

# ***SECTION 1.0***

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**INTRODUCTION**

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## INTRODUCTION

### 1.1 SUMMARY OF THE PROPOSED ACTION AND EIS PROCESS

This Environmental Impact Statement (EIS) has been prepared pursuant to the National Environmental Policy Act (NEPA) to assess the environmental impacts of issuing a two-part determination under Section 20 of the Indian Gaming Regulatory Act (IGRA) (Proposed Action), and the subsequent development of the West Plains Mixed-Use Development by the Spokane Tribe of Indians (Tribe). The mixed-use development would include a casino as well as other uses. Compliance with NEPA is also required for approval of the Tribe's gaming development and management contract by the National Indian Gaming Commission (NIGC), a federal agency, before such contract can go into effect.

Under Section 20 of IGRA (25 USC § 2719) gaming on lands acquired in trust by the Secretary of the Interior (Secretary) after October 17, 1988 is prohibited, with some exceptions. In this case, gaming on the 145-acre property adjacent to the City of Airway Heights (City) would require that the Secretary make a "two-part determination," under Section 20(b)(1)(A) that gaming on the property currently held in federal trust on behalf of the Tribe would be (1) in the best interest of the Tribe and (2) not detrimental to the surrounding community (25 U.S.C. § 2719(b)(1)(A)). A Secretarial two-part determination may only be made after consultation with the Tribe and appropriate state and local officials, including officials of other nearby tribes, located within a 25-mile radius. In addition, Washington's Governor must concur with the determination before gaming could occur on the property.

The NIGC is charged with regulating gaming on "Indian lands" as mandated by IGRA. As part of its regulatory authority under IGRA, the NIGC reviews and approves all gaming development and management contracts between Native American tribal governments and outside management companies.

For the purpose of this EIS, the BIA serves as the Lead Agency for compliance with NEPA, with the NIGC, Tribe, Washington State Department of Transportation (WSDOT), the City, Spokane County, the Federal Aviation Administration (FAA), and U.S. Department of the Air Force (Air Force) serving as Cooperating Agencies. The BIA has also formally requested that the United States Environmental Protection Agency (EPA) participate as a Cooperating agency; however, this agency has not accepted Cooperating Agency status for this EIS.

This EIS has been completed in accordance with the applicable requirements of NEPA and its implementing regulations and guidance. NEPA requires the BIA and the Cooperating Agencies to review and analyze the environmental impacts associated with the Proposed Action. This document provides a detailed description of the development alternatives and an analysis of the potential consequences associated with the developments that may result from the Proposed Action. The No Action alternative is also addressed as required under NEPA. This document includes a discussion of alternatives, avoidance of effects, and mitigation measures.

## 1.2 PURPOSE AND NEED

The Spokane tribal government is responsible for providing a full range of services, including education, health and recreation, public safety and law enforcement, tribal court, public utilities, natural resources management, economic development, and community assistance. In addition to overseeing governmental services, the Tribal Council charters and oversees the Tribe's economic enterprises. The Tribe wishes to improve its short-term and long-term economic condition and promote self-sufficiency, both with respect to its government operations and its members. The Proposed Action serves the needs of the BIA by advancing the agency's "Self Determination" policy of promoting the Tribe's self-governance capability. It serves the needs of the Tribe by promoting opportunities for economic development and self-sufficiency of the Tribe and its members.

The unmet needs of the Tribe are presented in the Spokane Tribe of Indians Unmet Needs Report (AES, 2011; **Appendix A**). This report summarizes information provided by the Tribal government regarding the Tribe's vision, goals, present economic situation, and 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 annual supplemental income needed by the Tribe to fund these programs is estimated to exceed 73 million dollars.

The Tribe has a total enrollment of 2,705 members, of which, approximately 1,954 members live within approximately 40 miles of the project site, and 962 members live on the Tribe's reservation in Stevens County. Approximately 680 members are under the age of 18, approximately 1,725 members are between the ages of 18 and 64, and approximately 300 members are age 65 or older (Raymond, 2011). Of the 1,954 members that live within approximately 40 miles of the project site, approximately 1,214 members are between the ages of 18 and 64. In 2009, the unemployment rate on the Spokane Reservation rose to 47 percent, up from 34 percent in 2008. Of the employed tribal members, 45.3 percent have earnings that they fall beneath the federal poverty level (AES, 2011; **Appendix A**).

The Tribe currently operates two gaming facilities in eastern Washington: The Two Rivers Resort Casino, located approximately 45 miles northwest of the City of Spokane along State Route 25 (27 miles from the tribal administration office), and the Chewelah Casino located approximately 42 miles north of the City of Spokane along U.S. 395 (37 miles from the tribal administration office). Both casinos were generating substantial revenue between 1998 and 2006; however, for a variety of reasons, including increasing competition from other gaming venues and the economic downturn, operating income at the two casinos has significantly decreased. As a result of the decline in operating income from the casino enterprises, the transfer of gaming revenues to the Tribe to fund government programs has dropped precipitously from approximately \$7 million in 2005 to less than \$20,000 in 2009. In addition, \$983,300 had to be transferred from the Tribe to the Two Rivers Casino in 2009 in order to compensate for the operating losses (AES, 2011).

The Tribe has immediate need for a more reliable and significant source of income because of its present financial situation. Declining tribal income against a backdrop of a rapidly growing and youthful tribal population with significant unmet social and economic needs including, but not limited to, health care, housing, education, employment, and job skills have resulted in the deteriorating financial condition. The situation is expected to continue as tribal revenues continue to decline and tribal membership grows. The Tribe's need for the Proposed Action is based on:

- Lack of a sufficient and sustained income source, which hinders the Tribe's ability to maintain programs and services necessary to improve the overall condition of the tribal membership;
- Desire to become a completely self-sufficient entity and eliminate reliance on grant funds (soft money);
- Lack of employment opportunities for tribal members (approximately 47 percent are unemployed, and 43 percent of the employed are below the federal poverty level);
- Desire to further develop the Tribe's property adjacent to the City with tribal economic enterprises;
- Potential profitability of Class III gaming in Airway Heights;
- Desire to re-establish cash reserves to ensure the stability of the Tribe through tough economic times in the future;
- Desire to improve services and quality of life for tribal members and their families; and
- Desire to contribute towards improving local communities through job creation and economic opportunities.

The Tribe's purpose in requesting the approval of a gaming development and management contract from the NIGC is to allow the Tribe to team with an experienced casino management company to develop and operate the proposed casino-resort facility. The Tribal Government needs a developer/manager because it alone cannot secure the necessary financing to develop this project and lacks the necessary expertise to manage a casino-resort facility of this nature.

The proposed casino-resort facility developed as a result of the Proposed Action will be operated pursuant to the requirements of federal law and the Tribal/State Compact between the State of Washington (State) and the Tribe. The casino-resort facility would provide the Tribe with a long-term, sustainable revenue base from which to fund tribal government operations and programs, decreasing tribal members' dependence on limited federal and State funding.

The Tribal Government plans to use revenues to fund a variety of social, housing, governmental, administrative, educational, and health and welfare services to improve the quality of life of tribal members, and to provide capital for other economic development and investment opportunities. The casino operations would provide living wage employment opportunities for tribal members and many local non-tribal residents, either directly or indirectly. Casino operations would also promote the purchase of goods and services, which may improve economic conditions in nearby communities.

In summary, the purpose and need for the Proposed Action is to advance the BIA's "Self Determination" policy of promoting the Tribe's self-governance capability by providing a sufficient, sustained income

source that will enable the Tribal Government to provide essential social, housing, educational, health and welfare programs, thereby improving the quality of life for tribal members and their families.

### 1.3 OVERVIEW OF THE ENVIRONMENTAL REVIEW PROCESS

NEPA requires that an EIS be prepared for major federal actions that could significantly affect the quality of the human environment. This document has been completed in accordance with applicable requirements, including those set out in NEPA (42 U.S.C. 4321 *et seq.*); the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR Sections 1500 – 1508); and the BIA’s NEPA handbook (59 IAM 3-H).

The BIA published a Notice of Intent (NOI) in the *Federal Register* on August 19, 2009 and August 27, 2009<sup>1</sup>, describing the Proposed Action, and announcing the BIA’s intent to prepare an EIS (**Appendix B**). The NOI comment period closed on October 31, 2009. A scoping report was published by the BIA in March 2011 as described in **Section 1.4** below. During the scoping process, the BIA identified 7 Cooperating Agencies: (1) Tribe, (2) WSDOT, (3) NIGC, (4) City of Airway Heights, (5) Spokane County, (6) FAA, and (7) Air Force.

The Draft EIS was distributed to federal, tribal, state, and local agencies and other interested parties for a 75-day review and comment period<sup>2</sup>. The review and comment period began after the Notice of Filing with the EPA in the *Federal Register* on March 2, 2012. The Notice of Availability (NOA) published by the BIA provided the time and location of public hearing to receive comments from the public concerning the Draft EIS. Substantive comments received on the Draft EIS during the comment period, including those submitted or recorded at public hearing, are responded to in Volume I of this Final EIS. A complete copy of all comment letters received on the Draft EIS is maintained by the BIA as part of the administrative record for this project. The complete Comment Letters Log is included within **Appendix Q** of the Final EIS for reference.

Similar to the Draft EIS, the EPA shall publish an NOA for the Final EIS in the *Federal Register* marking the beginning of the 30-day period after which the BIA may decide on the Proposed Action. At the time of the decision, the BIA will prepare a concise public record of decision (ROD), which states what the decision is, identifies all the alternatives considered in reaching the decision, and discusses preferences among alternatives based on relevant factors including economic and technical considerations and the BIA’s statutory mission. The ROD also identifies and discusses all factors that were balanced and discusses whether all practicable mitigation measures have been adopted to minimize environmental effects. If all practicable measures are not adopted, the BIA must state why such measures were not adopted. Specific details of adopted mitigation measures shall be included as appropriate conditions in

<sup>1</sup> The NOI published on August 19, 2009 contained incorrect dates for the close of the comment period and public scoping meeting. The NOI published on August 27, 2009 republished the content of the original notice with corrected dates.

<sup>2</sup> The NOA published on March 2, 2012 (77 FR 12873) announced a 45 day review period ending on April 16, 2012. In response to public requests, the BIA published a notice of the reopening of the comment period in the federal register on April 26, 2012 (77 FR 24976). The extended comment period ended on May 16, 2012. The total comment period for the Draft EIS was 75 days.

whatever approvals are being made by the lead agency. CEQ Regulations for Implementing NEPA, 40 CFR Section 1505.3, requires that “Mitigation and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency.” Therefore, the terms of a ROD are enforceable and can be used to ensure execution of the mitigation measures identified therein. Within the ROD a mitigation and monitoring enforcement plan (MMEP) must be adopted and summarized where applicable for any mitigation. However, it should be noted that mitigation enforceable by parties other than the BIA, for example through permits or enforceable agreements, does not require a monitoring and enforcement program.

## **1.4 SCOPING**

The CEQ Regulations for Implementing NEPA require a “scoping” process, to determine and narrow the range of issues to be addressed during the environmental review of a Proposed Action (40 CFR Section 1501.7). The scoping process entails a determination of the issues that will be addressed in the EIS by soliciting comments from agencies, organizations and individuals. The issues that were raised during the NOI comment period have been summarized within the *Environmental Impact Statement Scoping Report for the Spokane Tribe of Indians West Plains Casino and Mixed-Use Development Project*. This report was published by the BIA in March 2011 and is available for review at <http://www.westplainseis.com/> or upon request to the BIA’s Northwest Region Office at 911 NE 11<sup>th</sup> Avenue, Portland, Oregon 97232. This EIS addresses the issues and concerns summarized in the scoping report. The reasonable range of development alternatives analyzed in this EIS was developed based on comments received during the scoping process as well as consultation with the Tribe.

## **1.5 AGREEMENTS WITH STATE AND LOCAL GOVERNMENTS**

The Tribe has entered into the following agreements with local government agencies which include provisions relating to the nature and scope of compensation for local government services that would be affected by the Proposed Action.

### **1.5.1 TRIBAL-STATE COMPACT FOR CLASS III GAMING**

In February 2007, the Tribal-State Gaming Compact (**Appendix C**) was entered into and amended in September 2008 “to provide for mutual governmental purposes and to provide a regulatory framework for the operation of certain Class III gaming.” The proposed West Plains casino would be considered an authorized gaming operation subject to the terms of the compact. The compact outlines, among other things, the nature, size, and scope of Class III gaming; the licensing and certification requirements and procedures; procedures regarding the enforcement of compact provisions; regulations for the operation and management of the tribal gaming operation; and tribal reimbursement of regulatory fees and expenses incurred by the state gaming agency.

## 1.5.2 INTERGOVERNMENTAL AGREEMENT

An Intergovernmental Agreement (IGA) between the Tribe, City, and Spokane County was executed on April 10, 2007 and amended on August 26, 2010 (**Appendix C**). The parties set forth certain terms and conditions with regard to their respective obligations in conjunction with the annexation of the project site into the City's boundaries. Under Washington State land use law, the City cannot provide essential governmental services to an area beyond its limits unless such areas are eventually targeted for annexation. Prior to being annexed into the city limits of the City of Airway Heights, the project site was located within the designated "Urban Growth Area" of the City, and thus was within an area that was targeted for annexation. In accordance with the Washington State law requirement to obtain U.S. consent prior to annexation of federal land, the BIA signed a federal agreement consenting to annexation of the project site into the City limits on March 2, 2011 (BIA, 2011). The City subsequently filed a Notice of Intent to annex the property to the Spokane County Boundary Review Board in early December 2011. The City approved the annexation on April 16, 2012 (City of Airway Heights Ordinance C-770). The annexation became effective on April 30, 2012 (OFM, 2012).

The IGA provides a mechanism for ensuring adequate public services for the Proposed Project, including sanitary sewer and water service, stormwater, and street improvements to off-set project-related traffic impacts. The IGA provides details regarding the annual payment to be made by the Tribe to the City and Spokane County related to the provision of services, including, but not limited to, police, fire, emergency response, court, operations and maintenance for public roadways, and public safety. Prior to the annexation of the project site, the County shall continue to provide the essential government services listed above, with the exception of water and sewer services, which shall be provided by the City as described below. The IGA also requires that development within the project site complies with various chapters of City's Municipal Code and standard Public Works Standards manual, as well as Spokane County's Airport Overlay Zone code (Chapter 14.702 of the Spokane County Zoning Code). The IGA applies to Alternatives 1, 2, and 3, described in **Section 2.0**.

### Utilities

In accordance with Section 2.0 of the IGA (**Appendix C**), the City's public water and sewer services shall serve the project site through the City's municipal utilities with connections to be provided to the project site at the Tribe's sole cost and expense. As discussed in Section 6.2 of the IGA, with the consent of the United States to annexation of the property by the City of Airway Heights (signed on March 2, 2011), the City agrees to provide sewer and water service to serve no more than ten acres of land within the project site prior to the site's annexation. After the annexation of the site (effective April 30, 2012), the City shall provide sufficient water and sewer capacity to support development of the project site. The design and construction of the sewer and water system for the project site shall be in reasonable conformity with Chapters 13.06 and 13.04, respectively, of the Airway Heights Municipal Code and the City's Public Works Standards. Upon connection to the City's sewer and water system, the Tribe would pay the current sewer and water capital connection charges, as well as the monthly service fees. A description of the connection to the sewer and water system is provided in **Section 2.0** for each alternative.

## **Stormwater**

Pursuant to Section 2.4 of the IGA (**Appendix C**), the Tribe agrees to construct stormwater facilities on the project site in reasonable conformity with the standards set forth in the Airway Heights Public Works Standards.

## **Traffic Mitigation**

Pursuant to Section 3.0 of the IGA (**Appendix C**), the Tribe agrees to make street and intersection improvements as identified in the traffic impact analysis (TIA; **Appendix D** of Draft EIS and **Appendix R** of Final EIS) to provide for the safe and efficient vehicle and pedestrian movements and maintain traffic levels of service (LOS) at their pre-development levels, unless otherwise agreed by the City or County, and be in reasonable conformity with applicable City or County standards.

### **1.5.3 MEMORANDUM OF AGREEMENT**

A Memorandum of Agreement (MOA) between the Tribe and the City was executed on April 10, 2007 and amended on August 26, 2010 (**Appendix C**). As described in **Section 1.5.2**, under the IGA the City shall provide services to the project that include law enforcement and security services, public health and safety, fire protection, and routine road maintenance and repair. The MOA provides details regarding an agreed payment schedule for payment by the Tribe to the City to pay for such public services (as mentioned above) that would be impacted by the Proposed Project. The MOA applies to Alternatives 1 and 2.

## **Law Enforcement**

In Section 2.2, the MOA (**Appendix C**) outlines the security responsibilities of the Tribe, the law enforcement responsibilities of the City, and the jurisdiction of the City and the County to prosecute cases that occur on trust property. Under the MOA, the Tribe agrees to use best efforts to assist the City in any law enforcement matter where individuals pursued by the City flee to and/or take refuge within the trust property up to and including detention of the individual.

## **Public Health and Safety**

Pursuant to Section 2.3 of the MOA (**Appendix C**), the City agrees to provide full-time fire protection and emergency medical services to the trust property. The Tribe's responsibilities include, but are not limited to, maintaining standards no less stringent than any City, County, and State law addressing fire safety, employing medical technicians on site, and providing medical and fire protection training to staff, as appropriate. The Tribe and the City agreed to coordinate emergency service programs and exchange emergency response policies.

## **Routine Road Maintenance and Repair**

Under Section 2.4 of the MOA (**Appendix C**), the City agrees to provide routine maintenance and repair to the streets providing access to the property at the same level as provided for similar streets in the City.

Consistent to the IGA, the Tribe commits to take reasonable efforts to cause necessary improvements to the roads to mitigate traffic-related impacts.

### 1.5.4 INTERLOCAL AGREEMENT

On August 17, 2010, the City and Spokane County entered into an Interlocal Agreement (ILA) entitled “Interlocal Agreement Between the City of Airway Heights and Spokane County Concerning the Memorandum of Agreement Between the City of Airway Heights Regarding Services and Impacts of Tribal Gaming On Indian Lands Located Adjacent To Or Within the City of Airway Heights” (**Appendix C**). The purpose of the ILA is to outline the terms and conditions by which the City is to pay Spokane County in accordance with Subparagraph 3.3 of the MOA which states “In the event payments under this MOA supplant payments under the IGA, the City [of Airway Heights] shall be responsible for payments to the County pursuant to an agreement between the City and the County.”

## 1.6 REGULATORY REQUIREMENTS, PERMITS, AND APPROVALS

The Proposed Project, as described in **Section 2.0**, will require federal, state, and local permits and approvals. **Table 1-1** identifies each responsible agency and the potential permit or approval required.

**TABLE 1-1**  
POTENTIAL PERMITS AND APPROVALS REQUIRED

| Agency   | Permit or Approval   | Alternatives |
|--|--|--------------|
| <b>Federal/State</b>   |  |              |
| Secretary of the Interior  | Issuance of a Two-Part Determination   | 1, 2         |
| National Indian Gaming Commission  | Approval of Tribal gaming ordinances.<br>Approval of gaming development and management contract.   | 1, 2<br>1, 2 |
| U.S. Environmental Protection Agency   | Issuance of National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges From Construction Activities as required by the Clean Water Act.<br>New Source Review Minor Permit in accordance with the federal Clean Air Act | 1, 2, 3      |
| Washington Office of Archaeology and Historic Preservation   | Consultation under Section 106 of the National Historic Preservation Act.  | 1, 2, 3      |
| Washington Department of Transportation / Federal Highway Administration   | Approval of an Encroachment Permit for the construction of intersection and utility improvements.<br>Approval of access permits for entrance driveways to U.S. Highway 2   | 1, 2, 3      |
| <b>Local</b>   |  |              |
| City of Airway Heights   | Approval of an Encroachment Permit for intersection and traffic improvements within City owned right of ways.  | 1, 2, 3      |
|  | Approval of utility connections and encroachment permits for installation of utilities within City owned right of ways.  | 1, 2, 3      |
| Spokane County   | Approval of an Encroachment Permit for intersection and traffic improvements within County owned right-of-way  | 1, 2, 3      |
| Note: The following abbreviations identify the alternatives:<br>1: Alternative 1 – Proposed Casino and Mixed-Use Development<br>2: Alternative 2 – Reduced Casino and Mixed-Use Development<br>3: Alternative 3 – Non-Gaming Mixed-Use Development |  |              |