



**National Indian Gaming Commission**

**National Environmental Policy Act Record of Decision**

**Adoption of the United States Bureau of Indian Affairs Final Environmental Impact  
Statement**

**and**

**Selection of Preferred Alternative: Approval of Gaming Management Agreement between  
the Spokane Tribe of Indians and WG-Airway Heights, LLC**

**January 5, 2018**

**AGENCY:**

National Indian Gaming Commission

**ACTION:**

Record of Decision on Selection of Preferred Alternative.

**SUMMARY:**

This document serves as a Record of Decision (ROD) of the Proposed Action, which includes: (1) National Indian Gaming Commission's (NIGC) adoption of the United States Bureau of Indian Affairs (BIA) Final Environmental Impact Statement (FEIS) for the issuance of a Two-Part Determination by the Department of the Interior Assistant Secretary for Indian Affairs (Secretary) and development of a casino-resort facility, site retail, commercial building, tribal cultural center, and police/fire station on a 145- acre parcel of land (Site) located in the City of Airway Heights, Washington; and (2) the NIGC Chairman's decision to approve a Gaming Management Agreement (GMA) between the Spokane Tribe of Indians (Tribe) and WG-Airway Heights, LLC (WG-Airway Heights). The BIA, as the lead agency, published the FEIS on February 1, 2013. The NIGC, as a Cooperating Agency, has independently reviewed the existing documents and concludes that the BIA has satisfactorily addressed any comments the NIGC made to the documents, and adopts the EIS with the associated record.

The Draft Environmental Impact Statement (DEIS) and FEIS, considered a reasonable range of alternatives that would meet the purpose and need for the proposal, and analyzed the potential effects of the alternatives, as well as feasible mitigation measures. The decision to construct a gaming facility was an independent determination made by the Tribe and was never subject to NIGC review. The effects, however, were reviewed in the DEIS and FEIS. The consequence of the approval of the Proposed Action is that WG-Airway Heights will control operation of the Tribe's gaming facility during the term of the GMA. Pursuant to the Tribe's Gaming Compact with the State of Washington, the Tribe is required to comply with all Federal laws establishing minimum standards for environmental protection, applicable Environmental Protection Agency program standards, Tribal Environmental Policy Act requirements, Federal water quality and safe drinking water standards, and Tribal laws and codes regarding public health, safety, and environmental protection standards.

As set forth in the DEIS, FEIS, and the administrative record related to the Proposed Action, approval of the GMA will provide the Tribe with a dependable and sustainable source of income to allow it to achieve self-sufficiency, self-determination, and a strong Tribal government. These effects are consistent with the goals of the Indian Gaming Regulatory Act,

which was enacted to promote tribal economic development.<sup>1</sup> These beneficial economic factors associated with the Proposed Action may properly be considered by the NIGC Chair.<sup>2</sup>

With the issuance of this ROD, the NIGC announces that the Proposed Action is the Preferred Alternative in accordance with 40 C.F.R. § 1505.2. The NIGC Chair finds that the Preferred Alternative most suitably meets all aspects of the purpose and needs of the Proposed Action by promoting the Tribe's self-governance capabilities and long-term economic development, while preserving key natural resources of the project site, in accordance with Federal policies enunciated in the IGRA, the Indian Reorganization Act, and related laws and regulations. The NIGC Chair's decision is based on his review of the DEIS, FEIS, and the administrative record.

**FOR FURTHER INFORMATION CONTACT:**

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<sup>1</sup> 25 U.S.C. § 2701(4).

<sup>2</sup> 40 C.F.R. § 1505.2(b).

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## ATTACHMENTS

- Attachment 1      Draft Environmental Impact Statement - Spokane Tribe of Indians West Plains Casino and Mixed-Use Development Project, Bureau of Indian Affairs (Jan. 10, 2012).
- Attachment 2      Final Environmental Impact Statement - Spokane Tribe of Indians West Plains Casino and Mixed-Use Development Project, Bureau of Indian Affairs (Jan. 25, 2013).
- Attachment 3      Record of Decision – Secretarial Determination Pursuant to the Indian Gaming Regulatory Act for the 145-Acre Site in the City of Airway Heights, Washington, for the Spokane Tribe of Indians (June 15, 2015).
- Attachment 4      Letter from Kevin Washburn, Assistant Secretary – Indian Affairs, DOI, to Jay Inslee, Governor, Washington (June 15, 2015).
- Attachment 5      Letter from Jay Inslee, Governor, Washington, to Sally Jewell, Secretary, Department of the Interior (June 8, 2016).
- Attachment 6      Certification from Andrew Matherly, Chairman, Spokane Tribal Gaming Commission (Jan. 2, 2018).

## **1.0 INTRODUCTION AND BACKGROUND**

### **1.1 History of Trust Acquisition and Two-Part Determination**

On August 16, 2001, the United States acquired an approximately 145-acre parcel (Site) of land located in the City of Airway Heights, Spokane County, Washington, in trust for the Spokane Tribe of Indians (Tribe) for economic development purposes. On February 24, 2006, the Tribe submitted a request to the Bureau of Indian Affairs (BIA) that the Assistant Secretary for Indian Affairs (Secretary) of the Department of the Interior (DOI), determine whether the Site is eligible for gaming pursuant to two-part determination as the Tribe intended to develop, in phased construction, a mixed-use development that included a Class II and Class III gaming facility and resort.<sup>3</sup> The two-part determination required the Secretary, after consulting with the Tribe and appropriate state and local officials, including officials of other nearby tribes, to determine that gaming on the newly acquired lands would be in the best interest of the Tribe and its members, and would not be detrimental to the surrounding community.<sup>4</sup> In order for gaming to be conducted, the governor of the state in which the gaming activity is to be conducted must concur in the Secretary's determination.<sup>5</sup>

The proposed action considered by the Secretary, analyzed in the Final Environmental Impact Statement (FEIS) prepared by the BIA as Alternative 1 – Preferred Alternative, included (1) issuance of a two-part determination by the Secretary; and, (2) development of the casino-resort facility, site retail, commercial building, tribal cultural center, and police/fire station. The proposed project also included the possible approval of a gaming management agreement (GMA), and the BIA's approval of lease agreements between the Tribe and commercial developers for the purpose of allowing non-tribal commercial venues on trust land.

On June 15, 2015, the Secretary issued a Record of Decision (ROD), finding that Alternative 1 most suitably met all aspects of the purpose and needs of the proposed action by promoting the Tribe's long-term economic development and self-governance capability, and made a final determination to adopt the Preferred Alternative.<sup>6</sup> On June 15, 2015, the Secretary informed the Governor of Washington State, Jay Inslee, of his decision regarding the two-part determination and sought the Governor's concurrence.<sup>7</sup> On June 8, 2016, Governor Inslee concurred in the determination.<sup>8</sup>

On April 12, 2017, the Kalispel Tribe brought a suit against the DOI to challenge the two-part determination. The Site is located 2 miles from the Kalispel Tribe's gaming facility,

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<sup>3</sup> 25 U.S.C. § 2719(b)(1)(A).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> 76 Fed. Reg. 377 (Jan. 4, 2011).

<sup>7</sup> See Letter from Kevin Washburn, Assistant Secretary – Indian Affairs, Department of the Interior, to Jay Inslee, Governor, Washington State (June 15, 2015).

<sup>8</sup> See Letter from Jay Inslee, Governor, Washington State, to Kevin Washburn, Assistant Secretary – Indian Affairs, Department of Interior (June 8, 2016).

Northern Quest. The Kalispel Tribe asserts that under a two-part determination, that the Secretary's determination that gaming on newly acquired lands be "not detrimental to the surrounding community"<sup>9</sup> requires that the Secretary give special consideration to the Kalispel Tribe's projected detrimental economic impact, which he failed to properly consider. The Kalispel Tribe also asserts various National Environmental Policy Act (NEPA) violations.

The Kalispel Tribe is seeking: a declaratory judgment under the Administrative Procedure Act (APA) that the DOI abused its discretion, and failed to comply with IGRA and the Federal trust responsibility; an injunction prohibiting DOI from any action under IGRA based upon the two-part determination; and, a declaratory judgment that the BIA violated NEPA by failing to adequately consider alternative economic prospects for the Spokane Tribe, as well as other NEPA violations. On July 14, 2017, the Spokane Tribe submitted a motion to intervene, which was granted on July 27, 2017.

On June 16, 2017, Spokane County, Washington, brought a suit against the DOI to challenge the two-part determination. Spokane County is seeking a declaratory judgment under the APA, that the Secretary abused his discretion and violated IGRA by failing to provide a reasoned explanation to support its decision that the casino would not be detrimental to the surrounding community. The County also seeks a declaration that DOI violated the NEPA by failing to take a hard look and consider a sufficient range of alternatives to the casino project. The County is requesting that the Court vacate and remand the June 15, 2015 decision, declare that gaming at the Site is prohibited, and enjoin DOI from taking any action in reliance thereon. The Spokane Tribe sought the right to intervene in the case, which was granted. On October 12, 2017, the two cases were consolidated, and the matters are proceeding.

## **1.2 Development of the Site**

The Tribe has since developed the Site and constructed the gaming facility. The decision to construct a gaming facility was an independent determination made by the Tribe and was not subject to review by the NIGC. The Tribe intends to open the gaming facility to the public on approximately January 8, 2018. The Tribe has certified that the project as developed remains within the scope set forth in the FEIS.<sup>10</sup>

## **2.0 ADOPTION OF THE FINAL ENVIRONMENTAL IMPACT STATEMENT AND PUBLIC INVOLVEMENT**

### **2.1 Adoption of Final Environmental Impact Statement**

The regulations promulgated to implement NEPA, provide that a Cooperating Agency may adopt without recirculating the Environmental Impact Statement of a Lead Agency when,

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<sup>9</sup> 25 U.S.C. § 2719(b)(1)(a).

<sup>10</sup> Certification from Andrew Matherly, Chairman, Spokane Tribal Gaming Commission (Jan. 2, 2018).

after an independent review of the statement, the Cooperating Agency concludes that its comments and suggestions have been satisfied.<sup>11</sup> As a Cooperating Agency, and based upon my independent review of the EIS, I have concluded that the NIGC's comments and suggestions, if any, have been satisfied and I adopt the EIS and the associated record to support this decision.

The FEIS, along with the supporting record, including all notices, is available online at <http://www.westplainseis.com/index.html>.

## **2.2 Public Involvement**

The BIA published a Notice of Intent (NOI), describing its proposed action, announced its intention to prepare an EIS, and invited comments on the scoping of the EIS.<sup>12</sup> The NOI comment period closed on October 31, 2009, and a scoping meeting was held in Airway Heights on September 16, 2009. A scoping report, issued in March of 2011, summarized the major issues and concerns from the comments received during the scoping process. Scoping comments were considered by the BIA in developing the proposed project alternatives and analytical methodologies presented in the EIS.

The BIA circulated an administrative version of the DEIS to Cooperating Agencies for review and comments in May of 2011. After incorporating comments from Cooperating Agencies, the BIA published the Notice of Availability (NOA), invited written comments for 45-days until April 16, 2012, and provided notice of a public hearing that was held on March 26, 2012.<sup>13</sup> The NOA was also published in local newspapers. As the public requested, the BIA reopened the comment period until May 16, 2012.<sup>14</sup> The total comment period for the DEIS was 75 days.

All comments regarding the DEIS received during the comment period, including those received at the public hearing, and those comments prepared by Cooperating Agencies, were considered in preparation of the FEIS. On February 1, 2013, the NOA of the FEIS was published and notice was provided that comments would be accepted for 30-days.<sup>15</sup> The 30-day waiting period was then extended through May 1, 2013.<sup>16</sup> Substantive comments were addressed in the BIA's Record of Decision.

## **3.0 PROPOSED ACTION**

### **3.1 Description of the Proposed Action**

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<sup>11</sup> 40 C.F.R. § 1506.3.

<sup>12</sup> 74 Fed. Reg. 43715 (Aug. 27, 2009). This notice republished the content of an earlier notice published at 74 Fed. Reg. 41928 (August 19, 2009), which contained erroneous dates.

<sup>13</sup> 77 Fed. Reg. 12873 (March 2, 2012).

<sup>14</sup> 77 Fed. Reg. 24976 (April 26, 2012).

<sup>15</sup> 78 Fed. Reg. 7448 (Feb. 1, 2013).

<sup>16</sup> 78 Fed. Reg. 15040 (March 8, 2013).

The Proposed Action, approval of the GMA, would allow WG-Airway Heights, LLC (W-G Airway Heights) to manage the day-to-day operation of the Tribe's gaming facility. W-G Airway Heights will be responsible to conduct and direct all business and affairs in connection with the day-to-day operation, management and maintenance of the gaming facility including: establishing days and hours of operation; orderly physical administration, management, and operation of the facilities; satisfying required filings; identification and recommendation of all vendors; advertising, marketing, and promotions; paying bills and expenses; operation of the gaming facility; general administrative and management services such as general operational supervision, guidance, quality control, inspection, supervision and support of hiring, training of employees, sales, etc.; security and surveillance; alcohol and tobacco sales; selection, supervision, training, controlling, promoting, disciplining, and discharge of employees; preparation, adoption, and administration of standard personnel policies and procedures; preparation of a proposed operating budget and annual plan; and, adoption and implementation of a system of internal controls.

### **3.2 Purpose and Need of the Proposed Action**

The purpose and need for implementing the GMA with WG-Airway Heights is to provide for a level of professional management of the gaming facility that will ultimately improve the long-term economic condition of the Tribe and its members through the development of stable, sustainable sources of employment and revenue. Revenues generated from the gaming facility will promote tribal economic development, self-sufficiency, and a strong tribal government, including supporting social, governmental, and educational programs for Tribal members, as Congress intended in enacting the Indian Gaming Regulatory Act.

## **4.0 ENVIRONMENTAL CONSEQUENCES**

As indicated above, I am adopting the BIA's EIS that analyzed the environmental impacts of approval of the GMA, including all related activities and uses that are reasonably connected to the Proposed Action within the context of NEPA. I have assessed the analysis of the environmental consequences as outline in the FEIS and agree that it provides a complete description of the potential environmental consequences of the Proposed Action and the alternatives. The environmental consequences described in the FEIS are incorporated herein.

### **4.1 Environmental Impacts Identified in the FEIS**

A number of specific issues were raised during the EIS scoping process and comment periods. Each of the alternatives were considered in the EIS and/or the FEIS and evaluated. The categories of the most substantive issues include:

- Geological and Soils;
- Water Resources;
- Air Quality;

- Biological Resources;
- Cultural and Paleontological Resources;
- Socioeconomic Conditions;
- Transportation/Circulation;
- Land Use;
- Public Services;
- Noise;
- Hazardous Materials;
- Aesthetics;
- Indirect Effects; and,
- Cumulative Effects.

Analyses of these and other environmental parameters were also considered and analyzed within the FEIS. The FEIS identified the environmental impacts, including:

- Geology and Soils
  - Effect on topography - Development and operation of development alternatives would result in a less-than-significant impacts.
  - Effect on soils and geography – All development alternatives could potentially impact soils due to erosion during construction, operation, and maintenance activities; however, with the mitigation measures identified in the FEIS and the Secretary’s ROD, the level of impact would be less-than-significant.
  - Effect on seismicity – No known faults are mapped in the vicinity of the Site; therefore, the potential for surface rupturing along an on-site fault in low and not a constraint for the development alternatives. With development consistent with the International Building Code, the level of impact would be less-than-significant.
  - Effect on mineral resources – There are no known or mapped mineral resources on the Site. Land use under the development alternatives would not result in a loss of economically viable aggregate rock or otherwise diminish the extraction or important ores or minerals. Project-related impacts to mineral resources under the development alternatives would be less-than-significant.
- Water Resources
  - Flooding – The Site is outside the 100-year and 500-year floodplains. No impacts are expected to occur.
  - Surface water quality – With geology and soil mitigation discussed in the FEIS, the potential impacts to the local and regional watersheds from construction activities would be less-than-significant. After development, the Tribe is requires to design storm water facilities in reasonable conformity with

the Airway Heights Public Works Standards. Therefore, with mitigation provided in the FEIS and the Secretary's ROD, impacts to hydrology and water quality during operation of the development alternatives would be less than significant.

- Ground water supply – As Airway Heights has the capacity to provide water and has agreed to provide potable water to the Site there is no impact to existing wells in the immediate vicinity. Wastewater generated at the Site will be treated at the City's Wastewater Treatment, Reclamation, and Recharge Facility, which uses percolation ponds as a means of disposal for treated wastewater. The increased drawdown of the groundwater associated with the demand from development would be off-set by groundwater re-charge from the increased use of percolation ponds. Therefore, Alternative 1 would result in a less-than-significant impact on groundwater levels.
- Ground water quality – Impact from storm water runoff would be less-than-significant, and implementation of the mitigation measures identified in the FEIS and the Secretary's ROD would further reduce potential impacts from construction activity.
- Air Quality
  - Construction emissions – With implementation of the mitigation measures identified in the FEIS, the impacts would be at a less-than-significant level.
  - Operation emissions – The Preferred Alternative would not cause an exceedance of the National Ambient Air Quality Standards; therefore, the Preferred Alternative would be considered to conform to the State Implementation Plan. Utilizing the implementation measures identified in the FEIS and the Secretary's ROD to minimize emissions of criteria pollutants, the development alternatives would have a less-than-significant impact on regional air quality.
- Biological Resources
  - Habitats – No impact to sensitive habitats would occur.
  - Federally listed species – No impact to Federally listed wildlife would result from implementation of the development alternatives.
  - Migratory birds – Construction of the development alternatives would result in impacts to species protect under the Migratory Bird Treaty Act if active nests are present within shrubs or trees within the Site. However, with implementation of the mitigation measures identified in the FEIS and the Secretary's ROD, the potential impacts would be at a less-than-significant level.
  - Wetlands and/or waters of the United States – The proposed footprints associated with the development activities were designed to avoid the vernal

wetlands; therefore, the development alternatives will have no impact on these habitat features.

- Cultural and Paleontological Resources – If such resources or remains are encountered during development, construction shall halt until a Tribal Historic Preservation Office officer and a BIA archaeologist can assess the significance of the find and develop a Treatment Plan, if necessary. Through compliance with applicable regulations, as identified in the FEIS and the Secretary’s ROD, impacts would be at a less-than-significant level.
- Socioeconomic Conditions and Environmental Justice
  - Economic effects – The Preferred Alternative would likely result in the greatest beneficial impact to the local economy of Spokane County, and existing regional casinos would continue to generate positive cash flows. Anticipated substitution effects would not result in the closure of any of the competing gaming facilities. It is likely that existing regional casinos would continue to generate positive cash flows. The EIS indicates that there would not be significant quantifiable non-gaming substitution effects as a result of the development alternatives. Generally, the EIS concluded that construction and operation of all the development activities would generate substantial economic output for a variety of businesses in the County and substantial tax revenue for the State, County, and local governments. As discussed in the FEIS and the Secretary’s ROD, the development alternatives, and the Proposed Action, could result in economic impacts to the Kalispel Tribe, possibly impacting the Kalispel Tribe’s governmental budget. However, these effects are expected to dissipate over time due to market growth and marketing strategy adjustments, and would not cause such a reduction in income as to keep the Kalispel tribal government from providing essential government services. Therefore, the development alternatives would not result in significant adverse effects to minority or low-income communities.
  - Employment – Construction and operation of the development alternatives would generate substantial and ongoing employment opportunities that would be filled by the available labor force in the County. While employment at existing gaming facilities may temporarily be reduced proportionally to the estimated substitution effect, the net impact to employment opportunities as a result of the Proposed Project would be positive. Overall, the Preferred Alternative would result in the greatest beneficial impact to local employment opportunities in Spokane County.
  - Housing – A less-than-significant impact to the housing market would occur under the development alternatives.
  - Social effects – The gaming development alternatives do not introduce a new use to the community. Therefore, there would be no anticipated significant

increase to problem gambling rates in the local area. Additionally, the Tribe will make annual payments to the State, County, and local governments per the Tribal-State compact that would support public services and community benefits, including problem gambling services throughout the region.

Therefore, the potential impacts to problem gambling would be less-than-significant. All development alternatives would introduce a large number of patrons and employees into the community, and criminal incidents would be expected to rise. Further, agreements between the Tribe, County, and Airway Heights, along with increased tax revenue resulting from the development alternatives would fund expansion of law enforcement services required to accommodate planned growth, and any increased crime. Thus, the development alternatives would result in less-than-significant effects associated with crime.

- Community impacts – Due to the limited number of employees expected to relocate to the area, the effects on the local school district would be minimal and the effect on area libraries and parks would be less-than-significant.
- Environmental justice – Overall, the Preferred Alternative would have the greatest beneficial impact on the Tribe and the effects on environmental justice would be less-than-significant.
- Transportation/Circulation
  - Traffic – Impacts during construction would be temporary, significantly less than operational traffic, and would occur outside of the peak traffic hours; however, significant adverse effects would not occur with the mitigation provided in the FEIS. The increase in traffic generated by the buildout of the development alternatives would contribute to unacceptable traffic operations at several study intersections, causing them to operate below acceptable level of service standards. Mitigation measures provided by the EIS and the Secretary's ROD would restore the impacted intersections to acceptable operating conditions or would restore operating conditions to pre-development levels. Because of the timing of some of the mitigation is uncertain and may occur after the project is implemented, short-term adverse effects associated with traffic and circulation may occur until mitigation is designed, approved, and implemented. In addition, a memorandum of understanding with the County provides for funding to mitigate impacts from the Preferred Alternative. With mitigation, the impacts to transportation and circulation during operation would be less-than-significant.
  - Transit, bicycle, and pedestrian traffic – The Proposed Project would not impede bicycle and pedestrian circulation. Funding will be provided to the Spokane Transit Authority to compensate for any costs associated with increased ridership. Thus, effects to transportation and circulation would be

less-than-significant. Mitigation measures are provided in the FEIS and the Secretary's ROD. With implementation of mitigation measures, Alternative 1 would not contribute towards adverse cumulative effects to transit, bicycle, and pedestrian traffic.

- Connectivity – The current roads are anticipated to be sufficient to provide access to development constructed at the allowed density, and any changes to zoning or permitted special use would be at the discretion of the County. Mitigation has been provided in the FEIS that would ensure sufficient access to certain western parcels in the event that the County permits a more intensive development. With the incorporation of the mitigation measures included in the FEIS, significant cumulative effects regarding connectivity and circulation would not occur.
- Land Use – While State and local land use policies do not apply to tribal trust lands, the development alternatives would be compatible with local zoning and land use policies, as well as policies related to land use in the vicinity of the Fairchild Air Force Base and the Spokane International Airport, and not hazardous to air navigation. Implementation of the mitigation measures provided in the FEIS and Secretary's ROD would minimize potential cumulative land use effects.
- Public Services – All development alternatives would increase demands for services; including:
  - Water supply – The Airway Heights' public water system will service the Site through connections to be provided at the Tribe's sole cost and expense. With the recent expansion, Airway Heights' will have sufficient capacity to service the selected development alternative. With implementation of the mitigation provided in the EIS, impacts to the public water system and level of service would be less-than-significant. In addition, the City of Spokane has agreed to sell water at established rates to Airway Heights if Airway Heights cannot furnish adequate water, which will be paid for by user fees. If the City of Spokane cannot meet demand, it may temporarily discontinue service. With implementation of the mitigation provided in the FEIS and Secretary's ROD, impacts to the City of Spokane's public water system and level of service would be less-than-significant.
  - Waste water – Airway Heights' Wastewater Treatment, Reclamation, and Recharge Facility (WTRRF) was designed to have the flexibility to provide increased treatment capacity to meet future demands through construction of additional modular units. Therefore, impacts to Airway Heights' public sewer and wastewater treatment system would be less-than-significant.
  - Solid waste – Projected solid waste generated from the development alternatives is considered a small contribution to the waste stream and

- represents a small percentage of the capacity of the available recycling or disposal sites; therefore, it would have less-than-significant impact.
- Law enforcement – As outlined in the FEIS, the Tribe has entered into a memorandum of understanding with the City of Airway Heights to provide for law enforcement and to compensate the City for costs of impacts associated with increased police services or would provide fair-share assistance through existing mechanisms established pursuant to the Compact with the State for services from other law enforcement agencies. With the implementation of the MOU, the Compact, and the mitigation measures provided in the FEIS and Secretary's ROD, impacts to public law enforcement services would be at a less-than-significant level.
  - Fire protection and emergency medical services – The increase in traffic through the fire district, as a result of the development alternatives, could increase the district's call volume. Fair share payments made by the Tribe pursuant to a memorandum of understanding, would compensate the City for costs of impacts associated with increased fire protection and emergency medical services. With implementation of the memorandum of understanding, and mitigation provided in the FEIS and Secretary's ROD, the development alternatives would not contribute to a potential for significant effects on fire protection and emergency medical services.
  - Electricity and natural gas– Local utility companies have stated that they have the capacity to provide electricity and natural gas to the project site. Therefore, the development alternatives would have a less-than-significant impact on electricity and natural gas providers.
  - Noise – During the construction phase, noise levels from equipment and vehicles may at times exceed the noise abatement criteria standards use by the Federal Highway Administration and Washington Department of Transportation. Mitigation measures provided in the FEIS and Secretary's ROD would reduce the impacts to less-than-significant levels. Furthermore, the proposed project would not increase noise levels above Federal noise abatement criteria; therefore, noise generated by operation would be less-than-significant. Because exposure of hotel patrons to noise from aircrafts could create the potential for annoyance, mitigation provided in the FEIS and the Secretary's ROD would ensure that appropriate sound attenuation methods are utilized to reduce the potential for noise complaints to less-than-significant levels.
  - Hazardous Materials – If during construction contamination is encountered and determined to be hazardous, mitigation measured provided in the FEIS and the Secretary's ROD require the Tribe to consult with the EPA and to comply with all Federal hazardous materials regulations in the removal and disposal of any

contaminated soil or water. Hazardous materials used during construction of the proposed project would pose a risk to human health and/or the environment. Mitigation provided in the FEIS and Secretary's ROD require construction personnel follow Best Management Practices to prevent the release of hazardous materials used during construction into the environment. During operation, hazardous materials would be stored, handled, and disposed of according to State, Federal, tribal, and manufacturer's guidelines. Therefore, Alternative 1 would not result in significant cumulative effects associated with hazardous materials.

- Aesthetics – While the site-specific visual effects may be considered significant, the context of the development alternatives in relation to the larger landscape would be less-than-significant. Mitigation measures provided in the FEIS and Secretary's ROD require screening features and natural elements to be integrated into the landscaping design. Development alternatives would produce shadow, light and glare in the project vicinity. Mitigation measures provided in the FEIS and Secretary's ROD require implementation of Best Management Practices and compliance with applicable light and glare controls developed to protect the operational environment near Fairchild Air Force Base. Mitigation would reduce impacts to aesthetics to less-than-significant.
- Indirect effects
  - Off-site traffic mitigation improvements – Construction activities associated with off-site traffic improvements to be implemented through mitigation may indirectly affect the environment, but are regulated by the Washington State Department of Transportation, Airway Heights and/or the County, and would be required to comply with applicable Federal, State and local law, policies and ordinances related to protection of natural resources. Indirect effects resulting from off-site improvements would be less-than-significant.
  - Water/wastewater infrastructure improvements – Construction of off-site water/wastewater infrastructure improvements may indirectly affect the environment. Construction activities would be regulated by Airway Heights and/or Washington State Department of Transportation, and would be required to comply with applicable Federal, State and local law, policies and ordinances related to protection of natural resources. Indirect effects resulting from off-site improvements would be less-than-significant.
  - Growth-inducing effects – Because no significant regional growth is anticipated under the development alternatives, indirect effects from growth inducement would be less-than-significant.
- Cumulative effects – With the implementation of mitigation measures provided in the FEIS and the Secretary's ROD, the development alternatives would not contribute to cumulative effects associated with geology and soils, water resources, biological

resources, cultural resources, socioeconomic conditions, land use, public services, noise, hazardous waste, and aesthetics.

- Air Quality and Climate Change/Greenhouse Gas – In the cumulative year 2032, with implementation of the mitigation measures provided in the FEIS and the Secretary's ROD, no intersection would have a traffic level of service or increase in delay that would warrant a carbon monoxide Hot Spot Analysis. Development and operation activities would result in emissions of criteria pollutants and greenhouse gas primarily due to emissions from project related traffic. With mitigation, project related emissions of criteria pollutants would not contribute to a significant cumulative effect to air quality in the year 2032 and would not conflict with the applicable State Implementation Plan under the Clean Air Act. Mitigation measures in the FEIS and the Secretary's ROD would ensure compliance with Washington Climate Advisory Team greenhouse gas reduction strategies; therefore, the proposed development alternatives would have a less-than-significant cumulative effects associated with greenhouse gas emissions and climate change.
- Transportation - In the cumulative year 2032, increase in traffic generated by the proposed development alternatives would contribute to unacceptable traffic operation at several study intersections, causing them to operate below acceptable level of service standards. In accordance with the intergovernmental agreement and mitigation measures provided in the FEIS and the Secretary's ROD, the Tribe will implement and pay a fair share contribution to traffic improvements detailed in the Traffic Impact Analysis and Addenda for intersections adversely affected by the selected alternative. Mitigation measures would restore the impacted intersections to acceptable operating conditions in accordance with applicable agency requirements, or would restore operating conditions to pre-development levels. With mitigation, cumulative effects on transportation and circulation during operation would be less-than-significant.

## **5.0 ENVIRONMENTALLY PREFERRED ALTERNATIVE**

As set forth in the FEIS, Alternative 2 (a reduced casino and mixed-use development) and Alternative 4 (no-action/no-development alternative) would result in the fewest effects to the natural and human environment. Alternative 4 would be environmentally preferred; however, it would not provide the Tribe with the opportunity to engage in economic development to generate sustainable revenue to allow the Tribe to achieve self-sufficiency, self-determination, and a strong Tribal government. Alternative 4 would also likely result in substantially less economic benefits to Airway Heights and Spokane County.

Of the development alternatives, Alternative 2 is based on less development and would result in the fewest adverse effects on the human environment. However, it would generate less

revenue and, therefore, limit the number of programs and services the Tribal government could offer tribal citizens and neighboring communities. Alternative 2 is the Environmentally Preferred Development Alternative, but it would not fulfil the purpose and need for the Proposed Action.

## **6.0 PREFERRED ALTERNATIVE**

The purpose and need for the Proposed Action is to provide the Tribe with the opportunity to develop and maintain a source of revenue sufficient to allow it to meet its governmental needs and the needs of its tribal members through governmental programs in accordance with Federal policies enunciated in IGRA, the IRA, and related laws and regulations, in light of budget shortfalls.

As discussed above, Alternative 1 is the Preferred Alternative because it meets the purpose and need for the Proposed Action. Of the alternatives evaluated in the FEIS, Alternative 1 would facilitate the Tribe's ability to establish, fund, and maintain governmental programs to meet its obligations and provides benefits to its tribal members. WG-Airway Heights can immediately apply its experience to maximize operational efficiencies at the gaming facility. Those increased efficiencies will result in greater initial net profits and revenues to the Tribe than those associated with the other alternatives.

Alternative 2, while less intensive than Alternative 1, would require similar level of mitigation for identified impacts; however, the economic returns would be less than under Alternative 1 and the more limited development is not the most effective use of the land or the Tribe's capital resources. Alternative 3 would have similar impacts as Alternative 1, but substantially lower profitability of retail development compared to gaming making Alternative 3 less likely to secure a long term, sustainable revenue stream for the Tribe.

For the reasons stated above, I find that the Proposed Action is the Preferred Alternative because the revenue realized by the Tribe through WG-Airway Heights' management of the gaming facility would be substantially greater than the revenue realized though facility management by the Tribe. Accordingly, approval of the GMA best meets the purpose and need of the Proposed Action.

As explained above, the Tribe has already constructed the gaming facility. The GMA is merely a contract to manage the operations of the existing gaming facility to maximize the monetary benefit to the Tribe. Consequently, approval of the GMA would not result in environmental effects greater than those associated with disapproval. The FEIS demonstrates that with or without the Proposed Action, each of the factors analyzed will have a substantially similar impact on the environment. Therefore, at this time, approval and implementation of the Proposed Action would not result in any additional environmental impacts compared to

disapproval of the GMA, and as such both are considered environmentally preferable alternatives.<sup>17</sup>

## **7.0 MITIGATION MEASURES**

All mitigation measures were analyzed in the FEIS. The Tribe is required to implement the enforceable mitigation measures set forth in the FEIS and the Secretary's ROD.

## **8.0 COMMENTS**

In accordance with the requirements of 40 C.F.R. § 1503.4, all comments regarding the EIS Scoping Process, DEIS, and FEIS<sup>18</sup> were considered and responses prepared by the BIA. All comments and the responses to those comments are attached to the FEIS in accordance with 40 C.F.R. § 1503.4(b).


The NIGC, as a cooperating agency, adopted the EIS without recirculating the document.<sup>19</sup> The NIGC is not required to solicit and consider additional comments. However, comments submitted during the preparation of the EIS, and those incorporated in the Secretary's ROD, were reviewed and considered, particularly comments submitted by other tribes and comments relating to the Fairchild Air Force Base.

## **9.0 DECISION TO IMPLEMENT THE PREFERRED ALTERNATIVE**

The NIGC Chair selects the Preferred Alternative, described herein. This decision is made based upon the analyses and information contained in the DEIS, FEIS, the administrative record related to that analysis, and the Secretary's ROD. Based upon the information and analyses contained in the foregoing documents, I find that the Preferred Alternative will not result in any adverse effects on the environment and it will maximize the economic benefit to the Tribe over and above the economic benefit that could be realized through the alternatives.

## **10.0 SIGNATURE**

By my signature, I indicate my decision to implement the Preferred Alternative and approve the GMA.

  
\_\_\_\_\_  
Jonodev O. Chaudhuri  
Chairman  
National Indian Gaming Commission

**JAN 05 2018**

\_\_\_\_\_  
Date

<sup>17</sup> 40 C.F.R. § 1505.2.

<sup>18</sup> Notice of Availability was published in the Federal Register. 73 Fed. Reg. 31143 (May 30, 2008)

<sup>19</sup> 40 C.F.R. § 1506.3(c).