

## Appendix B

# COWLITZ INDIAN TRIBE TRUST ACQUISITION AND CASINO PROJECT FINAL EIS GENERAL COMMENTS AND RESPONSES

May 2008

## 1.0 INTRODUCTION

During the extended comment period for the Cowlitz Indian Tribe Trust Acquisition and Casino Project Draft Environmental Impact Statement (DEIS), the Bureau of Indian Affairs (BIA) received approximately 1,600 individual comment letters. A substantial number of these comment letters were survey forms and/or “vote” letters that did not provide substantive comments on the DEIS. Pursuant to the National Environmental Policy Act (NEPA), Section 1503.4(b), “the lead agency shall consider and respond to all substantive comments received on the DEIS (*or summaries thereof where the response has been exceptionally voluminous*).” Therefore, the response to comments are broken down as the following appendices in the Final EIS (FEIS):

**Appendix B:** This appendix contains general comments and responses received on the DEIS, broken down by major and minor issues of concern.

**Appendix C:** Appendix C contains those comment letters that are considered substantive and representative of the majority of comments. These letters contain numbered brackets around each substantive comment. Cross-coded responses to those comments are included behind the appropriate letter.

As stated, individual substantive comments within the representative comment letters have been bracketed and numbered for cross-referencing with a response. Once an issue has been addressed in a response to a comment, subsequent responses to similar comments reference the initial response. If necessary, the FEIS has been modified in response to comments, and the nature and the location of the modification is identified in the response.

A complete copy of all comment letters received on the DEIS is maintained by the BIA as part of the administrative record for this project. The Comment Letters Log is included as **Appendix A** of the FEIS for reference.

## **2.0 COMMENTS AND GENERAL RESPONSES**

### **2.1 NEPA PROCEDURAL ISSUES**

#### **2.1.1 EXTENSION OF THE COMMENT PERIOD:**

**Summary of Comments:** The BIA received numerous requests for an extension of the original comment period.

**Response:** The original comment period was from April 14, 2006, to July 14, 2006. This comment period was announced in the Federal Register with a Notice of Availability (NOA) on April 12, 2006, and again in the US Environmental Protection Agency (USEPA) notice in the Federal Register on April 14, 2006. This comment period was extended by the BIA on July 27, 2006, with a Federal Register announcement. The extension of the comment period was announced by the USEPA on August 4, 2006, in the Federal Register. The extended comment period ended on August 25, 2006.

#### **2.1.2 COMMENTS SUBMITTED ON THE DRAFT ENVIRONMENTAL ASSESSMENT**

**Summary of Comments:** A number of commenters expressed concern that previous comments submitted in response to the 2004 Draft Environmental Assessment (EA) for the smaller sized casino were not acknowledged during preparation of the DEIS.

**Response:** As discussed in **Section 1.3** of the DEIS, the Cowlitz Indian Tribe prepared the 2004 Draft EA to analyze the environmental impacts of a smaller scale project on the La Center Interchange Site. This document was released for public review in March of 2004. Comments received from all parties during public review of the 2004 Draft EA were considered during the scoping process to define the significant issues and to formulate the range of alternatives analyzed in the DEIS.

NEPA regulations state that the minimum requirement for initiation of the scoping process is filing of a Notice of Intent (NOI) to prepare an EIS. However, scoping may be initiated earlier, as long as there is enough information available on the proposal so that the public and relevant agencies can participate effectively. Accordingly, the BIA determined that all comments received on the 2004 Draft EA would be considered during the scoping process for the EIS. This is demonstrated by the *Cowlitz Casino Project EIS Scoping Report*, which was published by the BIA in February 2005. This document is currently available for review at the BIA's Northwest Region Office at 911 NE 11<sup>th</sup> Avenue, Portland, Oregon 97232. Refer to **Section 1.4** of the FEIS and the Scoping Report for further details on the scoping process.

### **2.1.3** *COMMENTS SUBMITTED ON THE PRELIMINARY DRAFT ENVIRONMENTAL IMPACT STATEMENT*

**Summary of Comments:** A number of commenters stated that previous comments submitted in response to the Preliminary DEIS (PDEIS) released to cooperating agencies in December 2005 were not properly responded to or adequately addressed within the scope of the DEIS.

**Response:** It should be noted that NEPA does not require a formal process for responding to comments received on preliminary unofficial versions of an EIS. However, in accordance with 40 CFR 1501.6(a)(2), lead agencies should utilize the recommendations of cooperating agencies with jurisdiction or special expertise to the maximum extent possible, consistent with its own responsibilities as lead agency. All substantive comments submitted by cooperating agencies during preliminary review of the document were considered during the preparation of the DEIS released to the public in April 2006. As appropriate, substantive comments were addressed through modifications to the text and analysis included within the document. Consistent with its responsibility as lead agency, the BIA appropriately utilized the comments and recommendations submitted by cooperating agencies to the maximum extent possible. However, it was not determined that every comment received during review of the PDEIS warranted further analysis in the DEIS. Additionally, it should be noted that input received during the environmental review and scoping process typically results in subsequent analysis, the outcome of which does not always lead to the same conclusions stated by commenters. Regardless, every comment received during preliminary review of the DEIS was considered by the BIA prior to release of the April 2006 DEIS. Please refer to **Section 1.3** of the FEIS for additional discussion of compliance with NEPA procedures.

### **2.1.4** *REQUIREMENT TO PREPARE A SUPPLEMENTAL EIS*

**Summary of Comments:** Many comments were received that indicated that the BIA should produce a Supplemental DEIS and release the document for another, and more extended, comment period. The most commonly stated reason for the request or demand for a Supplemental DEIS was that other alternatives needed to be analyzed. Most frequently, the alternative proposed for analysis is a new alternative north of the present study area. Other comments indicated that new analysis should be performed with new data collection and, to allow public review and comment, a Supplemental DEIS should be prepared. Other commenters indicated that the Tribal Business Plan, a required element of the application for fee-to-trust under 25 CFR 151, should be publicly released and comment allowed under NEPA through a Supplemental DEIS.

**Response:** Implementing regulations for NEPA, 40 CFR 1502.9(c) provide guidance on circumstances under which a lead agency should prepare a Supplemental DEIS. These regulations provide that the agency should prepare a supplement to the DEIS 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 the Act [NEPA] will be furthered by doing so.”

The BIA has not made substantial changes relevant to environmental concerns in the Proposed Action, or introduced a new alternative that has become the Proposed Action. Similarly, there are no significant new circumstances or information relevant to environmental concerns and bearing on the Proposed Action or its impacts. In response to comments received on the DEIS, the BIA has supplemented, improved, and modified its analysis and made factual corrections. While new information has been presented, the information has not resulted in substantial changes in the BIA’s conclusions regarding the environmental impacts of the Proposed Action. For example, the recently passed Tribal Environment, Public Health and Safety (EPHS) Ordinance and Tribal Gaming Ordinance Amendment provide supplemental enforcement mechanisms for equivalent mitigation. However, the proposed mitigation and the environmental effects remain substantially the same as presented in the DEIS. Similarly, the BIA does not believe that informed decision making or other purposes of NEPA would be furthered by preparation of a Supplemental DEIS.

The Tribal Business Plan is provided as **Appendix E** of the FEIS. However, procedures under 25 CFR 151 govern public review of the Tribal Business Plan as part of the decision making process on the application for fee-to-trust. Accordingly, a supplement is not necessary to allow public review of the Tribal Business Plan under the NEPA process for the Proposed Action.

#### **2.1.5**                    ***REQUIREMENT TO PREPARE A PROGRAMMATIC EIS***

**Summary of Comments:** Several comments were received that stated that the BIA was required to prepare a Programmatic EIS addressing the combined environmental impacts of the Cowlitz Indian Tribe’s proposal, the Warm Springs proposal at Cascade Locks, and the proposals of the Klamath Tribe near Battleground and in the Wilsonville/Aurora area of Oregon. These comments indicated that no proposal for the Cowlitz Indian Tribe could or should be approved prior to completion of the Programmatic EIS.

**Response:** A Programmatic EIS would be required if the BIA proposed to implement a specific policy, adopt a plan for a group of related actions, or implement a specific statutory program or executive directive. Additionally, an area-wide or overview EIS would be appropriate when similar actions, viewed with other reasonably foreseeable or proposed agency actions, share common timing or geography. The BIA does not have a proposal to implement any specific policy, adopt a plan for a group of related actions, or implement a specific statutory program in which any of the approvals for the Proposed Project would be subsumed. Additionally, only one of the other proposals noted in comments, the Warm Springs proposal at Cascade Locks, appears to be actively pursued by Tribal applicants. None of the others have initiated NEPA compliance with a third party contract or NOI. Two independent projects do not constitute a program or policy, or trigger the need for an area-wide or overview EIS. However, in response to public concern over the potential cumulative impacts of

past, present, and future casino projects in the greater Portland area, additional discussion of cumulative impacts in **Section 4.14** includes analysis of the greater Portland area's casinos and casino proposals. This issue is also discussed further in **Section 2.23** of this Appendix.

## **2.2 NON-NEPA ISSUES**

### **2.2.1 EXPRESSIONS OF OPINION**

**Summary of Comments:** Many of the comments received were expressions of opinion either for or against the project. Form letters provide the bulk of these comments. Other comments were received discussing previous requests for documents submitted under the Freedom of Information Act (FOIA), other requests for information, and previous statements made by public officials or Tribal representatives. Other comments expressed opinions regarding the extent of the Secretary of the Interior's authorities under the Indian Reorganization Act (IRA), procedural requirements of the fee-to-trust process, or procedures for enacting a reservation proclamation.

**Response:** To warrant response in the FEIS, comments must fulfill two minimum requirements: 1) the comments must raise a substantive environmental issue, and 2) they must also be related to either the decisions to be made by the federal agencies based on the EIS, or to the expected result of these decisions, i.e. the project. No responses are required for comments raising no substantive environmental issues. Accordingly, no responses are required for comments merely expressing an opinion, for or against, the project.

### **2.2.2 MATTERS BEYOND THE SCOPE OF THE EIS**

**Summary of Comments:** Many comments were received from the public regarding the restored lands determination made by the National Indian Gaming Commission (NIGC), or regarding NIGC procedures in making the determination. These comments focused on perceived factual or procedural errors in NIGC's finding, or expressed concerns over a perceived lack of opportunities for public input. These comments frequently indicated that the restored lands determination was in error. Others indicated that the process of reaching the opinion should be more open and the decision should be made in conformance with public opinion. Other comments were submitted that questioned BIA procedures under FOIA. Comments made by the Confederated Tribes of Grand Ronde discussed the BIA's fiduciary responsibility to Grand Ronde, and the BIA's responsibility to consult with the Grand Ronde Tribe concerning the impacts of the BIA's Proposed Actions on the Grand Ronde Tribe and its trust resources. Additionally, comments were made concerning the title of the La Center and Ridgefield Interchange sites.

**Response:** The proposed federal actions, which triggered NEPA and this EIS, include the decision on a fee-to-trust application under 25 CFR 151, a reservation proclamation, and approval of a gaming management contract. NEPA compliance is not required for an NIGC finding on the restored lands issue, and this EIS will not be used for a decision regarding the NIGC's finding, or any possible

future restored lands finding by the Department of the Interior. Accordingly, this EIS does not address the restored lands issue. Similarly, questions about the FOIA process or previous FOIA requests do not warrant response in this EIS. Finally, the BIA's consultation responsibilities to the Confederated Tribe's of Grand Ronde are met through government-to-government consultation and exist independent of the NEPA process. As the BIA does not believe that the EIS is the appropriate vehicle for conducting that consultation, the consultation process is not discussed in this EIS.

## 2.3 PURPOSE AND NEED

**Summary of Comments:** Several comments were received that addressed the issue of the project's purpose and need. Some comments indicated that the purpose and need was properly formulated. Other comments indicated the purpose and need was too narrowly drawn and had been designed to ensure that only a gaming alternative could meet the need. Other comments stated the purpose and need was impermissibly broad, and did not allow proper formulation of alternatives. Some other comments attempted to quantify the Tribe's unmet needs or opined that the Tribal membership had no unmet needs.

**Response:** An EIS "shall briefly specify the underlying purpose and need to which an agency is responding in proposing the alternatives including the proposed action (40 CFR 1502.13)." The underlying purpose and need to which the BIA is responding, is to fulfill its fiduciary responsibilities to the newly recognized Cowlitz Indian Tribe and to assist them in the development of a tribal government which provides the full range of governmental services to the Tribal membership. To do so, the Tribe requires an adequate revenue source and lands over which they may exert civil jurisdiction. In the IGRA, Congress clearly recognized the importance of Tribal gaming as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments. This purpose is important to the NIGC as well as to the BIA.

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

As was indicated in some comments, the Tribe not only has a unique ability to quantify their needs; but is required to do so as part of the application for fee-to-trust under 25 CFR 151. A required

element of this application is the Tribal Business Plan, which basically specifies the Tribe's unmet needs and details how the proposal will meet them. As a decision on the fee-to-trust application is one of the federal actions triggering this EIS, consideration of the Business Plan, its inclusion as an appendix (**Appendix E** of the FEIS), and ensuring that the Business Plan and EIS are consistent, are all necessary and appropriate. The most efficient and reasonable means of achieving the integration of the Business Plan and the EIS is to include, within the BIA's purpose and need statement, assistance to the Cowlitz Indian Tribe with implementation of the Business Plan. This assistance is confined to elements of the Proposed Action within the authorities of the BIA.

## **2.4 ALTERNATIVES**

**Summary of Comments:** Many comments were received concerning the alternatives addressed in the DEIS. Generally these comments were directed to several areas: 1) Not all viable alternatives were addressed, 2) Some alternatives addressed were not viable, specifically Alternative D, 3) A "mixed use" alternative, presumably consisting of a combination of gaming and commercial uses, should be analyzed, and 4) Other alternatives should be addressed, specifically, alternatives to the north in the Toledo and Vader areas as suggested in comments made during scoping. This last comment is particularly noteworthy since it was made repeatedly, and since some comments included lists of specific alternative sites to be investigated. Comments made on the DEIS indicated that a northern alternative should be investigated because commenters believed these alternative sites were within the Tribe's "aboriginal territory," were less controversial, would have less impacts on the local community, and would be better positioned to service the Tribal membership. A recurring theme in these comments is that the restored lands determination made by the NIGC was both procedurally flawed and in error.

**Response:** The BIA determined, in the *Cowlitz Casino Project EIS Scoping Report*, published in February 2005, that analysis of a more northerly alternative would not significantly enhance the EIS or further the purposes of NEPA. Comments received during scoping and the DEIS comment period constantly reiterated that such an alternative should be considered because the Restored Lands Opinion, a finding by the NIGC, was in error. However, the EIS is not being used for the purpose of determining the appropriateness of NIGC's finding. In other words, as the EIS is not being used to make a decision on the previous, or any future Restored Lands Opinion, it was decided that the addition of such an alternative would not further informed decision making or the purposes of NEPA. See the general response about non-NEPA issues (**Section 2.2** above) for further discussion of this issue.

Each agency preparing an EIS is to set out the objectives of the proposed action, which in turn shapes the range of reasonable alternatives considered in the EIS. Reasonable alternatives are defined as those that are technically and economically practical or feasible and that meet the purpose and need of the proposed action. In many cases the number of viable alternatives and variations approaches an

infinite number. Accordingly, the federal agency is not obligated to analyze all viable alternatives, but instead must analyze an adequate range of alternatives.

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

The DEIS and FEIS present a reasonable range of alternatives: (A) the Proposed Action, (B) a resort casino of slightly different configuration on the same location, near La Center, without the option of rerouting NW 319<sup>th</sup> Street through the project site, (C) a reduced intensity or smaller casino on the same location, (D) a different use, a business park, on the same location, (E) a similarly sized resort casino facility near Ridgefield, and (F) the “No Action” alternative. While the ability of the business park, Alternative D, to meet the purpose and need is questionable, the BIA felt that presentation of that alternative significantly expanded the range of alternatives considered.

As comments were received suggesting specific “northern alternative” sites, which would theoretically reduce environmental impacts, the BIA decided to revisit the issue of the ability of these sites to meet the purpose and need. Of the alternative sites suggested in comments, four were selected for review based on two criteria: 1) ease of freeway access and 2) parcel size. A field inspection of these sites defined further site characteristics. These sites were then revisited regarding a single concern: their ability to meet the defined purpose and need.

This analysis was aided by three independent reports: 1) a report prepared by EcoNorthwest and submitted as comments by the La Center cardrooms (c/o Perkins Coie) (Comment Letter 28 [Log # 433]), which attempted to both define the needs of the Cowlitz Indian Tribe and analyze the ability of northern alternatives to meet that need with reduced size facilities, 2) a gaming market assessment of the Vader, Washington area prepared by The Innovations Group and submitted as comments by the Confederated Tribes of Grand Ronde (Comment Letter 29 [Log # 434]), and 3) the Cowlitz Tribe’s recently released Business Plan, a required element of the Tribe’s fee-to-trust application which included a description of the Cowlitz Tribes economic objectives and needs (included as **Appendix E** of the FEIS). The Cowlitz Tribe’s unmet needs report details proposed annual expenses totaling \$113,572, 316. The EcoNorthwest report indicated that alternatives to the north were capable of supporting a more modest resort casino than the Proposed Action, which would return annual revenue to the Tribe of approximately \$79,400,000 by 2017. Similarly, The Innovations Group study indicated that following a 5.7 year period required to repay investment, a facility in the Vader area could return net income in the range of \$76,400,000. Therefore, none of the four northern sites would adequately meet the Tribes economic objectives and needs. These results were checked with an

additional market analysis prepared by E.D. Hovee Company (included as **Appendix N** of the FEIS). The Hovee analysis indicated that the probable annual return from any northern site is approximately \$77 million, confirming that the northern sites would not adequately meet the financial objects, goals and needs of the Tribe.

In sum, the BIA does not believe that further consideration of these additional gaming alternatives located to the north would add in expanding the range of reasonable or feasible alternatives, nor would their consideration further the objectives and goals of the Tribe, to which BIA gives substantial weight and deference in light of the Tribe's role as applicant. Such deference is particularly appropriate where, as here, the Tribe is requesting that land be acquired in trust for use as its reservation and for tribal government purposes, as well as for economic development. Consideration of northern alternative sites would require the BIA to defer meeting the Tribe's urgent needs, while speculating that the Tribe could successfully purchase and develop these parcels, and would ignore the goals and objectives of the Tribe's proposal. **Section 2.9** of the FEIS provides further details on the consideration of the northern alternatives.

## **2.5 WATER SUPPLY**

**Summary of Comments:** Several commenters raised the issue of potential impacts from the Proposed Project on adjacent groundwater supply wells. Comments were also received regarding the availability of Clark Public Utility (CPU) water to meet the demands of the Proposed Project and the potential impact on CPU groundwater sources. Commenters also stated that the FEIS needs to discuss the potential impacts of the off-site connection routes to fully address direct and indirect impacts from the Proposed Project.

**Response:** Impacts to the area water supply were discussed in **Section 4.10** of the DEIS. As discussed therein, water demand of the Proposed Project would be met by connection to the CPU system. The Tribe has received a letter of intent from CPU to enter into negotiations and contract for water service to meet the demands of the Proposed Project (DEIS Vol. III, **Appendix BB**). As discussed in **Section 4.10** of the DEIS, the Proposed Project would require a peak demand of 0.765 million gallons per day (mgd), which accounts for 11% of CPU's water supply system capacity. No other large development projects are planned within the CPU area. Therefore, implementation of the Proposed Project would not adversely impact on the water supply for the area. Furthermore, development of the Proposed Project would not impact local groundwater levels as no on-site groundwater wells are included as a component of the Proposed Project and water provided by CPU is already accounted for in the capacity determination of the CPU water system.

A water and wastewater engineering report (DEIS Vol. II, **Appendix G**) was prepared for the Proposed Project analyzing the components needed to provide water service to meet the demands of the Proposed Project. Based on the recommendations of the report, on site storage would be needed to provide adequate pressure for fire-flow. The size of the storage tank would be dependent upon the

water pressure of the incoming line from CPU. There are 8 inch and 12 inch CPU mains in proximity to the La Center Interchange Site. The nearest existing line to the Ridgefield Interchange Site is 16 inches in diameter and located on the east side of the site adjacent to NE 10<sup>th</sup> Avenue. The relative distance from the mains to the alternative project sites, and the pressure created by the well pumps, impact the pressure on the incoming line to the project site. In order to provide adequate pressure, the report recommended connection to both mains. The Tribe, like all other customers, will pay the necessary infrastructure costs to connect the site to the CPU mains. CPU will make the final decision on the locations and routes of the connections.

The options for routing connections to the alternative project sites are anticipated to be in existing roadways or other existing utility corridors. Using National Wetland Inventory (NWI) maps and site reconnaissance by AES biologists in December of 2006, it was determined that the potential routes for infrastructure improvements required to serve the Proposed Project identified in the Water and Wastewater Service Requirements Report (DEIS Vol. II; **Appendix G**) will not adversely impact the environment. All of the proposed routes are either in existing roadways or utility corridors in which significant disturbance has already occurred. In the event that any wetlands or other waters of the U.S., (i.e. roadside ditches are deemed to be jurisdictional by the U.S. Army Corps of Engineers' [USACE]) are impacted during construction of the connections, a permit would be required from the USACE or other appropriate public agency. Mitigation consistent with the current policies of wetland replacement at a ratio of least 1:1 will be required for permanent impacts. If a Nationwide Permit-Public Utility Corridors (NW 12) applies, then the temporary impacts will be restored to pre-existing conditions and construction will be performed in the dry season, to the extent possible. Full mitigation will be addressed at the time of connection to the CPU system and the Tribe will reimburse the utility for costs, consistent with other commercial customers. Since the source and route of the infrastructure upgrades relating to the Proposed Project are selected by CPU, all construction activities related to the upgrades will fully comply with all applicable State and Federal regulations. Refer to **Section 4.14.4**, Indirect Effects from Mitigation of Water Supply Impacts, in the DEIS.

## **2.6 WASTEWATER/WATER QUALITY**

**Summary of Comments:** Comments were submitted by the USEPA and several others regarding the potential water quality impacts of the on-site wastewater treatment plant (WWTP) and related surface water discharge of treated effluent to the unnamed stream on the property and the East Fork Lewis River. Commenters stated a need for more baseline data on the physical and chemical properties of proposed treated effluent and the receiving waters. Specifically, commenters requested further information on potential impacts of ammonia, fecal coliform, and temperature discharges that may be associated with the on-site WWTP. Comments were received regarding the impacts of converting the on-site seasonal stream to a perennial stream from treated effluent disposal, specifically as it relates to turbidity. The possibility of a direct discharge to the East Fork Lewis River was noted and a comment was received requesting analysis of the potential impacts.

**Response:** A supplemental wastewater report was prepared by Olson Engineering, Inc. (2006c) (**Appendix F** of the FEIS) that provides additional information on the water quality of the treated effluent generated by the Proposed Project. The report also provides additional information regarding the water quality of the receiving waters based primarily on information from the waste-discharge requirement for the La Center WWTP, located near the area where the unnamed stream joins the East Fork Lewis River. Additional water quality sampling was performed by Ecological Land Services, Inc. (ELS) during the months of October, November, and December of 2006 and January of 2007. These results are provided as **Appendix T** of the FEIS. A Technical Memorandum was prepared by SWCA Environmental Consultants (2006) analyzing the water quality data from the unnamed stream, the East Fork Lewis River, and the engineering report for the wastewater effluent. The report analyzed the effects the treated effluent would have on aquatic resources in the unnamed stream and the East Fork Lewis River. This Technical Memorandum is found as **Appendix S** of the FEIS. The new Biological Assessment (BA) has been prepared to include information provided by the above supplemental reports and is included as **Appendix I** of the FEIS. **Sections 3.3** and **4.3** (Water Resources) and **Sections 3.5** and **4.5** (Biological Resources) of the FEIS have been updated to include the conclusions of the additional studies.

#### ***SUPPLEMENTAL WASTEWATER REPORT***

The supplemental wastewater report summarizes the anticipated levels of common constituents within treated wastewater. **Table 2.6-1** summarizes the expected constituent levels for a WWTP treatment train with the same configuration as the Proposed Project. Temperature and metals levels were estimated from influent data obtained from the WWTPs at La Center and Woodland. Fecal coliform, biological oxygen demand (BOD), total suspended solids (TSS), Ammonia-Nitrogen, and turbidity estimates are based upon information reported at other WWTPs using MBR systems with denitrification and UV disinfection, similar to the treatment train for the Proposed Project. Discharge of treated wastewater effluent with the characteristics described in **Table 2.6-1** would not adversely impact water quality in accordance with Washington State Environmental Protection Act (SEPA) limits, Washington Department of Ecology (DOE) water quality standards, and Washington State's antidegradation provision.

#### ***ADDITIONAL BASELINE SAMPLING***

Additional baseline water quality sampling was performed to supplement the data collected for the DEIS. Samples were collected at the same sites as noted in DEIS Vol. II, **Appendix P**, during the months of October, November, and December of 2006, as well as January of 2007 (**Appendix T** of the FEIS). **Table 3.3-2** in **Section 3.3** of the FEIS has been updated to include the additional baseline data. Furthermore, in response to USEPA comments, the samples collected during the additional baseline sampling events were analyzed for ammonia as nitrogen to allow for comparisons with estimated ammonia as nitrogen levels of treated wastewater from the Proposed Project identified in **Table 2.6-1** above. Due to the size of the data table for the baseline sampling events, refer to **Table 3.3-2** in the FEIS for the results of the analysis of baseline samples.

**TABLE 2.6-1**  
**EXPECTED WATER QUALITY OF TREATED WASTEWATER**

<b>Constituent</b>	<b>Anticipated Level</b>
pH	7.0-8.0
Temperature	16°C
Fecal Coliform	<2 MPN per 100 ml
BOD	<5mg/L
Total Suspended Solids	1 mg/L
Ammonia as Nitrogen	1 mg/L
Turbidity	<1 NTU
Arsenic	2 µg/l
Copper	5 µg/l
Lead	1 µg/l
Phosphorous	0 µg/l
Silver	0.02 µg/l
Zinc	27 µg/l

NOTES: MPN = most probable number; ml = milliliters; mg/L = milligrams per liter; BOD = biological oxygen demand; TSS = total suspended solids; NTU = nephelometric turbidity unit; µg/l = microns per liter.

Source: Olson Engineering, 2006c.

### ***COMPARISON OF WATER QUALITY DATA***

Based on data provided in **Appendix T** of the FEIS, averaged fecal coliform levels of the unnamed stream range from 116 most probably number (MPN) to 147 MPN. The projected wastewater fecal coliform levels would be less than 2 colonies per 100 ml, and therefore, it can be concluded that the wastewater discharge will not impact the unnamed on-site stream or the East Fork Lewis River.

A comparison of the baseline ammonia results and the anticipated ammonia levels of wastewater discharge indicate ammonia levels of the unnamed stream may increase over existing conditions. However, mitigation has been included in **Section 5.0** of the FEIS. The anoxic basin will be sized accordingly to provide enough denitrification to meet ammonia criteria established through the NPDES permitting process in accordance with the Washington Administrative Code (WAC) surface water quality criteria (**Appendix S** of the FEIS).

The conclusions of the supplemental wastewater report (**Appendix F** of the FEIS) and data provided in **Appendix T** of the FEIS indicate that the water quality of discharged treated effluent will not adversely impact the water quality of the receiving waters based on the Washington DOE regulations that are expected to be used by USEPA in issuing a required NPDES permit for the discharge.

## ***APPENDIX I – BIOLOGICAL ASSESSMENT AND WATER QUALITY***

Due to the extensive vegetation on the banks of the unnamed stream, increased erosion and sediment loading in the unnamed stream should be negligible after the initial discharge during the otherwise dry period of the year. The total discharge volume of tertiary treated effluent will not approach the peak flows of storm events that currently are the primary source of water for the seasonal stream. The quantity of effluent discharged will be lower in the summer, late spring and early fall when treated effluent will be used for irrigation of landscaping on the project site. These are the same periods when the effluent will be the only source of water in the stream. Creation of a perennial stream would prevent sediment loading and turbidity through reduction in the undiluted first flush events. Sediment loads would be reduced by the creation of a protected buffer, through which existing sheet flow discharges will pass before entering into the unnamed stream. The removal of cattle grazing should further stabilize the banks of the stream as will the establishment of the streamside buffers and their vegetative enhancement as proposed. Any temporary increased turbidity will be less than significant.

### ***TEMPERATURE***

Summer month water temperature was also raised as a major issue. The design of the wastewater treatment plant has been modified to include an underground piping cooling system located under the proposed recreational vehicle (RV) park. This cooling system will ensure that the permitted discharged will meet all of the temperature requirements (16 degrees Centigrade [°C]) for the East Fork Lewis River. As noted in the SWCA Technical Memorandum (**Appendix S** of the FEIS), discharge of treated effluent may create a cooling effect that could be beneficial to fisheries. **Section 4.3** of the FEIS has been updated to reflect the results of the supplemental reports.

### ***DIRECT DISCHARGE TO THE EAST FORK LEWIS RIVER***

The permitted discharge of treated effluent to the unnamed stream is the primary option for on site disposal. Direct discharge into the East Fork Lewis River, as discussed in the previous wastewater report (DEIS Vol. II, **Appendix G**), has been eliminated from consideration because of a variety of reasons including an inability to obtain rights-of-ways through private property, a requirement for a direct outfall to the East Fork Lewis River from the WWTP.

## **2.7 STORMWATER**

**Summary of Comments:** Comments received from the USEPA were similar to others received regarding the effectiveness of proposed stormwater treatment practices, the resulting physical and chemical properties of the stormwater, and the potential impact on the unnamed stream and the East Fork Lewis River. Comments were received regarding the use of Wetland Cs for stormwater retention and the potential water quality impacts. Questions were also raised about flood events and the potential impact of untreated stormwater co-mingling with the unnamed stream or Wetland Cs. The possible impacts of the treated stormwater on groundwater after discharge were also raised.

**Response:** A supplemental stormwater report (Olson Engineering, 2006d) was prepared to specifically answer issues raised by commenters and is included as **Appendix G** of the FEIS. **Section 4.3** of the FEIS has been updated to incorporate the information provided within this supplemental report, as well as information contained within **Appendices I, S, and T** of the FEIS (refer to **General Response 2.6** for further discussion of these additional appendices). The report clarifies the efficiency that is anticipated from the various proposed on-site stormwater treatment facilities. As noted in the report, the on-site wetlands will be used for detention and filtration as a component of the stormwater treatment facilities in a manner designed to be consistent with the stormwater requirements of Clark County Code 40.380.040 as provided for in the Memorandum of Understanding (MOU) between the Tribe and Clark County (DEIS Vol. I, **Appendix C**) and the Tribe's EPHS Ordinance (**Appendix U** of the FEIS). A wetland buffer report was prepared and included as Appendix 9 to the original Olson Engineering stormwater report (Olson Engineering, 2006b) (DEIS Vol. I, **Appendix F**). The supplemental stormwater report and the wetland buffer report both indicate that Clark County stormwater standards will be met both for volume and water quality. **Section 4.3** of the FEIS has been updated to incorporate the information provided within these reports.

As discussed in the supplemental stormwater report (**Appendix G** in FEIS), and **Section 4.3** of the FEIS, no adverse impacts on the quality of groundwater or surface water are expected due to the initial treatment of all stormwater on site before discharge. The report shows that fecal coliform levels are actually expected to decrease from current levels due to the proposed treatment facilities incorporated into the Proposed Project. Additionally, implementation of the Proposed Project would result in the removal of existing fecal coliform sources such as cattle grazing and septic systems currently on site. The use of Wetland Cs and the swales or detention facilities for stormwater management would result in groundwater infiltration rates similar to existing rates. Stormwater currently discharges to the unnamed creek that serves as drainage channel for sheet flow runoff from the undeveloped site. Upon implementation of the Proposed Project, the unnamed stream will remain the primary receiving water for stormwater. The issues of turbidity increase and flooding events releasing untreated water are addressed by controlling flow with tribal best management practices (BMPs) listed in **Section 5.0** of the FEIS, and use of retention basins, detention basins, constructed wetlands, infiltration practices, grassland swales, and minimization of directly connected impervious surface areas. These BMPs are detailed in Section 5.5.3 of the Olson Engineering supplemental stormwater report (Olson Engineering, 2006d) (**Appendix G** to FEIS). Controlling the flow of stormwater will control the turbidity increase associated with high runoff events. Thus, turbidity increase and flooding events are not issues of concern in terms of stormwater runoff as detailed in **Appendix G** of the FEIS. Flow will be within allowable rates in 2, 10, and 100-year storm events.

## 2.8 AIR QUALITY

**Summary of Comments:** Many comments were submitted concerning the impact that the Proposed Project would have on the regional and local air quality. Some of the comments addressed specific criteria pollutants, while others addressed the regulatory implications of the Proposed Project. Some commentators were concerned with the impacts increased air pollutants from the Proposed Project would have on local fauna, while other's questioned if the mitigation outlined for traffic was included in the air pollutant emission calculation in the DEIS. Other's commented that the DEIS did not provide a baseline for criteria pollutants that compares the action alternatives with the no action alternative. Other comments were received that the EIS did not adequately address greenhouse gas emissions and effects to global warming.

**Response:** Sulfur oxides (SO<sub>x</sub>) are criteria pollutants as designated by the USEPA. SO<sub>x</sub>, however, is not a pollutant of concern for the Proposed Project due to the extremely low ambient concentration in the project region. The supplemental air quality report prepared for the Proposed Project (CH2MHill, 2007, **Appendix H** of the FEIS) states that SO<sub>x</sub> emissions are typically very low from mobile sources. Criteria pollutants were analyzed with regards to the National Ambient Air Quality Standard (NAAQS). Primary NAAQS are used to protect human health, while secondary NAAQS are provided by the USEPA to protect animals, crops, vegetation, and buildings. Secondary NAAQS are generally higher than primary standards and are used as significance standards for air quality with regards to animals, crops, vegetation, and buildings. Analysis showed that the Proposed Project would not cause an exceedance of either the primary or secondary NAAQS thresholds for any of the criteria pollutant.

Operational emissions are not concentrated in the immediate project area due to the length of the average vehicle trip. As a result, there would be no exceedance of the secondary NAAQS. Traffic mitigation shown in **Section 5.2.6** is included in calculations of all project emissions. **Table 4.4-5** in the FEIS shows the baseline for criteria pollutants between the action alternatives and the no action alternative.

A discussion of greenhouse gas regulations and climate change has been included within **Section 3.4** of the FEIS. The cumulative contribution to climate change resulting from the project alternatives is discussed in **Section 4.15** of the FEIS and mitigation to address potential effects is presented in **Section 5.0** of the FEIS.

## 2.9 WETLANDS

**Summary of Comments:** Several commenters raised questions about the classification of the wetlands and the need to be consistent with Clark County Code (CCC) 40.450. Specifically the adequacy of buffers was identified as an issue. Some commenters argued that additional wetlands not covered by the USACE jurisdictional determination of on-site wetlands would have been protected by

the County ordinance. The USEPA and others noted that the possibility of impacts to wetlands or other waters of the U.S. could occur from the routes needed to connect various utilities to the project site and that these impacts needed to be discussed in the EIS. Comments were received about the relationship between the USACE permitting process and the need to fully address mitigation in the document. Wetland Es was noted by commenters as containing a stream and, therefore, requiring a different buffer. Commenters also raised questions about the water quality impacts to wetlands (specifically Wetland Cs).

**Response:** The wetland buffer report (Appendix 9 of DEIS Vol. I, **Appendix F**) contains the answers to most of the issues raised regarding the classification of wetlands, the adequacy of buffers, impacts anticipated, and how those relate to the Clark County Wetland Ordinance (CCC 40.450). The wetland buffer report notes that with the exception of Wetland Es, the forested wetland on the southwest corner of the property that is classified as a Class 3 wetland, all of the wetlands on site are Class 4 wetlands. The report identifies 1.21 acres of the buffer area required by the County ordinance that will be impacted by construction activities and stormwater facilities. Mitigation, consistent with the County approved technique of averaging buffers elsewhere on the site, will be the enhancement of 9.6 acres of buffers by plantings of native trees and shrubs; adding of another 5.03 acres of vegetatively enhanced wetland buffers on site; and vegetatively enhancing an existing 17.57 acres of un-impacted (avoided) wetlands on site (ELS, 2006: 8). Wetland Ex, the Class 3 wetland in the southwest corner of the property, contains, as pointed out by Clark County, a portion of the unnamed stream that originates in the wooded area just south of the property and then subsequently flows through Wetland Es, then off the site, and reenters the site again further north (refer to **Appendix I** of the FEIS).

The stream noted above is the same seasonal, unnamed, stream into which most of the La Center Interchange Site drains. As noted in the Clark County comments (Comment Letter 5 [Log # A005]), the buffer requirement for a Type 5 stream is 150 feet. The buffer from the outer edge of Wetland Es is 100 feet. If one were to measure the buffer from the edge of the seasonal unnamed stream on the interior of the wetland area, as is the usual practice for streams, the proposed buffer is in substantial compliance with the Clark County stream-buffering requirement and is otherwise covered under the buffer averaging already performed for the site as discussed above. Additionally, it should be noted that Clark County amended their Habitat Conservation Ordinance (HCO) in June 2006. Substantial modifications to this ordinance included a change to the water typing system to be consistent with stream definitions and typing utilized by the Washington Department of Natural Resources. As a result, the unnamed stream on the project site was re-classified as a Type Ns stream, and the standard buffer requirement was reduced to 75 feet. Therefore, proposed buffers on the project site exceed the minimum requirements. Accordingly, the treatment of wetlands on site is in substantial compliance with the Clark County Ordinance as agreed to by the Tribe in the MOU with the County (DEIS Vol. I, **Appendix C**) and required by the Tribe's EPHS Ordinance (**Appendix U** of the FEIS).

The 2006 ELS report on wetland buffers (Appendix 9 of DEIS Vol. I, **Appendix F**) further notes on page 5 that the only wetlands on the project site that will be impacted by the Proposed Project are the roadside ditches, which are exempted from the County ordinance, and two small isolated wetlands, which are not subject to USACE jurisdiction. Non-jurisdictional wetlands are not required to be addressed on the federal level in the EIS, and the impacts to the roadside ditches will be mitigated by replacement at a 1:1 ratio. The exact location for the mitigation will be identified through the 404 permitting process; however, mitigation areas are likely to be along the realigned NW 319<sup>th</sup> Street (under Alternative A). The chart on page 4 of the report (ELS, 2006) contains a full summary of the wetlands on the site, the Cowardin classification, County classification, and buffer requirements for each. As noted in the DEIS, a Section 404 permit from the USACE will be required for impacts to these roadside ditches. A discussion of impacts to jurisdictional waters is included in **Section 4.5** of the DEIS. Mitigation measures are outlined in **Section 5.2.4** of the DEIS.

Refer to **General Response 2.5** above for a discussion of impacts to off-site wetlands and waters of the U.S. from the construction of water/wastewater lines to the project site. If, as anticipated, the existing roadways are used for the pipelines there will be no impacts to wetlands. The crossings of either McCormick Creek or Allen Creek, would depend on the route finally selected by CPU. The crossing could require a 404 permit, unless the final method of crossing chosen was jack and bore, or suspension from existing road crossings, thus avoiding impacts. Any actual impacts would be mitigated in accordance with the USACE and county standards under the applicable nationwide permit. Any impacts to roadside ditches that are determined to be jurisdictional for example, would be mitigated by the utility performing the work at a replacement ratio of 1:1 to be consistent with the current USACE standards. Final decisions on the actual routes will be made by CPU, who will be the lead for the actual work and necessary permitting at that time.

Refer to **General Response 2.7** for a discussion of impacts to wetlands from use as part of the stormwater facilities for the Proposed Project.

## **2.10 FISHERIES AND AQUATICS**

**Summary of Comments:** Several commenters raised the issue of the need to consult with National Marine Fisheries Service (NMFS) and/or U.S. Fish and Wildlife Service (USFWS) under Section 7 of the Federal Endangered Species Act (ESA). The overall adequacy of the BA (DEIS Vol. II, **Appendix I**) was challenged both in relationship to fisheries and scope of the area covered. Several commenters raised the question of the possibility of impacts to federally listed species from the discharge of either wastewater or stormwater into the unnamed creek and flowing from there into the East Fork Lewis River.

**Response:** The BIA agrees that a full consultation with both the USFWS and the NMSF will be required as part of the Proposed Action. To facilitate this consultation, AES conducted additional site visits in December of 2006, and a new Biological Assessment was completed (**Appendix I** of the

FEIS). Additionally, a supplemental Technical Memorandum was prepared by SWCA Environmental Consultants of Portland (**Appendix S** of the FEIS) that specifically addresses impacts to fisheries in the unnamed stream and the East Fork Lewis River. The conclusion of the Technical Memorandum is that the Proposed Project will have minor effects on the listed fish species in the East Fork Lewis River. Factors substantiating this conclusion include:

- 1) Fecal coliform content from the discharge of the WWTP will be less than the current levels in the East Fork Lewis River. Additionally, the removal of cattle grazing and septic tanks from the project site will also improve water quality above current conditions.
- 2) The addition of an underground piping cooling system to the Proposed Project, to cool the wastewater discharge prior to release into the unnamed stream, will reduce water temperatures to 16°C.
- 3) Species of special concern will not be able to access the perennial stream. Given the fact that there is an approximately 12-foot drop on the unnamed stream into a pool at the base, which averages 2 feet in depth (based on follow up surveys done for the new BA by AES biologist in December 2006), the unnamed stream is not accessible as a fisheries habitat for either migration or spawning. The East Fork Lewis River in the vicinity of the confluence with the unnamed stream is primarily a migratory corridor and provides possible rearing habitat for the Chinook salmon. As noted on pages 5 and 6 of **Appendix S** of the FEIS, the cooler temperatures anticipated from the unnamed stream after addition of the treated and cooled effluent, especially in the summer, may be beneficial to Chinook salmon juveniles.
- 4) Turbidity is not expected to increase.
- 5) Characteristics of the mixing zone are not an issue. The discharge will be covered by a USEPA-issued NPDES permit, therefore, the quality of the discharge will meet federal standards.

The new BA was submitted to the USFWS and NMFS in April 2007. No issues, as they relate to fisheries, were anticipated within the new BA and the supplemental water quality work done for the Proposed Project. The USFWS and NMFS have concurred with the BIA's finding of "may affect, not likely to adversely effect" federally listed species and fisheries. Concurrence letters from these agencies are included within **Appendix I** of the FEIS.

## **2.11 TERRESTRIAL SPECIES/HABITATS**

**Summary of Comments:** Commenters challenged the adequacy of the BA (DEIS Vol. II, **Appendix D**), the methods of assessing impacts, and the use of "best scientific information available."

Commenters asked about the adequacy of the treatment of bald eagles and migratory birds especially

in relationship to the nearby Ridgefield National Wildlife Refuge and the La Center Bottoms. Several commenters asked about the treatment of specific species and/or habitats in the documents.

**Response:** As stated in General Response 2.10 above, the BIA agrees that a full consultation with both the USFWS and the NMFS is required as part of the Proposed Action. The bald eagle receives full protection from federal laws including the Bald Eagle Protection Act, the Migratory Bird Treaty Act, and the ESA. These statutes will remain in force after the land is taken into trust for the Tribe. The new BA, included as **Appendix I** of the FEIS, discusses the potential for impacts to eagles and the mitigation that is proposed addresses both direct and indirect impacts. The new BA was prepared in accordance with the federal guidelines of the USFWS and the NMFS. Necessary changes to the EIS were made to ensure that the FEIS is consistent with the new BA. Additionally, the new BA addresses off site impacts to the extent necessary to fully assess potential impacts to listed species. As noted in **General Response 2.10** above, no adverse impacts to fisheries in the East Fork Lewis River are expected. Likewise impacts to birds that fly from the nearby Ridgefield National Wildlife Refuge to the La Center Bottoms are expected to be less than significant with implementation of measures recommended in **Section 5.0**. Lighting prescriptions included in **Section 5.0** will reduce lighting effects, including those to wildlife and migrating birds. The birds can successfully alter their course from the refuge to the La Center Bottoms. No problems in complying with the Migratory Bird Treaty Act are expected. As discussed within the new BA, no adverse impacts to federally listed species are anticipated. The USFWS has concurred with the BIA's finding of "may affect, not likely to adversely effect" federally listed species. The concurrence letter from USFWS is included within **Appendix I** of the FEIS.

## **2.12 CULTURAL RESOURCES**

### **2.12.1 PRESENTATION OF ETHNOGRAPHIC DATA**

**Summary of Comments:** Several commenters expressed vigorous concern over the ethnographic data presented in the DEIS relating to the prehistoric tribes that occupied the region centered around the project site in Clark County. Many commenters indicated that the project site is outside the Cowlitz Indian Tribe's historical land.

**Response:** The ethnography data presented in the DEIS was taken from several sources, including the Tribe's website. Upon review it was determined that the information presented in the DEIS required clarification and correction. Subsequently, additional primary resources were reviewed and discussions incorporated into the FEIS. In particular, the ethnographic information relating to the prehistoric and historic occupants of the project area and the related events that affected aboriginal population movements in Washington state in general, and in Clark County specifically, has been updated. See **Section 3.6** of the FEIS for the expanded discussion of the ethnographic history of the area and **Section 8.0** for the additional references utilized. The issue of traditional versus nontraditional tribal lands is a constant point of contention in the expansion of a modern Tribe's

sphere of influence. The legal definition and subsequent resolution of these issues is outside the scope of the NEPA review process and will not be addressed here. See also **Section 2.2.2** for a response to non-NEPA issues beyond the scope of this EIS.

### ***2.12.2 EVALUATION OF HISTORIC RESOURCES***

**Summary of Comments:** Some comments were submitted concerning the Section 106 evaluation process, specifically what qualified as a “historic site” under National Register of Historic Places (NRHP) regulations, and the status of certain historic-era properties located on the La Center and Ridgefield Interchange sites.

**Response:** Two cultural resources reports were prepared for the DEIS and submitted by the BIA’s Portland Regional Archaeologist for State Office of Archaeology and Historic Preservation (OAHP) consultation under the Section 106 process. An archaeological study of the La Center Interchange Site was conducted by Heritage Research Associates (HRA), Inc. in 2003 (DEIS Vol. II, **Appendix Q**), and Analytical Environmental Services (AES) conducted an archaeological and historic architectural review of the Ridgefield Interchange Site in 2005 (DEIS Vol. II, **Appendix R**). In December 2003, OAHP provided a letter of concurrence to the BIA indicating that they concurred with the finding of “*No Historic Properties Affected*” for the La Center Interchange Site (DEIS Vol. II, **Appendix Q**).

Following release of the DEIS, three additional reports were submitted to OAHP for conclusion of the Section 106 process. These reports included a historic architectural review of the standing structures on the La Center site, an archeological addendum for the La Center Interchange Site, and a revised archaeological and historic architectural review of the Ridgefield Interchange Site (**Appendix J** of this FEIS).

On March 3, 2008, the OAHP provided a letter to the BIA indicating that they concurred with the BIA’s professional recommendations and finding of “*No Historic Properties Affected*” for the La Center Interchange Site, concluding the Section 106 process for the Proposed Action at that site (**Appendix J** of this FEIS). Further archaeological studies and consultation with OAHP pursuant to Section 106 would be required if the Ridgefield Interchange site is selected.

## **2.13 PROBLEM GAMBLING AND CRIME**

### ***2.13.1 IMPACTS TO LAW ENFORCEMENT***

**Summary of Comments:** Several commenters were concerned that a casino development would increase crime and impacts to law enforcement agencies. Some commenters expressed concern that law enforcement impacts may be cross-jurisdictional, affecting agencies other than the Clark County Sheriff’s Office.

**Response:** **Section 4.10** of the DEIS analyzed impacts to law enforcement. National studies commissioned by the federal government, and data from casino communities, suggest that there is no definitive link between crime and the opening of a casino. However, due to increases in population, similar to other entertainment venues, a casino development would increase calls for service and the number of crime reports filed by local law enforcement agencies. The vast majority of calls would be referred to the primary law enforcement provider, the Clark County Sheriff's Office. Impacts to the Clark County Sheriff's Office would be mitigated through the MOU between Clark County and the Tribe, Section 3(A) of the Tribe's EPHS Ordinance (**Appendix U** of the FEIS), and through a contractual agreement with the Clark County Sheriff's Office to provide funding for the resources necessary to provide adequate law enforcement to the Proposed Project.

Nearby law enforcement agencies may be involved in a mutual aid capacity, such as the City of Ridgefield or City of La Center police departments. Authority to provide mutual aid services is granted by the Washington Mutual Aid Peace Officers Powers Act. There is not currently a mechanism for reimbursement for mutual aid calls between the Sheriff's Office and City of Ridgefield or City of La Center. The contractual agreement between the Tribe and the Clark County Sheriff's Office would not preclude reimbursement for mutual aid support. The number of mutual aid calls required from indirect impacts is estimated to be a very small number of calls. As analyzed in the Post Development Review (**Appendix M** of the FEIS), where mitigation is arranged for primary law enforcement services, it has eliminated financial burdens on local law enforcement. The Proposed Project is not expected to generate a substantial amount of traffic traveling into or through downtown La Center or Ridgefield, therefore, indirect impacts to law enforcement in these communities would not be significant. As discussed on page 138 of the Supplemental Traffic Impact Study (TIS) (**Appendix O** of the FEIS), the population base of La Center and Ridgefield is much less than the rest of the study area and neither city will capture more than 1% of the total traffic.

### **2.13.2 PROBLEM GAMBLING**

**Summary of Comments:** A number of commenters stated that the casino project would create problem gambling effects. Several commenters were concerned that mitigation presented in the DEIS would not adequately address impacts from problem gambling or secondary impacts such as domestic violence, crime or bankruptcy.

**Response:** Problem and pathological gambling were analyzed in **Section 4.7** of the DEIS. Using Washington prevalence numbers, the number of problem gamblers that would seek services were estimated and the DEIS concluded that one additional counselor (with an estimated annual salary of \$47,500) would be needed for increased problem gambling resulting from the Proposed Project. The MOU with Clark County and the Tribe's EPHS Ordinance state that *no less* than \$50,000 would be provided, which means that the contribution could be greater. This mitigation is appropriate as it addresses the increased cost to local governmental services from problem gambling. As discussed on page 4.7-5 in **Section 4.7** of the DEIS "the major difference between states with increased and

decreased gambling problems was the availability of services for problem gamblers” (Volberg et al., 2005). It should be noted, with access to gambling from card clubs (four of which currently operate in La Center), tribal casinos, Internet gambling, and the presence of legal gambling opportunities in 48 states, it is impossible to prevent the access to legal gambling opportunities to potential problem gamblers in the area.

Secondary effects of problem gambling are also addressed in **Section 4.7** of the DEIS. Problem gambling often occurs with other behavioral and emotional problems that contribute to secondary issues, making correlation between problem gambling and secondary effects difficult. However, treatment of problem gambling would lessen the impacts of these secondary effects. As discussed in **Section 4.7**, studies commissioned by the federal government have failed to find a statistically significant link between the presence of a casino and crime, or between the presence of a casino and bankruptcy rates.

## 2.14 SCHOOLS

**Summary of Comments:** Several commenters were concerned that the Proposed Project would impact school enrollment or that impacts to schools were underestimated. Some commenters were concerned that the student per household rate used was inaccurate, leading to underestimated impacts. Some commenters were concerned that the Proposed Project would lead to financial impacts to local school districts (Ridgefield School District or La Center School District) from decreasing property values or loss of property tax. Some commenters were concerned that affected schools are at capacity. Other commenters were concerned that the MOU with the Ridgefield School District would not mitigate impacts to area schools.

**Response:** Impacts to schools were analyzed in **Section 4.7** of the DEIS. The DEIS reported a 0.35 average student generation rate based on the Ridgefield and La Center school district rates, adjusted for the secondary area’s housing stock and tenure mix. This resulted in a projected growth estimate in the DEIS of 76 to 111 students. The student generation rate analysis was expanded in **Section 4.7** of the FEIS based on the student generation rates used by Clark County’s nine school districts for planning purposes. The resulting figure was an overall student generation rate for all housing units of 0.46 (E.D. Hovee, 2006c, **Appendix K** of the FEIS). The resulting impact to schools based on the new generation rate would be approximately 99 to 145 students spread throughout the two-county secondary study area. At 145 students, the added enrollment represents only 0.2% of existing Clark County school enrollment and even less when Cowlitz and Clark county enrollments are combined. This percentage is not considered a significant impact especially when spread among the school districts of the two-county study area. Additionally, simply adding enrollment to a school district is not considered a significant issue unless there is a lack of funding for capital improvements. As discussed below, there would be no loss of funding, which is based on residential property tax and school impact fees on residential developments.

As discussed in **Section 4.7** of the FEIS, property values would not be affected by the Proposed Project. Removal of the property from tax rolls could potentially lead to less revenue for the district to which the La Center site belongs, which is currently the Ridgefield School District. The La Center School District has petitioned to include areas of the expanded La Center UGA; however, to date this request has not been approved. The Tribe has agreed in the MOU with Clark County and in the EPHS Ordinance to make payments in lieu of property taxes for revenue lost resulting from the removal of the land from the tax rolls. Thus, there would be no net loss of revenue collected from property tax as a result of the Proposed Project.

School enrollment vs. capacity is discussed in **Section 3.7**. Mitigation is applicable only for the impact of the Proposed Project or a proportionate share of the impact. School capital expenses are paid by school impact fees on residential development, bond levies which raise residential property tax, and state funding (Clark County, 2004a). As discussed above, the development would mitigate for any lost school impact fees or property tax. Any new housing developments resulting from growth in the area would be required to pay both school impact fees and property tax.

The MOU with the Ridgefield School District is meant only to mitigate for the lost revenue from the Clark County school impact fees. Clark County school impact fees are designed to require “that new development pay a proportionate share of the cost of new facilities needed to serve growth” (Clark County Code 40.610.010). The school impact fee only applies to residential portions of developments designed for persons under 61 years of age (Clark County Code 40.630.030) and does not apply to non-residential portions of a development. Should the Tribe develop Tribal housing the MOU with the Ridgefield School District provides that the Tribe would pay school impact fees consistent with the Clark County School Impact Fee Ordinance. Thus, the MOU serves its function of compensation for lost school impact fees.

## **2.15 EMPLOYMENT AND HOUSING**

### **2.15.1 EMPLOYEE INCOME**

**Summary of Comments:** A number of commenters were concerned that income for new employees would be too low resulting in increased need for welfare and social services. Other commenters were concerned that employee income would be too high leading to labor shortage and increased costs of goods and services. Several commenters submitted comments in support of the Proposed Project and stated that that new jobs would benefit the local economy.

**Response:** As analyzed in **Section 4.7** of the DEIS, relative to households of average size and number of wage earners, there would be no households below the federal defined poverty level or even eligible for food stamps. Individual household characteristics vary in the number of wage earners and dependents per household. Thus, a household with one wage earner, earning in the lowest quintile of casino wages, and with three or more dependents, could fall below the poverty line. Assuming that

in-migrants are evenly distributed by household size and income, it can be expected that 10% of workers eligible for public assistance will be new residents while 90% will be already receiving services in the secondary area and would not represent a new impact. Of existing area residents, casino employment may represent an improvement over prior household income and some reduction in need for public assistance. As discussed in **Section 4.7** of the DEIS, the average casino wage is equivalent to the 2003 average wage of jobs in the primary area and 82% of the average wage in the secondary area. The Proposed Project also has higher wages and benefits than what are currently available in comparable sectors of the primary and secondary study area.

As discussed in DEIS Vol. II, **Appendix S**, the Proposed Project may attract employees from existing businesses. Businesses that lose employees to the casino can be expected to re-hire to fill its needs, so that the end demand for non-local employees is the same. Assuming that employment corresponds directly to revenue, up to 447 existing card room workers (61.3% of the total) could lose their jobs from impacts to La Center cardroom revenue. These workers are likely good candidates for Cowlitz casino employment, and could have the net impact of reducing total new employee demand (DEIS Vol. II, **Appendix S**). Expansion of the urban growth area and nationwide economic inflation will affect cost of goods and services regardless of the Proposed Project; the project's contribution to the pricing of goods and services is insignificant and determined by larger market forces.

#### **2.15.2 NUMBER OF IN-MIGRATING WORKERS**

**Summary of Comments:** Several commenters state that the number of non-local hires (number of employees outside the secondary area who move to within the secondary area) will be greater than 10% as stated in the DEIS.

**Response:** This issue was thoroughly addressed in **Section 4.7** of the DEIS and the Socioeconomic Assessment (DEIS Vol. II, **Appendix S**). Ten percent represents an average of the expected range of non-local hires, which is within a likely band of 5-15%. Appendix B to the socioeconomic assessment (DEIS Vol. II, **Appendix S**) provides a detailed labor market assessment that provides two means for assessing the reasonableness of the local hire projection: a) a detailed evaluation of the Clark-Cowlitz labor market supplemented with b) experience of other potentially comparable casinos. There are reasons for suggesting that this upper bound of non-local hires (15% or more) represents an extreme case on which the Cowlitz Casino can provide improved results as documented in a memorandum from E.D. Hovee on socioeconomic impacts (E.D. Hovee, 2006b):

- The casino will offer a competitive wage and benefits package. Projected Cowlitz casino wages are almost 60% higher than Clark County wages within comparable industry sectors (estimated at \$17,600 in 2003). This wage level will attract Clark and Cowlitz county residents who are currently unemployed, underemployed, earning less money or looking for a career change. The casino may also entice some residents to enter or return to the labor pool, encourage some

existing residents currently working in Oregon (31% of the Clark County labor force) to accept a Clark County job, and/or entice some Oregon residents to commute to Clark County.

- Due to its proposed location 16 miles north of Vancouver’s downtown, the casino project can more readily draw from an added pool of unemployed and underemployed residents in Cowlitz as well as Clark County – with Cowlitz unemployment rates historically averaging over 3 percentage points above those of Clark County (i.e., more than 50% higher).
- The Cowlitz Tribe has entered into a Strategic Alliance Agreement with Clark College to provide training programs for future employees of the Tribe. This agreement covers a wide range of positions of varying skill and pay levels. The agreement also includes supplemental educational services in topics such as English as a second language, basic skills training, customer service training, leadership and supervision training, degree programs and career ladder programs. In support of the Agreement, Clark College would also provide pre-employment screening and workplace readiness assessment of potential employees. This combination of services is important to improve skills of the existing in-place labor force, including those who otherwise might be underemployed or hard to employ.

The study area’s relatively higher historical unemployment rate and observed resident willingness to commute are important to this labor market determination, along with the area’s relatively low current rates of work force participation and the existence of a significant pool of potential supplemental work force on the Oregon side of the Columbia River, particularly in Multnomah County. Appendix B to the socioeconomic assessment (DEIS Vol. II, **Appendix S**) provides additional positive and negative factors that could affect local hiring. It is noted that the estimate of non-local hires may vary either up or down depending upon local labor market conditions and hiring practices at the time operations of the completed facility commence.

### ***2.15.3 HOT-BEDDING OR HOT-BUNKING***

**Summary of Comments:** Several commenters were concerned that employees would be “hot-bedding” or “hot-bunking.”

**Response:** These terms refer to a situation where employees work different shifts and share the same bed. The assumption is that employees would not be able to afford housing or housing would not be available. In relation to housing affordability, the average wage for a casino employee would be \$28,000 and the estimated median household income would be \$39,500 as evaluated in the socioeconomic assessment (DEIS Vol. II, **Appendix S**). Estimated household incomes, therefore, are generally above levels that would qualify for public assistance. Additionally, rental housing would be affordable to the lowest income quintile of workers at \$610 per month (DEIS Vol. II, **Appendix S**). This is above the average rent in the City of Woodland but below that of Vancouver. For a discussion of housing availability, refer to **General Response 2.15.4** (below), which details that there are

approximately 11,000 available units in the secondary study area. As housing would be affordable to new workers and available, there is no reason to believe that hot-bedding would be a significant issue.

#### **2.15.4 HOUSING DEMAND**

**Summary of Comments:** Several commenters were concerned that the DEIS failed to consider the Proposed Project's increase in housing demand and the lack of affordable housing in local communities.

**Response:** As discussed in **Section 4.14** of the DEIS, non-local hires are expected to produce a demand for up to 315 housing units. Vacancy rates of 5% and 6% respectively for the primary and secondary study areas, yield an expectation of approximately 11,000 available units within these two areas. The 315 added households represent less than a 0.2% share of the existing housing stock in Clark and Cowlitz counties (E.D. Hovee, 2006a; 2006b). Table 46 of the Socioeconomic Assessment provides a distribution of in-migrating households by income, jurisdictions, and tenure (E.D. Hovee, 2006a). Even if households in the lowest three income quintiles were to seek rental housing, the total renting in-migration would be 242 households. With a conservative estimate of 1,500 vacant rental units – which excludes all units constructed since 2000 – the secondary study area would be able to easily accommodate this household increase (E.D. Hovee, 2006b). Housing affordability is discussed under **General Response 2.15.3** (above), which concludes that housing is affordable to the lowest income quintile of workers at \$610 per month.

#### **2.15.5 PROPERTY VALUES**

**Summary of Comments:** A number of commenters stated that surrounding property values would be diminished if a casino were developed on the La Center or Ridgefield sites. Some reasons given for a potential decline in property values were new demographics, changes to a pastoral community, crime, traffic, noise, light, glare, and impacts to community character. Some commenters were concerned that a decline in property values would affect tax revenues and funding of the local school systems.

**Response:** The DEIS analysis in **Section 4.7** noted that negative value impacts to nearby large rural homes situated near the La Center Interchange or Ridgefield sites could occur to the extent they are affected by effects such as noise, traffic, shadow, light, or glare generated by a casino development. However, recent studies have noted that the impact to property values would be less than significant. A July 2006 report by the Taylor Policy Group for the Washington Indian Gaming Commission titled *The Character and Effects of the Indian Economy in Washington State* noted that “the opening of Indian casinos produces no statistically meaningful effect on nearby, off-reservation taxable sales or property.” Additionally, EcoNorthwest concluded in a June 2006 report *Impact Study for the City of La Center, Washington* (prepared for, and provided as comments on the DEIS by, the City of La Center [see Comment Letter 7 (Log # A007)]) that “the average prices for homes would be largely unaffected by the development.” As there is no expected decline in property values, there would be no resulting effect on tax revenues or funding for the local school system. While the La Center site

would be removed from the tax rolls, the Tribe has agreed in the MOU with Clark County and in the EPHS Ordinance to make payments in-lieu of property taxes. Effects to community character and quality of life are discussed in **General Response 2.18** below. Impacts from crime, traffic, noise, light, glare, and community character are all discussed in **Section 4.0** of the FEIS.

## **2.16 EFFECTS TO LA CENTER**

**Summary of Comments:** Several commenters were concerned that a casino project would affect cardroom revenue to the City of La Center.

**Response:** A June 2006 report by EcoNorthwest (prepared for, and provided as comments on the DEIS by, the City of La Center [see Comment Letter 7 (Log # A007)]) estimates that the loss to City revenues from a decline in cardroom business could be as much as 66% (rather than 61% as stated in the DEIS, a figure taken from an April 2004 EcoNorthwest report entitled *Impacts of a Tribal Casino, An Analysis of Certain Impacts of a Tribal Casino on La Center* prepared for the City of La Center). A few commenters were concerned that declining revenue to the City of La Center would affect public services. A 66% decline equates to an estimated \$3.1 million revenue loss to the City of La Center. However, \$1.6 million per year in continued cardroom revenue would continue to be paid to the City. This is well in excess of the \$823,000 (or 25% of gambling tax revenues) allocated by the City to its general fund as of 2005 (E.D. Hovee, 2006c). Thus, the primary impact would continue to be on a reduced build-up of the City's rainy-day fund used for capital improvements, rather than on the general fund supporting City services. This impact is analyzed in **Section 4.7** of the FEIS. Some of the discretionary fund is used on capital improvement projects for public facilities and thus this impact is considered potentially significant. Mitigation for replacement of lost revenue for at least 10 years is included in **Section 5.2.6** of the FEIS. It should be noted that alternate funding for capital improvement projects are available through federal and state grants, local bond measures, and/or increases in retail tax, permit fees, property tax or development fees. Thus, it is assumed that during the 10-year period of payments the City could arrange for alternative funding mechanisms similar to surrounding jurisdictions. Additionally, the June 2006 EcoNorthwest study concluded that even with revenue declines, the value of cardroom physical real estate and property would not be materially affected.

## **2.17 IMPACTS TO SPIRIT MOUNTAIN CASINO**

**Summary of Comments:** The Grand Ronde Tribe provided comments (Comment Letter 29 [Log # 434]) indicating that the competitive effects of a new casino, and the resulting loss of market share, would "significantly reduce" annual revenues from their Spirit Mountain Casino. These revenues are used to support the Tribal government, which provides essential services such as health care, education, and housing to Grand Ronde tribal members, as well as providing operating funds for various important natural and cultural resources protection programs operated by the Tribal government.

**Response:** Two reports prepared by E.D. Hovee Company for the Proposed Project (**Appendices K and L** of the FEIS), indicate comparatively small effects to Spirit Mountain in the event that the Cowlitz Resort Casino at La Center is constructed. However, if the Cowlitz facility, a new facility proposed by Warm Springs at Cascade Locks, and a new facility proposed by the Klamath Tribe are all constructed, impacts to Spirit Mountain may be significant for a period of time. It should be noted that the facility proposed by the Klamath, being geographically the closest to Spirit Mountain, has the greatest potential economic impact to the Confederated Tribes of Grand Ronde.

## **2.18 QUALITY OF LIFE**

**Summary of Comments:** Several commenters were concerned that the casino may affect the quality of life in the area. Some commenters specifically indicated that impacts to traffic, aesthetics, socioeconomics, and public services would negatively impact quality of life.

**Response:** The issues affecting quality of life including traffic, aesthetics, socioeconomics, and public services are addressed in the topical sections of the DEIS. NEPA requires that social issues be analyzed when associated with physical environmental effects. These physical effects have been addressed in the DEIS and thus a subjective analysis on how the Proposed Project may affect resident's perception of the quality of life is not required; however, a section addressing quality of life concerns has been added to **Section 4.7** of the FEIS. This analysis finds that the workers and patrons of the casino would have similar goals and values to the residents of the area. Community character is discussed in **Section 4.13**. The discussion addresses the effect to the rural nature of the area. With the recent approval of the La Center UGA expansion, urbanization of the area can be expected regardless of the Proposed Project.

## **2.19 TRAFFIC**

**Summary of Comments:** Many comments were received regarding the scope and methodology used to determine traffic impacts in the DEIS. Several comments questioned the geographic scope of the analysis claiming it was too small and needed to include the Interstate (I-) 5 bridge and I-5 weigh station. Several comments claimed that trip generation rate estimates underestimated impacts because of a narrow geographic scope or inappropriate methodology. Other comments suggested that weekday PM peak hour periods should have considered a longer period of time and it was unclear how the time periods were determined. Other comments claimed background traffic growth rates used in determining 2010 traffic impacts were incorrect. Some comments suggested that the traffic impacts analysis should consider the traffic impacts of an event occurring simultaneously at the Cowlitz Casino event center and the Clark County Amphitheatre. Some comments suggested changes should be made to the trip distribution and assignment section for clarification and reasoning or to provide a larger scope. Others claimed the traffic impact analysis did not analyze vehicle queuing at intersections.

**Response:** A Supplemental Traffic Impact Study (TIS) was prepared for the FEIS (**Appendix O** of the FEIS), which expanded the geographic scope of the traffic impact analysis to a larger coverage area. The expanded area includes I-5 from the Interstate bridge to State Route (SR) -500, I-205 from the Glenn Jackson Bridge to SR-500, and I-5 in the vicinity of the Woodland/I-5 interchange. The casino resort proposal will impact sections of I-5 and I-205 through the City of Vancouver including the I-5 and I-205 bridges. The Supplemental TIS indicates that some level of service changes for I-5 and I-205 segments may be expected as a result of the project. However, the proposed project will not affect levels of service for either the I-5 or the I-205 Columbia River Bridges. Modifications under consideration in the Columbia River Crossing DEIS and the environmental assessment for I-205 between SR-500 and the Glenn Jackson Bridge should result in substantial improvements to the level of service for both interstate corridors.

Additional casino trip generation case studies were added to the analysis in the Supplemental TIS for estimating vehicle trips and very conservative assumptions regarding retail, the RV Park, event trips and casino trips were applied. Impacts to the weigh station are measured at the level of service (LOS) intersection of NW 319<sup>th</sup> Street/NW La Center Road and I-5 northbound on- and off-ramps.

As discussed in the Supplemental TIS the primary trip generation variable used for the Proposed Project is the square footage of the casino gaming floor area, because it constrains the number of positions available and provides the maximum area available for gaming positions. Peak hour time periods were established from a comparison of traffic for similar casino projects. The Supplemental TIS re-examined the issue of peak time periods and determined that the weekday peak time for casino site trips is 6-7 PM, while the weekday road system peak is 5-6 PM.

The Supplemental TIS undertook a more comprehensive review of growth rate reports and trends and determined that for the 2005-2010 period generally, growth rates increased over rates utilized in the TIS. However, rates decrease from 2010 through 2023 and 2030 based on adopted plans and modeling performed by the Regional Transportation Council (RTC). The Supplemental TIS also included an analysis for events occurring simultaneously at the Cowlitz Casino events center and the Clark County Amphitheatre. The analysis found that traffic would not increase sufficiently to cause a change in level of service.

Additionally, the Supplemental TIS provides an enhanced discussion of trip distribution and assignment. The trip distribution model was developed specifically for the Cowlitz Casino study based on similar studies, and found that casino and event-related trip distribution is related to the amount of competing gaming establishments, time and distance from the Casino, and population.

Vehicle queuing is included in the traffic impacts analysis and was discussed in **Section 4.8** of the DEIS under LOS impacts.

Details regarding the revised traffic impact study and the conclusions of the Supplemental TIS (**Appendix O** of the FEIS) can be found in **Section 4.9** of the FEIS.

## **2.20 NOISE**

**Summary of Comments:** A comment was received concerning the impact that the Proposed Project would have on noise levels due to increased traffic on the northbound off-ramp of I-5.

**Response:** As discussed in the Noise Technical Report (DEIS Vol. III, **Appendix U**) and **Section 4.11** of the DEIS, the WAC  $L_{eq}$  (Average Sound Level) daytime limit of 57 dBA (A-weighted decibel level) and the nighttime limit of 47 dBA would not be exceeded as a result of the Proposed Project. The modeling results included the area of the northbound off-ramp of I-5.

## **2.21 LAND USE COMPATIBILITY**

**Summary of Comments:** A number of commenters stated that the project alternatives are inconsistent with the Clark County Comprehensive Growth Management Plan (GMP) as well as land use and zoning designations for the alternative project sites. Additionally, commenters stated that the DEIS did not adequately evaluate project impacts on the proposed expansions of the City of La Center's and the City of Ridgefield's UGAs, and that the Proposed Action would not be allowable according to existing Clark County land use regulations. Some commenters stated that the DEIS did not adequately address the project's immediate and long-term compatibility effects with surrounding land uses.

**Response:** Implementation of the Proposed Action would result in the federal government taking the Subject Property into trust for the benefit of the Tribe. As described in **Section 4.9** of the DEIS, Tribal lands are not subject to County or City rules and regulations once the land is in trust. Application and enforcement of local land use and zoning enactments on trust lands is beyond the jurisdiction of local governments. Tribes retain jurisdiction over land use and zoning matters on lands they control.

NEPA 1502.16(c) requires that an EIS must evaluate potential conflicts between the Proposed Action and applicable land use plans, policies, and controls for the area affected. This evaluation should consider formally adopted land use plans as well as land use plans that have been formally proposed by the appropriate agency in written form. A detailed evaluation of potential conflicts between the Proposed Project alternatives and adopted Clark County land use regulations and policies was included within **Section 4.9** of the DEIS. However, several events have taken place since the release of the DEIS that have significantly affected the regulatory land use setting on both the La Center Interchange Site and the Ridgefield Interchange Site.

On September 25<sup>th</sup> 2007, approximately one year after the close of the public review period for the DEIS, the Clark County Board of Commissioners formally adopted an update to the Comprehensive GMP focusing on changes to designated UGAs within the County to accommodate projected growth over the next 20 years. Specifically, as a result of the 2007 Comprehensive GMP Update, the City of La Center's UGA was expanded to add 1,427 acres, including the entirety of the La Center Interchange Site. **Section 3.9** and **Section 4.9** of the FEIS have been revised to reflect the new UGA boundaries and land use policy changes adopted within the 2007 Comprehensive GMP. In response to public comments, the land use impact discussion within **Section 4.9** was further expanded to evaluate potential conflicts that could arise from the Proposed Project and the expanded City of La Center UGA. Because the Subject Property has been designated for light-industrial urban development and included within the City of La Center's UGA, environmental consequences resulting from the Proposed Project would be similar to environmental consequences that would occur through implementation of the County's adopted land use plan for the project site and vicinity. However, it should be noted that commercial land uses under the Proposed Project would result in increased public use of the area and increased vehicle trip generation when compared to the industrial land uses envisioned by the County. These impacts are discussed in **Section 4.9** of the FEIS. Additional effects resulting from the Proposed Action in conjunction with the City of La Center's expanded UGA, are evaluated as cumulative effects in **Section 4.14** of the EIS.

In addition, since the close of the public comment period on the DEIS, the Ridgefield Interchange Site was annexed into the municipal boundaries of the City of Ridgefield on July 12, 2007 as a result of the City Council's adoption of the Ordinance No. 958, removing the site from Clark County jurisdiction. Accordingly, the Ridgefield Comprehensive Land Use Plan is now the governing land use plan for the Ridgefield Interchange Site. **Section 3.9** and **Section 4.9** of the FEIS have been revised to reflect the new Ridgefield City boundaries and the changes in applicable land use plans for the Ridgefield Interchange Site. The discussion of potential land use effects within **Section 4.9** was further expanded to evaluate potential conflicts from Alternative E and adopted land use plans as a result of the City's annexation of the site. Additional effects resulting from Alternative E in conjunction with the City of Ridgefield's expanded UGA and municipal boundaries are evaluated as cumulative effects in **Section 4.14** of the EIS.

The significance of potential conflicts with local land use plans resulting from the Proposed Project will be considered by the BIA during the decision-making process. However, it should be noted that the BIA retains authority to move forward with the proposal despite potential conflicts that could occur. The BIA's decision on the Proposed Project will be described fully in the Record of Decision (ROD), which will explain any decision to override land use plans or policies for the project site.

It should be noted that denial of a land acquisition request due to conflicts with local land use plans would improperly grant veto power over such land acquisition requests to local governments, contrary to the clear intent of the Indian Gaming Regulatory Act (IGRA) and the Indian

Reorganization Act (IRA). If the BIA determines that the Tribe has made good faith attempts to negotiate mitigation measures with local governments, and mitigation measures to address potential land use conflicts have been identified within the EIS, it would be contrary to the intent of IGRA to deny a land acquisition request on the basis of local opposition due to alleged land use conflicts.

Another issue raised in comments is the Proposed Project's immediate and long-term incompatibility effects with surrounding land uses. A project's "incompatibility" would manifest itself in specific environmental effects (e.g., noise, air quality, traffic, etc.). **Section 4.0** of the DEIS details the various environmental effects that may result from the construction and operation of the Proposed Project. The level of the project's "incompatibilities" is measurable by the resulting effects before and after stated mitigation in **Chapter 5.0** of the EIS.

## 2.22 INDIRECT AND GROWTH-INDUCING

**Summary of Comments:** Several comments were received indicating that the analysis of indirect and growth inducing impacts was insufficient. Comments from Clark County (see Comment Letter 5 [Log # A005]) stated that indirect and growth inducing effects would include adverse impacts to County land use planning efforts and that these impacts should be analyzed and described. Other comments indicated that indirect impacts should be projected based on a study of what indirect developments and associated growth has occurred in previous casino and/or fee-to-trust projects.

**Response:** For purposes of analysis, it was assumed that the majority of indirect and growth inducing impacts would be socioeconomic, and that these impacts would predominantly result as a product of casino employment in general and in-migration of employees specifically. Utilization of these assumptions allowed estimated quantification of the amount of land alteration. This land alteration relates directly to predicted physical environmental effects on the ground.

However, the creative suggestion offered in comments that post-development patterns associated with other gaming projects be investigated was accepted. A study of developments that have occurred contiguous to five other gaming projects in the greater Portland area (Chinook Winds, Kah-Nee-Ta, Lucky Eagle, Spirit Mountain, and the four La Center card rooms) was undertaken and is included as **Appendix M** of the FEIS. This study also included analysis of demographic and income profile information. The study was utilized as a means of checking the analysis provided in the DEIS. This study concluded that land use and development effects associated with the development of gaming projects in these areas have been surprisingly muted. Similarly, effects on demographics and household incomes have been modest.

## 2.23 CUMULATIVE IMPACTS

**Summary of Comments:** Substantial numbers of comments were received which critiqued the cumulative impacts analysis. These comments centered on three issues: 1) That the geographic scope

of the analysis was too narrow, 2) That the list of proposed non-gaming projects should be more extensive, and 3) That the cumulative impacts analysis should have centered on, or at least discussed, past, present, and future gaming projects in the Pacific Northwest. Other possible gaming projects in the greater Portland area were a specific concern.

**Response:** It was determined through scoping that the predominant issues of public concern were socioeconomic and traffic impacts. As is noted in the cumulative impacts section of the EIS, **Section 4.15**, care must be taken with both the geographic and temporal scope of analysis. Obviously, too narrow a scope will delete important impacts; but too broad a scope diminishes the significance of effects through dilution. Socioeconomic effects, such as increased employment, immigration, or housing demand, are particularly subject to such diminishment. The geographic scope of the analysis is the reason that other Indian casino projects were not considered in the cumulative impacts discussion.

Additional analysis was completed for suggested non-gaming proposed projects and the discussion in **Section 4.14** of the DEIS has been amended.

It becomes obvious that the popular public perception of cumulative impacts includes other proposed Indian casino projects. To respond to this public concern, and to make the information available for decision makers, a short synopsis of past, present, and future gaming in the greater Portland area, and a discussion of growth of this industry, is included below.

#### ***FACILITIES REVIEWED***

Existing and proposed gaming facilities considered are listed below.

##### *Existing Gaming Operations:*

- Chinook Winds (Lincoln City, Oregon)
- Kah-Nee-Ta (Warm Springs, Oregon)
- Lucky Eagle (Rochester, Washington)
- Spirit Mountain (Grand Ronde, Oregon)
- Four Card Rooms (Double Down Saloon and Casinos, Last Frontier, Palace Casino and New Phoenix – La Center Washington)

##### *Proposed Gaming Operations*

- Aurora/Wilsonville (Oregon)
- Cascade Locks (Oregon)
- Cowlitz Casino (La Center, Washington)

#### ***CURRENT & PROPOSED OPERATIONS***

The current gaming facilities profiled in Southwest Washington and Northwest Oregon comprise a total of an estimated \$331 million in gaming revenues with 3,673 video lottery terminals (VLTs), 169

table games, 75 Class II VLTs and 2,050 bingo hall seats (**Table B-1**). Associated with these existing operations are more than 800 hotel rooms and 128 RV sites.

If all three of the additional tribal casinos currently being discussed for the Southwest Washington and Northwest Oregon region were to be constructed and operated at revenue levels per VLT comparable to current conditions, total gaming revenues from existing plus new facilities could increase to more than \$897 million per year with 10,173 VLTs and 374 table games. The hotel inventory associated with current and proposed facilities could increase to 1,292 rooms with a near doubling of RV sites to 253 RV spaces.

**TABLE B-1**  
CURRENT & PROPOSED CASINO OPERATIONS  
(SOUTHWEST WASHINGTON & NORTHWEST OREGON)

Casino Properties	Facility Size*	Gaming Revenues	Hotel Rooms	RV Sites	VLTs	Class II VLTs	Table Games	Bingo Hall (Seats)
<b>Existing Casinos:</b>								
Chinook Winds <sup>1</sup>	157,000	\$108,900,000	308	51	1,250	0	27	600
Kah-Nee-Ta <sup>1</sup>	25,000	\$3,000,000	170	51	338	0	6	0
Lucky Eagle <sup>1</sup>	65,000	\$51,000,000	69	26	585	0	20	600
Spirit Mountain <sup>1</sup>	90,000	\$130,700,000	254	0	1,500	75	56	850
Card Rooms in La Center <sup>2</sup>	NA	\$37,300,000	0	0	0	0	60	0
<b>Proposed Casinos:</b>								
Aurora/Wilsonville <sup>1</sup>	200,000	\$130,700,000	NA	0	1,500	0	NA	NA
Cascade Locks <sup>1</sup>	603,000	\$174,300,000	241	0	2,000	0	70	0
Cowlitz Casino <sup>1</sup>	281,150	\$261,400,000	250	125	3,000	0	135	0

NOTE:

\*Facility Size measured in square feet.

1) Gaming revenues are estimated based upon published market information such as total VLTs at each tribal casino, total VLT revenues at Oregon tribal casinos, and total gaming revenues at Oregon tribal casinos. 2) Gaming revenues derived from published Washington State Gaming data.

Source: E.D. Hovee, 2007.

### ***COWLITZ CASINO EFFECTS***

Assuming that current and new facilities generate revenues at current regional industry standards, the proposed Cowlitz Casino (Alternatives A and B) would generate annual gaming revenues estimated at just over \$261 million. This is within the band of gaming revenue alternatives previously identified with the January 2006 Socioeconomic Assessment – ranging from \$208 - \$415 million.

The Cowlitz Casino project could represent a 79% *addition to existing* regional gaming revenues, an 82% increase in the number of VLTs and an 80% increase in the number of table games at facilities

within the Southwest Washington/Northwest Oregon region. The Proposed Project would also comprise a 31% increase in the number of casino-related hotel rooms and 98% increase in RV sites. If all three casino properties that have been proposed for this region were to be constructed, the Cowlitz Casino would represent 29% of the revenue potential (and VLTs) of all existing plus proposed facilities combined. The Cowlitz Casino would also constitute 36% of the table games, 19% of the hotel rooms and 49% of all RV sites for existing plus proposed gaming properties.

## **2.24 MITIGATION SPECIFICITY AND ENFORCEABILITY**

**Summary of Comments:** A number of commenters questioned the commitment and specificity of the proposed mitigation measures. Commenters stated that the DEIS was deficient because recommended mitigation measures lacked necessary regulatory specificity. Additionally, a number of commenters stated that a mitigation monitoring and enforcement plan should be included within the EIS or the ROD. Several commenters stated that mitigation measures in the DEIS are insufficient and do not satisfy the “hard look” required by NEPA. Other commenters indicated the DEIS relies improperly on the MOU between the Cowlitz Tribe and Clark County to ensure that mitigation is conducted and enforced. These commenters questioned the legality of the MOU itself and indicated that because of these questions the MOU cannot be used to ensure enforceability of potential mitigation measures discussed in the DEIS.

**Response:** It should be noted that the EIS is not the document that commits the agency to mitigation; it is the Record of Decision that does so. The EIS may set forth potential measures for consideration. It does not adopt them. This background information should be kept in mind in evaluating the reach of proposed mitigation measures suggested in the DEIS for the BIA to adopt in its ROD. The commenters’ suggestions become appropriate measures for the BIA to consider in their Record of Decision. As required by 40 CFR 1505, the BIA or other appropriate consenting agency shall be responsible for ensuring that mitigation adopted within the ROD is implemented. Where applicable, a monitoring and enforcement program for mitigation measures shall be adopted and summarized within the ROD (40 CFR 1505.2 [c]). However, many of the mitigation measures recommended in the EIS are self-enforcing and implementation will be ensured through permit conditions or other binding agreements. Because of uncertainty regarding the legal status of the MOU and the mitigation measures contained in the MOU, in October 2007 the Tribe enacted two ordinances to serve as a new, enforceable legal mechanism that would ensure the same mitigation of impacts that is provided in the MOU, regardless of the outcome of the litigation. See **Section 1.5** of the FEIS for a discussion of these two ordinances. See the expanded discussion of NEPA procedural requirements for adopting the ROD in **Section 1.3** the FEIS.

With respect to those commenters who concluded that the DEIS does not conclusively demonstrate that enforceable mitigation measures will actually mitigate the identified impacts, that comment is noted. All relevant, reasonable mitigation measures that could improve the Proposed Project have been identified. Good faith efforts have been made throughout the environmental review process to

design the project so as to minimize environmental impacts, to designate a preferred alternative that will further minimize impacts, and to propose mitigation measures that are intended to further minimize potential impacts.