especially markets with existing high unemployment rates. If the anticipated employment impact of a casino is small in the context of the total employment of a particular county, by definition one would expect that its effect on employment would not be statistically significant.

Also see **Response to Comment 8-45** regarding the general acceptance of economic analyses that rely upon the IMPLAN model.

Comment 8-71 also quotes a study by the Federal Reserve Bank of St. Louis, which appears to be a credible study and the conclusions contained therein appear reasonable. However, the last sentence of this study indicates that it is mostly applicable to casinos located in rural areas. This study may not be applicable to the Preferred Alternative.

### **Response to Comment 8-72**

Refer to **Section 2.6.1** of this Attachment.

### **Response to Comment 8-73**

The commenter's statement that certain taxes and fees that would be collected, if the Preferred Alternative were to occur on non-tribal lands, is acknowledged. The analysis provided by the County does, however, rely upon certain assumptions. First, the analysis assumes that the costs the County, and County funded agencies will incur in providing services is approximately equal to the tax revenues is received. In actuality, services provided by the County and County funded agencies may be different from the amount of tax revenues received. Second, the figures contained in the comment letter include taxes that are remitted to the City of Airway Heights. These costs are not applicable to services that the County is providing. Net of remittances to the City of Airway Heights, the construction related (one-time) and operations related (annually recurring) estimates by the County would equal approximately \$2.6 million and \$2.3 million, respectively. It should also be noted that these figures include estimated construction and operational public transportation tax amounts of approximately \$1.2 million and \$425,000, respectively. Section 6.0 of the ROD includes substantial mitigation for effects related to traffic and public transportation.

Furthermore, the table included in Comment 8-73 shows the County’s estimate of “direct” taxes and fees. As described in Final EIS, Appendix J, the construction of the Preferred Alternative is estimated to generate approximately \$3.5 million in one-time sales tax revenue and \$1.7 million in property tax revenues. Similarly, the operation of the Preferred Alternative is anticipated to generate approximately \$2.5 million in annual sales tax revenue and \$1.2 million in property tax revenues. Most of these effects are indirect and induced benefits. It is true that only a percentage of these amounts are remitted to the County and county related agencies, with the balance remitted to Washington State and to the City of Airway Heights. Since the 145-acre property is currently held in trust, an analysis of impacts from loss of property tax is outside of the scope of analysis under NEPA.

The sales tax percentage for most of Airway Heights is 8.7 percent. Of this amount, 6.5 percent is remitted to Washington State and 2.2 percent is remitted to the Airway Heights and County. The following table illustrates the components of the 8.70 percent sales tax rate:

**Summary of Sales Tax Rates, Fiscal Year 2013**

Agency	Tax Rate
State of Washington	6.50%
Public Transport Benefit District	0.60%
Public Facilities District	0.10%
Spokane County Criminal Justice	0.10%
Spokane County Juvenile Justice	0.10%
Spokane County/City Criminal Justice	0.10%
Spokane County Mental Health	0.10%
Emergency Communications	0.10%
Spokane County Local	0.15%
City of Airway Heights Local	0.85%
Total	8.70%

Source: City of Airway Heights

It should also be noted that the estimated taxes and fees illustrated in the commenter provided table do not represent current taxes and fees collected by the County. Rather, these estimates show potential taxes and fees under certain development scenarios (Alternatives 1 and 3). Because these developments do not exist today, the dollar figures shown in the commenter provided table do not represent a decrease in revenues versus the status quo. Refer to Section 2.5.1 regarding payments to the Spokane County for provision of services.

Please see **Section 2.10.2** of this Attachment for further information.

**Response to Comment 8-74**

Refer to **Sections 2.5.1** and **2.8.2** of this Attachment and **Response to Comment 8-55** of this Attachment.

## Response to Comment 8-75

The Final EIS does not claim that the Preferred Alternative will not result in substitution effects that will reduce the near-term revenues of existing casinos. Final EIS, Appendix G and Appendix V contain extensive discussion of the projected impact of the Preferred Alternative on existing area gaming facilities, and clearly state that there will be substitution effects. Rather, the Final EIS states that, with mitigation, neither the substitution effects nor issues related to problem gambling would be significant. In addition, it should be noted that the additional jobs and wages described in Final EIS, Appendix J and **Response to Comments 8-56 and 8-70**, will be beneficial to the population of the County, even after considering substitution effects that may adjust the estimates included in Final EIS, Appendix J. Also see **Section 2.10.1** of this Attachment and **Response to Comment 8-28, 8-45 through 8-50 and 8-71** regarding substitution effects. Refer to **Section 2.9** of this Attachment and **Response to Comment 8-76** regarding problem gambling.

## Response to Comment 8-76

Please refer to **Section 2.9** of this Attachment regarding problem gambling. While this comment asserts that the 0.13 percent contribution the Tribe will make to problem gambling support services is insufficient, this contribution is consistent with what is legally required by Washington State Engrossed Substitute House Bill 1031, Section 5.2. In addition, the Tribe is making annual payment to Airway Heights and County as detailed in the MOA and the IGA. These additional payments will compensate for any law enforcement, emergency services, road maintenance, and other public services (including problem gambling support services) provided by Airway Heights and County as a consequence of the Preferred Alternative.

Two studies performed in the last 12 years purported to show a correlation between crime and casinos, including the Grinols and Mustard (Grinols; 2000, updated 2004) study referenced in this comment. In a statistical analysis of all U.S. counties, Grinols estimated that a statistically significant proportion of violent and property crimes in casino counties could be attributed to casinos. In a study of Native American casinos, the National Bureau of Economic Research (NBER) found a measurably smaller increase.<sup>8</sup> Unlike the NBER study, the Grinols study did not control for upward trends statewide, and thus came up with a higher estimate (i.e. crime was rising in the area at large, and not specifically at the casinos). The NBER study found a “lack of an impact of casinos on property crime in counties within 50 miles.”<sup>9</sup>

The Rappaport Institute for Greater Boston and the John F. Kennedy School of Economics at Harvard University (Baxandall and Sacerdote 2005) in a national, county-level study of Native American casinos found a slight decrease in crime rates after casinos opened. In the total sample group of 156 counties, the Rappaport study found a decrease of 3 reported crimes per 1,000 residents. Baxandall and Sacerdote<sup>10</sup> conclude that:

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<sup>8</sup> National Bureau of Economic Research (NBER), 2002. The Social and Economic Impact of Native American Casinos. Working Paper 9198. Available online at: <http://www.nber.org/papers/w9198>. Accessed June 4, 2013.

<sup>9</sup> Ibid.

<sup>10</sup> Baxandall, P. & B. Sacerdote (January 2005). The Casino Gamble in Massachusetts: Full Report and Appendices. Rappaport Institute for Greater Boston, John F. Kennedy School of Economics, Harvard University. Page 14.

In sum, casinos are not associated with general increases in crime rates. The total number of crimes can be expected to increase with the introduction of casinos, but only because casinos are associated with population increases which are far larger than any possible decrease in the number of crimes per resident.

In summary, there is no evidence from gross level data that the advent of casinos has a measurable impact on city-wide crime rates in general. It is highly likely any crimes associated with casinos are either offset by economic benefits or that the level of crime is so small as to be overwhelmed by other factors such as economic trends.

Casinos can have an impact to community services as a result of increased need for emergency, police, and fire services, although multiple studies have shown this impact to be less substantial than the Grinols study cited in the comment. However, as discussed in Final EIS, Volume II, Section 4.7, the increased tax revenues resulting from the development of the project site will fund expansion of law enforcement services required to accommodate the planned growth. In addition, the Tribe has agreed to make payments to Airway Heights and County to mitigate for potential impacts of the project per the MOA, and the IGA, and Mitigation Measures 6.6.A and 6.6.B listed in Section 6.0 of the ROD.

### **Response to Comment 8-77**

The Final EIS and supporting documents Final EIS Appendix G, Final EIS Appendix V, **Section 2.10.1** of this Attachment and **Response to Comment 8-28, 8-45 through 8-50 and 8-71** contain extensive discussion of estimated substitution effects. Again, the Final EIS does not claim that there are no substitution effects.

The particular study cited by the commenter is included as Exhibit 43 to Comment Letter 8. The Exhibit 43 study focuses on certain casinos in the Missouri market. The applicability of this study to the Preferred Alternative is unclear. The commenter also cites and emphasizes one particular sentence in this study that states "...there is no evidence to suggest that there is any positive agglomeration effect from casinos being clustered." It is unclear in what context the commenter believes this citation is applicable to the Preferred Alternative. As stated previously, the substitution analysis within the Final EIS reflects the competitive nature of casinos.

### **Response to Comment 8-78**

The commenter cites a study concerning casinos in the state of Wisconsin. This study is included in Exhibit 44 of Comment Letter 8. The commenter cites sections of this particular study that seem to imply that the casino market in Wisconsin is saturated. The implication from these citations is relatively accurate, although the particular citations should be read in the context of the entire study. In particular, what the study says is that the Wisconsin casino market appears to be relatively saturated, given certain assumptions. These assumptions include a lack of innovation in the gaming market that may stimulate new demand; for example, internet gaming.

As described within the Final EIS, the Spokane market is sufficiently large to support three casinos. As discussed in Final EIS, Appendix V (pages 12-14), there are numerous markets in the country with a

much higher ratio of supply to adult population than in Spokane. For example, Kansas City and Saint Louis are two of the most saturated markets in the country. However, each market in recent years experienced market growth from the addition of a new casino. In St. Louis, the River City casino entered the market in March 2010 leading to an increase in the number of gaming positions of 11.4 percent. Despite the market's previous saturation, the addition of River City led to revenue growth of 4.5 percent compared to 0.7 percent in the 12 months previous to its opening. Implied growth of 3.8 percent may not seem very dramatic, but the St. Louis market generates more than \$1 billion in revenues, so 3.8 percent represents more than \$40 million in new revenues. In Kansas City, the addition of the Hollywood casino at the end of January 2012 led to market growth of 7.1 percent compared to the previous trend of 0.4 percent decline. As shown in **Exhibit 2** of this Attachment, win per capita increased in Kansas City to \$588 and in St. Louis to \$540 after the opening of River City. Please see **Exhibit 2** of this Attachment for more information on these calculations.

### **Response to Comment 8-79**

Comment noted. **Section 2.1.2** of this Attachment.

### **Response to Comment 8-80**

Comment Noted. The comments submitted by Spokane County have been considered by the Secretary in his determination on the Preferred Alternative. A discussion of the Secretary's finding regarding the potential for detriment to the local community is provided in Section 7.0 of the ROD.

## **COMMENT LETTER 9: MAYOR TOM TRUELOVE, CITY OF CHENEY, APRIL 25, 2013**

### **Response to Comment 9-1**

Comment noted. The comments submitted by the City of Cheney have been considered by the Secretary in his determination on the Preferred Alternative.

### **Response to Comment 9-2**

Refer to Final EIS, Volume II, Section 4.8 regarding potential impacts to transportation and circulation that would result from the development of the Preferred Alternative. Refer to **Section 2.6.1** of this Attachment regarding the Preferred Alternative's compatibility with Fairchild AFB operations.

### **Response to Comment 9-3**

Refer to **Section 2.6.2** of this Attachment regarding consistency of the Preferred Alternative with local zoning codes.

### **Response to Comment 9-4**

Refer to **Section 2.6.1** of this Attachment. As described therein, the closure of Fairchild AFB is not a reasonably foreseeable consequence of the Preferred Alternative; therefore, the analysis of impacts from its closure is not warranted.

**COMMENT LETTER 10: GERALD F. PEASE, JR, DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE, APRIL 30, 2013**

**Response to Comment 10-1**

Comment noted. The comments submitted by the USAF have been considered by the Secretary in his determination on the Preferred Alternative.

**Response to Comment 10-2**

The suggested mitigation has been included in Section 6.8 of the ROD.

**Response to Comment 10-3**

The suggested language has been added to mitigation in Section 6.12 of the ROD.

**Response to Comment 10-4**

The suggested language has been added to mitigation in Section 6.8 of the ROD.

**Response to Comment 10-5**

The suggested language has been added to mitigation in Section 6.9 of the ROD.

**COMMENT LETTER 11: CHAIRMAN GLEN NENEMA, KALISPEL TRIBE OF INDIANS, FEBRUARY 25, 2013**

**Response to Comment 11-1**

Refer to **Section 2.2.1** of this Attachment regarding the extension of the Final EIS review period.

**Response to Comment 11-2**

Refer to **Section 2.2.3** of this Attachment regarding the ability for Spokane County to comment during the NEPA process and **Section 2.5.1** of this Attachment regarding the termination of the ILA.

**Response to Comment 11-3**

Refer to **Section 2.7** of this Attachment regarding completion of the conformity determination and **Section 2.5.1** of this Attachment regarding termination of the Interlocal Agreement.

**Response to Comment 11-4**

Refer to **Section 2.10.1** of this Attachment regarding potential impacts to the Kalispel Tribe.

**COMMENT LETTER 12: CHAIRMAN GLEN NENEMA, KALISPEL TRIBE OF INDIANS,  
APRIL 30, 2013**

**Response to Comment 12-1**

Comment noted.

**Response to Comment 12-2**

Comment noted. As described in Section 7.0 of the ROD, the Kalispel Tribe was identified as a “nearby Indian tribe” as defined in 25 CFR §292.2 and was, therefore, consulted by the BIA in regards to the Spokane Tribe’s request for a Two-Part Determination in accordance with 25 CFR §292.19. The comments submitted by the Kalispel Tribe during the consultation process for the Secretarial Determination and corresponding NEPA process have been considered by the Secretary in his determination on the Preferred Alternative.

**Response to Comment 12-3**

Comment noted. The background summary provided by the commenter is generally consistent with that provided in Section 1.0 of the ROD. Please refer to the responses below which address the Kalispel Tribe’s specific comments. The comments submitted by the Kalispel Tribe during the consultation process for the Secretarial Determination and corresponding NEPA process have been considered by the Secretary in his determination on the Preferred Alternative.

**Response to Comment 12-4**

Comment noted. See **Section 2.2.2** of this Attachment. As stated therein, the Department has determined that preparation of a supplemental EIS and/or re-circulation of the EIS is not necessary to fulfill NEPA requirements.

**Response to Comment 12-5**

Please refer to the responses below which address the Kalispel Tribe’s specific comments on impacts to the surrounding communities. A discussion of the Secretary’s finding regarding the potential for detriment to the local community is provided in Section 7.0 of the ROD.

**Response to Comment 12-6**

The issue of socioeconomic impacts on the Kalispel Tribe was previously addressed in Final EIS Appendix G and Final EIS Volume I, General Response 3.5.1. As stated therein, the estimated substitution effects from the Preferred Alternative - Phase I was estimated at approximately 29.5 percent of the estimated 2013 Northern Quest gaming revenues (Final EIS Appendix G, pg. 22). The estimated substitution effects from the Preferred Alternative – combined Phases II and III was estimated at approximately 20.9 percent of the estimated 2015 Northern Quest gaming revenues (Final EIS Appendix G, pg. 23). Of this amount, approximately 5.0 percent is attributable to Phase II and approximately 15.9 percent is attributable to Phase III. As described in Final EIS, Volume I, General Response 3.5.1, because

the percentages described above apply to different base dollar figures, it is not appropriate to simply add the percentages together to calculate a cumulative effect of all three phases. The estimated dollar impacts to Northern Quest gaming revenue related to Phase I and combined Phase II/III are estimated at \$42.8 million and \$23.0 million, respectively (Final EIS Appendix G, pgs. 22 and 23). Final EIS, Appendix G estimated the substitution effect from Phase II at approximately 5 percent, which equates to approximately \$5.5 million. This implies that the Phase III impact would be approximately \$23.0 million less \$5.5 million or \$17.5 million.

It should be noted that the substitution analysis in Final EIS, Appendix G divided the revenue substitution effect by the estimated 2013 (Phase I) and 2015 (Phase II/III) Northern Quest gaming revenues to compute the substitution percentages cited above. The estimated 2013 and 2015 Northern Quest gaming revenues cited in the Final EIS were estimated by the Innovation Group, the BIA's consultant. The Innovation Group did not estimate year 2020 Northern Quest gaming revenue because there was not a sufficiently reliable basis to make such an estimate.

Subsequent to the preparation of Final EIS, Appendix G, the Kalispel Tribe commissioned a report by PKF Consulting dated March 27, 2012 (PKF Report) and a subsequent PKF Consulting Calculations for revised Financial Analysis dated approximately March 2013 (Revised PKF Analysis). Among other things, the PKF Report and the Revised PKF Analysis include actual and projected "base case" revenues for Northern Quest. Both gaming and non gaming revenues are included.

A factor in determining the size of the substitution effect to the Kalispel Tribe is the question of whether the reduction in revenues would affect the ability of the Kalispel tribal government to continue to provide governmental services. An interim step in making this determination is to estimate the Northern Quest earnings before interest, taxes and depreciation (EBITDA). The analysis of substitution effects that is contained in the Final EIS focused on revenue because EBITDA estimates require assumptions of operating expenses of Northern Quest. Information regarding Northern Quest operating expenses is proprietary information maintained by the Kalispel Tribe. However, both the PKF Report and Revised PKF Analysis project "base case" EBITDA and substitution effects to EBITDA. It should be noted that the analyses contained in the PKF Report and the Revised PKF Analysis contain a number of conservative assumptions, with the term "conservative" defined herein as presenting an adverse or downside case of the post substitution effect EBITDA of the Northern Quest Casino. Some of these conservative assumptions are:

- The simultaneous occurrence of Alternative I, Phases I, II and III during a single year. The Revised PKF Analysis identifies this year as 2020.
- No adjustment for diminishing substitution effects or elasticity of demand for gaming during the interim periods between phases.
- Estimated Phase I substitution effects to revenue that are similar to the estimates contained in Final EIS, Appendix G, but Phase II and III substitution effects that are higher. Specifically, estimated gaming revenue substitution effects for all phases of approximately \$89.3 million (Revised PKF Analysis, pg. 1). This compares to the Final EIS estimate of \$42.8 million for Phase I, approximately \$5.5 million for Phase II, and approximately \$17.5 million for Phase III, for a total of \$65.8 million.

- “Base case” EBITDA margins for Northern Quest of 39.4 percent in 2014 and 39.6 percent in 2020 (PKF Report, pgs, 13-14). In contrast, the year 2020 EBITDA margin, post substitution effect from Phases I, II and III, is projected at 27.4 percent (Revised PKF Analysis, pg. 2).

Regarding EBITDA margins, both the PKF Report and the Revised PKF Analysis assume a relatively constant “based case” EBITDA margin in a range of 39.4 percent and 39.6 percent during the years of 2014 – 2020 (PKF Report, pgs. 13-14). However, with the onset of the post-substitution effect in 2020, total revenue and EBITDA margin are projected to decrease to 27.4 percent (Revised PKF Analysis, pgs. 1 and 2). This significant decline in EBITDA margin is presumably due to an assumption of a large fixed cost component of the Northern Quest expense structure. However, as described above, the three phases of the Preferred Alternative would occur over a number of years, not simultaneously, and there would be a lead time of more than one year between the announcement of construction of each phase and opening. The Kalispel Tribe would have a period of time to anticipate the opening of each phase, and to rationalize expenses to match the anticipated post substitution revenues. Consequently, the substantial decline in the EBITDA margin included in the PKF analyses associated with the opening of the phases appears to be a very conservative assumption.

When aggregated, the conservative assumptions described above that are included in the PKF Report and Revised PKF Analysis culminate in a significantly conservative (i.e., downside) estimate of the substitution effect to Northern Quest EBITDA during the year 2020. This estimated Northern Quest EBITDA is then analyzed in the TFA Debt Service Letter dated May 16, 2012, and the Nathan Associates Inc. study dated May 16, 2012. Neither of these reports incorporate the timing of cash flows to the Kalispel Tribe, which would allow the Kalispel Tribe to pay down its outstanding debt balance during the years between the Alternative I phases, or the fact that under its current term loan, the Kalispel Tribe is paying down 5 percent of the outstanding balance each year, which has a significant effect on the outstanding Kalispel debt service in the year 2020. Significantly, the TFA Debt Service Letter assumes that all three phases of the Preferred Alternative would occur in the year 2014, a major assumption that significantly overstates the substitution effects on the Kalispel Tribe’s EBITDA and funds available for discretionary purposes after the payment of debt service. In order to adjust for this assumption, Innovation Capital, the investment banking affiliate of the Innovation Group, independently estimated the Kalispel Tribe’s debt service obligations and discretionary income available to fund tribal governance programs. As a starting point, Innovation Capital used the PKF Report estimates for “base case” and post substitution effects EBITDA, notwithstanding the issues associated with the underlying assumptions contained therein. However, the Innovation Capital analysis assumed that the phases would occur over time as described in the Final EIS, not simultaneously in the year 2014. Innovation Capital did use the PKF EBITDA projections because these are the only set of EBITDA projections available for the Kalispel Tribe in 2020. Notwithstanding the very conservative nature of the PKF EBITDA assumptions, as described above, the Innovation Capital analysis concludes that the Preferred Alternative would not have a significant effect on the ability of the Kalispel Tribe to provide essential government services to its members.

The timing of the phases of the Preferred Alternative is also relevant to the issue of substitution effects on the Kalispel Tribe. Final EIS, Section 2.3.1 states that the construction of Phase I, Phase II, and Phase III of the Preferred Alternative are anticipated to be completed in approximately 2012, 2015, and 2019,

respectively. This implies that the full first year of operations of Phase I, Phase II and Phase III would occur in approximately 2013, 2015, and 2020, respectively. Phase I consists of a number of components, including 1,500 slots, 32 table games, food and beverage, and some retail and commercial space. Subsequent phases would increase the gaming venue, retail and commercial. Phase III also includes a hotel. One of the reasons the Preferred Alternative is split into phases is to provide flexibility to add capacity in a sequence permitted by economic growth, population growth and the market opportunity. Although the Final EIS presents a discrete sequence of timing, this could change depending on specific circumstances. Consultants of the Kalispel Tribe state that future phases of the Preferred Alternative would have a detrimental impact on the Kalispel Tribe, including the ability of the tribe to service its debt and leave enough cash flow to provide governmental services. However, such future phases of the Preferred Alternative would presumably only be constructed if they were sufficiently profitable to enable the Spokane to service debt incurred to fund construction. The occurrence of such a scenario, one in which the Kalispel Tribe would default on its casino related debt while the Spokane Tribe would successfully service its debt, appears unlikely, given the similarity in location and quality of the two gaming venues and the fact that the Kalispel Tribe would have a multi-year head start in paying down its debt obligations.

It should also be noted that although the Preferred Alternative would have a limited degree of adverse impact on the revenues and EBITDA of the Kalispel Tribe, there is no evidence that this would cause a substantial change in the physical environment (e.g., air, land, water, etc.). As set forth in CEQ regulations (40 CFR 1508.14) and upheld by case law (*Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766 [1983]), a potential reduction in the Kalispel Tribe's estimated future revenue does not constitute an "effect" under NEPA. When effects are solely competitive and economic and do not result in physical environmental effects, as they are in this case, NEPA does not require mitigation.

### Response to Comment 12-7

Please see **Response to Comment 12-6** and **Section 2.10.1** of this Attachment regarding the PKF Consulting Report.

It should also be noted that the commenter refers to the estimates of the substitution effects that are included in the PKF Consulting Report. These percentages are very similar to the Final EIS estimates discussed above, with one exception. The commenter states that the PKF Consulting Report estimates the gaming revenue effect on Northern Quest of the 2020 introduction of the fully built-out Preferred Alternative at 44.1 percent. However, page 36 of the PKF Consulting Report estimates the cumulative effect of both Phase I and Phase II of the Preferred Alternative at -44.1 percent. Page 42 of the same report estimates the gaming effect of Phase I at -24.9 percent. Due to the effect of compounding, this implies that the effect from the full build-out in 2020 would equal  $[(100\% + 44.1\%) / (100\% - 24.9\%)] - 100\%$  or approximately -15.4 percent.

It is also important to note that although some of the percentages cited in the PKF Consulting Report are similar to those listed in the Final EIS, the dollar amounts are not. Please see **Response to Comment 12-6** for further information.

There have not been sufficient changes in market conditions to warrant an update of Appendix G. The application of growth rates is sufficient to adjust for the delayed development schedule.

### Response to Comment 12-8

Final EIS, Appendix G, page 22 does not state that the estimated gaming revenues for the West Plains casino is \$141 million in the year 2015. Rather, Final EIS, Appendix G, page 22 describe the methodology used to estimate the incremental gaming revenue associated with the Preferred Alternative, Phase I and Phase II/III (i.e., full build-out). The methodology involved subtracting the results of one gravity model from another gravity model. Both gravity models used the estimated dataset for 2013 - 2015, which is the year 2015 referenced by the commenter. This does not imply that Phase III of the Preferred Alternative would open during those years. The reference in Final EIS, Appendix J, page 7 to the year 2020 is correct because that is the estimated completion date of the Preferred Alternative, Phase III.

### Response to Comment 12-9

Please see **Response to Comment 12-6**

### Response to Comment 12-10

Final EIS, Appendix V does not state that the gaming substitution effects in the first year of operation of the Preferred Alternative will disappear. Rather, Final EIS, Appendix V provides numerous comparable case studies (including St. Charles and Kansas City, Missouri; Grand Victoria, Indiana; and Lake Charles, Louisiana) that demonstrate that the substitution effects diminish after approximately one year (Final EIS Appendix V, pg. 34).

The commenter's statements regarding the Blue Chip case study may not take into account two significant factors: 1) the eight months of growth during 2009 and 2) the various factors that contributed to declines during 2010 and 2011.

As noted in Final EIS, Appendix V, Blue Chip experienced eight months of growth during 2009 See **Exhibit 2** of this Attachment which states that the 209 growth in Blue Chip gaming revenue coincided with the peak declines in employment in Indiana .

According to the data presented in **Exhibit 2** of this Attachment, Blue Chip had absorbed the impact of Four Winds by January 2009. Blue Chip experienced sustained revenue growth from February through July 2009, prior to the opening of another regional competitor in August 2009, Firekeepers Casino in Battle Creek, Michigan.

The commenter reaches a different conclusion by aggregating the first six months of 2010 into the third 12-month period decline of 5.3 percent. As discussed in Final EIS, Appendix V, it is not reasonable to attribute the declines from January-June 2010 to Four Winds. There were likely other cumulative influences in 2010 and 2011, including above-average snowfall in the winter of 2010, the opening of Firekeepers Casino in August 2009, and continuing employment impacts from the recent recession.

## Response to Comment 12-11

Please see **Section 2.10.2** of this Attachment and **Response to Comments 8-48** and **8-49** regarding the potential for substitution effects on non-gaming establishments. It appears that the PKF estimated impacts to Northern Quest 2015 non-gaming revenue is listed on Page 42 (not 43) of the PKF Consulting Report. The commenter is correct that, using the assumptions included in the PKF Consulting Report, the opening of Phase I of the Preferred Alternative (also known as Alternative 2) would reduce Northern Quest's non-gaming revenue by an estimate 14.8 percent. Related thereto, the PKF estimated impact to Northern Quest 2020 non-gaming revenue appears to be listed on page 36 of the PKF Consulting Report. The commenter's statement that, using the assumptions included in the PKF Consulting Report, the opening of Phase II of the Preferred Alternative would reduce Northern Quest's non-gaming revenue by an estimated 28.9 percent is not correct. The information included on the PKF Consulting Report, page 36, compares revenues assuming no West Plains facility, versus the estimated full build-out of the Preferred Alternative. Rather, the year 2020 introduction of the fully built-out the Preferred Alternative described in the Final EIS would represent the completion of Phase 3, not all three phases. Consequently, it would be inappropriate to add the commenter estimated 2015 impact of 14.8 percent to the commenter estimated 28.9 percent impact because that would represent double counting. Rather, using the assumptions included in the PKF Consulting Report, the correct estimated year 2020 impact would equal  $[(100\% + 28.9\%) / (100\% - 14.8\%)] - 100\%$  or approximately 12.3 percent.

## Response to Comment 12-12

The commenter is correct that the purpose of the Civic Economics report in Final EIS, Appendix U was to evaluate the retail development opportunities in the vicinity of the Preferred Alternative. Second, Final EIS Appendix U did not state that the market area is restricted to Western Spokane County. Rather, Final EIS Appendix U stated that the "primary" market area for retail development of the Preferred Alternative is Western Spokane County. The study also looks at the primary market area in the context of estimating the opportunity gap. The study is not intended to imply that the customers for a new retail offering will be sourced only from what the study defines as the "primary" market area. Third, Final EIS Appendix U, page 9 does state that substitution effects can occur, especially when a new market entrant is well positioned. The statement, however, was made in the context of theoretical new retail entrants in general, and not in the specific context of the Preferred Alternative.

## Response to Comment 12-13

Substitution effects to non-gaming establishments are fully analyzed in Final EIS, Volume II, Section 4.7. The commenter is correct that, under certain circumstances (including in the absence of the opportunity gap described in Final EIS, Appendix G and U) that there could be a substitution effect to non-gaming establishments. However, such effect would not be significant. See **Section 2.10.1** of this Attachment and **Response to Comments 8-48, 8-49** and **12-10** that analyze the substitution effect on non-gaming establishments. Additionally, please refer to Final EIS, Appendix V, which contained an extensive discussion of research regarding non-gaming substitution effects and **Response to Comment 12-14**.

## Response to Comment 12-14

See **Exhibit 2** of this Attachment which provides a detailed discussion regarding the commenters comments on the individual studies cited in Final EIS, Appendix V. The commenter is correct that the findings of the various studies cited in Final EIS, Appendix V, pages 36-40 are not 100 percent completely consistent, that some of the studies analyze effects other than substitution effects, and that some of the studies analyze the effects of non-tribal gaming. The commenter is also correct that some of the studies cited in Final EIS, Appendix V do not analyze new datasets, but instead review sets of previously completed studies. Studies that analyze the results of previous studies is a common practice. In addition, the studies cited in Final EIS, Appendix V do not collectively imply that substitution effects from tribal gaming do not exist or are always small. Rather, when viewed collectively, these studies suggest that gaming related substitution effects usually diminish or are unapparent when analyzed over multi-year period. Please See Final EIS, Volume I, Response to Comment 23-24 for further discussion of the studies included in Final EIS, Appendix V. Also note that many of these studies are also relevant because, unlike the Harvard Study, they do not focus exclusively on markets where a single new casino is introduced.

## Response to Comment 12-15

The reason that the PKF Consulting Report and the TFA letter are applicable to the Nathan Associates Report is because the Nathan Associates relies upon the PKF Consulting Report and TFA letter as source documents for the calculations included therein. Please see **Section 2.10.1** of this Attachment and **Response to Comments 12-16** through **12-19** regarding the Nathan Associates Report, the PKF Consulting Report and the Revised PKF Analysis.

A review of the TFA Debt Service Letter noted the following assumptions and methodologies:

- The TFA Debt Service Letter (pg. 2) states that the Kalispel Tribe would be in default under three scenarios in 2014, which include: 1). the Preferred Alternative, Phase I). the Preferred Alternative, Phase II, and the “Maximum build-out” scenario (the Preferred Alternative, Phase III). As described in General Response [B.B.B.], Phase III is not anticipated to occur until 2020, not 2014.
- The TFA Debt Service Letter seeks to estimate debt service coverage ratios and other covenants related to the Kalispel Tribe’s debt obligations. However, the documents that include these covenants were not provided to the BIA or its consultants. Consequently, it is not possible to test the conclusions rendered in the TFA Debt Service Letter.
- The TFA Debt Service Letter does not describe the options the Kalispel Tribe has to delever its current lending arrangements, and what the effects of such actions would be.
- The TFA Debt Service Letter (pg. 4) states that the term loan amortizes at 5 percent per year. The TFA Debt Service Letter does not appear to factor this principal debt reduction into its analysis.

The TFA Debt Service Letter (pg. 1) states that operating data used in connection with the debt service calculations were sourced from the PKF Consulting Report. Specifically, the TFA Debt Service Letter relies upon the calculations of earnings before interest, taxes and depreciation (EBITDA) estimated in the

PKF Consulting Report. See Final EIS, Appendix V, and **Section 2.10.1, Responses to Comments 12-16 through 12-19**, and **Exhibit 2** of this Attachment regarding the assumptions and methodologies included in the PKF Consulting Report and the Revised PKF Analysis.

**Response to Comment 12-16**

The Final EIS did not comment on the qualifications or expertise of PKF Consulting USA. Its critique was focused on the data, assumptions, and methodology included in the PKF Consulting Report.

The issue of market share of competing casinos, such as Coeur d’Alene Casino, does appear to be relevant to the calculations included in the PKF Consulting Report. The PKF Consulting Report calculated substitution effects by estimating the number of patron visits to existing casinos in the market, and then estimating how much patronage would shift to the West Plains Casino once it opened. To the extent that there is a larger pool of existing casinos in the market, the substitution effect of the West Plains Casino entering that market would be spread across a larger pool of existing casinos.

**Response to Comment 12-17**

A review of the Revised PKF Analysis indicates that the revisions concentrate on certain data and calculations included in the PKR Consulting Report. The Revised PKF Analysis does not include substantive text, and therefore it is difficult to assess why specific changes were made to the analyses included therein. Propensity to gamble remained the same at 30 percent. However, there were significant changes in the population estimates and the frequencies applied. This confirms the critiques in Appendix V that the market area definitions were in error in the PKF Consulting Report. Presented below is a table listed in **Exhibit 2** of this Attachment that compares the data.

**2020 Comparison, Original vs. Revised**

Regions	Location	Population (2020)		Frequency		Gaming Visits	
		Original	Revised	Original	Revised	Original	Revised
Zone 1	Military Base	51,400	13,130	20	13.5	308,400	36,516
Zone 2	West of NQRC	145,800	47,940	10	7	437,400	73,404
Zone 3	Southwest of NQRC	86,700	70,624	10	7	260,100	101,695
Zone 4	East/Southeast of NQRC	479,500	799,186	10	8.5	1,438,500	1,466,412
<b>Total</b>		<b>763,400</b>	<b>930,880</b>			<b>2,444,400</b>	<b>1,678,027</b>

Source: Innovation Group, PKF Consulting Report and Revised PKF Analysis

As a result of the difference in population estimates and frequencies applied, the 2020 gaming visits from the residential area differ with respect to their totals and the distributions among zones. Gaming visits included in the PKF Consulting Report for Zones 1, 2 and 3 were reduced by 88 percent, 83 percent and 61 percent, respectively in the Revised PKF Analysis. Approximately 59.8 percent of the impact to Northern Quest in the PKF Consulting Report came from these three zones, as can be seen in the following table included in **Exhibit 2** of this Attachment.

Total gaming visits to all facilities originating from Zone 4 are estimated at 1,466,411 in the Revised PKF Analysis, and thus almost unchanged from the 1,438,500 included in the PKF Consulting Report. However, the assumed share of Zone 4 patrons who would visit the Preferred Alternative has increased from the 15 percent included in the PKF Consulting Report to 30 percent. This doubling of assumed capture of Zone 4 patrons creates the largest positive change in assumed substitution effects calculated in the Revised PKF Analysis. This is because Zone 4 includes the largest number of gaming patrons, and thus changes in the assumptions for Zone 4 tends to dominate the analysis.

**Alternative 1 Impact on Visits, PKF Consulting Report**

		Baseline	Alternative 1 NQRC Share	NQ Visits Alternative 1	% of Total Impact
Zone 1	Military Base	308,400	10%	30,840	21.7%
Zone 2	West of NQRC	437,400	15%	65,610	29.0%
Zone 3	Southwest of NQRC	260,100	55%	143,055	9.1%
Zone 4	East/southeast of NQRC	1,438,500	85%	1,222,725	16.8%
Visitor	Visitors to Spokane	533,000	44%	234,520	23.3%
<b>Total</b>		<b>2,977,400</b>	<b>57%</b>	<b>1,696,750</b>	<b>100.0%</b>

Source: Innovation Group and PKF Consulting Report

Also offsetting the assumed reductions in visits from Zones 1, 2, and 3 is a new market segment included in the Revised PKF Analysis that is titled “Other, Non-Playersclub/ +75 Miles.” There is no discussion in the Revised PKF Analysis regarding the basis or source of this new segment of customer.

In summary, the calculations included in the Revised PKF Analysis appear to adjust for some of the critiques noted in Final EIS, Appendix V regarding the PKF Consulting Report. Specifically the critiques that implied that the PKF Consulting Report’s gaming visit estimates are too high for Zone 1. However, although the Revised PKF Analysis adjusted downward the estimated gaming visits for Zones 1, 2 and 3, increases in Preferred Alternative’s capture of Zone 4 patrons, and the creation of a new segment labeled “Other, Non-Playersclub/ +75 Miles” seems to completely offset these changes. It is difficult to diligence the reasonableness of these changes.

Furthermore, the Revised PKF Analysis appears to use some of the same assumptions included in the PKF Consulting Report that, as described in Final EIS, Appendix V, are probably not appropriate. For example:

- The Revised PKF Analysis assumes that 100 percent of the gaming patrons will either patronize Northern Quest or the Preferred Alternative. In actuality, a significant proportion of gaming customers will patronize neither, but will instead visit competing facilities.
- The Revised PKF Analysis does not account for the market elasticity described in Final EIS, Appendix V.
- Insufficiently supported impacts to earnings before interest, taxes, depreciation and amortization (EBITDA). The Revised PKF Analysis asserts that the substitution effect to EBITDA will be much larger than on revenue, on a percentage basis. For example, as noted by the commenter, the Revised PKF Analysis estimates that the impacts of the Preferred Alternative, Phase I to Northern Quests revenue and EBITDA will equal approximately 25.5 percent and 39.8 percent, respectively. For this to be true, the analysis must assume that a reduction in revenues could not be accompanied by a similar reduction in expenses. The Revised PKF Analysis does not provide enough information to assess the reasonableness of this assumption. See **Section 2.10.1** of this Attachment and **Response to Comment 12-6** for further discussion of EBITDA margins.

Please see **Exhibit 2** of this Attachment for further information.

### **Response to Comment 12-18**

The commenter's statements regarding the accuracy of the data used in the PKF Consulting Report and the Revised PKF Analysis are acknowledged. Please see **Section 2.10.1** of this Attachment and **Response to Comment 12-17** regarding a review of the Revised PKF Analysis. As described in **Response to Comment 12-17**, it is difficult to diligence the source of some of the data included in the PKF reports because it comes from proprietary sources, and these source documents were not included in the PKF reports.

### **Response to Comment 12-19**

The commenter is correct that, when not accounting for seven years of market growth from 2013 to 2020, the estimated percentage changes in revenue are similar. However, there are important differences, which are described above and can be summarized as follows:

- The Revised PKF Analysis does not adjust for the increase in the market due to population and economic growth.
- The dollar differences in the Revised PKF Analysis are significantly higher than the estimates in the Final EIS. The dollar estimates in the Final EIS are reasonable because the estimates start with the estimated revenue of the Preferred Alternative, then allocate the substitution effect component among the various competitors both in the primary market, as well as more distant competitors
- The Revised PKF Analysis does not describe why the percentage effect to EBITDA is greater than the estimated effect to revenue
- See Response to **Comments 12-15** through **12-17** for other issues.

Also see **Section 2.10.1** of this Attachment and **Exhibit 2** of this Attachment.

### **Response to Comment 12-20**

Refer to **Section 2.10.2** of this Attachment, **Exhibit 3** of this Attachment, and **Response to Comments 12-6** and **12-15** regarding the TFA Letter.

### **Response to Comment 12-21**

Refer to **Section 2.10.2** of this Attachment, **Exhibit 3** of this Attachment, and **Response to Comments 12-6** and **12-15** regarding the findings of the TFA letter. The relationship between TFA and the Kalispel Tribe is relevant information. Final EIS, Appendix V did not comment on TFA's credibility.

### **Response to Comment 12-22**

Comment Letter 12 does provide relevant information related to the Preferred Alternative, but it does not include any material new information other than the TFA letter that would warrant re-consideration of the conclusions contained in Final EIS, Appendix V. As described in **Section 2.10.2** of this Attachment, data provided by the TFA letter do not support the contention in the Nathan Associates Report that the Kalispel Tribe would be unable to meet its debt obligations. A discussion of the Secretary's finding regarding the potential for detriment to the local community is provided in Section 7.0 of the ROD.

### **Response to Comment 12-23**

Please refer to **Section 2.6.1** of this Attachment and the responses below which address the Kalispel Tribe's specific comments on impacts related to Fairchild AFB.

### **Response to Comment 12-24**

Refer to Final EIS, Volume I, Section 3.8 regarding mitigation enforceability. Additionally, as discussed in **Section 2.6.1** of this Attachment, the Spokane Tribe recently enacted the West Plains Development Code to serve as an additional enforceable legal mechanism that would ensure the same mitigation of impacts as was provided in the ROD.

### **Response to Comment 12-25**

Refer to **Section 2.6.2** of this Attachment regarding the Preferred Alternative's consistency with local zoning codes.

### **Response to Comment 12-26**

Refer to **Section 2.6.2** of this Attachment regarding the Preferred Alternative's consistency with local zoning codes. Additionally, as noted in Final EIS, Volume I, Section 3.6.2, 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 Heights, the City of Medical Lake, and the Spokane Tribe. For instance, in its comments on the Final EIS (Comment Letter 5) the City of Airway Heights concluded that the Preferred Alternative is consistent with Chapter 17.16 of the Airway Heights Municipal code entitled 'JLUS Protections for Fairchild Air force Base' (adopted December 17, 2012) and does not encroach upon existing or future missions at Fairchild AFB.

### **Response to Comment 12-27**

Refer to **Section 2.6.2** of this Attachment regarding the Preferred Alternative's consistency with local zoning codes and Final EIS, Volume I, Section 3.8 regarding mitigation enforceability.

## Response to Comment 12-28

Refer to Final EIS, Volume I, Section 4.0, Response to Comment 23-34.

Section A.7 of Appendix A of the AICUZ, entitled “AICUZ Concept, Program, Methodology, and Policies,” states that “whenever possible, residential land use should be located below DNL 65 dB.” The section goes on to state that “commercial/retail trade and personal and business services categories are compatible without restriction up to DNL 70 dB; however, they are generally incompatible above DNL 80 dB. Between DNL 70 and 80 dB, noise level reduction measures should be included in the design and construction of buildings.” As quoted within this comment, the Final EIS states that, the “AICUZ study recommends that, whenever possible, residential land use should be located below 65 decibel (dB) Day-night Average Level (Ldn) while commercial/retail, trade, and personal and business services can be located in areas up to 70 dB Ldn without restriction. Between 70 and 80 db Ldn, noise level reduction measures should be included in the design and construction of buildings.” By comparing the text of the Final EIS to the AICUZ, it is clear that the Final EIS did not mischaracterize the findings of the AICUZ.

Additionally, as stated within the applicable sections of the Final EIS and ROD, noise level reduction measures consistent with the AICUZ will be incorporated into the design and construction of the Preferred Alternative. Therefore, the Final EIS did not understate the potential for adverse impacts to Fairchild AFB operations. Refer to **Section 2.6.1** of this Attachment regarding the Preferred Alternative’s Compatibility with Fairchild AFB.

## Response to Comment 12-29

Refer to Final EIS, Volume I, Section 3.6.1 and Volume II, Section 4.9.1. As discussed therein, impacts related to aircraft noise were in fact based on the noise contours depicted on Figure 3-21 of the 2009 JLUS, as suggested by the commenter. Specifically, the Final EIS based its analysis on the future mission scenario defined as Scenario 3 within the 2009 JLUS which combined the use of 32 KC-767A aircraft (on which the KC-46A was based<sup>11</sup>) and 16 B-52 aircraft. It should be noted that in a recent decision issued by the USAF, Fairchild AFB was not identified as the preferred alternative for the KC-46A tankers<sup>12</sup>. Additionally, while Figure 3.9-5 of the Final EIS, Volume II did not show the noise contour lines of the KC-46A, it did depict Military Impact Area (MIA) 3 which, as described in Final EIS, Volume II, Section 3.9.1 and 2009 JLUS, is defined by a quarter-mile area around the 65 dB Ldn noise contour line of Scenario 3.

## Response to Comment 12-30

The noise levels cited by the commenter are sound exposure levels (SELs) from individual over flights not the Day-Night Average Level (Ldn) noise descriptor which is used in the FAA Advisory Circular and 2007 AICUZ as a basis for determining compatible land uses. Refer to Final EIS, Volume I, Section

<sup>11</sup> Boeing, 2012. KC-46 Tanker Backgrounder. Available online at: [http://www.boeing.com/assets/pdf/defense-space/military/kc46a/pdf/kc46a\\_tanker\\_backgrounder.pdf](http://www.boeing.com/assets/pdf/defense-space/military/kc46a/pdf/kc46a_tanker_backgrounder.pdf). September 2012.

<sup>12</sup> U.S. Air Force, 2013. Official website of the U.S. Air Force. *KC-46A training, operational bases, alternatives selected*. Posted May 22, 2013. Accessed at: <http://www.af.mil/news/story.asp?id=123349597>

3.6.1 and Volume II, Sections 4.9.1 and 4.11.1 regarding the Preferred Alternative's compatibility with aircraft noise and vibration.

As described in Final EIS, Volume II, Section 4.11.1, the Preferred Alternative would not result in long-term exposure of sensitive receptors to SEL single event noise from aircraft over flight as SEL noise from aircraft would occur infrequently (approximately 10 times per day) and for a limited duration (approximately 10 seconds of peak level noise). Refer to Final EIS, Volume I, Section 3.6.1 and Volume II, Sections 4.9.1 and 4.11.1 regarding impacts from single event noise. As described therein, mitigation consistent with Strategies 23 and 27 of the 2009 JLUS is provided to ensure appropriate sound attenuation methods are utilized during construction of the Preferred Alternative to minimize the potential for nuisance to patrons. Additional mitigation consistent with Strategies 10 and 44 of the 2009 JLUS is provided to protect Fairchild AFB against liability for any nuisance caused by aircraft using Fairchild AFB and/or the airspace above the project site (i.e. noise and vibration).

### **Response to Comment 12-31**

Refer to **Section 2.6.1** of this Attachment regarding the Preferred Alternative's compatibility with Air Force Base Operations.

### **Response to Comment 12-32**

The commenter is correct that the Final EIS identified SEL noise as a potentially significant adverse impact. However, the commenter fails to note that the Final EIS also provides measures consistent with Strategies 10, 23, 27, and 44 of the 2009 JLUS to mitigate the potential impacts from SEL noise. With the incorporation of the mitigation listed in Section 6.0 of the ROD, SEL noise from aircraft would not result in a significant adverse effect. Refer to **Section 2.6.1** of this Attachment regarding the Preferred Alternative's compatibility with Air Force Base Operations.

### **Response to Comment 12-33**

Refer to **Section 2.6.1** of this Attachment regarding the Preferred Alternative's compatibility with Air Force Base Operations.

The commenter is correct that the distribution of pamphlets and signage alone would likely not be adequate to mitigate noise impacts from aircraft over flight. However, that mitigation measure in combination with the numerous other mitigation measures and design features listed in Section 6.0 of the ROD relating to aircraft noise would reduce the potential for significant effects. As described in **Section 2.2.4** of this Attachment, the Department's administrative record for the Preferred Alternative demonstrates that the USAF's concerns regarding the Preferred Alternative have been fully addressed through the NEPA process and associated mitigation.

### **Response to Comment 12-34**

Refer to **Section 2.2.4** of this Attachment regarding the BIA's perceived failure to address USAF's concerns regarding the Preferred Alternative.

### **Response to Comment 12-35**

Refer to **Section 2.6.1** of this Attachment regarding the Preferred Alternative's compatibility with Air Force Base Operations.

### **Response to Comment 12-36**

Refer to Final EIS, Volume I, Section 4.0, Response to Comment 23-29. As discussed therein, the scope of analysis for each issue area is dependent on the nature of the impact. For example the analysis of direct effects associated with geology and soils is inherently site specific while direct effects to air quality are analyzed on a more regional basis. As such, the Final EIS acknowledges the City of Spokane where appropriate. Refer to the responses below regarding the Kalispel Tribe's specific comments on potential impacts on the City of Spokane.

### **Response to Comment 12-37**

The City of Spokane would not experience negative fiscal effects by the construction of the Preferred Alternative because construction that occurs outside its jurisdictions. There would likely be some positive but difficult to measure positive effects due to increased economic activity in the vicinity of the Preferred Alternative that would be stimulated by the construction activities.

For similar reasons, the operation of the Preferred Alternative should not significantly affect the City of Spokane. As described in Final EIS Appendix V, the retail component of the Preferred Alternative represents 1.65 percent of the retail activities in the County. Please see **Response to Comments 8-49** and **8-50** that address impacts to retail establishments in the County and **Response to Comment 8-56** that addresses housing. Because the City of Spokane is located in the County, these responses are similarly applicable to the City of Spokane. Furthermore, because the Preferred Alternative will provide significant jobs, the residents of the City of Spokane should experience a positive effect from the Preferred Alternative because, among other things, the City of Spokane and a relatively large workforce and a relatively high level of unemployment. Also, as noted in Final EIS Appendix V (bracket 23-30), 43 percent of the population of Spokane County resides in the city of Spokane. Therefore, because the site of the Preferred Alternative is not located within the city limits of Spokane, it is estimated that of the economic impacts contained in Appendix J, less than 43 percent are estimated to accrue within city limits.

Also see **Section 2.10.2** of this Attachment regarding substitution effects to local businesses and governments.

### **Response to Comment 12-38**

Please see **Section 2.10.2** of this Attachment and **Response to Comments 8-49** and **8-50** that address impacts to retail establishments in Spokane County.

### Response to Comment 12-39

Problem gambling will be addressed in numerous ways, as discussed in **Section 2.9** of this Attachment. The Tribe will provide written materials regarding professional gambling treatment programs at the casino, it will contribute 0.13 percent of all gross gaming revenues to problem gambling services through the DSHS/DASA, and it will make payments to the City of Airway Heights and the County of Spokane. The Washington State DSHS/DASA provides problem gambling services on a regional level, including the City of Spokane. The Final EIS leaves the specific distribution of the mitigation funds to the operator of the DSHS/DASA program, who is in the best position to determine whether to focus the funding on certain segments of the population, on the general population, or both.

This comment does not state how much payment would be required to mitigate for impacts felt to the City of Spokane. Therefore, it is not possible to state that the contribution to the DSHS/DASA will be insufficient. However, Section XIV.D of the Tribal-State Compact for Class III Gaming between the Spokane Tribe and the State of Washington (Tribal-State Compact) provides an opportunity for neighboring communities, including the City of Spokane, to meet with the Tribal Council and discuss concerns regarding the impact of Class III gaming operation. Should the City of Spokane feel it is being impacted by operation of the Preferred Alternative, it is eligible for impact mitigation funding through the Tribal-State Compact.

### Response to Comment 12-40

Refer to Final EIS, Volume I, Section 3.8 regarding mitigation enforceability.

The commenter is correct that upon development of a gaming facility/casino on the 145-acre trust property, payments by the Spokane Tribe to Airway Heights pursuant to the MOA shall supplant the annual payment set forth in Section 5.1 of the IGA, provided such payment exceeds the annual payment. However, Section 5.0.1 of the IGA states that “[i]n exchange for the Annual Payment described [in Section 5.1], the City [of Airway Heights] shall provide the Property with the same services that it provides to properties of similar density, use, and location, *except for sewer and water services described in paragraph 2*, including, but not limited to, police, fire, emergency, court, operations and maintenance for public streets services, and any public safety related actions referenced herein” (*emphasis added*). Therefore, the monthly service fee for sewer and water service outlined in Section 2.0 of the IGA is separate from the annual payment under Section 5.1 of the IGA and would not be supplanted by the MOA. Consequently, payments for sewer and water service would not be subject to the reopener clause within the MOA. As noted in the IGA the monthly service fee for water and sewer services would be based upon the rates adopted annually by the City Council of Airway Heights and are, therefore, considered to be sufficient to address the increase in demand for water and sewer services resulting from the development of the Preferred Alternative.

The commenter is also correct that the MOA includes provisions that would allow the parties to renegotiate the terms of the MOA if there are significant changes in circumstances. However, the commenter fails to note that in addition to the definitions cited by the commenter Section 8.2 of the MOA defines “significant changes in circumstances” to include evidence from Airway Heights that the cost of providing the services described within the MOA exceeds the payments by the Tribe pursuant to Section

6.0 of the MOA. Additionally, Section 8.6 of the MOA states that “[i]n the event that any of the criteria set forth in sections 8.1, 8.2 and 8.3 [of the MOA] are met, the parties shall commence renegotiations in good faith.” Section 8.6.2 of the MOA goes on to state that “[r]egarding renegotiation of fee amounts, the intended benefits of this agreement are that the Tribe receives the needed services set forth herein and the City receives a reasonable fee that covers the costs incurred by the City to provide such services.” Therefore, the basis of renegotiation, whether in good faith or by arbitration, is to ensure that the fee paid to Airway Heights is at least sufficient enough to cover the actual costs of providing services. As noted by the commenter, the cost to Airway Heights resulting from providing services includes obligations to the City of Spokane under existing agreements.

Refer to **Section 2.8.2** of this Attachment regarding impacts to public services associated with responding to emergencies at the project site.

### **Response to Comment 12-41**

Refer to **Section 2.5.1** of this Attachment regarding the termination of the ILA.

### **Response to Comment 12-42**

Comment noted. Refer to **Section 2.2.2** of this Attachment regarding the adequacy of the analysis within the Final EIS.

### **Response to Comment 12-43**

Refer to **Section 2.2.2** of this Attachment regarding requests for supplementation of the Final EIS, **Section 2.2.3** of this Attachment regarding the ability of Spokane County to comment during the NEPA process, and **Section 2.5.1** of this Attachment regarding the termination of the ILA. A discussion of the Secretary’s finding regarding the potential for detriment to the local community is provided in Section 7.0 of the ROD.

### **Response to Comment 12-44**

Please refer to the responses below which address the Kalispel Tribe’s specific comments on the traffic analysis within the Final EIS.

### **Response to Comment 12-45**

A detailed discussion of pipeline projects and traffic growth assumptions for future baseline conditions is provided in the Final EIS, Volume II, Section 4.8, Final EIS Appendix D (page 36), and Final EIS Appendix R (page 3). The pipeline growth was determined through coordination with local agencies and through information in the STRC regional model. Coordination of traffic signals was not recommended as mitigation. To the extent that traffic signals are coordinated under existing conditions, this would have been factored into the STRC traffic model and reflected in the intersection capacity.

### **Response to Comment 12-46**

An explanation of the “volume at failure with mitigation” and “volume at failure with existing geometry” is provided in the Final EIS, Appendix R (page 29). Intersection capacity is not a component of the fair share equations. Traffic volumes are the variables used to calculate fair share contribution, which is consistent with WSDOT’s requirements. Each equation provided in the fair share contribution section of the Final EIS Appendix R clearly states which volumes were used to calculate the Tribe’s fair share contribution. A description of the methodology and assumptions used to determine all intersection volumes (failing or not) is provided in the Final EIS, Appendix D.

### **Response to Comment 12-47**

As stated in **Response to Comment 12-46**, traffic volumes are the variables used to calculate fair share contribution, which is consistent with WSDOT’s requirements. Each equation provided in the fair share contribution section of the Final EIS, Appendix R clearly states which volumes were used to calculate the Tribe’s fair share contribution. A description of the methodology and assumptions used to determine all intersection volumes (failing or not) is provided in the Final EIS, Appendix D.

### **Response to Comment 12-48**

While the primary access to the parking garage is located on Sprague Avenue it is not reasonable that patrons traveling east on Sprague Avenue from the project site would pass the primary Northern Quest casino entrance, which provides access to the main parking lot. If patrons proceeded past the main casino entrance they would have to wait at the light at the intersection of Hayford Road and Sprague Avenue. The traffic analysis provided in the Final EIS, Appendix R included a reasonable number of casino to casino trips assigned to the intersection of Hayford Road and Sprague Avenue, based on the information described above. The analysis of traffic impacts to the Hayford/Sprague Road intersection is not flawed.

### **Response to Comment 12-49**

Pipeline projects assumed under background conditions in the Traffic Impact Analysis and Addendums were developed in consultation with Airway Heights, WSDOT, Spokane County, and the Spokane Regional Transportation Council. The future traffic projections included within the traffic impact analysis are conservative and take into consideration reasonably foreseeable projects that would add traffic to the transportation network. Refer to the Final EIS, Volume I, Section 4.0, Response to Comment 23-63 regarding the Legacy Landing Project. The component of the Legacy Landing Project that is a reasonably foreseeable future development, i.e. the travel plaza, would not create a notable increase in background traffic given that gas station (Travel Plaza) traffic is primarily passer-by traffic or traffic destined for or leaving Northern Quest Casino, and not necessarily net new traffic added to the roadway network. It should be noted that additional traffic from a future expansion of the Northern Quest Hotel was added to the assumed traffic volumes for the cumulative scenario (Final EIS, Appendix D, Section 4.2). Based on information provided by the Kalispel Tribe in other locations in its letter, it is unclear how the Tribe would be able to finance development of the Hotel Expansion and the Legacy Landing Project (252 Master Plan). The future traffic projections assumed in the Final EIS provide for a conservative analysis of cumulative effects resulting from the Preferred Alternative.

### **Response to Comment 12-50**

Refer to the FEIS, Volume I, Section 4.0, Response to Comment 23-37 concerning the feasibility and enforceability of traffic mitigation. In accordance with NEPA requirements, the FEIS discloses the potential for impacts and recommends feasible mitigation measures to reduce or eliminate impacts. The Final EIS, Volume II, Section 4.8 and Section 4.15 of the Final EIS indicate that there may be short-term adverse effects to traffic operations as the timing of implementation of several proposed mitigation measures is uncertain. While the FEIS proposes feasible mitigation and fair share or 100 percent contribution to funding of mitigation for adverse traffic effects at off reservation intersections, only the public agency with jurisdiction over the impacted transportation facility can provide actual implementation plans or timelines for implementation.

### **Response to Comment 12-51**

Refer to **Section 2.7** of this Attachment regarding the timing of the Conformity Determination and consideration in the ROD.

### **Response to Comment 12-52**

Refer to Final EIS, Volume I, Section 3.8 and Final EIS, Volume II, Section 1.3 regarding mitigation enforceability. Additionally, refer to **Section 2.6.1** of this Attachment. As discussed therein, the Spokane Tribe recently enacted the West Plains Development Code which implements restrictions consistent with JLUS recommendations on the 145-acre property. The West Plains Development Code incorporates mitigation measures recommended within the Final EIS to ensure the Preferred Alternative's consistency with Fairchild AFB operations including restrictions and requirements regarding building heights, density, sound attenuation, wildlife attractants, and light and glare. In addition, the West Plains Development Code also requires incorporation of any additional mitigation measures set forth in the ROD.

### **Response to Comment 12-53**

Comment noted. Please refer to the responses below which address the Kalispel Tribe's specific comments on the analysis of impacts to public services within the Final EIS.

### **Response to Comment 12-54**

Refer to **Section 2.8.1** of this Attachment regarding water supply and **Response to Comments 8-55** and **12-40** regarding the adequacy of payments for water and sewer services.

### **Response to Comment 12-55**

Refer to **Response to Comment 8-55** regarding the sufficiency of payments under the MOA to mitigate potential impacts to public services provided by Airway Heights.

### **Response to Comment 12-56**

As described in Section 5.0 of the ROD, the Department has determined that Alternative 1 (the Proposed Project) is the Preferred Alternative because it meets the purpose and need for the Proposed Action. The mitigation measures adopted in Section 6.0 of the ROD adequately address the Preferred Alternative's potential environmental impacts.

### **Response to Comment 12-57**

The mitigation regarding annual payments has been clarified in Section 6.6 of the ROD.

### **Response to Comment 12-58**

Refer to **Response to Comment 12-59**.

### **Response to Comment 12-59**

This comment does not raise any concerns regarding the validity of the market feasibility studies for the Tribe's existing facilities that were not previously raised in comments on the Draft EIS and thoroughly responded to in the Final EIS. Refer to the Final EIS, Volume I, Section 4.0, Responses to Comments 23-54 through 23-58 (pages 4-36, 4-37).

The market studies referred to in the comment do not provide any information regarding the environmental effects of Alternatives 1-4; therefore, inclusion within the appendices of the EIS is not warranted by NEPA. As noted previously, these reports are included within the BIA's administrative record. The commenter has not submitted any information or evidence to contradict the explanation provided in the Final EIS as to why the conclusions of the reports are still valid. There is no evidence before the BIA to support the commenter's assertion that expansion of the Tribe's existing facilities would meet the purpose and need for the Proposed Action.

### **Response to Comment 12-60**

As stated in Section 4.12 of the Final EIS, the U.S. Department of Labor Occupational Safety and Health Administration (OSHA) regulations are applicable to the project site. This includes provisions that require facilities to document the potential risk associated with the storage, use, and handling of toxic and flammable substances.

As requested in previous comments provided during the Draft EIS comment period, mitigation in Section 5.2.11 was updated to include specific information regarding BMPs for storage and inspection of hazardous materials. Additional mitigation as suggested in the comment in question is not warranted as construction and operation on the project would comply with all OSHA regulations and standards.

### **Response to Comment 12-61**

The Final EIS, Volume II, Section 4.13, contains a thorough analysis of potential visual effects resulting from the project alternatives. This analysis discloses that the project alternatives would result in significant alteration of existing rural views of the project site; however, the Final EIS concludes that

these changes would not be visually incompatible with land uses currently existing in the immediate vicinity, including development within Airway Heights, Fairchild AFB, and Northern Quest Casino property. The analysis states “While the site-specific visual effects may be considered significant, the context of the project development in relation to the larger landscape would be less than significant (additional development within a highly developed region).” The perception of a visual impact is subjective, and what one person may perceive as a negative impact another may not find intrusive. No concerns related to visual effects were raised during the NEPA process from sensitive receptors residing near the project site that would experience altered views as a result of the project. While the Preferred Alternative will result in a significant *change* to the visual character of the site, it would not result in a substantial degradation of the overall visual character of the community. Therefore, conclusions within the Final EIS regarding the potential for effects associated with aesthetics are valid and no additional analysis is required.

### **Response to Comment 12-62**

Comment noted. Please refer to the responses below regarding Kalispel Tribe’s specific comments on the indirect effects analysis within the Final EIS.

### **Response to Comment 12-63**

As shown in **Response to Comment 12-50**, the mitigation measures proposed in the Final EIS would reduce traffic impacts and thereby improve traffic circulation within the project region. As shown in **Response to Comments 12-45 to 12-49**, the assumptions used in the FEIS traffic analysis are not flawed; therefore, the assumptions in the analysis of indirect impacts are not flawed.

### **Response to Comment 12-64**

The commenter does not specify what unique and potentially significant impacts on Fairchild AFB would occur from traffic improvements. As described in Final EIS, Volume I, Section 4.0, Response to Comment 23-96, each improvement would be completed to the standards of the agencies with jurisdiction over the intersections (WSDOT, Spokane County, or City of Airway Heights). As described in Section 5.2.7 of the Draft EIS, all construction work within federal and state right-of-ways must be done in accordance with the current WSDOT Standard Specifications for Road, Bridge, and Municipal construction manual. Section 1-7.17 of the 2012 construction manual establishes requirements to protect all private and public utilities. Additionally, item 1 of the General Notes for street construction within the City of Airway Heights Public Works Standards requires that all workmanship and materials be in accordance with the most current copy of the WSDOT Standard Specifications for Road, Bridge, and Municipal Construction. Compliance with these standards would reduce the potential for any impacts to Fairchild AFB.

### **Response to Comment 12-65**

Refer to **Response to Comments 8-55 and 12-40** regarding the adequacy of payments for water and sewer services.

### **Response to Comment 12-66**

Refer to the Final EIS, Volume I, Section 4, Response to Comment 23-100. As stated therein, future growth in the City of Spokane was considered as appropriate in the cumulative analysis included within the Final EIS. The extent to which the project would contribute towards cumulative effects associated with development in the City of Spokane would primarily be limited to traffic and air quality. Due to the distance of the project site from the City of Spokane (approximately 7 miles), and the nature of project related effects, all other effects would be localized, and would not be compounded by development projects within the City of Spokane.

Further, in accordance with the State of Washington GMA, local governments within Spokane County must develop comprehensive plans and adopt regulations that are consistent with Spokane County's Comprehensive Plan. Joint county and city planning within urban growth areas (UGAs) is also required. The cumulative analysis for the Preferred Alternative assumed projected growth within the Spokane County Comprehensive Plan, which included designated UGAs for the City of Spokane. Therefore, growth occurring in the region, including the City of Spokane, was considered under cumulative background conditions within the analysis of cumulative effects in the Final EIS, Volume II, Section 4.14.

### **Response to Comment 12-67**

The analysis of effects associated within Fairchild AFB in the Final EIS, Volume II, Section 4.9 was based on potentially expanded future mission scenarios outlined in the JLUS, including a mix of next generation air refueling aircraft and B-52 aircraft. It should be noted that in a recent decision issued by the USAF, Fairchild AFB was not identified as the preferred alternative for the KC-46A tankers<sup>13</sup>

### **Response to Comment 12-68**

The analysis of cumulative effects within the Final EIS is not flawed. As discussed in **Responses to Comments 12-1** through **12-67**, the analysis of direct impacts within the EIS is not flawed; therefore, cumulative impact assessment was not based on false assumptions.

### **Response to Comment 12-69**

Comment Noted. Refer to **Section 2.2.2** of this Attachment regarding the adequacy of the Final EIS.

## **COMMENT LETTER 13: CHAIRMAN RUDY J. PEONE, SPOKANE TRIBE OF INDIANS, MAY 1, 2013**

### **Response to Comment 13-1**

The summary of the Spokane Tribe's comments is noted. Please refer to the responses below which address the Tribe's specific comments.

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<sup>13</sup> U.S. Air Force, 2013. Official website of the U.S. Air Force. *KC-46A training, operational bases, alternatives selected*. Posted May 22, 2013. Accessed at: <http://www.af.mil/news/story.asp?id=123349597>

### **Response to Comment 13-2**

The Tribes enactment of the West Plains Development Code is noted. Refer to **Section 2.6.1** and **2.6.2** of this Attachment.

### **Response to Comment 13-3**

The findings of the STEP Assessment are noted. Based on the analysis within the Final EIS, the BIA has similarly concluded that, with the implementation of the mitigation measures listed in Section 6.0 of the ROD, 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 installation.

### **Response to Comment 13-4**

Comment noted. Refer to **Section 2.5.1** of this Attachment. As stated therein, the BIA similarly concluded that adverse impacts to the County arising from the Preferred Alternative continue to be mitigated under the existing agreements and no new impacts have arisen as a result of the termination of the ILA.

### **Response to Comment 13-5**

Comment noted.

## **COMMENT LETTER 14: BRUCE AND PAM BROWN, FEBRUARY 7, 2013**

### **Response to Comment 14-1**

Comment noted. Please refer to **Section 2.1.1** of this Attachment.

## **COMMENT LETTER 15: LONNIE HUTCHINSON, RECEIVED FEBRUARY 15, 2013**

### **Response to Comment 15-1**

Comment noted. Please refer to **Section 2.1.1** of this Attachment.

## **COMMENT LETTER 16: PRESIDENT MARK E. WEADICK, FRIENDS OF SPOKANE HOUSE, RECEIVED FEBRUARY 13, 2013**

### **Response to Comment 16-1**

Comment noted. Please refer to **Section 2.1.1** of this Attachment.

## **COMMENT LETTER 17: TIM AND CHRIS WADE, FEBRUARY 17, 2013**

### **Response to Comment 17-1**

The Innovation Group conducted an independent market analysis of the Spokane area to assess the potential effects of the West Plains Development (included as Attachment G of the Draft EIS). As discussed in Final EIS, Volume II, Section 4.7 and in the Innovation Group study, the Spokane market is sufficiently large to support three casinos of this size, any market substitution effects would diminish as

patrons return to local spending patterns, and the market is expected to grow with population over time. In addition, although some decreases in gaming revenue may be felt by the Kalispel Tribe, implementation of the Proposed Action would not prevent the Kalispel tribal government from providing essential services and facilities to its membership. Refer to **Section 2.10.1** of this Attachment regarding impacts to the Kalispel Tribe.

### **Response to Comment 17-2**

Refer to Final EIS, Volume I, Section 4.0, Response to Comment 23-10 regarding the net gain in jobs that would occur as a result of the Preferred Alternative despite any temporary reduction in jobs at other facilities.

### **Response to Comment 17-3**

Please refer to **Sections 2.1.1, 2.3, and 2.4** of this Attachment.

## **COMMENT LETTER 18: DOUGLAS AND CLAIRE HOLLAND, FEBRUARY 23, 2013**

### **Response to Comment 18-1**

Comment noted. Please refer to **Section 2.1.1** of this Attachment.

## **COMMENT LETTER 19: DAVID A. SOWINSKI, FEBRUARY 24, 2013**

### **Response to Comment 19-1**

Refer to **Section 2.8.1** of this Attachment. As described by the commenter, in recent years Airway Heights operated the Parkwest well that drew water from the West Plains aquifer which was also the source of water for a number of public and private water right holders including the City of Medical Lake and the City of Four Lakes<sup>14</sup>. Due to the nature of the West Plains aquifer, pumping from the Parkwest well resulted in drawdown in surrounding wells<sup>15</sup>. As described in its letter dated April 22, 2013 (Comment Letter 5), Airway Heights and the Department of Ecology collaboratively worked together to transfer the water use from Parkwest well to another location within the city limits of Airway Heights to eliminate the impacts to surrounding wells. As a result of this collaboration Airway Heights recently completed the construction of a new well that both replaces the Parkwest well and withdraws water that is percolates into the aquifer through the infiltration basins at the wastewater reclamation plant. The new well has a pumping capacity of more than 3,000 gallons per minute, which is more than twice what was anticipated by Century West when it completed the water capacity analysis for the Preferred Alternative (See Final EIS, Volume II, Section 4.10.1). Because the Preferred Alternative would not be served by the Parkwest well, no impacts to the West Plains aquifer are anticipated to occur.

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<sup>14</sup> Department of Ecology News Release 11-249 dated September 8, 2011. "Airway Heights agrees to stop pumping from Parkwest well" Available online at: <http://www.ecy.wa.gov/news/2011/249.html>

<sup>15</sup> City of Airway Heights press release dated September 7, 2011. "New municipal well to meet current, growing needs in Airway Heights." Available online at: <http://www.cawh.org/news.asp?template=false&id=507>

**COMMENT LETTER 20: CONGRESSWOMAN CATHY MCMORRIS RODGERS, FEBRUARY 21, 2013**

**Response to Comment 20-1**

Please refer to **Section 2.2.1** of this Attachment regarding extension of Final EIS review period and **Section 2.2.3** of this Attachment regarding the ability for Spokane County to comment during the NEPA process.

**COMMENT LETTER 21: LAURA BROWN, FEBRUARY 27, 2013**

**Response to Comment 21-1**

Please see **Section 2.6.1** regarding the Preferred Alternative's compatibility with Fairchild AFB. Refer to Final EIS, Volume I, Section 4.0, Response to Comment 23-10 regarding the net gain in jobs that would occur as a result of the Preferred Alternative despite any temporary reduction in jobs at other facilities.

**COMMENT LETTER 22: JOHN D. CLARK, FEBRUARY 26, 2013**

**Response to Comment 22-1**

Please see **Section 2.6.1** regarding the Preferred Alternative's compatibility with Fairchild AFB.

**COMMENT LETTER 23: KENNITH M. JOHANSON, FEBRUARY 19, 2013**

**Response to Comment 23-1**

The Final EIS analyzes multiple studies, all of which are more current than the 1975 U.S. News and World report cited by the commenter, to determine the potential impacts of new problem and pathological gamblers that could result from implementation of the Preferred Alternative. The results of these studies indicate that with the numerous gaming facilities in the area already providing gambling opportunities to local patrons, the addition of one more casino would not have a significant impact on the overall rate of problem or pathological gambling.

Please see **Response to Comment 8-76** for additional discussion of impacts to crime rates and law enforcement services.

**COMMENT LETTER 24: BILL JOHNS, RECEIVED MARCH 1, 2013**

**Response to Comment 24-1**

Final EIS, Volume II, Section 3.7.3 used the appropriate method of analysis for environmental justice based on Council for Environmental Quality (CEQ; 1997b) and U.S. Environmental Protection Agency (USEPA; 1998) guidelines. According to Table 3.7-6 of the Final EIS, all of the census tracts analyzed were far below the 50 percent threshold for minority populations. In addition, Kalispel tribal lands within two miles of the project site were considered to be minority populations in the analysis to provide a more conservative estimate of minority populations. The use of U.S. Census data from 2005 through 2009 for income resulted in a conservative estimate for the area, given that income levels tend to rise over the years due to inflation. As shown in Final EIS, Volume II, Table 3.7-7, all of the census tracts analyzed

had median household incomes well above the poverty line. Although the minority population in the City of Airway Heights was higher than the other census tracts analyzed, the median household income was still 2.4 times greater than the poverty threshold. None of the environmental justice factors analyzed in combination were near the threshold level that would indicate the need to use a secondary method of analysis. The secondary method of analysis requested in this comment would not be appropriate based on the CEQ and USEPA guidance.

### **Response to Comment 24-2**

Refer to **Section 2.8.1** of this Attachment and **Response to Comment 7-7** regarding water supply.

### **COMMENT LETTER 25: JOHN ROSKELLEY, FEBRUARY 15, 2013**

#### **Response to Comment 25-1**

The purpose and need for the Proposed Action is described in detail in the Final EIS, Volume II, Section 1.2. The economic condition and unmet needs of the Tribe are described in the Draft EIS, Appendix A. The Secretary's determination that the Proposed Action would be beneficial to the Tribe is discussed in Section 7.0 of the ROD.

#### **Response to Comment 25-2**

Please refer to **Section 2.1.2** of this Attachment for a discussion of the Secretary's Two-Part Determination process.

#### **Response to Comment 25-3**

Comment noted. Please refer to **Section 2.1.1** of this Attachment.

#### **Response to Comment 25-4**

This comment is correct that the Two-Part Determination pursuant to Section 20 of the Indian Gaming Regulatory Act (IGRA; 25 USC §2701 et seq.) would allow the Tribe to conduct Class II and Class III Gaming on the project site if it was determined that gaming would be in the best interest of the Tribe and would not be detrimental to the surrounding community. As shown in Final EIS, Volume II, Section 1.2 and the Spokane Tribe of Indians Unmet Needs Report dated November 17, 2011 (Appendix A of the Draft EIS), gaming on the project site would allow the Tribe to provide necessary services to its members and would be in the best interest of the Tribe. With implementation of mitigation measures listed in Section 6.0 of the ROD, the impacts to the environment and surrounding community would be less than significant.

Please see **Section 2.9** of this Attachment for a discussion of problem gambling, child services, and alcohol abuse.

**Response to Comment 25-5**

Refer to **Response to Comment 25-1**. Potential future settlements with the U.S. governments are not a long-term stable source of income from which to fund tribal governmental programs.

**COMMENT LETTER 26: G. SIMCHUK, FEBRUARY 5, 2013**

**Response to Comment 26-1**

Comment noted. Please refer to **Section 2.1.1** of this Attachment.

**COMMENT LETTER 27: KAROL MOSS, APRIL 18, 2013**

**Response to Comment 27-1**

Comment noted. Please refer to **Section 2.1.1** of this Attachment.

**COMMENT LETTER 28: CATHY MCMORRIS RODGERS, MAY 1, 2013**

**Response to Comment 28-1**

Please see **Section 2.6.1** regarding the Preferred Alternative's compatibility with Fairchild AFB.

**COMMENT LETTER 29: TYLER WELTI, MAY 14, 2013**

**Response to Comment 29-1**

Please see **Section 2.6.1** regarding the Preferred Alternative's compatibility with Fairchild AFB.

**COMMENT LETTER 30: E. SUSAN MEYER, CEO, SPOKANE TRANSIT AUTHORITY, JUNE 5, 2013**

**Response to Comment 30-1**

Refer to **Response to Comments 6-1** and **6-2**.

**COMMENT LETTER 31: SPOKANE COUNTY COMMISSIONERS, MARCH 31, 2014**

**Response to Comment 31-1**

Refer to **Section 2.1.2** of this Attachment.

**Response to Comment 31-2**

Refer to **Sections 2.2.4** and **2.6.1** of this Attachment. The fact that a portion of Fairchild AFB operations is conducted directly over the Proposed Project Site was disclosed within the Final EIS, Volume II, Section 3.9 and was taken into consideration in the analysis of the Proposed Actions compatibility with air force base and airport operations in Final EIS, Volume II, Section 4.9.1. Additionally, comments on the Draft EIS regarding the Proposed Action's compatibility with Fairchild AFB operations, including

those regarding public safety risks, were thoroughly responded to in the Final EIS, Volume I, Section 3.6.1 and in individual responses contained within the Final EIS, Volume I, Chapter 4.0, as appropriate.

### **Response to Comment 31-3**

A copy of the Comment Letter 31 was provided to the USAF. The USAF's response, dated July 29, 2014, concluded that it was the consensus of the following organizations that the Fairchild AFB's APZs are appropriately aligned in accordance to the Air Force AICUZ policy and the AICUZ Department of Defense Instruction (DODI): 18<sup>th</sup> Air Force, the HQ AMC Directorate of Operations, the HQ AMC Directorate of Installations and Mission Support, and HQ Air Force staff.

### **Response to Comment 31-4**

Refer to **Section 2.2.2** regarding the termination of the ILA, Spokane County's opposition to the Preferred Alternative, and the need for a supplemental EIS. Refer to **Response to Comment 31-3** regarding the accuracy of the Fairchild AFB's APZs.

### **Response to Comment 31-5**

Refer to **Section 2.2.2** of this Attachment.

### **Response to Comment 31-6**

Refer to **Section 2.2.4** of this Attachment.

### **Response to Comment 31-7**

Refer to **Response to Comment 31-3** and **Section 2.6.1** of this Attachment regarding the Preferred Alternative's compatibility with Fairchild AFB.

### **Response to Comment 31-8**

Refer to **Response to Comment 31-3 Section 2.1.2** of this Attachment.