

**COMMISSION MEETING
THURSDAY, AUGUST 12, 2004
DRAFT MINUTES**

Chair Niemi called the meeting to order at 1:30 p.m., at the Heathman Lodge located in Vancouver. She welcomed the attendees and introduced the members and staff present:

MEMBERS PRESENT: **COMMISSIONER JANICE NIEMI, Chair;**
 COMMISSIONER ALAN PARKER, Vice Chair;
 COMMISSIONER CURTIS LUDWIG, Kennewick;
 COMMISSIONER GEORGE ORR, Spokane;
 REPRESENTATIVE ALEX WOOD, Spokane;
 REPRESENTATIVE TOM MIELKE, Vancouver;

STAFF PRESENT: **RICK DAY, Director;**
 NEAL NUNAMAKER, Deputy Director;
 AMY BLUME HUNTER, Administrator, Communications/Legal;
 DAVE TRUJILLO, Acting Administrator-Licensing;
 JERRY ACKERMAN, Assistant Attorney General;
 SHIRLEY CORBETT, Executive Assistant

Staff Accomplishments:

Director Day introduced John Brinsmead, Agent in Charge-Tacoma office, and presented him with a service pin and certificate recognizing 25 years of service with the Commission. Director Day then noted that Special Agent Dylan Milliron successfully completed the Basic Law Enforcement Academy in July.

1. Review of Agenda and Director's Report:

Director Day briefly highlighted the new inserts to the agenda packet and reviewed the meeting agenda for Thursday and Friday. He noted that staff has requested that Item 10, dealing with the Digital Surveillance Rule be held over until the September meeting. He reported that staff had concerns about the language and would like to make sure that the wording is not unintentionally adding requirements for surveillance. The Chair concurred. Director Day proceeded with the Director's Report and covered the following topics:

Problem Gambling Update:

Director Day updated the Commission on staff's mission to further explore an interagency agreement regarding problem gambling, training/awareness, and help line services. He noted that a copy of the PowerPoint presentation provided by staff to the House Commerce and Labor Committee and the Senate Commerce and Trade Committee on July 26 was included in the agenda packet. He reported that the presentation carried the logo for three agencies, the Lottery, the Horse Racing Commission, and the Gambling Commission. The presentation was provided to describe the joint efforts of the three agencies to pursue an interagency agreement with the Department of Social and Health Services. That process is going very well. Subsequent to that meeting, an additional meeting of the various agencies and independent stakeholders was conducted. The agencies involved did concur that an interagency agreement was not only possible, but probably the best direction to go. Staff is attempting to work out the details in an effort to get the interagency agreement wrapped up within the next two months. **Director Day** noted the importance of the interagency agreement and its subsequent costs, which has formed the foundation of the dollars the Commission will need to provide in its budget plan.

Budget Consideration/Approval 2005-2007 Budget Plan:

Director Day recapped the decisions for the 2005 budget made at the July meeting. He affirmed the \$2.5 million was removed from the Commission's working capital and that subsequent efforts were focused on planning how to move forward. The Commission approved a mid-biennium correction for the 2005 budget to reduce seven FTE's equating to \$300,000 less in expenditures, and providing an expenditure plan in 2005 at \$14,641,000. He noted that fiscal year 2005 will be a transition year, and, by the time the Commission reaches the end of 2006, the Commission will have significantly reduced FTEs. While the agency will achieve \$13.5 in revenues, it will still require the Commission to supplement the 2005 budget from the working capital by approximately one million dollars in order to get through the next year.

Director Day reemphasized that at this point, the Commission does not plan on presenting a general license fee increase in 2005—staff is committed to balancing the budget, and streamlining the organization. He reviewed the major revenue sources by category: punchboard/pull tab licensees at 33 percent of revenues, house-banked card room licensees and card room employees at approximately 25 percent of revenues generated, tribal casinos operating and certified employees of tribal casinos generate approximately another 25 percent of the overall revenue, and amusement game licensees, Bingo licensees and all other (15 sources) generate the remaining 17 percent of the agency's revenues. Over the biennium, punch-board and pull tabs are estimated to generate \$9 million in revenue, house-banked card rooms and their employees will generate approximately \$7 million, and Class III activities are estimated to generate close to \$7 million. **Director Day** noted that revenues are predicted to be fairly static at this point.

Director Day noted that since the last meeting, three administrative issues have been included in the recommended budget. Staff discovered \$16,000 in one-time costs that were not previously removed for equipment and supplies for new agents already hired. Secondly, approximately \$447,000 was added for standard employee salary step increases and resulting benefit increases. He emphasized this was not an across the board raise, it was for scheduled standard employee salary increases. Lastly, the previous budget presentation neglected to provide for a full time person in the electronic gambling lab. Therefore, \$24,100 and a half time FTE position were added to annualize growth in the lab as necessary.

Director Day addressed the carry forward level, noting this is the base from which the Commission builds the budget. In normal cases, this is an amount that is established and agreed upon by representatives from the

Office of Financial Management, the Legislature, and the agency. At this point, there is a disagreement about the final totals. The chart included in the budget presentation provided the Commission's level and the Office of Financial Management's level, and as reflected, represents a difference over the biennium of approximately 11 FTE's and \$2.5 million. He explained that was largely as a result of the 2003 legislative session, and a proposal to create a consolidated Department of Gaming. There were some across the board cuts for appropriations and the end result in the budget notes produced reflected that the Commission would have no appropriations. **Director Day** emphasized the Commission had already taken efficiency cuts going into that legislative session, and the budget notes describing those cuts didn't have a lot of coherence to the process the Commission had gone through. Ultimately, the Commission reaffirmed the desire to stay with the Commission approved budget at the time. Subsequently, the "line" to start from in the budget process for the new biennium will be different from the amount reflected by the Office of Financial Management. Director Day acknowledged that might cause some administrative problems as the Commission moves through the official budgeting process, while simultaneously awaiting a response from the Attorney General Opinion request recently submitted.

Proposed 2005-07 Biennium Budget:

Director Day addressed the Recommendation Summary, which is a foundation document, and summarized that staff was proposing a series of reductions resulting in a budget request of 169.9 FTE's at approximately \$28.45 million for the 05-07 biennium. This is approximately 21 FTE's and one million dollars less than 2004. He noted there has not been a decline in gambling or total net receipts in this state, and the detailed work demand the Commission faces also hasn't dropped. He reiterated that staff took on the task to streamline the agency, keeping mission critical services in mind. Director Day affirmed that staff will be bringing rules packages forward, which will give the Commissioners an opportunity to decide on whether to continue some services, or reduce some regulatory efforts. He cautioned that he may have to come back and request an alteration to the FTE's in the future depending upon the kind of work load predicted and the kind of processes that may be changed. However, at this point, Director Day advised that he was requesting the Commission approve the reduced budget as proposed. He cautioned that the budget and the working capital level approved at this point does not include things like salary increases that might be enacted by the Legislature on a statewide basis, and does not include any funds set aside for increases that may be necessary for increased PERS 2 retirement contributions, which may be a realistic possibility in the next biennium, if not sooner.

Director Day reviewed the Maintenance Level Decision Packages, noting that staff has taken the approved carry forward budget, and provided for the adjustments that were made for 2005 (the additions and reductions). Staff anticipates starting the rules simplification process in October, continuing the internal audit program, and the increased contribution in support of the Governor's request for Problem Gambling at \$150,000 in 2005. Maintenance Level Decision Package #2 essentially reflects the reduction of 17.3 currently filled FTE's and a total budget reduction of approximately \$2 million. **Director Day** addressed a notation indicating these numbers included a vacancy rate of three FTEs for a saving of \$218,700—which includes eliminating three supervisor positions in Field Operations, through attrition and natural retirement. He noted this would allow the Director to manage the budget (as we have dollars to pay for it) to phase the positions out, and to allow the staff to facilitate their own personal retirement planning. Director Day affirmed the commitment to work towards a larger number of agents per supervisor ratio—in the end, the goal would be to get to eight agents per supervisor. Maintenance Level Packet 2 also addressed the new initiatives concerning rules and policy/position interpretations. Staff anticipates that position to start

functioning in January of 2006. The concept is to consolidate the various opinions and interpretations that are issued by the agency and centrally locate them. Additionally, the problem gambling estimate has been identified, and although it is not tied to a particular proposal—it will change depending upon whether the rule proposals before the Commission and can ultimately change depending the success of an interagency agreement. The rule simplification project is anticipated to be a two-year chapter-by-chapter review process, which will be brought forward to the Commission. Maintenance Decision Packet #3 reflects a reduction in the agency's self-insurance premiums, which has been authorized by the Office of Financial Management.

Director Day addressed one Performance Level Package, relating to the agency's licensing data system, and the desire to replace it with a modern information management system that links the entire agency and upgrades the data and the ability for stakeholders to use the Internet for access. Staff is hoping to get that project on line in 2007. If for some reason revenues do not materialize, the Commission would have the option to delay this project; however, staff will start the planning process for the information management system mid-year in 2006.

Director Day addressed the anticipated expenditure budget, noting that 70 percent of the agency's budget represents staffing. He emphasized that something like the working capital transfer, or budget cuts, has a direct impact on FTE positions—which is the only place where the agency can actually make long-term reductions that have a significant impact. He also noted the Office of Financial Management has developed or asked state agencies to submit three “priorities of government”—generally the Gambling Committee has had one activity (regulation and enforcement of gambling); however, to make sure the Commission participated in this process, staff divided the Commission's budgeting process into the following three categories or activities: Licensing at 21 percent, Enforcement at 55 percent, and Tribal Activities at 24 percent

Director Day addressed the impact of the recommended budget on the working capital noting that in essence as the Commission gets through the next biennium, the Commission would be operating with a working capital balance at approximately \$2.5 million (depending upon potential expenditures already discussed). The budget as proposed is designed to bring the Commission's expenses directly in line with our revenue over a short period of time (about a year). Director Day requested the Commission approve the recommended 2005-2007 biennium budget, to include the four decision packages, for a total of \$28,455,000 with 169.9 FTE's. He also recommended the Commission be prepared to consider future rule proposals, process changes, and impacts to work load, which may dictate further budget adjustment considerations as the Commission moves through the biennium. **Chair Niemi** called for comments, questions, or a motion.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to approve the 2005-2007 budget proposal as presented by Director Day.

Commissioner Parker praised staff's work noting they have done a commendable job of organizing and presenting the budget proposal, and in identifying where adjustments can be made and have been made, consistent with management that will allow the Commission to meet the responsibilities of the Commission. He questioned if there were unanticipated demands that might result in unanticipated expenditures, if that couldn't be taken care of by coming back with budget adjustment proposals that the Commission could consider and act upon. He noted the working capital was at \$2.5 million right now, and he questioned how deeply the Commission could go into that working capital and still not be in danger of depleting it below

where it should be, or where it has to be. **Director Day** responded that he has looked at the extreme danger point. However, the Office of Financial Management has a policy that sets a target of two months of operating capital—for the Commission, that equates to approximately \$2.2 million. Behind that, there is the cash fluctuation, which is about \$1.5 million. Essentially if the Commission were to drop below \$1.5 million, Director Day believed that would put the Commission in jeopardy of running in the red. He affirmed there is a risk, and staff will be closely monitoring whether the budget demands look like they will come forward (increasing pension contributions, etc.). He noted that since June, the Commission has received five house-banked card room applications for new licenses. These require additional investigation time—especially if the employees come on as well. Director Day affirmed those activities are directly related to the initiative, and the Commission’s budget as proposed is carefully balanced on the revenue estimates and workload increases. If that balance teeters one way or another, he acknowledged that adjustments might need to be made. Director Day affirmed that by the time we reach 2006, the Commission might have to look at a fee increase in order to accommodate budget increases required for pension contribution and salary increases.

Chair Niemi verified this budget was based on nothing unusual happening. **Director Day** affirmed. **Commissioner Orr** echoed Commissioner Parker’s concern regarding the working capital balance, noting the budget was being submitted on a fine line with a lot of unknowns. Vote taken; the motion passed unanimously.

Agency Request Legislation:

Director Day noted that staff prepared conceptual agency request legislation intending to divert the interest from the Gambling Revolving Fund (which is deposited into the State General Fund), to a dedicated problem gambling fund. The interest is estimated at approximately \$200,000. A summary of the agency’s work in preparing information regarding this concept and stakeholders contacted was included in the agenda packet. Should the Commission approve the concept, staff would convey the concept to the Governor’s office, and the Governor would make a final decision. **Director Day** noted the Commission could also refer the legislation and request a separate sponsor, if desired.

Director Day reported that in the process of exploring stakeholders, the Commission received a response from the Office of Financial Management, acknowledging this legislation would reduce the amount available to the General Fund by approximately \$200,000—they also addressed the fact that the Governor was moving forward with a plan for problem gambling funding, and therefore did not support the agency request legislation. **Director Day** advised the Commission could take action to move this forward anyway and submit it to the Governor’s office; or, the Commission could approve the concept reflecting Commission support and direct staff to seek a sponsor. Director Day recommended the Commission consider approving the concept—making it available as an option to stay in the mix of potential solutions for problem gambling funding; but, in light of OFM’s nonsupport, he noted the Commission would not submit the proposal in the format of agency request legislation.

Commissioner Parker made a motion that the Commission adopt the position in support of the proposal to create a fund for problem gambling based upon setting aside the interest, with all due respect to the Director of the Office of Financial Management’s correspondence. He noted that Mr. Brown’s correspondence still made references to an “excess” fund balance, which goes to the heart of the difference in perspective between the Commission and OFM. Commissioner Parker agreed there seemed to be no point in officially sending the agency request legislation forward; however, there was value in having discussed this issue, and taking a

position, noting that the Commission believed this was an appropriate proposal, regardless of OFM's position. **Commissioner Orr** seconded the motion. *Vote taken; the motion passed unanimously.*

Director Day affirmed the Commission would pursue a four prong approach to funding problem gambling: actively increase funding up to \$150,000 in fiscal year 2005, in addition to consideration for a permanent source of funding at least for the responsibility the Commission has under 9.46, moving forward with the legislative concept that would add to that, and lastly, pursuing the interagency agreement with three agencies to support the funding process.

Charitable and Nonprofit Gambling Report:

Director Day announced the Charitable and Nonprofit Study will be sent to the Commissioners under separate cover in advance of the September meeting to allow adequate time to digest the material. Consultant Sally Perkins will present a summary report on September 9.

Correspondence:

Director Day addressed a significant letter and accomplishment in reference to correspondence received from Vice Chairman Tonasket on behalf of the Confederated Tribes of the Colville Reservation, formally certifying removal of the non-compliant electronic machines and fully implementing the tribal state compact. Director Day extended the Commission's appreciation and congratulations to the Colville Tribe and echoed the Tribe's hope for a positive mutually respectful working relationship as the compacts are fully implemented. **Chair Niemi** inquired if Vice Chairman Tonasket was present, and he was not.

Director Day pointed out that staff also included a quarterly report summary data relative to the smoking ban in Pierce County in an effort to update the Commission on the impacts observed. **Chair Niemi** called for public comments regarding any of the issues covered during the Director's Report.

Dolores Chiechi, Executive Director, Recreational Gaming Association, responded to the problem gambling funding issue and the suggestion to make the interest earned from the revolving fund for a dedicated problem gambling fund. She reported the RGA appreciated being asked as a stakeholder to present their position or input on this issue. She reported that the RGA has thanked the Governor and the House and Senate Committees for involving the stakeholders as everyone work towards a resolution for permanent funding for problem gambling. Ms. Chiechi advised the RGA would support the agency request legislation to take the interest and apply it to that problem gambling fund. However, she noted they also have concerns when the Legislature steps in and sweeps those monies from the Commission's budget. She reported that as the RGA has worked with the Governor and the House and Senate Commerce Committees, they have expressed their concern that any funds that are collected from the industry be set aside and not be allowed to be moved into the General Fund for the purposes of the General Budget. They have emphasized the funds should be used for the purposes for which they were collected. Ms. Chiechi reiterated the RGA's support and advised they would be willing to help move that legislation forward, should it get a sponsor.

2. Puyallup Compact Amendment:

Director Day reported that statute directs that the Commission may hold a public hearing for purposes of compact consideration, and the Commission shall vote to return to the Director a compact, or to forward it on to the Governor for execution. He affirmed that in the case of compact considerations, the ex-officio commission members shall vote as well. Director Day acknowledged the presence of Chairman Herman

Dillon and Mr. Lawrence LaPointe of the Puyallup Tribe.

Director Day noted the House and Senate held hearings regarding the Puyallup Compact on July 26th and took public testimony. The Commission is not aware of any written comments from either of the Committees at this point in time. Director Day directed attention to correspondence from Elaine Willman and Linda Taylor, in opposition of the compact approval, which was inserted in the agenda packet after distribution. Correspondence supporting the compact was provided by Puyallup Tribal Chair Dillon, the Mayor's of Fife, Tacoma, and Puyallup, Pierce County Executive Ladenburg and the Clare Petrich, President of the Port of Tacoma. A summary of the proposed amendment and a copy of the amendment were also provided in the agenda packet.

Director Day explained that the Indian Gaming Regulatory Act (IGRA) serves as the foundation to the Federal Law adopted by Congress in 1988. The Act allows gaming activities if they are not specifically prohibited by federal law or state criminal law. The intention of the Act was to promote tribal economic development, self-sufficiency, and strong tribal governments. The regulatory structure was put in place to shield the tribes from organized crime, ensure that the tribe is the primary beneficiary, and that gaming is conducted honestly and fairly. It should also foster full cooperation between the state and the tribes. Three types of gaming are allowed: Class I, II and III. Class III is what the Commission is interested in and has jurisdiction in—essentially the casino style gaming.

Director Day touched briefly on jurisdiction, which is somewhat unique in the Puyallup case because the Indian Gaming Regulatory Act requires the governing body of the tribe with jurisdiction over the land to adopt an ordinance authorizing Class III gaming. The Puyallup agreement was a little unique because the compact (top of page 3) goes through a process that provides for that demonstration or assertion of jurisdiction. The state has jurisdiction as negotiated through the compact, and the Federal Government has jurisdiction over the Class II gaming through the National Indian Gaming Commission. Class III, Indian gaming can occur on all lands within the limits of an Indian Reservation and secondary Indian lands held in trust by the tribe. **Director Day** affirmed there are two categories: pre 1988 lands and post 1988 lands. Today, the Commission is addressing land acquired by the tribe, or land that will be acquired by the tribe. The first category is within the contiguous boundaries of the reservation; however, the land subject to discussion is next to Fife, and clearly the site is within the boundaries of the Puyallup Reservation and therefore qualifies as Indian Land for the purposes of gaming under IGRA.

Director Day reported the Commission has typically only approved compacts that are on trust land or contiguous to the reservation. The big difference in this case is the temporary allowance of gaming on fee land, within the boundaries of the reservation. This is something that has been more restrictive in the state; it is not a Federal requirement. Director Day addressed pre 1988 lands and the different combinations going on in the state of Washington in the compacts—citing the Stillaquamish situation for instance, as lands held in trust or owned by the tribe. The Commission has also previously talked about land acquisitions within the boundaries of the reservation after 1988, and the Puyallup Tribe would reflect such a situation. The last area regarding the 1988 land acquisitions is land which would be part of the initial reservation for a newly recognized tribe (for example, the Snoqualmie Tribe), and the Commission approved such a compact, approximately two years ago. **Director Day** explained the Snoqualmie Tribe has been going through a process to obtain their initial reservation—that process has not been completed. Currently, there are similar discussions relating to the Cowlitz Tribe and the potential of an initial reservation near the

Vancouver/LaCenter area. Director Day clarified that is a Federal process—it is not an issue before the Commission, and if and when an initial reservation is designated, the Commission would be in a position to act if the Cowlitz Tribe requested negotiations.

Director Day highlighted the State’s public protection interests and the compact approval process—noting the Commission Director is responsible for negotiations. Either party may request negotiation, and once the parties agree they have successfully completed the proposed compact, it is then forwarded to the Commission and the Legislature. The Legislature has 30 days to review and comment, and the Commission has 45 days to hold a hearing—at which time the Commission may vote to forward the compact to the Governor, or, return it to the Director for further negotiations. The Governor has final execution authority. Director Day advised that he understood that Governor Locke supports this amendment. Lastly, the Tribe forwards the signed compact amendment to the Secretary of Interior to be published.

Director Day summarized the existing compacts, noting the Commission entered into the first compact in 1991. The state currently has compacts with 27 out of the 29 recognized tribes—the Cowlitz and Spokane tribes do not have compacts at this time. There are 22 tribal casinos operating, and staff anticipates that in the fall, the Tulalip Tribe will add a second casino. He noted the Swinomish Tribe currently has a casino under construction, which should be operational this fall. Two facilities per tribe is the maximum; however, the Colville’s have a provision for three casinos and three smaller facilities because of the size of their reservation—the key restriction was that there had to be 25 miles between each facility. The maximum number of machines that each tribe is allotted is 675 machines—multiplied by the tribes, reveals a maximum of 18,225 total possible that could be operated in this state. The maximum operational hours per week are limited to 156 hours. Tribes that don’t conduct gaming activities may transfer their machine rights to larger gambling tribes.

Tribes were originally authorized to operate up to 1,500 tribal lottery machines per facility. That particular section has not changed; but, the most Favored Nations clause in the compacts permits tribes to incorporate the Colville Compact, authorizing up to 2,000 machines in one facility, for a maximum of 3,000 machines in two facilities. In the Puyallup application, the 2,000 machines requested were approved through a memorandum of incorporation similar to approvals already granted to the Muckelshoot and Tulalip tribes. The process is designed to incorporate the most favored nation or automatic provisions in the compact, and the process has been developed to ensure that each tribe has identified what change it wants, and, that it is officially incorporated in the compact process. Four changes have been handled that way for the Suquamish, the Muckelshoot, the Tulalip and Puyallup compacts. **Director Day** confirmed there are approximately 16,000 tribal machines in operation throughout the state at this point. There is joint State/Tribal regulation to monitor compliance with the Compact and to enforce tribal and state criminal laws, and, the state is reimbursed for its cost.

Director Day provided a description of the proposed third amendment to the Puyallup Compact. The issue began with the Port of Tacoma Expansion Project. The Tribe, prior to negotiations, executed an inter-local agreement that dealt with the closure of Alexander Avenue and the expansion of the Port Project. The parties entered into a Memorandum of Understanding to reflect the Governor’s and community’s support of that project and the changes that were requested. As a result, the Tribe requested negotiations to relocate from the facility on Alexander Avenue. Director Day emphasized the Tribe’s request for negotiation was founded in the Port Project—it was not something the Tribe sought out, and that was reflected in the negotiation process.

He confirmed the heart of the agreement was to ensure the Tribe was not disadvantaged from the Port Expansion Project.

Director Day summarized the compact amendment, and emphasized that the tribe is only authorized to have two facilities. The agreement also requires that the Tribe must demonstrate it has jurisdiction over the land. It requires that there be a legal description of the property—then requires and incorporates as an appendix, agreements with local governments that have jurisdiction over that area, and includes those as an appendix in the compact itself. Last, but not least in that process, it provides for approval and evidence to the Commission that the National Indian Gaming Commission has approved the gaming ordinance governing operation on the land and that an ordinance has to be issued to the Tribe with jurisdiction over the land. Gaming may occur on fee land temporarily within the boundaries of the reservation, (Legislation has already been introduced at the Federal level to accomplish this)—it is designed in two stages, an initial three year approval or three year grant, followed by what could be a three year extension, based on a demonstration that the tribe is pursuing trust status. Director Day explained that the whole process is allowed to recognize that the Tribe is not really in control of how fast the decision making goes relative to land moving into trust status. At the end of six years, if the land has not moved into trust status, gaming operations must cease on the fee land.

Director Day affirmed there have been a number of discussions regarding setting a precedence, and he advised that in order for the Puyallup Amendment to set a precedent for other Compacts, a Tribe must demonstrate that the following circumstances exist: it is a major expansion by a local jurisdiction which eliminates access to an existing gaming facility—support by the Governor and local communities to relocate the gaming facility to fee land—the site must be with the Tribe’s reservation—the relocation must replace a closed facility and does not increase the Tribe’s number of facilities—the Tribe has applied to have the land transferred to trust status—and, the parties agree that the Tribe will operate a gaming facility on fee land for no more than six years.

In summary, **Director Day** advised that the amendment before the Commission provides a means for the Puyallup Tribe to assert jurisdiction and allows temporary jurisdiction on fee land for up to six years. It is a replacement for the Alexander site. The Governor supports this amendment and although Senator Prentice could not be present today, she has also expressed her support for the amendment. **Chair Niemi** called for public comment.

Chairman Herman Dillon advised that it was a pleasure to be present and that he would be happy to answer any questions. He noted there were several community dignitaries present that wished to address the Compact.

Ted Bottiger, Port Commissioner for the Port of Tacoma, reported that during this process, the Port was pleasantly pleased to deal with the Puyallup Tribe, and to have the whole-hearted support of the Tribe in coming together with a consensus agreement, as well as with the other units of government within Pierce County. He confirmed the Port of Tacoma is growing—and responding to requests from almost every one of their tenants for more space. As a result they are now the fifth largest port in North America. When the Port looked for a new location for Evergreen Shipping, the Port came to the end of the Blair Waterway. As a part of putting that together, the Port had to close Alexander Avenue, the principal access by customers of the Emerald Queen Casino. The Port went to the Tribe, and they in orderly timing, filed a protest on the vacation

petition the Port had filed—and negotiations commenced. The Tribe did not want to be hurt—they wanted jobs for tribal people and the people in the community—they didn't want the current cash flow to be hurt. An agreement was reached that if they would allow the Port to close the access, pending all of the agreements, that they in turn would be benefited by the closure of Alexander Avenue.

Mr. Bottiger identified approximately 300 acres in the East Blair area desirable for development that would require a partnership between the Port of Tacoma and the Puyallup Indian Tribe. He affirmed that negotiations continue. The Tribe is a full partner—and a major consideration was how to keep the casino operating during the period of time it would take to change the status of the land from trust to tribal land. The Tribe purchased the Executive Inn in Fife—which is the location that the facility known as the Emerald Queen would move to. The long term affects of this would be more jobs for everyone in Pierce County, more tax revenue for Fife, Pierce County, and Tacoma. Mr. Bottiger emphasized that the Port is building a future and they needed and were asking for the Commission's support in allowing the move of the tribal casino, the closing of the Emerald Queen, the selling of the boat, and moving the facility to Fife.

Representative Meilke inquired what the Port had to pay to the Puyallup Tribe for this transaction. **Mr. Bottiger** responded that the Port isn't paying anything—the Port has guaranteed the Tribe will not lose money in the months of November and December. The Tribe will continue their previous degree of promotional events (the boxing matches and etc.), and if the revenues fall short, the Port would make up the difference with a maximum exposure of \$1.6 million dollars. He didn't anticipate that with the level of current activities, that would ever come into effect. Representative Meilke inquired whether a secondary road could be improved that that would not negatively affect the Tribe. Mr. Bottiger responded that the secondary road was being improved; however, it would cause twice as many individual automobiles and semi-trucks on Tyler Avenue, at a huge public safety issue.

Denise Dyer, Pierce County's Development Division, appeared on behalf of County Executive John Ladenburg, and expressed Pierce County's support of the amendment and Compact. She reported that Pierce County has enjoyed a long and mutually beneficial relationship with the Puyallup Tribe over a number of years—their history with the Tribe dates back to 1988 when John Ladenburg was the chief negotiator of the Puyallup Indian Land Claim Settlement, which has become a national model. Ms. Dyer reported that the joint economic development opportunity translates into 4,000 construction jobs and 6,000 permanent jobs that would build up in a county where unemployment exceeds the state's average by nearly $\frac{3}{4}$ of a point. She reported that the property involved to accommodate the Port's growth, makes available a combined 350 acres along the Blair Waterway. This would allow the Port to convert the property to marine related use, and the ability for the Port of Tacoma to continue to grow to support its customer base. Ms. Dyer viewed this agreement as an extension of the land settlement agreement, reached over 15 years ago. She advised there was no dispute between any of the jurisdictions involved in this project, and that she was present in the spirit of community collaboration to ask for the Commission's support for another historic opportunity for Pierce County and the Puyallup Tribe—to achieve an economic development victory, not only for Pierce County, but for the entire state.

Commissioner Parker commented that it was satisfying to see this kind of positive development. He inquired if there was a long term growth project for the Port or for the county. **Ms. Dyer** responded that Pierce County's economy was very trade dependant. Many jobs within Pierce County and throughout the entire Puget Sound region and the state are affected by trade; however, she didn't have an absolute number

reflecting job growth.

Mike Kelly, Mayor, City of Fife, reported that the City of Fife supported the Gambling Commission Compact amendment that would allow the Emerald Queen Casino to operate in the city before and after the property is transferred in the trust. He affirmed the Tribe and the city have worked together over the last several months to develop an agreement that would strengthen the sense of community and provide a process for the Tribe and the city to improve the quality of life and encourage economic development in the community. The agreement developed deals with all the jurisdictional, public service, and financial impact issues related to the Emerald Queens Facility being located in Fife. He advised the two governments have agreed in principal to all points, and the attorneys are now working on finalizing the paperwork. Mayor Kelly expected the final agreement to be signed at the next council meeting. He believed that this partnership with the city and the

Tribe would carry into future generations—that it was a historical moment for the City of Fife and the Tribe. **Mayor Kelly** asked the Commission to approve the Compact amendment.

Bill Evans, Deputy Mayor, City of Tacoma, touched on history, recalling that the very first residents of what is now the City of Tacoma, were members of the Puyallup Tribe—and the early settlers honored the tribe by naming the city after that sacred mountain in whose shadow the city was built originally. He reported that there has been many historic interconnects between the two governmental agencies, and that it was very important to recognize the trust that has grown. He also noted the Tribe has gone beyond normal requirements in terms of benefiting the local community, which was supported by the correspondence contained in the agenda packet. Additionally, the Tribe has committed itself to economic development initiatives in the community. Deputy Mayor Evans commented that the model of partnership between the Port, the county, the city, and the Tribe, is a model for the state. He believed that as the tribe progresses, so too will the city, county, and state prosper. Mr. Evans encouraged the Commission’s support.

David Graybill, Chief Executive Officer, Tacoma Pierce County Chamber of Commerce, added the Chambers voice of support for the Compact amendments. They believed the changes would ensure the continued strength of the Puyallup Tribal business activities that are important to the community and it would also help sustain the fast growing economic development in the region of the Port of Tacoma. He affirmed the Port of Tacoma, the community leaders, and the Puyallup Tribe have stepped forward to create a situation in which each jurisdiction may mutually prosper. Mr. Graybill advised that he supported the Tribe’s plea to be able to relocate their activities so that the Port and the Tribe may continue their economic growth. He advised the Puyallup Tribe is a major contributor to the Pierce County community, noting they are one of the top ten employers, and they are also good citizens in the business community—joining the community in ways that often go unheralded. Mr. Graybill believed the Tribe’s willingness to accommodate this move for the Port and for the local community should be applauded. He affirmed the Chamber of Commerce was requesting the Commission’s positive approval of the Compact amendments.

Chair Niemi called for a recess at 3:30 p.m. and recalled the meeting at 3:45 p.m.

Kim Wheeler, Mayor, City of Ruston, echoed some of the comments expressed. She agreed that the Puyallup Tribe was a viable asset to Pierce County. However, her concerns related to the due process, and she suggested the request hasn’t followed due process or the letter of the law. She advised that the request for

the compact allows for continued expansion of gaming without following the law or having more public notice or hearings. The issue went before the Legislature on the 26th of July—and only 15 days later she noted the issue was before the Gambling Commission. Mayor Wheeler expressed her concerns that there has not been time or an opportunity for public hearings, public input, and she noted this issue had not been widely publicized within the immediate area in Pierce County that would be affected. She believed there would have been a lot of additional viewpoints had there been more public notice or information available. Mayor Wheeler suggested that by allowing this compact, there would be no long term financial tax benefit to the city or to the state—it would simply continue to create and support an unfair playing field between the Tribal and the non-tribal businesses, and that it would continue to support the growing Tribal gaming monopoly in the state. Mayor Wheeler felt the Compact needed to be delayed or postponed until there was more time for the public to review the information and have public hearings. She commented that the hearing being conducted today is nearly 100 miles away from the area that would be affected, without any opportunity for those individuals within that area to have anything to say. **Mayor Wheeler** asked the Commission to refrain from approving the Compact until there is a study on the totality of the impact of the amendment, and before it sets precedence for future compacts and requests throughout the state and nation.

Mayor Wheeler note that it was her understanding that the Emerald Queen boat was being moved or removed, but the facility itself would remain and possibly be used for a future Bingo hall. She noted it was also her understanding, according to the Fife municipal code, that there has been a prohibition on additional gaming facilities within the city of Fife, and she wasn't sure any amendments had been offered to the ordinances that would allow a gaming facility to come into the city since the prohibition. **Commissioner Ludwig** responded that in reference to a potential Bingo hall, that is Class II gaming, over which the Commission has no jurisdiction. Mayor Wheeler affirmed that she understood that; however, the whole point of the presentation today has been based upon the need to vacate that space and allowing for the movement within the Port.

Ken Harden, Owner-Waterhole Bar and Grill in Sumner, thanked the Commission for the letter and the work they did regarding the smoking ban in Pierce County and in posting the results of gambling and the impact on the businesses in Pierce County. He presented a letter signed by various business owners.

Andrew McAfee, Fire Chief, Riverside Fire and Rescue, reported that his department is an independent special purpose fire district in the Puyallup valley area, located on the reservation. He testified that the Puyallup Tribe has been very generous to his organization and a number of other organizations. Chief McAfee noted that special purpose fire districts are not covered under the compacts for charitable requirements like in city and county jurisdictions. However, the Puyallup Tribe has been very generous with Riverside Fire and Rescue, and assisted the department in obtaining two grants—one for \$175,000 for a water tender, and a second grant for \$90,000 for an ambulance. Chief McAfee believed moving the casino to the Fife location would increase the economical benefits and continue to ensure good things for the local community. He urged the Commission's support.

Phillip Brendale relayed a citizen's concern regarding the "all too cozy arrangement" that exists between the state commissions and several foreign governments with territories scattered throughout the state. Today, the subject matter concerned the Puyallup tribal government and this honorable Commission. He advised that he had "nothing of any use to say to the Tribal institution" and he reminded the Commission that as individual members and as a decision-making body, that there had been one or two duties which had been overlooked in

the past when decisions were made that involved Indian Tribes. He commented that the Commission has an overriding duty to the citizens, and the Commission is obligated to ensure the citizens receive the best results available when negotiating a gambling Compact or its amendments. The Commission and the commissioners are required to act in the best interest of the public, and must determine that it is in the citizen's interest to allow Indian gambling on fee land—not just that it benefits the Puyallup tribe. He suggested the commissioners must be able to justify how a decision to ignore federal regulation furthers the citizen's public interest. If the commissioners were unable to make such a justification on the public record, then he believed the commissioners would be violating their sworn judiciary duty to the public trust. **Mr. Brendal** commented that this was not the first time the public interest has been sacrificed so the tribes could benefit—and that it needed to stop. He requested the following: deny approval on the grounds of failure to follow federal regulations as required under the Indian Regulatory Act, IGRA, and the fee to trust procedures and regulations—and secondly, to stay the proceedings because this was an incomplete process since no local community input was solicited or accepted.

Ernestine Farness, Manager, Seattle Jaycee Bingo-Seattle, reported that she just heard about the proposed Compact amendment. She asked if the location of the new facility was within the boundaries and if it became trust land, whether that would then become tribal sovereign land, which could then be extended. She advised her concern related to the non-profits and charitable organizations. She emphasized that she didn't have a grudge against the tribal entities and affirmed they are doing a good job at what they are doing; however, when they move, it could potentially take revenues from the existing non-profit organizations. She asked the Commission to take a second look at the legal issues before making a determination. **Assistant Attorney General Jerry Ackerman** responded that the parcel of land being addressed was within the current boundaries of the Puyallup Indian Reservation. He clarified that under federal law, which is what governs this process through the Indian Gaming Regulatory Act (IGRA), the Tribe, for federal law purposes is authorized to operate a gambling facility on fee land. The Commission historically has negotiated Compacts that require that Tribal gaming facilities be on trust land. That wasn't a legal requirement; it has simply been a policy decision of this Commission since Class III gaming came into effect in the state. The Compact amendment maintains that the maximum number of facilities that the Tribe can operate is two. Mr. Ackerman indicated that if the question was whether a Tribe by acquiring additional parcels of land could add a third, fourth or fifth facility, and the answer was no. The Compact simply allows the Tribe to move from their current facility, the Emerald Queen facility to a different site. It is a swapping of locations not an addition of locations. He affirmed the Tribe was able to acquire the Executive Inn piece of property and operate there because it was within the existing boundaries of the Puyallup Indian Reservation. If the Tribe acquired a parcel of property outside the boundaries of the reservation, that would require a gubernatorial concurrence process as well as approval of other authorities that are not implicated by what is currently happening.

Ian Foacker reiterated previous comments that the Tribe is a very good neighbor in Pierce County and an important part of the community. He addressed a series of events. On April 7, 2004, Pierce County Executive John Ladenburg and Tacoma City Council Member Kevin Phelps, both on the Sound Transit Board attended a luncheon meeting in Federal Way to gain support for the expansion of the Tacoma Light Rail System from Tacoma to Federal Way. This occurred four months prior to the Tribe even announcing that they were even interested in this property. On August 2, 2004, just days after the closing of the Best Western Property, remodeling started for the slot area at the Best Western. At the Tacoma City Council Meeting the next evening, the Council passed four resolutions that would pay (\$20 million) for the vacation of the Emerald Queen property, and to close Alexander Avenue as well as other capital investments and

improvements in the Port. Mr. Foaker advised that he testified that it would be prudent to wait until the Gambling Commission had their hearing on the matter to see if the project may be delayed or even be allowed. The reply from the City of Tacoma staff was that this has been in the works for a year and that they had the blessings from the Governor's Office, Norm Dicks, the Pierce County Executive, Port Officials, and that the Washington State Gambling Commission hearing was only a formality. He asked what happened to public debate—and expressed his concern that there has been a concerted conspiracy at work at the expense of the citizen's rights and the rule of law. **Mr. Foaker** suggested that the position the Commission takes might nullify the Puyallup land claim statement of 1988. He advised the Tribe received \$77 million dollars in taxpayer money for that property, and questioned whether the taxpayers would now get the \$77 million dollars back, plus interest.

Commissioner Orr responded that he understood Mr. Foaker's frustration; however, he believed Mr. Foaker's arguments should be registered with his local governmental entities and not the Gambling Commission. Commissioner Orr attempted to reassure Mr. Foaker that Commission the staff have been on task and have followed the due process.

Commissioner Parker commented that it was important to have a context for what the Commission was doing—and one of the points of context, which is probably not widely known among the public or understood because it's a technical point, is that the state of Washington's authority to require Tribes to negotiate compacts before they operate the Class III casinos, is a direct result of an act of Congress in 1988, the Indian Gaming and Regulatory Act. He explained that in 1987, the U.S. Supreme Court decided a case in which the court basically said that the Indians have a right under Federal Law, in that case, to operate a high stakes Bingo game, but the implication was other types of gambling because of a set of Federal principals that have been around since the beginning of this country, which basically recognized the right of Tribes to govern themselves.

Commissioner Parker reported the Tribes won that case, and essentially if nothing had happened, then there would be no right by any state to require Tribes to enter into Compacts. Congress compromised the rights that the Tribes established in the Supreme Court in the 1988 Indian Gaming Regulatory Act, by making it a Federal law that the Tribes had to negotiate these compacts, and in effect, empowered states to force the Tribes to come to the table. In this case, the Commission is negotiating an amendment to an existing compact—and the responsibility of this Commission is carefully defined under law. The Commission is not in a position to arbitrarily decide whether it's better for the people of Washington not to have more casinos, or to decide whether it's better not to have the relocated casino along I-5 because it will represent an expansion of gambling. Commissioner Parked emphasized those are not considerations the Commission is empowered to make—the Commission is empowered to look at the Compact and to look at the Washington law that governs what the Commission does. If the Commission goes outside of that, Commissioner Parker suggested they would be in violation of the law, and the Tribe or other parties to the Compact could justly sue the Commission.

Commissioner Parker noted the testimony presented to the Commission makes it very clear that the Port of Tacoma had an opportunity to expand and they then approached the Tribe, the County, the City of Tacoma, and the City of Fife—and it seemed to him to be the type of mutual agreement that served as a model of how to resolve this kind of situation. The Commission is taking public testimony now, and the public is allowed to comment and share its views with this Commission; however, at the same time, he felt that it was

important that the public understood the parameters within which the Commission was acting.

Commissioner Parker addressed the \$77 million taxpayer issue, noting that was a settlement. The Indian Tribe had a claim to get their land back, which was recognized by law. Congress was interested in fairly settling that claim, and part of that settlement was in the form of a payment to the Tribe. It was not the Washington taxpayers throwing their money at the Puyallup Tribe—it was an attempt by the U.S. Congress to arrive at a fair and just resolution of a claim that the Indian Tribe had. Commissioner Parker mentioned the history of this country, and its long history of many instances where Indian Tribes were treated unfairly and unjustly—that has been documented, and there is no room to dispute that fact.

Kammie Biehl, representing a grass roots citizen group in LaCenter, addressed an incident with the Suquamish Tribe, noting it was discovered after their casino was opened that the facility was not in fact on tribal land, it was fee land. Correspondence from an Assistant Attorney General dated July 29, 1999, to the citizen's group that was opposing the facility, states that in doing so, they learned that the casino was on fee land rather than tribal land. The third to the last paragraph says the Gambling Commission did not agree with that interpretation of the Indian Gaming Regulatory Act—and basically, their position was that the Gambling Commission had the opposite opinion, which was that the historical boundaries are not applicable—it is either fee land or Tribal land.

Ms. Biehl advised that she attended the recent legislative hearings conducted in Olympia, and that there were quite a few questions that did not appear to be answered. She emphasized that she was very concerned about precedence. As a representative for a group in LaCenter, she was opposing actions towards the development of a large Tribal Casino because the location was bad, and because it would probably wipe out at least one community. Ms. Biehl advised she was in attendance today because she was afraid of what was occurring. She suggested that if the Puyallup Compact was approved, it would basically take out what has been months of effort on the part of her group, which has been following and relying on federal policies, federal laws, and IGRA, to protect the community and hopefully result in a denial of this precedence which could potentially allow this Tribe to open up a tribal facility on fee land, while they have up to six years or more to obtain trust status.

Ms. Biehl reported that one of the things covered in great detail at the recent Olympia hearings related to how a precedent wouldn't be established because of various specific requirements. However, in reading the summary, Ms. Biehl advised that she continues to be very concerned about the Favored Nation clause. A Tribe could make the approach that they have some imminent need and therefore request an allowance for the Class III gaming on regular fee land. **Commissioner Ludwig** responded that the tribe (Cowlitz) Ms. Biehl was talking about doesn't even have a reservation near LaCenter, or any place else, at this present time—which is not at all similar to the situation before the Commission. He advised that he failed to see in anyway, how what the Commission did today would set a precedent. Ms. Biehl responded that the Cowlitz Tribe was applying for initial reservation status—right now it is fee land, but they are claiming indigenous, aboriginal rights, which is what helps define historical reservation boundaries. She referred back to the Puyallup Tribe, noting there is only 26 acres of reservation that currently exists; however the 1870's land survey outlined in the PowerPoint presentation was not the current reservation.

Commissioner Ludwig verified that the Puyallup Tribe does indeed have a reservation. **Ms. Biehl** affirmed they have 26 acres; however, not in Fife—and if the Cowlitz Tribe gained their application for initial

reservation, she feared a similar situation. **Chair Niemi** intervened, noting this was not a Cowlitz issue, and that the current agenda item related to the Puyallup Compact.

Ms. Biehl responded that she has done a lot of research into the Puyallup Compact because she wanted to make sure that it wasn't something that would affect her grass roots organization. She addressed the 1988 Puyallup Land Claim Settlement, noting that it appears that they took the 1870's survey and used that as a basis to determine what lands would no longer be under the jurisdiction of the Puyallup Tribe, and what lands would be. They were very specific in that land claim settlement and provided a map which outlines the lands that remained tribal lands, which has not been shown in these hearings. **Assistant Attorney General Ackerman** responded that ownership of land does not equate to the boundaries of an Indian Reservation. The Land Claim Settlement Agreement was in fact appended to the existing Puyallup Compact. The 1873 survey map included reflects the Puyallup Indian Reservation as of today. Within that Indian Reservation, the Tribe currently owns certain property in trust status, and also owns certain property in fee status. There are also a large number of individual non-tribal members that own property within that reservation. There are a number of entities, businesses, and governmental entities that own property within that Indian Reservation. It is still within the Indian Reservation. The Indian Gaming Regulatory Act is quite clear—fee land within the external boundaries of the Reservation is available for a gambling facility, if it is owned by the Tribe. The trust land requirement is not a requirement for property within an Indian Reservation by law. It can apply to property that is outside the Reservation.

Mr. Ackerman explained that the trust land requirement has been negotiated with the other Tribes in the state as well as with the Puyallup Tribe. The Emerald Queen is currently on trust land; their other facility is on trust land. However, that requirement is a policy choice this Commission has historically made; it is not required by the Indian Gaming Regulatory Act. He advised that what is being proposed at this point, it is not that the Commission abandons that policy choice. He clarified this amendment attempts to accommodate a request made by the local government and the Port of Tacoma to allow the Tribe to temporarily operate on fee land. It gives them a window to get that property into trust, and if they are unsuccessful, it will close down. He reiterated it is not a requirement of federal law, that is a negotiated position, a policy position this Commission has historically taken.

Ms. Biehl responded that her concern was that part of the outcome of that land claim settlement was to forever extinguish any rights of jurisdiction or governance over any lands that were not specified, and she noted this particular parcel was not. She agreed this is a great deal—she just believed that it should go through the trust process first because there are some very important reasons for that—it is where one looks at the community detriment, and it allows the local jurisdictions and citizens to comment. That is where the federal agencies evaluate whether it is appropriate or not. Ms. Biehl explained that she felt like there was a whole part of that process that was bypassed at the first hearing in Olympia—and that in six years the impacts would be felt. She reiterated her concerns that precedence could be set. She indicated the documents that she has read have not shown her that this is not regular fee land, in spite of the fact that it is in Fife—it is different, it is not from any other historical boundary based on the 1988 settlement where the Tribe did extinguish all rights.

Mr. Ackerman responded that the 1988 Land Claims Settlement Agreement did not extinguish the Tribe's jurisdiction. It specifically disclaims any intention to disclaim jurisdiction. The document is a Land Claim Settlement Agreement. The situation in 1988 had existed for many years, the Tribe was asserting claims to

property that other non-tribal individuals and other entities were asserting claims to—and the Land Claim Settlement Agreement confirmed titles in various properties. The Tribe gave up its claims to titles of properties other than the properties that had title confirmed in the Tribe. It didn't extinguish their jurisdiction. Mr. Ackerman explained the Puyallup Reservation, like many of Reservations in this state, is a checkerboard. It has Tribal owned land, it has land owned by the Tribal government, it has land owned by Tribal individuals, and it certainly has land owned by non-tribal entities, businesses, and individuals. On such reservations, there will inherently be concurrent jurisdiction for certain purposes. The Tribe will have authority over tribal and non-tribal members. The state will have authority over non-tribal members and in certain circumstances, over tribal members. The Tribal government will have authority over both. In the Land Claims Settlement Agreement, the Puyallup Tribe agreed to stop asserting a claim to the other parcels, other than the 26 acres identified by Ms. Biehl—in fact, there was nothing that precluded, or even contemplated that the Tribe would not or could not go forward and buy, or otherwise acquire property, which is what they have done. The Tribe went to the owners of the Executive Inn and purchased the property.

Chair Niemi encouraged Ms. Biehl to speak directly with staff if she had further questions because of the number of additional attendees that indicated a desire to testify, and in recognition of the remaining agenda items scheduled. She then called for the next speaker.

Elaine Willman, Toppenish, Chair for a local community education group, and Chair for a National Alliance of Community Education Groups in 34 states, announced that she has held up the Puyallup Tribe across the country as one Tribe that does extremely well by its people and because it is one tribe that is an excellent neighbor and partner. She advised her frustration would be balancing a support for this project and accolades for this partnership as a good model, while at the same time believing it sits on a foundation of dangerous legal sand. She advised that she does take issue with the proposal. Following Commissioner Parker's example of setting things in context, she addressed the context of the Commission's strategic plan for 2003-2008. She noted the strategic plan is absolutely void of any analysis or assessment of decisions that this Commission has made regarding Tribal Class III Gaming Compacts. There isn't an assessment or analysis of the accumulative impact of all the decisions regarding the 27 gaming Compacts and their subsequent amendments. She believed that was an important matter to factor into a strategic planning session.

Ms. Willman commented that the Puyallup decision would be precedent setting with Governor Locke and subsequent decision makers practicing the most favored nation clause, which has been exercised since the first compact was approved. She believed that what one tribe gets, is made available to another, and another—which is how we have achieved 27 tribal gaming casinos, with a minimum build out of 60 already approved—and a maximum build out (since the Colville Compact) of 174 Class III Tribal Casinos in Washington. She reported that there are 25,000 American Indians in Washington State, and 6 million Washington citizens whose economy is at stake. Six million Washington citizens and \$700 million dollars, which is over a half a million dollars out of Washington's cash flow and into a tribal private government cash flow. **Ms. Willman** stated that there are 268 towns in Washington—92 percent of those towns have less than 5,000 people—only seven towns in the state have over 100,000 people. A majority of the 248 towns are along prime exits on Interstate 5, Interstate 90, Interstate 82, Highway 12, and Highway 2—and those little communities could not take the impact of a Class III tax-exempt casino landing in their tax space. Ms. Willman emphasized they could not withstand that economic impact, and, the Indian Gaming Regulatory Act is the only relief for off reservation land shopping. She submitted that there was a distinct legal difference between historical reservation boundaries and real ones. Indian lands are clearly defined in Title 25 and Title

18 in Public Law 280, and they require two things to be Indian land: it must come into the Federal Trust, and it must have Federal superintendents. She stated that the Best Western site has neither—the Best Western site sits within the historical survey area. She further addressed the Puyallup Land Claims Settlement Act, page 19, reading, “except as otherwise provided in this agreement the Tribe agrees not to assert or attempt to assert any type of jurisdiction and government authority resisting or potential, including but not limited to the power to tax as a non-trust as to non-trust lands, any activity on non-trust lands any non-Indians, or individuals on non-trust lands.” Ms. Willman believed the \$77 million was a land claims settlement, it was a good model, and it was a fair deal, it wasn’t Washington taxpayers. She affirmed the tribes deserved that money, but they have a historical survey area, not a real reservation—and they promised never to assert one again in exchange for lands that would always be theirs. Ms. Willman indicated there were two maps that should have been on the PowerPoint presentation; two maps that are in the Puyallup Land Claims Settlement Act that clearly show what land is in Federal Trust and under Federal Superintendence for the Puyallup Tribe. There are no other properties in the historical survey area, in Federal Trust or in Federal Superintendence. She indicated that if the Commission approved this Compact, the Cowlitz and the Kalispel Tribes would certainly be at the Governor’s office next, saying they want their fee land, and they would get around to putting it into trust. They will want their Class III casino. Ms. Willman emphasized the Commission has a fiduciary duty to save a million Washington citizens, not one out of four American Indians that live on reservations in our state. Out of the 25,000 Indian citizens in Washington, only one out of four actually live on a reservation to even benefit from the \$700 million dollars a year. In closing Ms. Willman reiterated that the legal foundation of this decision poses a legal risk to everyone, and it must not open that ugly door of Class III gaming on fee land unless the Commission would allow every other Washington business person Class III gaming on fee land.

Commissioner Ludwig advised that he was particularly interested about the Claim Settlement of 1988, specifically the language on page 5 regarding the concept to forever extinguish any rights to lands that once were reservation or previously considered Puyallup Indian country. However, as he understood Assistant Attorney General Ackerman’s comments, that didn’t remove their jurisdiction as such over that land. **Ms. Willman** responded that she respectfully disagreed with Mr. Ackerman as to what was legitimate Indian Reservation land in the Puyallup area. Commissioner Ludwig questioned whether Ms. Willman realized that under state law, the Commission was obligated to follow the advice of their lawyer, or be held accountable. **Ms. Willman** affirmed and noted that Mr. Ackerman had been a particular friend and good guide in the Toppenish community. However, this was more frightening, considering that there are already 27 Class III Tribal Casinos for very few enrolled tribal members with a potential build out of 60 and a maximum possibility of 174.

Ms. Willman stressed that it was time for this Commission to seriously dwindle down and carefully make the decisions that have such a huge economic impact on adjacent communities. She advised that she was aware of at least two tribes waiting to expand their gaming —the Cowlitz Tribe with 177 acres at the LaCenter exit, and the Kalispel Tribe with 250 acres in Airway Heights. **Commissioner Orr** responded that he lived in Spokane County and that he disagreed with Ms. Willman’s comments about the Kalispel Tribe. Secondly, he reported that he was frustrated with some of the testimony offered today. Commissioner Orr reiterated that the elected officers and representatives from the various cities and communities directly related to the Puyallup Compact Amendment have negotiated an agreement and have come before the Commission seeking formal approval. Commission staff worked through a process, and the Commission, as previously noted, must pay attention to the advice of our legal staff. He affirmed there are a lot of “what ifs”—however, the

subject at hand is an amendment to a compact that has been negotiated by this group and by representatives of these communities. Commissioner Orr offered his opinion, that the Commission should not second guess those communities.

Commissioner Parker commented that he thought the witness did a wonderful job with her submittal. He responded to the question regarding setting a precedent, and advised that in his opinion, Director Day very carefully and very effectively explained the nature of the precedent that this represents. Commissioner Parker affirmed an individual has every right to disagree with that, and see it differently. However, regarding this matter—the Commission feels that this could only represent a precedent for somebody who would be in exactly the same shoes as the Puyallup Indian Tribe. This is a temporary authority to operate on fee land within their reservation. The Assistant Attorney General has advised the commissioners that the historical reservation is the legal definition that applies, and the Commission is therefore within their responsibility to accept the Attorney General’s opinion on that matter. The precedent perhaps is in the eye of the beholder; from the Commission’s side of the table, the precedent here is very carefully defined, this is not precedent for anyone else. Regarding the comment about whether the Commission approves compacts that benefit only a very few members of a number of Indian Tribes, Commissioner Parker clarified that is not a public policy consideration within the Commission’s responsibility or authority—the responsibility is to take the matters before the Commission and to weigh/determine whether or not to approve said Compacts. The Indian tribal governments are responsible for determining whether or not this is good for their constituents, just as the Mayor of Fife, the Executive Director of Pierce County, and so on—are accountable to their constituents.

Commissioner Orr made a motion seconded by **Commissioner Parker** to support the Puyallup Compact Amendment as presented by staff. *Vote taken; the motion passed with five aye votes. Representative Mielke voted nay.*

Commissioner Ludwig then made a motion seconded by **Commissioner Parker** to recommend to the Governor that the Puyallup Compact Amendment be approved.

Chair Niemi called for comments. **Representative Mielke** addressed the comment regarding being bound by law to listen to the Assistant Attorney General’s guidance. He advised that as a State Representative he didn’t believe legislators were required to do so—certainly that office is utilized for an opinion; however, he didn’t feel that was bound in law. Representative Mielke announced that he was very concerned about some of the things that were addressed. He believed that if the Commission was going to error, the Commission should error on the side of caution. In his opinion, there should have been more public hearings in the Fife area because it was the area being affected by this change. While the Commission has heard from some of the officials, he did not believe the Commission heard from the public who could be adversely affected. **Representative Mielke** commented that if the Commission continues to go forward without more caution, then IGRA loses its strength. He emphasized that regarding this particular matter there were still a lot of unanswered questions, and because of that, he would be voting in the negative.

Chair Niemi called for the vote. *Vote taken; the motion passed with five aye votes. Representative Mielke voted nay.*

3. Qualification Report and Review:

Washington State Gambling Commission
Draft Minutes
August 12-13, 2004 Meeting
Page 19 of 36

40 et 8 #099, Vancouver:

Deputy Director Neal Nunamaker reported that staff completed the qualification review for the 40 et 8 organization for the fiscal period ending August 31, 2003. 40 et 8, was organized in May of 1933, and became licensed by the Commission in 1974. 40 et 8's primary programs include Americanism, nurses training, child welfare, youth sports and the POW MIA scholarships. The 40 et 8 organization currently holds licenses for Bingo at a Class M level, pull-tabs, and amusement games. 40 et 8 has made definite progress towards its stated purpose. It has qualified as a non-profit organization conducting Bingo. Staff recommends that 40 et 8 be certified to conduct family activities in the state of Washington as a non-profit organization. Mr. Nunamaker introduced. Paul Maso, Treasurer and Connie Sorrenson, Primary Bingo Manager, who advised they were available to answer questions.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** that 40 et 8 #099 be approved as a non-profit/charitable organization authorized to conduct gambling activities in the state of Washington. *Vote taken; the motion passed with four aye votes.*

4. New Licenses, Changes, and Tribal Certifications:

Commissioner Orr made a motion seconded by **Commissioner Parker** to approve the new licenses, changes, and Class III tribal certifications as listed on pages one through 26 on the approval list. *Vote taken; the motion passed with four aye votes.*

5. Default:

Archie Lobehan, Card Room Employee Muckleshoot Casino:

Amy Hunter reported that staff was requesting a default order be entered to revoke Archie Lobehan's Class III certification, based on the fact that he took \$30 in Tribal Lottery System tickets in order to balance his bank. He apparently did this on two different occasions. The Muckleshoot Tribe has revoked his license. The Director brought charges against Mr. Lobehan, the Commission personally served him, and staff tried to contact him but was unable to do so. By failing to respond, he has waived his right to a hearing and staff is requesting a default order be entered revoking his certification. **Chair Niemi** inquired if Mr. Lobehan was present, he was not.

Commissioner Ludwig made a motion seconded by **Commissioner Orr** to accept the findings, conclusions, the decision, and order as presented in the case of Archie Lobehan and order the revocation of his Class III certification to conduct authorized gambling. *Vote taken; the motion passed with four aye votes.*

6. Other Business/General Discussion/Comments from the Public:

Chair Niemi announced that there might be a possibility due to the difficulty of obtaining a quorum for the October Commission Meeting, that the meeting may be rescheduled a week earlier. She urged the licensees to watch for notices should the need to reschedule arise. She advised that the Commission would give as much advanced notice as possible. She then called for public comment.

Gary Murrey, Great American Gaming Corporation, advised the Commission that a special gaming

conference was scheduled out of state the week of October 5th through the 8th and would cause a conflict for many licensees. **Chair Niemi** responded that staff would take that into account.

Ed Fleisher, Counsel for the Cowlitz Tribe, made a statement on the Tribe's behalf. While the Cowlitz has taken no official position on the Compact amendment for the Puyallup Tribe, he noted there has been a tendency by some to confuse the various projects being undertaken by Tribes that are in Washington. Currently the Cowlitz Tribe is going through the Bureau of Indian Affairs to place 152 acres of land near LaCenter into the trust for the betterment of its people and as a recreational and economic amenity for the region. He affirmed the Cowlitz Tribe would soon be coming to the Gambling Commission and the Governor to enter into Compact negotiations with the state. He explained that the Tribe's goal is to develop a venue that would include gaming, fine dining and other entertainment options that provides jobs to tribal and non-tribal members in the community. The Tribe has voluntarily taken the full environmental impact statement (EIS) on this property. It will examine the effects that may occur on this property as a result of development. This purpose is to ensure the Tribe considers the impacts and find ways to address them. He advised the EIS would involve a public participation process and could delay this project up to a year. Mr. Fleisher stated the Tribe is noted for its patience and they want to go the extra mile to be good neighbors. Additionally, the Cowlitz Tribe has entered into a memorandum of understanding with Clark County, which among other things provides that the Tribe will abide by the Development and Environmental Protections. It will compensate law enforcement, fire districts, the Prosecuting Attorney's Office, and school districts costs. They will also have two percent of the net revenue going to Clark County for charitable purposes and they will provide a minimum of \$50,000 for a program for problem gambling in Clark County. **Mr. Fleisher** stated that as the Tribe proceeds with this process, they would continue to share information, answer questions, and address the concerns of local citizens. He assured the Commission that the Cowlitz Tribe was committed to being a good citizen and a good neighbor.

7. Executive Session to Discuss Pending Investigations, Tribal Negotiations and Litigation/ Adjournment:

Chair Niemi recessed the meeting at 4:48 p.m., to conduct an executive session to discuss pending investigation, tribal negotiations, and litigation. She announced that no public action would be taken. At 5:15 p.m., Chair Niemi recalled the public meeting and announced that Friday's meeting would commence at 9:30 a.m.

Minutes submitted by,

Shirley Corbett
Executive Assistant

**COMMISSION MEETING
FRIDAY, AUGUST 13, 2004
DRAFT MINUTES**

Chair Niemi called the meeting to order at 9:30 a.m., at the Heathman Lodge located in Vancouver. The following members and staff were present:

MEMBERS PRESENT: **COMMISSIONER JANICE NIEMI, Chair;**
 COMMISSIONER ALAN PARKER, Vice Chair;
 COMMISSIONER GEORGE ORR, Spokane;
 COMMISSIONER CURTIS LUDWIG, Kennewick;
 REPRESENTATIVE TOM MIELKE, Vancouver;

STAFF PRESENT: **RICK DAY, Director;**
 NEAL NUNAMAKER, Deputy Director;
 AMY BLUME HUNTER, Administrator, Communications/Legal;
 DAVE TRUJILLO, Acting Administrator-Licensing Services;
 CALLY CASS-Healy, Assistant Director-Field Operations;
 JERRY ACKERMAN, Assistant Attorney General;
 SHIRLEY CORBETT, Executive Assistant

8. Approval of Minutes: Regular Meeting of May July 8-9, 2004, in LaConner.

Commissioner Orr made a motion seconded by Commissioner Parker to approve the regular meeting minutes of the July 8 and 9, 2004, meeting as presented. Vote taken; the motion passed with four votes.

9. Logo Cards:

WAC 230-40-070:

Ms. Hunter reported this rule was up for final action. The rule change was requested by some of the licensees. She noted that logo cards provide a security function to make it less likely that cards from outside the game will be introduced. They have become harder to purchase because many manufacturers have stopped making them and they are not as available. Logo cards are required for house-banked card rooms. Previous discussion has related to logo cards for Poker games. Originally, staff felt that logo cards should be used if a Poker room had a player-supported jackpot. A player supported jackpot is money that has been put in by the players. The sums of money in those jackpots can grow to be quite large—sometimes tens of thousands of dollars. Last month, Mr. Teeny asked staff to look at some type of an alternative and later

provided some written suggestions. The Rules Team felt that the integrity could still be maintained if some requirements were added about displaying winning hands in view of the surveillance cameras, and having cards counted to confirm that there is in fact a full deck. This proposal was discussed at the study session. Staff anticipates the additional rule would be up for final action at the September meeting. In the meantime, staff recommends the current proposal be adopted with an effective date of January 1, 2005. If an additional rule is approved at the November meeting, it would also be effective January 1, 2005. **Ms. Hunter** affirmed that for the next few months, Poker rooms would need to continue to use the logo cards.

Commissioner Parker made a motion seconded by **Commissioner Orr** to adopt the rule as recommended by staff and that the rule be effective January 1, 2005.

Chair Niemi called for public comments.

George Teeny, Owner-New Phoenix and Last Frontier in LaCenter, and RGA representative, expressed his appreciation for the time and effort that the staff has put in on this request. He advised that he provided staff with a memo explaining the reasoning that the integrity of the game can be taken care of by not having logo cards. He also noted that U.S. Playing Cards, a licensed company in the state, has purchased the KEM Card Company, which is the card of choice for everyone that uses logo cards. Mr. Teeny advised that he has asked them to send a letter to let the industry know when logo cards would be available in our state. Mr. Teeny advised they provided written confirmation that logo cards should be in the state by the first of the year. **Chair Niemi** verified that Mr. Teeny had no objection to the Commission adopting the rule and called for the vote. *Vote taken; the motion passed unanimously to be effective January 1, 2005.*

10. Digital Surveillance in Card Rooms:

WAC 230-40-625 and WAC 230-40-825:

Ms. Hunter reported this item would be held over until September.

11. Merchandise Prizes for Pull-Tab Games – Removing Pricing and Credit Restrictions:

WAC 230-12-330 and WAC 230-12-340:

Ms. Hunter reported this rule was also up for final action. She addressed correspondence from Mr. Panagiotu who represents Gasperetti's Distributing—asking that this rule be held over until next month. That would not change the effective date slated for January 1, 2005. She explained that last summer the Commission received a petition from a pull-tab distributor recommending passing a rule requiring that anyone who sells merchandise prizes to pull-tab operators must be licensed. Merchandise prizes can be stuffed animals, jackets, or any prize that is not a cash prize. They are approximately one percent of the pull-tab market. The reason for the request by the petitioner is that when a pull-tab operator or distributor sells a pull-tab game and it has these types of prizes attached, then they are required to follow all the rules about discriminatory pricing and credit. That means they have to sell prizes or sell the whole game to a person at the same price. They can't have one deal for one person and a different deal for someone else buying the same product. At that time, staff advised the Commission that staff would go back and look at the underlying reasons concerning credit and discriminatory pricing for merchandise prizes and make a determination on whether the Commission needed to continue that. The result of that review brought forth the rules currently before the Commission.

Ms. Hunter reported that staff did not feel these prohibitions or restrictions for merchandise prizes are needed; and therefore recommends repealing those requirements. The effect is that distributors then would then be selling merchandise under normal market conditions. They may sell their prizes at different prices—they can go to a variety of different retailers, or, in some cases there are business people who come to the operator’s location and sell a variety of merchandise prizes. The Rules Team typically meets the Monday following the Commission meeting, and they will be meeting with Mr. Gasperetti to discuss these rules.

Mr. Gasperetti, Owner-Gasperetti’s Distributing, University Place, reported that he holds the oldest license in the state. Mr. Gasperetti requested that the Commission hold this rule over for 30 days, so that he could attend the Rules Team meeting and discuss the differences that he has in relationship to why the word “credit” should not be extracted from the rule. He advised that the distributors want to be regulated—they don’t want to sell products at various prices. He advised the he couldn’t imagine the chaos if this rule was passed—he believed it would cause terrible loopholes for operators and distributors alike. He thought one of the best rules ever passed was the rule about the manufacturers issuing credit to the distributors in the state—and the requirement that distributors only had 60-days to pay the manufacturer, or the manufacturer would notify the Gambling Commission. He believed that rule has made the business stronger—it has made people more honest and it ensured that manufacturers get their money timely. Mr. Gasperetti advised that he did not want the credit rule changed—he wanted it tightened. He hoped the Commission would hold the rule over until September.

Chair Niemi called for further public testimony, and asked if anyone objected to continuing this rule until the September meeting. There were no comments or objections.

12. Licensure of Digital Surveillance Installers:

WAC 230-02-205:

Ms. Hunter advised this rule was filed after the July meeting. She reported that staff has been discussing the rule for quite some time, and they feel that surveillance is an integral part of the card room security and control features. This rule requires that businesses that provide installation, integration, maintenance, or any other service of digital surveillance systems (which includes access to the operating system or files) to be licensed. That means the individuals who work for these companies would need to be licensed as gambling service supplier representatives. She affirmed that this rule would apply to both those businesses and the people who work for those businesses. The Recreational Gaming Association has raised some questions about how far this would extend. **Ms. Hunter** advised that it is not intended to apply for to a janitor who happens to be in the surveillance area cleaning. She advised that the Rules Team would have a final language proposal next month and she noted that staff was open to further discussions with the Recreational Gaming Association.

Gary Murrey, on behalf of the Recreational Gaming Association, addressed the concerns identified in their correspondence. He advised that it was the RGA’s understanding this rule would be looking at licensing people who have access to the hard drives stored with the video images—not necessarily the worker that hangs a camera, or runs a line to the surveillance camera, or adjusts the camera angle, or fixes a monitor. He suggested that if the Commission were to make all those people licensed service suppliers, it might limit the number and the ability of those folks, and increase the price dramatically. He agreed the industry should try

to protect the people who have actual access to the pictures—they don't want just anyone to be able to get into the hard drive, change pictures, look at images, or put bugs into the system—he agreed those were the people the industry wanted to know about. Mr. Murrey reported that the RGA provided staff with some changes to the language to clarify the need to only license those people who have the technical part of the programming language access. **Director Day** affirmed that staff didn't have any difference over what the RGA and staff was trying to accomplish; it was more a matter as to whether or not the wording was clear enough to do that, and whether there was a way of making it clearer as we move to final adoption. There were no further comments.

13. Betting Rounds:

WAC 230-40-120:

Ms. Hunter reported this rule deals with how a wager is defined and determined. An example of how this would play out in a game that has different wagers was provided in the rule summary. The result of the new definition is that it would allow more money to be on the table. Staff believes the rule should be changed in order to be very sure the same interpretation exists in card rooms and Tribal casinos, when determining what a wager is. Ms. Hunter advised this rule would provide clarification to staff and licensees. Staff recommended further discussion.

Mr. Teeny, representing the RGA, reported the RGA agreed with the rule. He affirmed it was a good rule and creates consistency throughout the state in all the gaming centers. The RGA urged moving forward. There were no further comments.

14. Petition for Rule Change – Robert Dayton:

WAC 230-40-825:

Ms. Hunter explained this was a petition filed by Robert Dayton. She noted any citizen may file a petition. The current rule requires that when there is a winning hand in excess of \$500, surveillance must stop and put the PTZ camera on the winning hand and get the amount of the wager and a picture of the player that actually won the hand. The petitioner is asking that this threshold be increased to \$1,000. He explained that when licensees have to stop and take the pictures and have surveillance, it interrupts the game and also takes the floor supervisor as well as the surveillance personnel away from other duties. Mr. Dayton feels that with the recent changes in betting limits, more hands will have to be verified. The Rules Team planned to provide a more complete review of the rule at the next meeting. Ms. Hunter explained that because this is a petition, the Commission has three options: file the rule, deny the rule, or propose an alternative. Ms. Hunter advised that staff recommends filing the rule for further discussion. She noted there was some discussion in the study whether the threshold should actually be \$2,500 or whether the requirements should be linked with the odds of the game. She explained that the game called Lucky Ladies has a 9 to 1 odds ratio, and a \$200 bet limit for example would pay out \$1,800. The Recreational Gaming Association was asked to provide more information about how often there are payouts at the higher amounts so that staff could get a better idea on how often the game would have to be stopped. **Chair Niemi** called for public testimony.

Max Faulkner advised that a concern licensees share is that numerous stoppages may take surveillance away from other things. He noted that some of the bigger clubs have had troubles in the past with the \$500 limit because there were so many stoppages. He believed that many of the smaller clubs might not to change their internal controls, and retain the \$500 limit. He suggested that the higher limit of \$2,500 would give licensees a chance to adjust to the level they're comfortable with in relation to their surveillance needs.

Commissioner Orr believed that whatever the change was, it should match the philosophy of the original rule. If the intent was to take a picture of the winner and his cards because of potential cheating, or for tax purposes, whatever that reason was, he believed that should follow through with the limits set.

Mr. Dayton reported that he proposed the petition because his current experience was that he was pulling surveillance every 12 minutes. He thought he was being proactive; however, with the \$200 limits he didn't feel the \$1,000 limits would meet the threshold. He indicated that right now, some of the clubs are calling surveillance about every 8 minutes (or so) on Spanish Black Jack. He affirmed that he thought he was premature in compiling his petition. He reported that he would like to keep the concept open to raise the threshold to \$2,500 as suggested by the RGA. He affirmed his petition was submitted for game protection, but now, it would be taking away from game protection because the lower threshold would require calling surveillance, meanwhile, potentially missing other actions at other tables. While only one table would be stopped, the surveillance operator can only operate one task at a time, and he would be taken away from watching the other tables and the floor.

Mr. Murrey provided a brief explanation relating to the camera surveillance process for the larger payouts.

Commissioner Ludwig made a motion seconded by **Commissioner Orr** to file the rule in spite of the petitioner's indication that he asked for too small of a dollar limit, in order to keep this matter moving, and perhaps consider amending the threshold during the entire process. *Vote taken; the motion passed unanimously.*

15. Petition for Rule Change – ZDI Gaming, Inc.:

WAC 230-30-030, WAC 230-30-072, and WAC 230-30-097:

Ms. Hunter advised this petition is up for discussion and possible filing. ZDI Gaming submitted the petition—Bob Tull represents ZDI. This rule was held over last month so that a demonstration could be provided on three machines. Ms. Hunter noted that because staff had not seen the physical machines until today, staff's analysis was based on the written materials submitted by the petitioner. The petitioner has proposed three rule changes. Staff's initial impression was that the rules were probably too simplified and that more rule changes would be necessary if the Commissioners were inclined to file this package. There are two versions of this system. In the first system, the player would insert money into the machine, the money amount would then be displayed in a credit window on the screen, the player would then push a spin button, and two things would happen. The pull-tab ticket would be printed in the machine. Then, images of spinning wheels would be displayed on the screen along with some audio sounds. The spinning would stop and the ticket would be displayed on the screen. If it is a winning ticket, then that dollar amount would be added to the win window on the screen. If it is a loser, staff assumed that amount would be credited. She advised the written material was not clear regarding the payout—whether the machine would be paying the person, or whether the person would take the ticket somewhere else. The petitioner has advised staff that the machine would print any losing tickets—and that one of the differences with this system is that the ticket is actually being printed after it has been purchased, which is different than the traditional pull-tab game where all the tickets are printed and a paper product exists.

Ms. Hunter explained that in the second version of the game, the player would request a ticket and pay the operator. That operator would then hit the dispense ticket button, and at that point, the ticket would be

printed and dispensed. The player would then open the ticket to determine if it is a winner, and if so, the operator would pay the player and mark off the flare. The machine has some software—it has a CD that produces reports showing the tickets that were sold, the winning tickets, and the remaining tickets when a game is pulled. She noted that last month, Mr. Tull mentioned that it would cut down on paper. The licensees have determined that about 2/3's of a normal pull-tab game goes unsold. Because this ticket is printed after it's been purchased, it would not be using as much paper.

Ms. Hunter affirmed that staff has a number of regulatory concerns and legal/policy concerns that have been highlighted by the rules team. One of the questions is whether a pull-tab that's been printed at the operator's business after it's been purchased, if that is the same as the ticket that has been produced by a licensed manufacturer. She noted there are construction standards for pull-tabs, and staff wanted to make sure that the winner couldn't be predetermined. The petitioner has indicated that they will meet the necessary requirements, but staff hasn't been able to test and verify the process. Staff also feels that the language is unclear in some areas—there are terms used and not defined. Under the legal and policy considerations, Commission staff believed this would allow a system that is not currently authorized. It is not like the current pull-tab dispensing devices in this state, or even pull-tab readers. The system merely reads the pull-tab, and she acknowledged this system has been around for quite a few years. **Ms. Hunter** affirmed the proposed system would provide more effective accounting controls. With the current paper product, a lot of hand counting and weighing is facilitated. The proposed system allows more of that to be done automatically. Ms. Hunter noted that in the past, more player interaction was required—the player still has to be able to read and open the player ticket. Lastly, there is the question as to whether this is a gambling device. A copy of a 1999 formal Attorney General's Opinion was included in the agenda packet that addresses whether the Commission has the authority to allow video pull-tabs. Staff also included copies of different pertinent laws for consideration, as well as a memorandum from Mr. Tull, responding to the regulatory policy on the legal issues that staff raised. Ms. Hunter explained the Commission has three options with the petitions: filing it, denying it, or proposing an alternative. **Chair Niemi** called for comments or questions.

Bob Tull, Attorney representing ZDI reported that he planned to demonstrate the existing technology being used throughout the state, and some prototypes of the technology ZDI thinks would be an advancement in the manufacturing of pull-tabs. He stressed that the issue is not whether or not a pull-tab will be sold, or whether or not a pull-tab will meet the physical standards, it's whether or not under appropriate circumstances, we can finish the manufacturing process at the time and place or point-of-sale. He affirmed that if the rules were too simple, ZDI would continue to work with staff to try to address the types of additional information required. Mr. Tull affirmed that any time a question has been raised ZDI has responded. He felt the rules process functioned at it's most efficient when it reaches the Commission. Staff and petitioners can only do so much, and then as the rules come before the Commission, the confusions get ironed out. Mr. Tull said that ZDI believes this package is sufficient, but they are not resistant to further clarifications and modifications.

Mr. Tull noted that ZDI has been in business in this state for a long time. It manufactures pull-tabs and other products involved in the gaming industry, for charities, card rooms, pull-tab licensees, and even for some of the tribal activities. He distributed a variety of pull-tab samples of the pull-tabs available in this state, as well as a prototype of the ZDI product being proposed. ZDI believes that it meets all the standards and therefore the issue isn't about the tab, it's about the process. Mr. Tull noted ZDI would demonstrate two versions that have evolved, and then show the technology that is being used today. He drew the Commission's attention to a huge stack of paper known as "dead games" which represented unsold tickets. Pull-tab operators buy the

games and display them in a variety of formats, and if the game isn't selling, or if the prizes go early, they may pull that game. Licensees must keep a record of the discarded or unsold tickets for 60 days. In the case of the charities, the record must be retained for four months. Every week licensees have to store a huge amount of dead paper so that Commission staff can from time to time come in and at random check to see if specific games were legitimate. ZDI's technology would eliminate that—an agent could in a matter of minutes check every game being played. Mr. Tull didn't think there was any dispute that the proposed record keeping, audit capability, and the additional security features would be substantial. Mr. Tull and Jay Gerow from ZDI proceeded to demonstrate the technology that is in use today.

Mr. Gerow demonstrated that the ticket gets inserted back into the bill validator and shows the number of plays on that particular ticket (which will vary) and then a person presses the button, the machine spins, and it displays the symbols that are represented on that ticket. It will continue until the plays are out. At that point, the ticket is given back to the player who then takes it back to the counter and turns it in to the operator to get paid. That system has been available for over a year. Mr. Gerow reported that ZDI has approximately 100 machines operational in the field right now. He noted the technology of reading the card of pull-tabs has been in existence for about eight years. The policy consideration that led to this technology being approved many years ago, was that a person could get the tab out of the device and then had the choice of having it read by the machine, or physically opening the tab, personally reading it, and getting paid without using the machine. **Mr. Tull** affirmed the thesis has always been that it is a pull-tab—a version of a pull-tab, and actually multiple pull-tabs on one piece of paper.

Chair Niemi inquired where the machines were in operation. **Mr. Gerow** responded they were in various charitable Bingo halls, in taverns, and commercial casinos. **Mr. Tull** advised a company called Gold Crown originally made this technology popular.

Commissioner Parker inquired about the cost of the device. **Mr. Gerow** responded that he doesn't sell the device; he leases the device at approximately \$150 a month per machine. Commissioner Parker questioned what ZDI's prospects would be if they were promoting, expanding, and marketing this device. Mr. Gerow advised that it would be hard to say, he thought the current 100 machines already in play appeared to be the maximum threshold. **Mr. Tull** reported that some pull-tab players like this system, other pull-tab players like the products similar to the samples the commissioners had in hand. Other people don't play pull-tabs at all. Mr. Tull reported there are approximately 1,700 pull-tab licensees throughout the state. ZDI's proposal is to keep selling the physical, legal pull-tabs, but to do the manufacturing in a manner that doesn't waste as much paper. The manufacturing takes place in its final step on premises. ZDI is still responsible for producing the legal ticket. ZDI is still responsible for the machine. It would be a different arrangement in terms of how it was put on the site.

Mr. Tull and Mr. Gerow proceeded with a demonstration of the back-bar prototype. This version may be attractive for licensees that don't have room for fish bowls. The patron would pay the operator for a ticket, the button would be depressed, and the machine would actually print out a ticket that would meet all of the Commission's requirements. The patron would open the pull-tab and verify it on the flare. **Mr. Tull** reported that before this machine could be sold in the state, it would have to be reviewed by Commission staff—the pull-tab has to be candled to make sure that people can't read through the pull-tab against a bright light. Mr. Tull reiterated that this technology would make it much more difficult for any fraud or manipulation to take place. Additionally, the record keeping would be instantaneous. Commission staff

could print out a report that showed every ticket that has been sold, every remaining ticket, and they could determine whether or not it had all the appropriate qualities and safeguards.

Commissioner Ludwig questioned where Commission staff or the Attorney General got the idea that this was a video pull-tab. **Mr. Tull** advised that he wasn't sure they have the idea that it is a video pull-tab; he believed they were saying that until there is a definitive prototype for staff to review they couldn't make a determination. The second issue is the question of where the tab comes out and how it plays. Commissioner Ludwig suggested that perhaps the Commission should wait on the petition until a prototype is available for review. **Mr. Tull** responded that the system is described in ZDI's materials.

Commissioner Orr expressed serious concerns in reference to patrons being able to determine the amount of pull-tabs remaining and whether the prizes available on the flare merit purchasing pull-tabs—versus a machine accounting process. **Mr. Tull** responded that the flare is still used exactly the same way; prizes paid have to be marked off the flare. **Mr. Gerow** responded that there is actually a ticket count on the machine, which is required by WAC. He explained that if the tickets are not visible, there has to be a physical display of what is left in the game. He indicated the proposed machine would have a display that would probably sit under the flare similar to an LED display. It would count down each ticket that was left. **Mr. Tull** assured Commissioner Orr that his concern would be dealt with. He suggested that in fact, patrons would in essence be able to calculate their odds mathematically—they would be able to see that there were exactly 3,000 tickets left instead of guessing that there were 3,000, and still have the benefit of the flare denoting the prizes still available. **Mr. Gerow** affirmed the advantage would actually be in the player's favor at that point because they would know exactly how many tickets were left, rather than guessing.

Mr. Tull demonstrated the last version of the machine—one that perhaps would be close by a table where customers might be sitting or they could walk up to. Patrons would put their money in, as they can with the existing technology; however, this time when they press the button, the wheels spin, and a ticket is printed on-demand. The winning amount, if there is one, is displayed on the machine, and just like regular pull-tabs, the patron would have to turn the ticket in to the operator to get paid. He affirmed that players could not play their winning amounts back off the machine. **Mr. Gerow** noted the machine printed every ticket, regardless if it was a winner or a loser. **Mr. Tull** explained that unlike the existing series, when the licensee decides to take a game out of play, the only paper he has used is the sold tickets. The unsold tickets are still completely reproducible by an agent when they arrive—they would be retained under all the same retention requirements. **Mr. Tull** indicated that ZDI believes the shift isn't about the pull-tab—this is different, but it's not that much different, and he affirmed the system has to meet the standards. The issue was that the final step of the manufacturing process was taking place in the machine. The idea is to have people think the machine process is more fun—it's sizzle. **Mr. Tull** again explained the system will have to meet the physical standards, it will have to be paid out the same way, and the record keeping is better. However, first rules must be developed and then the technology. Then, there would be a review process. He emphasized this device has already been through a review process—it is a verifier, a reader, and it's a dispenser. He emphasized that ZDI was not proposing a video pull-tab.

Commissioner Ludwig suggested that the machine being demonstrated certainly looked like a video pull-tab machine. **Mr. Tull** responded that it was a pull-tab dispenser—the difference was that the manufacturing was being completed in the printing process, versus being printed at the factory. **Mr. Tull** emphasized that the advantages to licensees and to the regulatory process of this step forward in technology were very significant

advantages in terms of waste, storage, and cost, as well as the regulatory advantages. He noted that one of the questions asked was which comes first, the printing or the reading. ZDI has advised Commission staff that they needed to tell ZDI what they require. **Mr. Gerow** clarified that the machine actually does print first.

Chair Niemi addressed the 1999 Attorney General's Opinion from 1999—and verified that video pull-tabs lack the essential element of true pull-tabs, which would include a piece of paper or a card. **Mr. Tull** reaffirmed that the existing system has been in this jurisdiction for many years and will continue to be as long as people feel like playing it. The prototype, or one that might come from other manufacturers would have to be reviewed, and rules would have to be implemented. He noted that if the staff believes there is a need to supplement this package with something else that addresses their manufacturing concerns, ZDI would be happy to do so. Chair Niemi suggested there were so many changes, that it might be better to start fresh and write a new rule specifically for these machines—instead of changing different subsections of existing rules. Mr. Tull agreed; however, he asked that the Commission file this rule package and he advised that ZDI would deliver a prototype of one that was more focused on manufacturing in time for some review by the staff before September. He emphasized the issue was about the manufacturing process; the post sale record keeping, which could be taken into account with new technology. He reaffirmed it is about making sure that the manufacturing process completed on site was safe and appropriate, and still within the total regulatory grasp of the Commission.

Commissioner Parker asked staff to comment on whether the rule change that authorized the initial version (the machine on the far left) was currently in play and/or if it was only in play on a limited basis. **Director Day** affirmed there were specific sections of the rules that authorized pull-tab readers, and they have been in existence approximately nine years. As currently allowed, the actual printed pull-tab exists and all the machine would be doing is reading the physical pull-tab for the customer. In theory, the hard copy of the pull-tab can still be the controlling feature of the game; the player does not need the reader. Director Day posed a question, noting that in the fishbowl example, the physical pull-tab game set was visible in the fishbowl—he inquired where the game sets reside in the prototypes being demonstrated, and verified if they were an electronic game set. **Mr. Tull** responded that the manufacturing process of the pull-tabs was not completed until it came out of the machine. It was on a CD, and Mr. Tull concurred that it was accurate to say that until it's printed, it's in electronic form; however, he wanted to make sure that it was understood that that is also true of the other tickets in the manufacturing process—until they are printed, they are also in an electronic form. He explained that the tab ZDI is proposing and the tab that is now legal in this state are the same, except for the thickness of the paper and except for the place of manufacturing completion. The premise of the new technology was to continue the same type of enhancement for sales purposes, but, to decrease storage and increase security. HE emphasized that it was still a pull-tab.

Commissioner Parker believed that the idea of a reader is what makes all the difference. His instinct was that a reader is a device that will read the bar code and reveal if the player won or not. He suggested that ZDI has taken the concept of a reader and essentially interpreted it to mean essentially a video machine display where the display itself becomes how the game is played or it is the attractive part of the transaction. He thought there was a difference in the concept of what a reader is and the manufacturing process, which goes to the regulatory aspect of the Commission's concern. The nature of the game he believed was an entirely different discussion, and the Commission has the prerogative of revisiting that question. **Mr. Tull** believed the difference between today's technology and the next generation of technology was the advantages regarding paper and security, and the fact that the manufacturing is only done for those tickets that get sold.

All the other standards would remain in place. It was not about the electronics, it was about compactness and savings. He asked why completion of the manufacturing process was an unsolvable problem from the regulatory standpoint. ZDI didn't think it was problematic. He concurred it's up to the Commission to decide whether or not this prototype still fits, and he agreed that the Attorney General's Opinion (AGO) by Jim Ferris several years ago was very clear that video pull-tabs don't have paper, and therefore they were not a legal physical pull-tab. He argued the prototype produces a legal physical pull-tab; it simply employs a reader, which is not a change in the player scheme. The fact that it is completed on site is a change; however, ZDI believed that was one of the priceless advantages.

Assistant Attorney Ackerman responded that he was not sure that he agreed with Mr. Tull's reading of the AGO by Mr. Ferris. He urged that commissioners who haven't had the opportunity to read the opinion in its entirety to become familiar with the document. He explained that in 1999, Mr. Ferris was dealing with state-of-the-art concepts and certainly didn't have the benefit of viewing these devices. Mr. Ackerman noted that he has had the benefit of having conversations with Mr. Tull and Mr. Gerow several months ago, and was given a verbal concept at that point. He affirmed they were kind enough to supply the staff with some written material, and again discussed it based on what was then available. He advised that as he views the physical machines today, he sees two very different machines.

Mr. Ackerman noted that his only role was to provide the Commission with a legal analysis as to what is required by the Revised Code of Washington. He affirmed it does in fact prohibit video pull-tabs. He addressed the machine being demonstrated on the far right, the one that either a bartender or other employee of the establishment would have to operate. He explained the principal difference between what is currently allowed in the state and that device, was a manufacturing issue. The device was manufacturing a pull-tab in a way that is different from what the current practice is; however, it does in fact generate a pull-tab, and more to the point, the player has to interact with that pull-tab. The player has to take the pull-tab, open it up, and has to present it to get paid if it is a winner. There is a necessary interaction between the player and the pull-tab. Mr. Ackerman believed that was at the core of what Mr. Ferris recognized as the minimum thing that had to occur for pull-tabs to be legal in this state. There has to be a piece of paper and there also has to be an interaction between the player and the piece of paper. That was the standard for pull-tabs in 1973; and it is the standard for pull-tabs today. Even in talking about a pull-tab reader, the player must handle the pull-tab, the player must insert the pull-tab into the first device demonstrated, in order for the machine to operate and to read the pull-tab and determine if it is a winner or not.

Mr. Ackerman viewed the machine in the middle as much more problematic. In the majority of circumstances, there appeared to be no necessary interaction with the piece of paper. As long as the patron was losing, they never had to touch the piece of paper. The machine would basically play the game for the player. In fact, if the player wins, the only function of the piece of paper, the necessary interaction of the piece of paper, was to get paid. Mr. Ackerman advised that he had some substantial legal doubt about that machine; and that it could be characterized as a video pull-tab machine that produces a receipt—or a video pull-tab that also gives the player an optional paper pull-tab should they wish to have it, or the player may play that game to its conclusion without ever touching the piece of paper.

Mr. Ackerman addressed the 1999 AGO, and explained that he believed it came out the way it did because at that time Mr. Ferris was looking at the game of pull-tabs as played in 1973. It obviously entailed a piece of paper, and it obviously required interaction with the player and the piece of paper. He noted that Commission

staff has concerns about the idea that the manufacturing could be shifted into the cabinet. Mr. Ackerman pointed out that was also of concern in the next to the last page of the opinion—Assistant Attorney General Ferris referred to a Mexico case, and noted that an obvious difference between the very traditional game of pull-tabs and video pull-tabs was in the manufacturing process. Mr. Ackerman advised that the manufacturing process would be something that he would want to give some additional thought; however, he emphasized there is a necessary interaction between the piece of paper and the player that doesn't seem to be required by the middle device being demonstrated.

Mr. Ackerman asked the Commission to remember that Mr. Tull hasn't come before the Commission and said, approve the device. Instead, he has asked the Commission to consider amending the WAC's that regulate the game of pull-tabs. The WAC's don't authorize any of the proposed devices. Mr. Ackerman advised that he shared staff's concern that if a device wasn't isolated with an entire rule package, much the way that DigiDeal did when they brought forward their Black Jack concept, the petitioner may be led astray. The petitioner may get a rules package passed, assuming that his device will then be approved, then later find out that their machine still doesn't qualify. He emphasized the Commission had a WAC proposal, not a machine proposal for consideration.

Chair Niemi expressed concern—restating that she believed that what everyone was saying was that there are some differences with what we have now, and those differences are almost too great to deal with through the WAC's. She suggested that it's possible this issue could end up requiring legislation. She affirmed the Commission could do one of several things: either consider legislation, or come up with a whole separate WAC dealing with manufacturing instead of pushing this into a pull-tab category.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** not to file this rule change at this time. Commissioner Ludwig commented that he viewed this as video electronic pull-tab video machine—it presents a little slip that a patron can use to collect their money. **Chair Niemi** called for public comments.

Steve Michels, President of the RGA, asked that the Commission to file this rule for further discussion because there were still so many questions. He noted that a lot of the potential users were also just seeing the machine for the first time, and that the RGA would rather have this rule proceed with further discussion, rather than having it killed. He was sure ZDI would come back with something else, and the additional time would allow the licensees to help ZDI come back with something that would be more acceptable.

Commissioner Orr commented this was a tremendous red herring. He affirmed it could come back. He stressed that it was very important for people to realize that there are a whole lot of rules that get filed and ultimately adopted. He believed these rules were in a different category, and he stated that the machines as presented scared him.

Don Kaufman, President of the WCCGA, responded to Mr. Ackerman's statement that a player could play the whole set and never touch a pull-tab. Mr. Kaufman affirmed that would be fine if the player didn't want to get paid. If the player wanted to get paid, they would have to take the pull-tab up to somebody and turn it in. Therefore the pull-tab was involved. He believed the rule ought to be filed for further discussion, because if the rule isn't filed, the discussion would end and nothing would be resolved. If the rule is filed, further discussion would be allowed to find out what the differences are, and potentially there could be something that everyone supports. The industry definitely needed something different, and Mr. Kaufman believed this

prototype had the potential to be that something different. **Mr. Ackerman** responded that a player could play the middle device demonstrated and never have to touch a piece of paper to play the game in order to know whether they have won or lost. Certainly if a player wanted to get paid they would need to take the winning ticket some place--that simply makes the paper a receipt.

Chair Niemi inquired whether it would be beneficial to obtain another opinion in light of the fact that gambling has made substantive changes since 1999. **Mr. Ackerman** suspected not, advising that he had looked at case law in the state and around the country to see if there was a similar device that another state had considered. There were not. There were some Bingo games in connection with Tribal gambling enterprises; however, he didn't think they were analogous. He advised the problem was the uniqueness of Washington's Statute, 9.46 has a directive that pull-tabs must meet the game requirements as it was played in 1973, and yet gives the Commission some latitude to alter the definition. That is what Mr. Ferris was trying to cope with in 1999. Mr. Ackerman stated that he was not sure that another Attorney General's opinion would help the Commission greatly.

Mr. Tull offered his final remarks. He submitted that it would be in the best interest of the Commission to allow petitioners, whenever possible, their reasonable day in court. He believed the way that works best is to test the process, as we're doing today, and then let the rule be filed, and at the end of the process to make a decision. Mr. Tull believed that Mr. Ackerman was over reading the statute and over reading Jim Ferris's opinion. He advised that he couldn't find the interaction, and was not aware of that requirement. Mr. Tull noted that ZDI has worked with staff, and ZDI believed the prototype presented produces a pull-tab. ZDI believed the manufacturing was completed in the prototype process, and that same pull-tab seemingly couldn't be a pull-tab on one machine and a video pull-tab on another. ZDI believed that it was a pull-tab in both instances. The sizzle, the reader, the verifier has not been a problem in this state. It hasn't been a major impact and it certainly hasn't caused a regulatory problem. ZDI submits that the appropriate and fair thing is to let the airing of issues take place to keep the spotlight on these issues and force ZDI to decide how they can address each and every one of the concerns heard. If the concerns aren't heard with an opportunity for ZDI to respond to, then ZDI could potentially spend another full year going back and forth trying to figure out whether or not they have touched on all the concerns. Mr. Tull asked that for general policy reasons, this rule be filed, which would then allow staff and the industry to work through the process. If in the end Mr. Ackerman still felt this was not right within the scope of the statute, then the Commission could make that decision and make it part of the Commission's record. ZDI would have something they could actually determine whether or not was appropriate for further legal review. He agreed this was an example where the regulatory issues ought to be the primary compass for going through any of these discussions. ZDI believed the regulatory advantages were enormous and therefore they would like to have them considered further.

Commissioner Parker expressed his support for the motion. He commented that once the Commission has an official rule before them, it must be dealt with—it's the nature of the Commission's procedure. He explained the considerations the Commission has to follow when treating a proposal fairly is different than whether or not the Commission decides to file a rule. He believed there was a threshold question in this instance, whether there was any point to filing this rule. Commissioner Parker commented that because of the demonstration, he believed the device looked like an electronic pull-tab game. Further, the Commission has been advised that the device is not in accordance with the law. **Commissioner Parker** affirmed it has been helpful to go through this discussion because it insulated the different considerations and allowed the Commission to see the differences between the machines. He believed that with the proposed machine, a

customer wouldn't even have to receive the pull-tab; the video terminal would read it for the customer. That was the essence of the distinction between the two machines for Commissioner Parker, and he thought the discussion about regulatory advantages and saving paper, etc., were interesting considerations; however, that wasn't what these rules were about. He advised that he supported the motion, and noted that ZDI has every right to continue to bring forward proposals to the Commission, and the Commission would have a responsibility to look at them. He cautioned however, that if the Commission didn't feel like there was any potential or reasonable opportunity to adopt a rule, then the Commission was well advised to deny the proposal.

Mr. Tull asked the Commission and Attorney General Ackerman how much touching of a compliant pull-tab should ZDI build into their technology for consideration—did it have to move from one side to the other—or did it have to be touched before it's played. He inquired what and where would ZDI find the legal guidance on that issue.

Commissioner Ludwig called for the question. *Vote taken; the motion to not file the rules package at this time passed unanimously.*

Chair Niemi advised that she didn't feel prepared to make a decision to support filing the rules taking into account this Attorney General's Opinion, and all the initial questions posed by staff, and all the issues that were subsequently raised. She affirmed that just because a rule is filed doesn't mean the Commission must eventually adopt it. Chair Niemi agreed discussions could continue between staff and ZDI, and perhaps something could be rounded out. However, at this point, there were too many unknowns and she preferred not having the rule in the filing process.

Commissioner Niemi called for a recess at 11:20 a.m. and reconvened at 11:35 a.m.

16. Problem Gambling Fee:

WAC 230-04-208:

Ms. Hunter noted this rule was up for discussion and possible filing. This concept has been discussed for the last few months, and she reported that staff believed that a separate fee being collected and dedicated for problem dedicated awareness and education based on a percentage of the license fee would be appropriate. Staff felt that this would be a more equitable approach than going with a flat fee. License fees are based on gross receipts, which means that small operators pay a smaller fee than larger operators. The fee would apply to both charitable and commercial operators. Small pull-tab operators for example, would pay 2 percent of their license fee, which is about \$11.50 a year. A Bingo operator with gross receipts of \$1.5 million a year would pay \$112 a year, and a 15 table house-banked card room would pay 4 percent of their license fee, which is about \$1,200 a year. Overall, this fee collection process would bring in about \$230,000 to be dedicated specifically for public awareness and training, as defined by law. It would provide a more permanent funding source, and staff therefore recommended filing the rule for further discussion. The effective date would be June 30, 2005. **Chair Niemi** called for public comments.

Delores Chiechi, Executive Director of the Recreational Gaming Association, representing the commercial card rooms, advised that the RGA was opposed to this particular problem gambling fee proposal. She reported the RGA was concerned about the piecemeal approach that may be taken. She noted the Legislature and the Governor are taking a look at this issue quite seriously and the RGA has been involved in that

process. While the fee wouldn't be imposed until June of 2005, and only with the understanding that if the Legislature were to take some action, perhaps this fee wouldn't need to be collected by the Gambling Commission. Ms. Chiechi commented that it has been the RGA's experience that once government implements a fee, it is difficult to get them repealed. The RGA has concerns about the industry eventually being double taxed, not only at the Gambling Commission level, but then again, as the Legislature determines how they are going to pay for the program which may include a more comprehensive approach for treatment, education and awareness. She noted the RGA would support legislation that would collect the money from the industry at one point, in one facility, and have those funds dedicated for problem gambling services.

Ms. Chiechi questioned what would stop the Legislature from taking this additional money the Gambling Commission collected specifically for the Problem Gambling issue, when it could become just another pot of money that they see the Commission doesn't need in the Commission's revolving fund. She emphasized the RGA has great concerns regarding the potential for another sweep of funds from the Commission by the Legislature. Accordingly, the RGA was standing in opposition of this problem gambling fee. Ms. Chiechi affirmed they were working closely with stakeholders, the Legislature, and the Governor in an attempt to design a comprehensive approach to the issue of problem gambling, and the RGA was supportive of a fee that was based on gross receipts, or the percentage of gross receipts from each segment of the industry, including the Lottery Commission, the Horse Racing Commission, and Tribal entities. Ms. Chiechi noted many Tribes have already stepped forward and indicated their support.

Chair Niemi affirmed the Commission was aware that legislation may be proposed that may or may not do something, and she understood the RGA's objections.

Commissioner Parker asked about the RGA's preferred method of providing funds for problem gambling. **Ms. Chiechi** responded that it should be a dedicated fund in the Office of Financial Management or Department of Revenue that would be collected by whichever entity from all segments of the gambling industry to pay for that issue in a comprehensive manner, versus a piecemeal approach that could result in the Gambling Commission taxing the industry, the Department of Revenue taxing the industry, and with the industry ending up paying for this issue in two different locations. She reiterated that the RGA supports a comprehensive approach of one entity collecting the funds with a dedicated account so it couldn't be touched by the Legislature. Their staunch objective was to make sure the appropriated money gets put in a place for the problem gambling purposes, and not thrown into the General Fund that could be used for anything they see fit at the time.

Commissioner Ludwig made a motion seconded by **Commissioner Orr** to file the rule for discussion. *Vote taken; the motion passed unanimously.*

17. Card Room Supervision: CEO acting as Gaming Operations Department Manager:

WAC 230-40-554:

Ms. Hunter reported this rule contained a small verbiage change to allow the CEO, also commonly called the General Manager, to act as the Gaming Operations Department Manager. She noted that we have often times heard them referred to as the Casino Manager. The Recreational Gaming Association submitted the proposed language change. Currently, the rules require that separate people fill these positions. That has been the requirement since house-banking began in 1997. The intent of these rules was to prevent a person from

having incompatible functions. There has been a lot of discussion by staff about this change and a conclusion has been reached that if a business has proper internal controls, this change should work. It leaves the decision to the owner of the business as to how they want to set up their operation, and staff believes this is appropriate. Therefore, staff recommends filing this rule for further discussion.

Commissioner Orr made a motion seconded by Commissioner Parker to file WAC 230-40-554 for further discussion. Vote taken; the motion passed unanimously.

18. Other Business/General Discussion/Comments from the Public:

Chair Niemi called for public comments. **Gary Murrey**, on behalf of the Recreational Gaming Association, thanked Commission staff for working with the RGA. He felt the rule just filed, WAC 230-40-554 was an example of how cooperation between the Commission staff and the licensees worked to develop a process with a common position agreeable from both sides.

Chair Niemi again urged the public to keep a watchful eye in reference to the October Commission Meeting, which may need to be rescheduled on short notice if the Commission is unable to achieve a quorum. With no further business the meeting was adjourned at 11:50 a.m. Chair Niemi advised the next meeting was scheduled for September 9 and 10, 2004, at the Hampton Inn/Foxhall located in Bellingham.

Minutes submitted by:

Shirley Corbett
Executive Assistant