COMMISSION MEETING
THURSDAY, JANUARY 13, 2005
DRAFT MINUTES

Chair Niemi called the meeting to order at 1:30 p.m., at the DoubleTree Guest Suites located in Seattle. She announced the appointment of Commissioner Jim Bicker – it was noted that Commissioner Bricker has been associated with the Government Affairs Division of Pemco Financial Services for the past 13 years, and has approximately 30 years of experience with the Executive and the Legislative branches of state government working with the Governor's Office and the Office of Financial Management. Commissioner Bricker has also served in capacities with the National Governor's Association and the National Conference on State Legislators. Commissioner Bricker is also a retired Colonel, retired from the United States Marine Corps Reserve after approximately 33 years of service. Chair Niemi then welcomed the attendees and introduced the members and staff present:

MEMBERS PRESENT:	**COMMISSIONER JANICE NIEMI, Chair;** **COMMISSIONER CURTIS LUDWIG, Kennewick;** **COMMISSIONER GEORGE ORR, Spokane;** **COMMISSIONER JIM BRICKER, Coupeville;**
STAFF PRESENT:	**RICK DAY, Director;** **NEAL NUNAMAKER, Deputy Director;** **CALLY CASS-HEALY, Assistant Director-Field Operations;** **AMY B. HUNTER, Administrator-Legal Department;** **DAVE TRUJILLO, Acting Administrator-Licensing;** **JERRY ACKERMAN, Assistant Attorney General;** **SHIRLEY CORBETT, Executive Assistant**

Staff Accomplishments:
Director Day and **Chair Niemi** presented Commissioner Orr with a five-year service recognition pin and certificate, and Director Day read into record a congratulatory letter from former Governor Locke. Special Agent Steve Steiner was also called forward and presented with a five-year award. Special Agent Steiner is currently working with the Tribal Gaming Unit.

1. **Review of Agenda and Director's Report:**

Director Day reviewed inserts to the Commission packet since publication. He drew attention to two E-link messages from the Director—a December holiday message to staff encouraging everyone to pause and consider the value of family, friends, and co-workers. The January E-link message carried two messages. The first message addressed the streamlining of the agency based on the Commission's approved budget. Director Day noted that if the Commission's approved budget continues through the end of this biennium (2005-07 budget), the Commission will have reduced over 26 FTE's with 19 (73 percent) of those reductions coming from the administration/management area. The message also describes Acting Deputy Director Neal Nunamaker's experience and contributions to the agency. Director Day announced that he has considered Mr. Nunamaker's performance, contributions, and leadership in the agency, and formally appointed him as Deputy Director.

Also added to the agenda packet was a recent article from the Washington Certified Public Accountant Magazine concerning Special Agent Keith Schuster who is also a reserve member of the US Army. **Director Day** noted that Special Agent Schuster recently received a bronze star during his service in Iraq.

Director Day reviewed the agenda for Thursday and Friday and requested that the Pine Tree Default and the Long Pham Petition for Review be removed from the agenda. The Pham Petition for Review will be rescheduled for February. The commissioners concurred. Director Day proceeded with the Director's Report.

Fiscal Year 2004 Net Gambling Receipts:

Director Day reviewed the pie chart comparing the 2002, 2003 and 2004 net receipts. He noted the net gambling receipts reached a new high in 2004, climbing to over 1.5 billion, with tribal casinos, house-banked card rooms and Lottery showed growth in dollars, while Bingo and pull-tabs continued to decline in net receipts.

2004 – A Year in Review:

Director Day advised the review was intended to update the Commissioners on the progress and accomplishments the agency has made in the last year. He highlighted some of the significant accomplishments as follows: the implementation of a new employee recognition program, an internal agency audit program, a complete reformatting of the quarterly activity reports to make them simpler for the industry to complete, the start of the process to formalize and standardize the agency policy structure—resulting in the completion of 22 new agency policies, the initiation of major automation projects to include the new automated case report system, a process in the Licensing Division to digitize all license information in order to gain access efficiencies, and the automation of the fingerprint comparison system.

Director Day reported the Licensing Division processed over 19,000 license applications in 2004. Addressing the Commission's role of assistance across the state, he noted that field enforcement personnel assisted the Spokane Police Department in solving three burglaries, and penetrated ten bookmaking operations in the state. A significant accomplishment was the negotiation of a Compact with the Colville Tribe and the transition of their three casinos operating in compliance with Compact provisions.

Employee Survey Results:
Director Day reported that every two years the Commission participates in an employee survey administered by the Department of Personnel. The summary documents from this year's survey were included in the agenda packet. He noted that the participation of staff increased to 86 percent, which was very high and exceeded the average of most of the other state agencies. The overall ratings for this agency were also higher when compared to other state agencies. **Director Day** believed the results reflected well on the quality and dedication of agency employees, especially at a time when the Commission is dealing with budget cuts. He noted that management would actively incorporate employee suggestions and input in an effort to improve the agency and workplace. Additionally, staff will be revisiting the agency's strategic plan and contacting industry stakeholders regarding their suggestions for improved agency processes.

Legislative Issues:
Director Day explained that the Governor's approved budget ended up with approximately ten FTE's and $2.5 million less than the Commission approved budget. The differences go back to that continuing discourse regarding the control of allotments and the carry forward levels. As well, the Governor's budget calls for a change from a gambling revolving fund to an appropriated account as embodied in House Bill 1045. In addition, the Governor's budget also proposes another $1.5 million dollar transfer from the Gambling Revolving Fund to the General Fund. Director Day noted that all of these recommendations would have an impact on the Commission's ability to do its job. **Chair Niemi** concurred and commented that she believed the commissioners would probably talk about the comments they wanted to make to the Governor and the Legislature during the executive session.

House Bill 1031 and companion Senate Bill 5037 – Problem Gambling:
Director Day advised that typically staff has attempted to present the bills and provide an explanation describing the impacts in order to assist the commissioners in determining which bills may necessitate the development of formal Commission position statements. The position statement is then utilized as a testimony tool when agency staff addresses the Legislature.

House Bill 1031 and Senate Bill 5037 includes the product of the Governor's work group established to look at the issue of problem gambling services and how to fund those services. The bills impose a B & O tax on licensees and calls for contributions from the Lottery and Horse Racing Commission. It establishes an account for those funds and sets up a service in the Department of Social and Health Services. The last page of the bill adds the word "treatment" and restricts the Commission from imposing any fees to fund those services while the tax is in place. **Director Day** explained the Commission has generally supported problem gambling services. The last time this bill was introduced (House Bill 2776), the Commission voted to support the concept; however, the Commission questioned how it would be funded. He suggested the Commission consider continuing the support for a solution to problem gambling services, and also address the technical concern that the bill essentially expands the Commission's potential for being involved in the funding of problem gambling related services but restricts the Commission's ability to raise funds for those purposes. Accordingly, he suggested the Commission consider requesting that particular

section be amended to resolve the conflict. **Chair Niemi** verified that the Commission should take a hard look at Section 9, and **Director Day** affirmed. He explained the bill sets up the account for problem and pathological gambling and directs that treatment under this section would be available only to the extent of the funds appropriated. He noted that is not reflected in the corresponding change in Chapter 9.46 of the law. Director Day explained the concept of the proposal—that percentages of a B & O tax could be imposed on non-tribal licensees, a percentage could be built in to the Mega Lottery, and a percentage on the wager for horse racing. This would bring three revenue streams together to fund the treatment account.

Chair Niemi addressed Section 9 - Subsection 2 (page 7) restricting the Commission's ability to raise fees to fund problem gambling and she believed that would place the Commission in the position of an unfunded mandate.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** directing that the staff providing testimony at the hearing on Monday, January 17, to remind the Legislature this would be an unfunded liability for the Commission, and to ask that they strike the associated language from the bill, and to affirm that the Commission supports the idea of the bill and supports the bill in general with the exclusion of the one section.

Commissioner Bricker commented that in reading the sentence that included treatment, the law made reference to the words "may also contract with"—he believed there was an inconsistency between Section 1 and Section 2, Subsections 1 and Subsections 2. He inquired what was envisioned in reference to collectively funding treatment by other entities. **Ms. Hunter** responded that the state has not previously been involved in providing treatment. She believed the intent of the proposal was to allow a broader ability to contract for treatment. Ms. Hunter explained that for many years, the Commission provided contributions to a non-profit organization for problem gambling services, not including treatment. She affirmed there has been much discussion and at times disagreement as to whether when the law was first changed to "public awareness training and other services" whether treatment should have been included.

Commissioner Bricker inquired whether the Governor's office explained why the language was added in Subsection 2. **Ms. Hunter** explained the Governor had a work group looking at problem gambling—and while the Commission was not a part of the work group, the Commission was kept informed on their discussions. At that time, the Commissioners were looking at a fee to help fund problem gambling awareness training, and the licensees provided testimony about not wanting to be double taxed. The Commission inserted a sunset clause in the rule that if a new funding law for problem gambling services was passed, the Commission's rule would go away. The fee rule passed with an effective date of June 30, 2005. **Director Day** agreed with Ms. Hunter that the proposal created a much broader program with a solid funding base, and part of the reason for the new language was to ensure the licensees aren't assessed a fee twice for the same service.

Assistant Attorney General Jerry Ackerman inquired if the legislation grew out of the Governor's work group on problem gambling. **Director Day** affirmed, and again noted the Commission was not a part of the work group. Mr. Ackerman asked why Section 9 was

amended—Subsection 1 inserted the language that allowed the Commission to fund and contract for treatment for pathological gamblers. He questioned why that section was amended at all in light of the fact that Subsection 5 now created a tax upon gambling licensees for the problem gambling account. Director Day responded that while he wasn't a participant in the discussion directly, the Commission did affirm it could fund problem gambling awareness services, but not treatment. He indicated the new language was intended to correct that issue, and, it was his understanding that it was also intended to provide a safety valve if the other funding source was not available. Director Day expressed concern that as proposed, the Commission would be in the position to be called upon for extensive funding and also prohibited from being able to impose anything to deliver the funding necessary for the program.

With no further discussion, **Chair Niemi** called for the vote. *Vote taken; the motion passed unanimously.* **Chair Niemi** urged Director Day to advise the Legislative Committees that the Commission would certainly like to have at least Subsection 2 of Section 9 deleted, and while the commissioners are in favor of attacking problem gambling, they also believe there are some other problems with the bill as well.

House Bill 1045 – Creating the Gambling Account:
Director Day reported this bill was submitted by Representative Sommers at the request of OFM.

Paradise Village Bowl v. Pierce County Decision:
Director Day explained the issue of a local authority to prohibit gambling activities has been somewhat controversial in the subject of law and discussion. The decision regarding the recent case by Paradise Bowl in Pierce County was provided for informational purposes. He noted the Appeals Court supported the ability for the local authority to prohibit gambling activities.

Correspondence:
Director Day referenced correspondence from the State Auditor regarding the completion of the 2004 audit—the Commission had no exceptions. Director Day complimented Bob Sherwood and the entire Business Services staff and Budget staff in their efforts to provide proper accounting and budgeting for the Commission. Director Day then drew attention to correspondence on the Great Canadian Corporation (a licensee involved in four establishments in the state), and a controversy about its business dealings in the past. A settlement was reached as far as the business transaction that was involved.

Director Day noted that as requested, the Commission issued correspondence to the Liquor Control Board, Explorers, and the special agents involved in the underage gambling investigation. Letters were also issued acknowledging the establishments licensed by the Commission that did not allow underage gambling. Lastly, Director Day addressed correspondence from Freddies Casino in Fife and their desire to place (TLS) machines on site, and a request to be notified about the legality of their proposal. Staff clarified the authority for tribal gambling and affirmed that placement of TLS machines in a non-tribal

premise would result in seizure by the Commission because it would be an illegal gambling device.

Charitable Nonprofit Study Follow-up:
Director Day recalled that at an October 26 follow-up work session, the Commissioners selected eight recommendations from the consultant's report and added one for continued discussion. The Commission asked staff to begin with a review of a statement of policy and how the adjusted cash flow and significant progress process worked. Staff reviewed existing RCW's and WAC's to see what the Legislature had already directed or intended. Staff was also asked to provide a summary on how the adjusted cash flow of gross proceeds works together in the present regulatory scheme, before the Commission moved forward on additional changes or improvements.

Director Day recommended that each month, the non-profit and charitable licensees or organizations be called upon to offer comments on the previous presentation, in this case, regarding the consultant's report presented at the last Commission meeting. This would allow the Commission to have the opportunity for continued feedback from those licensees that are actually in the business. **Chair Niemi** called for public input/comments regarding the charitable non-profit report and the Commission's follow-up process.

Ric Newgard affirmed they have been in communication with staff and have decided to withhold comments at this time. He acknowledged Assistant Director Cass-Healy's recap of the public meeting regarding the report, and he noted the organization will plan to come back next month and provide an update on how the business industry perceives things. There were no further comments.

Deputy Director Nunamaker explained that when the staff returned from the October 26th special meeting, the first task was to look at the statute as a whole and the rules as a whole to see if there were some philosophical or policy points that staff could draw from to form an overall policy statement. Deputy Director Nunamaker reported that as he read through the laws and statutes, a few themes came to the forefront. The first was that the Legislature provided charitable and non-profit organizations an "opportunity" to raise funds through gambling activities. The activities we normally think that charitable and non-profit organizations have been authorized to conduct include Bingo, raffles, and pull-tabs. There are a number of other opportunities, which have not been particularly popular; however, they have been specifically put aside for charitable and non-profit organizations and they include things such as golfing tournaments and turkey shoots.

The second theme that came through constantly was the "responsibility" to ensure that the funds generated were utilized in accordance with the purposes of the organization. There were two basic topics, the first being suitability. The Commission works to ensure that only organizations meeting the requirements of the statute benefit from gambling, and that the activity is operated and managed by qualified members and employees. Suitability and accountability are a major portion of what the agency does. The statute clearly states that funds generated from gambling activities must be accounted for, and that the profits from the

gambling activities must benefit charitable and non-profit causes deemed of public interest by the Legislature.

Deputy Director Nunamaker noted that at the October 26 study session, considerable time was spent in discussions that revolved around three concepts; adjusted cash flow, significant progress, and excessive reserves. The issues encompassed by these concepts are at the heart of the Commission's regulatory philosophy and program for charitable and non-profit organizations, specifically relating to suitability and accountability. The rules in existence were designed to ensure the gambling income is available to the non-profit, to insure the gambling dollars are expended in an efficient manner, and to insure that the organization utilizes that money on authorized programs. Each of the calculations is an independent benchmark for the organization; but, they build off each other to provide a standard by which to evaluate the functioning of the charitable non-profit organization. These standards are in line with those suggested with the American Institute of Philanthropy and the Better Business Bureau Wise Giving and Charitable Giving Standards. Consultant Sally Perkins made a point in her report that the Commission's standards should be based on these broader standards, and they have been for many years.

Deputy Director Nunamaker introduced Special Agent Terry Westhoff and Special Agent Allen Esparza from the Licensing Investigations Unit, who created a presentation to fully and graphically explain how the staff makes the various calculations that determine if an organization is operating in conformance with the rules and to illustrate some of the financial requirements for charitable non-profit organizations.

Mr. Westhoff noted that for the purpose of the presentation, a fictitious charitable non-profit organization called the ABC Educational Foundation was created. An organization when initially applying with the Commission would be required to submit their stated purpose. In this case the organization is an educational organization created to fund the ABC Educational Foundation School, which is a private educational institution. The organization, after licensure, would have to inform the Commission of any changes to their stated purposes as well. The organization would be required to submit annual financial statements along with information to support that they have made significant progress toward their stated purpose. For the purpose of this presentation, the organization's fiscal year end is the same as the calendar year, December 31, 2003.

Commission staff looks at four basic financial requirements: adjusted cash flow, a two part significant progress requirement, and excessive reserves. The four requirements are separate; however, they are inter-related in that all of them ensure that the organization is meeting its charitable non-profit purpose. All adjusted cash flow ensures that gambling income is actually available for their stated purpose. Regarding the significant progress, part one ensures that that gambling income is actually expended for that stated purpose. Part two ensures that that money is expended efficiently—that most of the money is actually toward programs and not for general operation. The excessive reserves ensure that assets are utilized toward providing their stated purpose as well.

Mr. Westhoff addressed the rules around the adjusted cash flow, and explained they exist to ensure gambling income is actually available for the organization's educational purpose. The adjusted cash flow numbers are determined utilizing financial information that is provided by the charitable non-profit organization on their quarterly activity reports submitted to the Commission. The Commission's Financial Reporting Services unit collects that information and determines if the organization is in compliance with the adjusted cash flow requirements.

Mr. Westhoff provided some definitions, noting that "Bingo operation" is defined by rule as Bingo games and all associated activities conducted in conjunction with Bingo games. That may include other gambling activities such as pull-tabs, amusement games, and raffles. It also includes snack bar activities, retail sales (such as selling bingo daubers, trolls, and things of that nature), and rental income from the Bingo hall. He noted the reason that the Gambling Commission decided to include all associated activities instead of just looking at the gambling activities themselves, was because to do otherwise would not provide an entire picture of how well the Bingo operation is doing. For instance, if the staff just looked at Bingo and pull-tabs, they would miss out on the fact that the snack bar and retail sales of the organization may have allocated heavy loses resulting is less money available for the organization's stated purpose. On the other hand, if the snack bar and retail sales are making money, which should be money that the Commission ensures is spent toward the organizations stated purpose. "Adjusted cash flow" by rule is defined as the combined gross income of the Bingo operation less all prizes and expenses whether paid or accrued. Depreciation and amortization are not considered an expense for the purpose of this rule.

In this example, the organization had 3.5 million dollars in gross income. Subsequently, after subtracting all prizes and expenses, a gambling net income figure of $240,000 is achieved. The depreciation of $40,000 is added back in, for an adjusted cash flow of $280,000. **Mr. Westhoff** explained the reason organizations are allowed to add depreciation in is because depreciation is not an actual cash outlay by the organization like other expenses. Depreciation is the realization of a decrease in value of an asset over its useful life—it could have been for equipment or vehicles that were purchased several years ago—the organization did not actually spend $40,000 during this time.

> **Mr. Westhoff** noted that there was some discussion at the October 26 meeting in reference to adding back in gambling taxes. He affirmed that was allowed under the previous minimum net return rule; however, the Commission did not allow that with the new rule because of the fact that taxes are an actual cash outlay, and to allow the adding back of taxes may give the wrong impression regarding exactly how much money was available for the organization's stated purpose. Under the old minimum net return rule, there were organizations that lost money in their Bingo operations that were able to add back taxes and show a positive net return when in actuality the money had to go away from the stated purpose to fund the Bingo hall.

Referring back to the sample organization and the adjusted cash flow balance of $280,000, staff now determines the required cash flow for the organization. The rule is set on a graduated scale, with the idea that the more gross income made, the higher percentage of

gross income should be retained for the organization's stated purpose. Under the rule, the first $1.5 million is exempt from any percentage requirement; however, organizations that make $1.5 million or less in gross income must make a positive cash flow—they can't lose money. Organizations that make $1.5 to $2.5 million in gross income have to retain three percent for their stated purpose, and organizations that make up to over $4.5 million, must retain six percent. In the case of the sample organization, they have 3.5 million in gross income, so the first 1.5 million is exempt and the next bracket requires 3 percent—staff therefore multiplies $1 million times three percent for a total of $30,000. The next bracket of $2.5 to $3.5 million requires four percent for a total of $40,000 and the two figures are added together for a required cash flow of $70,000. The actual adjusted cash flow was $280,000, the required cash flow is $70,000 and subsequently, the organization would be in compliance by $210,000.

Chair Niemi questioned how the Commission explains to people that while an organization ended up with $280,000 for their charitable foundation, the Commission only requires $70,000 for their stated purpose. **Director Day** responded that this is one part of a test—it is a multi-layer regulatory scheme, and this segment tests to see if there is sufficient cash to ensure that the licensee is not involved in gambling activities just for gambling purposes only. In this case, if the organization would have had less than $70,000 they would have been in violation of the Commission's adjusted cash flow rules and the Commission would move to revoke their license. In this case, there is actually $280,000 which brings in the second significant progress test.

Mr. Ackerman addressed the adjusted cash flow chart which indicates the state currently has 330 licensees. He verified that only 26 fall under the adjusted cash flow analysis, the other 304 aren't subject to the adjusted cash flow analysis. **Mr. Westhoff** affirmed with the exception that the organizations must maintain positive cash flow. **Director Day** affirmed and pointed out that all of the organizations, regardless of size, have the first $1.5 million exempt from adjusted cash flow.

Mr. Westhoff proceeded to discuss the significant progress test, explaining that it ensures that gambling income is actually expended towards the organization's stated purpose. WAC 230-08-255 requires that an organization makes significant progress toward its stated purpose. Among these requirements, the organization must expend 60 percent of its net gambling income toward its functional expenses. Functional expenses are defined as expenses an organization incurs while accomplishing its stated purpose. It includes programs, service expenses and supporting service expenses. He noted that program services plus supporting services are equal to functional expenses.

Mr. Westhoff explained that the American Institute of Philanthropy requires that at least 60 percent of donor contributions be spent toward programs—that standard has been around a long time and is believed to be the genesis for the Commission's rule. In order to calculate the significant progress for the sample organization with a net gambling income of $240,000 (in this case the depreciation was not added in) staff multiplies that figure by 60 percent, for a total of $144,000 that must be spent on functional expenses. Functional expenses are the supporting services and program services expenses for the organization itself. Supporting

services expenses are those expenses that are incurred directly for providing programs—in the case of ABC Educational Foundation that would be anything directly related to providing education to students. It also includes indirect services such as providing contributions to other non-profit charitable organizations, scholarships, and things of that nature. Supporting services expenses are those that are essential to the general operation of the organization and its programs, but do not directly relate to a specific program. By rule, those include things such as salaries for the organization's director, management, bookkeepers and administrative staff, administrative office expenses, expenses such as training and recruitment of staff, publicizing the organization and professional fees such as CPA's and attorneys.

He illustrated sample equipment expenses of $75,000 and teacher's salaries of $75,000, noting that teachers directly provide the educational services, school equipment is essential to the students and those expenditures are valid program services. Things such as general office rent, director salaries, and attorney fees (in the sample adding up to $75,000), by rule are defined as supporting services expenses. The expenses are added together for a total functional expense of $225,000—the organization was required to spend $144,000 and they would be in compliance by $81,000 in this example.

Mr. Westhoff noted that whereas the first part of the significant progress test ensures that monies were expended toward functional expenses, the second part ensures that most of that money and functional expenses goes towards program services and not those supporting services expenses. By rule the organization must operate their programs in an efficient manner and an organization is deemed to be operating in an efficient manner when no more than 35 percent of functional expenses are utilized towards program services, if an organization directly provides its own programs.

Organizations that are pass-through organizations (they contribute to other charitable non-profit services) would be required not to exceed 20 percent. The idea is if someone is not administering their own programs, they should have less general administrative expenses. In the case of ABC Educational Institution, like most of our licensees, they administer their own programs and they would be required to adhere to the 35 percent requirement. The Better Business Bureau Wise Giving Alliance requires that of an organizations total giving expenses, at least 65 percent of those must go towards program services, and the Commission's rule reflects that national standard.

Mr. Westhoff reiterated that program services plus supporting services are equal to functional expenses, and recalled that in the sample organization, program services were $150,000 and the organization's supporting services were $75,000 for a total of $225,000. The staff then divides these figures ($75,000 divided by the total of $225,000) for 33 percent for supporting services and program services ($150,000 divided by $225,000) at 67 percent. In this example the organization would be in compliance because no more than 35 percent of their expenses were in supporting services.

The last financial requirement is excessive reserves. **Mr. Westhoff** reported that significant progress looks at the income side of things, and excessive reserves verifies that organization assets are also being utilized towards providing programs—that the program is not just

maintaining cash in their account that could be utilized toward providing program services. The American Institute of Philanthropy, the Better Business Bureau, and the IRS all have requirements that an organization not accumulate excessive reserves and spend those monies on current activities unless the organization is reserving them to expand programs, or things of that nature.

With this requirement, staff ensures that assets are not greater than the total current liabilities, total functional expenses—which is the money they already expended for their programs, and average net income loss for the Bingo operation for a three-month period. That provision gives an organization an emergency fund or working capital, recognizing that there could be things other than current liabilities that the organization may have to expend money toward, which gives them a three-month reserve. To illustrate, **Mr. Westhoff** noted the sample organization had cash and other assets of $400,000—their current liabilities were $215,000 and they spent $225,000 toward their functional expenses. Their gambling net income was $240,000 which was divided by four—for a three month value of $60,000. When added together, $500,000 is achieved and since that amount exceeds the cash and other assets, it is determined the organization did not have excessive reserves and would be in compliance.

There were no further questions; however, **Commissioner Ludwig** commented that he was extremely grateful that the Commission had experts like Special Agent Westhoff to alert the Commission when an organization is not in compliance, and he appreciated the detailed explanation of the process. **Chair Niemi** called for a recess at 2:45 p.m. and recalled the meeting at 3:10 p.m.

Director Day summarized the charitable non-profit review follow-up process, noting that the staff has now presented the first two items as requested on whether there should be a policy statement—and affirmed that scattered through the WAC's and via the direction offered by the Legislature, a draft policy statement was presented that the Commission could use. The second step related to how the Commission goes about regulating—not to decide whether or not the Commission should change percentages or change requirements, but, simply an explanation of how the Commission regulates the percentages required today—for consideration as the Commission moves forward with the discussion whether or not that be changed. At the February commission meeting, **Director Day** affirmed the licensees will have an opportunity to respond and may have comments on the adjusted cash flow and significant progress standards as presented. Further, the staff anticipates trying to bring the next three topics for presentation. The topics generally deal with the non-profits standards and the recommendation of applying an audited financial statement practice to the charitable non-profit arena. The presentation is intended to provide some review and recommendations for the Commission. **Chair Niemi** concurred.

<u>2004Centennial Accord:</u>
Director Day explained that a Centennial Accord meeting was conducted with the Governor and the tribes from across the state. As a part of that process, each agency submits a report of their progress. A copy of the Commission's 2004 Centennial Accord report was provided in the agenda packet for informational purposes.

Tribal Charitable Contributions Presentation:

Director Day reported the Tribal/State Compacts all provide for a charitable contribution section which is often referred to as a one percent contribution, and community impact provision, which relates to casino impacts and is often referred to as the two percent provisions. The Commission to a certain extent is responsible for gauging compliance with the compact provisions. Director Day noted that some time ago, Commissioner Parker expressed an interest about the data in total--what this actually looked like and how the Commission verified the one and two percent payments. Director Day introduced Program Manager Julie Lies from the Tribal Gaming Unit for a presentation/explanation.

Ms. Lies stated that she would be presenting a summary on the two types of contributions made by the Washington Tribes to government agencies and charitable non-profit organizations—known as community impact and the charity funds. She affirmed the Tribal Gaming Unit is tasked with ensuring compact compliance and that staff within the unit independently verify the accrual and disbursement of the TLS one percent amounts, and they also verify the disbursement of the two percent community impact funds. The Commission has two individuals (Cathy Harvey and Julie Lies) who are representatives on the two percent committees.

Ms. Lies addressed the community impact/two percent disbursements. The initial purpose for the disbursements was to reimburse local governmental agencies that were impacted directly by the operation of the tribal casinos. The compact language in each individual compact varies. The language may range from actual impacts to potential impacts, material impacts, or impacts based on documented costs. Under almost all the compacts, the tribes distribute up to 2 percent of net win from their table games. Net win is defined as the gross play less the prizes paid. In addition, if there is no impact or the local jurisdiction shows that there is no impact, no payment is made and the money reverts back to the tribe.

Ms. Lies explained there is an allowance for charity tables in the compact. Those proceeds are not included nor are non-gaming revenue, such as food and beverage and retail. In some compacts Keno is not included as a net win. For table games specifically, there is a maximum number of table games that tribes may operate and then they are given the opportunity to operate additional charity tables. Ms. Lies reported that because of their size, only two or three casinos operate charity tables. The proceeds from the charity tables, if they are operated, go directly to the non-profits. Because they are donating the funds to charitable organizations, the Commission does not include it in the community impact calculation. Tribal Lottery System revenues are not included either. They are specifically related to the table games themselves. The community structure varies by compact as well. Some facilities or tribes do not have community impact committees as some of the compacts are very specific as to where the proceeds are going, or they note the funds are to go specifically to one or two organizations. The rest are set up by committee and the committee sizes vary by the tribe. The make-up of the committees is specific by compact, and usually includes representatives from local organizations, at least one representative from the Gambling Commission, and then tribal representatives. Two percent payments are made at least annually; however, some compacts require quarterly payments.

Ms. Lies stated in 2003, community impact two percent distributions totaled $4,310,019 and there were a total of 56 organizations that received funds—14 tribes were included in this distribution. She also noted that in 2003, there were only 17 tribes operating casinos.

Ms. Lies then addressed the one-half percent of charitable distributions, which is a requirement under Appendix X—to distribute one-half of one percent of the tribal lottery net win. The net win is calculated by the amount of wager less prizes paid. She explained there is also a list of authorized deductions under Appendix X, and they include the cost of developing, licensing or otherwise obtaining the use of a Tribal Lottery System (TLS). In addition, facilities in their first year are allowed to reduce this by half—their requirement would only be a quarter of one percent, and in the second year, they are allowed to again reduce it by a quarter which would be three-quarters or .357 percent. In 2003, the TLS charitable distributions equaled $4,574,998 from 13 tribes, and there were 635 individual organizations that received distributions. The common category distributions went to churches, educational programs, social services, sports programs, tribal programs, and youth programs. Ms. Lies detailed the church, educational, social and community services, sports, and tribal distributions facilitated and provided background information regarding the typical activities supported. Ms. Lies noted there is a provision in the compact that if a tribe, by making these distributions caused the casino to operate at a loss, they would not be required to distribute the funds in that year, and she acknowledged some such instances. Lastly, she noted the total for the half a percent distribution was higher than the two percent, and she explained that was because the Tribal Lottery System and the machines comprise anywhere from 70 to 85 percent of the revenue coming in from the tribes.

Director Day verified that the Commission's Tribal Gaming Unit verifies the accrual of these funds and also verifies the disbursements, and then the unit also has two representatives that sit on the committees where those exist. **Ms. Lies** affirmed and reported that there are currently 20 tribes operating casinos in the state; however, only three have committees. Director Day advised the Commission that the agency's general perspective has been to monitor the compacts for compliance, to ensure the impact fees and charitable contributions are accrued and disbursed, and that while the Commission has representatives on the committees, the Commission does not try not to make judgments about exactly how or which organizations the funds should be distributed to—leaving those decisions to local discretion.

Chair Niemi suggested that an annual report to the Commission regarding the collection of the funds and distributions would be good idea, as well as an update if there are any changes in the way the process is handled. **Director Day** affirmed that the staff will plan on updating the figures and letting the Commission know how the process is going on an annual basis.

Monthly Update Reports:

Director Day noted the Administrative Case Update and News Articles were provided in the agenda packet. He then called attention to the Congressional Update. He noted that as mentioned in November, legislation has been introduced relative to the Puyallup Tribe's land acquisition and to move that land into trust. However, the more direct interest to the Commission's regulatory effort was addressed just before the Congressional Session adjourned—there were amendments to the Indian Gaming Regulating Act that worked their

way out of committee and were pending for the floor. They addressed some very significant issues that the Commission should be interested in relative to Class II machines and revenue sharing. The changes would impact the definitions right now under IGRA and would allow electronic aids or Class II machines. Director Day also noted there are now several states that have pursued revenue sharing, and because we essentially have a new Congress at this point, suggested that it would seem to be very timely for the Commission to convey to our congressional delegation and the new chair of the Senate Committee on Indian Affairs that the Commission is very concerned about the changes that eliminate Class II machines from the Johnson Act, and is also concerned about changes that would further restrict revenue sharing issues to be negotiated between the state and the tribes. Director Day addressed a draft letter created for the Commission's consideration.

Chair Niemi responded that the legislation was offered by Senator Campbell, who will no longer be a Senator. Chair Niemi advised that she was in favor of letting our delegation know how the Commission felt, and that it was important to let them know about the Commission's position.

Commissioner Ludwig agreed with Chair Niemi's comments and made a motion seconded by **Commissioner Orr** that the Commission authorize Chair Niemi to sign the letter to be mailed to the Chairman of the Committee on Indian Affairs, and our delegation. *Vote taken; the motion passed with four aye votes.*

Director Day noted that all of the Commissioners would be listed on the letter. With no further comments, **Chair Niemi** called for public comments, and there were none.

2. House-Banked Card Room Review:

Galaxy Casino, Everett:

Dave Trujillo, Licensing Services Administrator, presented the investigative results regarding the application for a house-banked card room submitted by GTR Enterprises doing business as Galaxy Casino. He reported that Galaxy Casino will be located in Everett and will operate as a commercial restaurant, lounge, and card room. He advised that three of the ownership members were present to respond to questions, and he introduced Terrence Wong, Louie Garlan, and Ryan Yee. He noted the members did not have any other ownership interest in any other Commission licensee or applications at this time.

Mr. Trujillo reported that staff completed an in depth licensing investigation as well as a preoperational review and evaluation.

Commissioner Ludwig made a motion seconded by **Commissioner Orr** authorizing Galaxy Casino to be licensed as a house-banked card room authorized to operate up to fifteen tables with the maximum betting limit allowed under WAC 230-40-120. *Vote taken; the motion passed with four aye votes.*

Mr. Yee thanked the Commission for their efforts in the application process. Specifically, he thanked Michele Chewerda, Lynn Clevenger, Allen Esparza and Ben Kelly.

Mr. Trujillo reported there are now 95 house-banked card rooms operating, and 12 applications pending approval.

Commissioner Orr, on a separate issue questioned why Marilyn's on Monroe, which was discussed at the October or November meeting still has not come before the Commission for approval. **Mr. Trujillo** responded they have not yet met the requirements of the preoperational evaluation and review and that there may be some pre-licensing investigations ongoing. **Director Day** affirmed that it wasn't uncommon for some applications to be pending quite some time as they complete the investigation process and in some cases their own improvements.

Commissioner Ludwig inquired about the closing of Café Arizona, recalling some controversial patron concerns at the time they opened. **Mr. Trujillo** advised that he didn't have specific information. **Director Day** indicated that the business closed the card room operation, but believed the restaurant was still in business.

3. New Licenses, Changes, and Tribal Certifications:

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to approve the new licenses, changes, and Class III tribal certifications as listed on pages one through 42 on the approval list. *Vote taken; the motion passed with four aye votes.*

4. Other Business/General Discussion/Comments from the Public:
Chair Niemi called for public comments.

Steve Michaels, President of the Recreational Gambling Association, welcomed Commissioner Bricker to the Commission and advised the RGA was looking forward to working with him.

Bob Tull stated that he and Kent Caputo sincerely thanked and appreciated the following Commission staff members for assisting in a Gaming Law Seminar that occurred in December: Amy Hunter, Dave Trujillo, and Terry Westhoff.

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

At 4:00 p.m., **Chair Niemi** called for an Executive Session to discuss pending investigations, tribal negotiations, and litigation. At 5:20 p.m., Chair Niemi recalled the public meeting and announced that Friday's meeting would commence at 9:30 a.m., and adjourned the meeting.

Minutes submitted by,

Shirley Corbett
Executive Assistant

COMMISSION MEETING
FRIDAY, JANUARY 14, 2005
DRAFT MINUTES

Chair Niemi called the meeting to order at 9:30 a.m., at the DoubleTree Guest Suites located in Seattle. The following members and staff were present:

MEMBERS PRESENT:	**COMMISSIONER JANICE NIEMI, Chair;** **COMMISSIONER CURTIS LUDWIG, Kennewick;** **COMMISSIONER GEORGE ORR, Spokane;** **COMMISSIONER JIM BRICKER, Coupeville;**
STAFF PRESENT:	**RICK DAY, Director;** **NEAL NUNAMAKER, Deputy Director;** **CALLY CASS-HEALY, Assistant Director-Field Operations;** **AMY HUNTER, Administrator-Legal;** **DAVE TRUJILLO, Acting Administrator-Licensing;** **JERRY ACKERMAN, Assistant Attorney General;** **SHIRLEY CORBETT, Executive Assistant**

6. <u>Defaults:</u>

Alaskan Bar & Grill, Kelso:

Administrator Amy Hunter reported that staff is requesting that the pull-tab license issued to Alaskan Bar & Grill be revoked based on their failure to submit two quarterly activity reports. After the charges were issued staff learned that the business was closed and the license lapsed; however, the Commission still had jurisdiction over that case because they had a license at the time the charges were issued. Alaskan Bar & Grill has failed to respond and staff recommends that a default order be entered revoking their pull-tab license. **Commissioner Niemi** inquired if anyone from the Alaskan Bar & Grill was present, and it was determined they were not represented.

<u>**Commissioner Orr** made a motion seconded by **Commissioner Ludwig** to revoke Alaskan Bar & Grill's pull-tab license. *Vote taken; the motion passed with four aye votes.*</u>

Chasers Bar & Grill, Kirkland:

Ms. Hunter reported that Chasers Bar & Grill has a history of not submitting their reports on time. They submitted their second quarter report on November 17—it was due on July 31,

and their third quarter report which was due October 30, has still not been received. An agent went to the premises and verified they were still in business and spoke with the owner. They did not respond to the charges, and staff therefore requests that the pull-tab license be revoked. **Commissioner Niemi** inquired if anyone from Chasers Bar & Grill was present, and it was determined they were not represented.

Commissioner Orr made a motion seconded by **Commissioner Ludwig to** revoke Chaser's Bar & Grill's pull-tab license. *Vote taken; the motion passed with four aye votes.*

Homeport Tavern, Everett:
Ms. Hunter reported this licensee was late with two activity reports. One was due July 31, one was due October 30. Both reports were received on December 1. The licensee has not reported on time for the last five quarters. The reports ranged from being 2½ weeks late to five months late. The business is still open; however, they have not responded to the charges. **Chair Niemi** inquired if anyone was present from the Homeport Tavern, and it was determined they were not represented.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to revoke Homeport Tavern's pull-tab license. *Vote taken; the motion passed with four aye votes.*

Mike's Tavern, Renton:
Ms. Hunter reported that Mike's Place Tavern in Renton has been late in submitting their reports for the last two quarters. Reports were due July 31 and October 30, and to date neither report has been received. The charges were sent and they were not returned to the Commission. Staff left a message for the owner and then a special agent visited the premises to make sure they were still open. The owner said that she probably received the notice but did not open it. By failing to respond, they have waved their right to a hearing and staff is requesting that the pull-tab license for this business be revoked. **Chair Niemi** inquired if anyone was present from Mike's Place Tavern, and it was determined they were not represented.

Commissioner Ludwig made a motion seconded by **Commissioner Orr** to revoke Mike's Place Tavern's pull-tab license. *Vote taken; the motion passed with four aye votes.*

Commissioner Ludwig stated that he was curious in light of so many of similar violations and asked if the licensee's actions suggested to anyone that they don't care about keeping those licenses. **Director Day** responded that by and large (compared to the over 10,000 activity reports filed) the licensees comply with these rules and they do file them. He noted that one thing the Commission has heard from many of the operators is that the Commission's efforts to simplify the reports will also help with compliance and timely filing.

Jason Trimble – Class III Certification Revocation:
Ms. Hunter advised that Mr. Trimble worked for the Lummi Nation. He was a tribal lottery systems supervisor, and he tried to keep an $80 tip rather than depositing it into the tip box, which is required, and then would have been shared among the other people doing the work. Supervisors can't share in the tips. Ms. Hunter advised this is a Class III certification

revocation, and noted the Tribe actually issues the license which is certified by the state. Charges were brought against Mr. Trimble. Staff tried to leave a message for him letting him know and to see if he was going to respond to the charges. He did not respond; therefore, staff is requesting that the Class III certification be revoked. The Tribe did terminate Mr. Trimble; however, because the card room employee licenses and the licenses for the tribal casinos are almost interchangeable, if the license isn't revoked, there is a chance that he could go to a card room and reapply and be able to transfer without some adamant action. **Chair Niemi** inquired if Jason Trimble was present and it was determined that he was not.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to revoke Jason Trimble's license to conduct Class III gambling activities. *Vote taken; the motion passed with four aye votes.*

Phillip Nguyen – Card Room Employee Revocation:
Ms. Hunter advised that Phillip Nguyen worked at Z's Restaurant in Pullman. Staff is requesting that his card room employee license be revoked based on Mr. Nguyen's criminal history and failing to notify the Commission of such history. Mr. Nguyen was off duty at the casino where he typically works when he attacked another employee with a meat cleaver. He was arrested for attempted murder in the first degree and burglary in the first degree. Those charges were reduced. Mr. Nguyen was convicted in November of assault in the second degree and he was sentenced to 21 months in jail and three years probation—that conviction is on appeal. An agent personally served the charges and Mr. Nguyen has not responded. By failing to respond Mr. Nguyen has waved his right to a hearing and staff requests an order be entered revoking his card room employee license. **Chair Niemi** inquired if Mr. Nguyen was present and it was determined that he was not.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to revoke Phillip Ngugen's card room employee license. *Vote taken; the motion passed with four aye votes.*

7. **Petitions for Review:**
The Thor Truong petition for review was scheduled for 10:15 a.m.; the Commission proceeded with other business until 10:15 a.m.

8. **Approval of Minutes - November 18 and 19, 2004:**

Commissioner Ludwig noted that on page 5, the minutes indicate he made and seconded the motion to certify that Yakima Valley OIC be certified to conduct gambling activities in the state. It was determined that Commissioner Ludwig made the motion and that it was seconded by Commissioner Orr.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to approve the minutes of the November 18-19, 2004, regular meeting as corrected. *Vote taken; the motion passed with three aye votes.* (Commissioner Bricker abstained since he was not present at the meeting.)

Item 9 and 10 were taken in reverse order.

10. Raffle Tickets:

WAC 230-20-335:

Assistant Director Cally Cass-Healy addressed the proposed changes to WAC 230-20-335 which currently allows charitable and non-profit organizations to conduct raffles as a way to create funds for their stated purpose. Currently, tickets may be sold for up to $25 each—that is set by statute. Operating requirements for members only raffles are outlined in WAC 230-23-335 and they also have reduced requirements. Currently the maximum sale price of a ticket is $2 if any tickets are sold at a discount for any members only raffle. For example, licensees may sell tickets for $2 each or 15 tickets for $20. Mr. Williams submitted a petition for a rule change to increase the price of a single member only raffle ticket from $2 to $10 when tickets are sold at a discount. Because the risk was not substantial, or oversight sufficient, Mr. Williams withdrew his petition with the understanding that staff would propose the rule. Ms. Cass-Healy affirmed that staff doesn't oppose the increase of the price of a member only raffle ticket from $2 to $10, when tickets are sold at a discount. An example of that would be one ticket for $10 or three tickets for $25. This does not affect the maximum limit—which is still $25 as set by statute. This rule is up for possible filing.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to file WAC 230-20-335 for further discussion. **Chair Niemi** called for public comments.

Jim Williams affirmed he submitted the original petition and he supported the rule change and urged further Commission consideration. *Vote taken; the motion passed with four aye votes.*

9. Expiration Dates on Bingo Gift Cards:

WAC 230-20-115:

Ms. Cass-Healy addressed the proposed amendments to WAC 230-20-115—noting this change is in response to Engrossed House Bill 3036 which was adopted during the 2004 Legislative Session. It prohibits expiration dates on gift certificates. She noted that charitable and non-profit licensees often award gift certificates as prizes or sell them for merchandise in their operations. WAC 230-20-115 currently requires licensees to imprint an expiration date on the gift certificates. The licensees came forward to request clarification on whether the new law prohibits expiration dates and whether it applies to them; therefore, staff is proposing the rule change in order not to conflict with law.

Commissioner Bricker inquired about the legislation, and who was behind the legislation and whether there was there any opposition. **Ms. Hunter** responded that she didn't know who proposed the legislation since at the time it didn't appear to have a direct relation to the gambling industry; however, she affirmed the law applies to all gift certificates across the board—be it for Target Stores or from a Bingo licensee. There was an assumption that a consumer group probably didn't want to have gift certificates that expire. **Chair Niemi** called for public comments and there were none.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to file WAC 230-20-115 for further discussion. *Vote taken; the motion passed with four aye votes.*

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

Chair Niemi called for public comments.

Don Kaufman, President of the WCCGA inquired whether the Commission decided to send a letter to the Governor regarding the Governor's budget proposal. He then encouraged the Commission to do so, noting the $1.5 million that the Governor was proposing to take was actually a part of the revolving fund which consists of license fees and is collected with the intent for the Gambling Commission to enforce the rules of the state—and not intended for the general revenues of the state. He also commented on the adjusted cash flow and tribal contribution presentations provided on Thursday, noting they were both excellent presentations. He reminded the Commission that the tribes were dealing with ½ and 2 percent contributions, and that the charitable gaming licensees were paying 10 percent on pull-tab revenues and 5 percent on Bingo revenues, and although they might not add up to $9 million dollars, on a percentage basis it still represents a lot of money based on the size of the charitable operations.

7. Petitions for Review – Thoi Truong:

Assistant Attorney General Sara Olson introduced **My-Khanh Nguyen,** a Washington State certified court interpreter, and Attorney Ronald Meltzer representing the petitioner and Petitioner Thoi Truong. Ms. Olson and Mr. Meltzer presented their cases. A transcript of the hearing is available upon request.

At 10:30 a.m., the commissioners convened an executive session to deliberate the case. At 10:55 a.m., **Chair Niemi** recalled the public meeting.

Commissioner Ludwig made a motion seconded by **Commissioner Orr** to affirm the order of the Administrative Law Judge. *Vote taken; the motion passed unanimously.*

Commissioner Ludwig commented that the Commissioners felt this matter was a substantial concern, even though it may have been caused through an accident or mistake as the Administrative Law Judge found. He noted it still resulted in a monetary loss to the operator—which is a grave concern to everyone. Based on those findings, he explained, the Commission has accepted those findings and conclusions and decided to affirm the ALJ's findings. Accordingly, this decision in effect dismisses both the petition and the cross petition.

Chair Niemi called for public comments. There were none, and she adjourned the meeting at 11:00 a.m., noting the February meeting would be held in Olympia.

Minutes submitted by:

Shirley Corbett, Executive Assistant