

THIRD AMENDMENT TO TRIBAL/STATE COMPACT  
FOR CLASS III GAMING BETWEEN  
THE TULALIP TRIBES OF WASHINGTON  
AND THE STATE OF WASHINGTON

WHEREAS, on August 2, 1991 the Governor of the State of Washington and the Chairman of the Tulalip Tribes of Washington executed a Compact pursuant to the Indian Gaming Regulatory Act of 1988, P.L. 100-497, codified at 25 USC Section 2701-2721 and 18 USC Section 1166-1168, and

WHEREAS, pursuant to the Indian Gaming Regulatory Act of 1988 and by action of the Department of the Interior, Bureau of Indian Affairs on September 25, 1991, said Compact became effective October 3, 1991, and

WHEREAS, said Compact by First Amendment of May, 1992 has been amended as to Section 9(c), and

WHEREAS, said Compact by Second Amendment of September, 1993 has been amended as to Section 3(f), (g) and (h), and

WHEREAS, the parties wish to amend portions of Sections 3, 14 and 15 and add an Appendix C to said Compact to add new Class III activities, provide for the relocation of the gaming operations and gaming facility, the place(s) at which certain Class III gaming activities may occur, provide latitude as to the hours of operation of certain Class III gaming activities, scope, and modify the Compact provisions relating to Community Contributions and other amendments thereto,

NOW, THEREFORE, and pursuant to Sections 15(d)(i), (ii) (aa), (cc) and iii(bb) of said Compact, the following Sections of said Compact shall be and hereby are amended to read and state as follows:

Section 3(a) is hereby amended by the addition of the following sub-subsection, to wit:

(xx) ~~Poker played in the same manner as authorized in State licensed card rooms and in conformity with those laws and regulations of the State regarding hours or periods of operation of such card game and its limitations on wagers or pot sizes in such card games. The Tribes shall submit the proposed rules, manner of regulation and manner of play of such poker card games to the State Gaming Agency at least thirty (30) days prior to the time play shall begin. If the State Gaming Agency does not respond within the thirty (30) days, the Tribe may begin offering the game. If a dispute~~

arises between the Tribe and the State Gaming Agency with respect to the nature of the game, security issues, rules of play or training and enforcement associated with regulation, it shall be resolved pursuant to Section 12(c) of this Compact.

(xxii) Lottery-type games, including but not limited to, keno and keno-type games, instant tickets, on-line games, lotto, jackpot poker or other lottery-type games authorized for play for any purpose by any person, organization or entity in the State of Washington that are not otherwise treated as Class I or II in the State of Washington pursuant to 25 USC Section 2703(6) and (7). For the purposes of the jackpot poker activity, the Class II poker stations associated with jackpot poker as well as the employees directly associated with jackpot poker shall be subject to Sections 4, 5, 6, 7, 8 and 9 of this Compact. For all such lottery-type games the Tribe shall submit the proposed rules, manner of regulation and manner of play to the State Gaming Agency at least thirty (30) days prior to the time play shall begin. If the State Gaming Agency takes no action within the thirty (30) days, the Tribe may begin offering the game. If a dispute arises between the Tribe and the State Gaming Agency with respect to the nature of the game, security issues, rules of play or training and enforcement associated with regulation, it shall be resolved pursuant to Section 12(c) of this Compact.

(xxiii) Satellite (off-track) wagering on horse races, subject to Appendix C.

Section 3(c) is hereby amended to read and state as follows:

(c) Authorized gaming operation. The Tribe may establish one gaming operation and gaming facility on the Tulalip Tribal lands for the operation of any Class III games as authorized pursuant to subsection (a) of this Section. At the option of the Tribe, the existing gaming operation and gaming facility located at 6410 - 33rd Avenue Northeast, Marysville, Washington 98271, may be relocated on other Tulalip Tribal lands and opened to the public, subject to the provisions of Compact Section 4(a); provided however, Class III lottery-type games may be conducted by the Tribe at Tribal Class II gaming facilities contiguous and adjoining to the Class III gaming facility.

Section 3(d) is hereby amended to read and state as follows:

(d) Forms of Payment. All payment for wagers made in

authorized forms of Class III gaming conducted by the Tribe on its Tribal lands, including the purchase of chips, for use in wagering, shall be made by cash, cash equivalent, credit card or personal check. ~~Personal checks shall not exceed \$250.00 per person per day.~~

Section 3(e) is hereby amended to read and state as follows:

(e) Size of gaming floor. The actual gaming floor within the gaming facility upon which the gaming stations and other Class III gaming are located shall not exceed ~~12,000~~ the square footage determined as appropriate by the Tribe. ~~square feet.~~

Section 3(f) is hereby deleted in its entirety and in substitution therefor is amended to read and state as follows:

(f) Size of Class III Gaming Operation. The maximum number of Class III gaming stations shall not exceed thirty-one (31) plus, at the option of the Tribe, one (1) additional gaming station ("the nonprofit station"). The proceeds from the nonprofit station shall be dedicated to support nonprofit and charitable organizations and their activities located within Snohomish County or the State of Washington. For purposes of determination of "proceeds" from the nonprofit station only, proceeds shall mean the pro rata net profit of the nonprofit station. Such proceeds are not subject to the calculation for the community contribution under Section 14(c) of this Compact. The Tribal gaming ordinance shall require regulations be adopted concerning the types of bona fide nonprofit and charitable organizations or types of projects of such organizations that shall be supported by the nonprofit station. When the gaming operation has met the conditions set forth in Section 3(n), "phase two" may be implemented, providing for up to fifty (50) gaming stations plus, at the option of the Tribe, two (2) additional "nonprofit" gaming stations.

Section 3(g) is hereby deleted in its entirety and in substitution therefor is amended to read and state as follows:

(g) Wagering Limitations. Wager limits shall not exceed two hundred fifty dollars (\$250). When the gaming operation has met the conditions set forth in Section 3(n), "phase two" may be implemented, providing for wager limits of up to five hundred dollars (\$500).

Section 3(h) is hereby deleted in its entirety and in substitution therefor is amended to read and state as follows:

(h) Hours of Operation. Operating hours may not exceed one hundred twelve (112) hours per week on an annualized basis. When the gaming operation has met the conditions set forth in Section 3(n), "phase two" may be implemented, providing for operating hours of up to one hundred forty (140) hours per week on an annualized basis. Provided, however, the Class III gaming operation shall be open no more than twenty (20) hours in any twenty-four (24) hour period, and shall be closed to the public from 2:00 a.m. until 6:00 a.m. each day of operation. Provided further, the Tribe may conduct Class III gaming operations beyond 2:00 a.m. upon mutual written agreement by the State Gaming Agency, the Tribal Gaming Agency, and the Snohomish County Sheriff's Department. Provided further, upon thirty (30) days written notice to the State Gaming Agency and upon written mutual agreement between the State Gaming Agency and Tribal Gaming Agency, the Tribe may, but not more than three (3) times per calendar year, conduct continuous Class III operations for up to seventy two (72) hours. In the event the Tribe engages in lottery-type gaming activities and/or if the satellite wagering authorized by this Compact is for events occurring at hours other than the then-established operating hours for the Class III gaming facility, the satellite wagering and lottery-type gaming activities, subject to the other provisions and restrictions herein regarding hours of operation may be conducted independently of other Class III gaming activities.

Section 3(i) is hereby amended to read and state as follows:

(i) Ownership of Gaming Facility and Gaming Operation. The gaming operation, including the gaming facility, shall be owned, operated and managed by the Tribe; provided however, the Tribe shall be entitled to contract for the management of the gaming facility and gaming operation. Any such management contract shall be subject to the terms of this Compact, including all certification and licensing requirements.

Section 3(m) is hereby amended to read and state as follows:

(m) Financing. ~~Any third party financing extended or guaranteed for the Class III operation and facility shall be either by an agency of the United States or a member institution of the FDIC or regulated by the Comptroller of the Currency. Any person, firm, corporation or entity extending~~

financing, either directly or indirectly, to the gaming facility or gaming operation shall be subject to the annual licensing requirements of the Tribal Gaming Agency and shall be required to obtain State certification prior to completion of the financing agreement, and annually thereafter; provided however, the foregoing licensing and certification requirements shall not apply to any third party financing extended or guaranteed for the Class III operation and facility from either an agency of the United States or a member institution of the FDIC or an institution regulated by the Comptroller of the Currency.

Furthermore, there is hereby added by amendment to the Compact a new Section 3(n), Conditions, to wit:

(n) After any six months of operation of the Class III facility from the anniversary of its opening, the State and Tribal Gaming Agencies shall conduct a review of the Class III operation to determine general compact compliance and whether the conditions set forth below have been satisfied. If, as a result of the review, the State and Tribal Gaming Agencies determine that the operation is in compliance with these conditions, the Class III operation may implement "phase two." If the State Gaming Agency determines that the Class III operation has not satisfied the conditions, any resulting dispute will be resolved through the dispute resolution procedures set forth in Section 12(c) of this Compact. Any increase in the number of gaming stations, hours of operation, or wager limits beyond that initially authorized during "phase one" of Class III gaming operations shall be conditioned upon the following criteria:

1. There have been no violations of the provisions of the Compact that have resulted in sanctions imposed by the Federal District Court.

2. There have been no violations of the Compact which are substantial or, due to repetition, would be deemed material.

3. There have been no material adverse impacts on the public health, safety, or welfare of the surrounding communities in the nature of criminal activities directly related to the operations of the Class III gaming facility.

4. There have been no material violations of Appendix A of this Compact.

5. The Tribal Gaming Agency has developed a strong program of regulation and control demonstrating an adequate level of proficiency, which includes the hiring of trained Tribal Gaming Agents, an independent management and reporting structure separate from that of the gaming facility, a thorough and developed system for the reporting of Compact violations, and a strong and consistent presence within the Class III facility.

Section 14(c) is hereby deleted in its entirety and in substitution therefor is amended to read and state as follows:

(c) Community Contribution. A sum of money equal to two percent (2%) of the net win of the gaming stations, less and except the "non-profit" gaming station(s), shall be paid by the Tribe to Snohomish County and any other neighboring jurisdictions for law enforcement and related purposes as a contribution to defer the actual or potential impacts upon those jurisdictions resulting from the operation of the Class III gaming facility, and/or other purposes as the Tribe and a jurisdiction may agree. These funds shall be proportionately shared by the such impacted jurisdictions based upon evidence of such impacts as demonstrated by each jurisdiction. The contribution shall be made annually upon the anniversary of the opening of the initial Class III facility, in the manner and method first mutually agreed upon between the Tribe and the jurisdictions involved in writing.

Section 15(d)(ii)(aa) is hereby amended to read and state as follows:

(aa) ~~the laws of the State~~ State or Federal laws are amended, expanding gaming beyond that which is now allowed under the terms of this Compact;

Section 15(d)(ii)(cc) is hereby deleted in its entirety and in substitution therefor is amended to read and state as follows:

(cc) another tribe within the State of Washington obtains through a Compact approved by the Secretary of the Interior greater levels of wagering, hours of operation, size and/or scope of Class III gaming activities, than authorized by the provisions of this Compact; provided however, that if the other tribe is located East of the Cascade Mountains

then the Tribe must also demonstrate that the greater level of activities have resulted in an adverse economic activity upon the Tribe's Class III gaming operations.

Section 15(d)(iii)(aa) is hereby amended to read and state as follows:

(aa) ~~laws in the State~~ State or Federal laws are enacted allowing that gaming which is now prohibited; or

Section 15(d) is hereby amended by the addition of the following new section (vii) to read and state as follows:

(vii) Interim Restrictions on Renegotiation/Amendments. Compact subsections 3(c), (f), (g) and (h) will not otherwise be subject to renegotiation or amendment for thirty-six (36) months from the date of execution by the parties of this Amendment, unless one of the following occurs: (1) the laws of the State or Federal laws are amended, expanding gaming beyond that which is now allowed under the terms of this Compact; (2) a State or Federal court within the State of Washington or a Federal court interpreting the laws of the State of Washington issues a decision permitting participation in a gaming activity that was not authorized for any purpose by any person, organization, or entity at the time this Compact was executed or not authorized by this Compact; (3) another tribe West of the Cascade Mountains obtains, through a Compact approved by the Secretary of the Interior, greater levels of wagering, hours of operation, size and/or scope of Class III gaming activities, than authorized by the provisions of this Compact; or (4) another tribe East of the Cascade Mountains obtains, through a Compact approved by the Secretary of the Interior, greater levels of wagering, hours of operation, size and/or scope of Class III gaming activities, than authorized by the provisions of this Compact and the Tribe can demonstrate that such levels have resulted in an adverse economic impact on the Class III gaming operation; provided however, these interim restrictions on renegotiation/amendment shall not affect any ongoing renegotiation/amendments concerning gambling devices or renegotiation/amendments pursuant to any Tribal/State declaratory judgment lawsuit concerning the same or the settlement or mediation thereof. In the event of a dispute hereunder, this matter shall also be handled in accordance with the provisions of Compact Section 12(c) as other disputes arising under this Section 15 and other Sections elsewhere in this Compact.

Furthermore, there is hereby added by amendment to the Compact a new Appendix providing for the rules and regulation of satellite (off-track) wagering on horse races, to wit:

APPENDIX C (in the form attached hereto and incorporated herein as though set forth in full).

TULALIP TRIBES OF WASHINGTON

By Stanley G. Jones Sr. Dated: 20<sup>th</sup> day of December, 1994.  
Stanley G. Jones, Sr.  
Chairman

STATE OF WASHINGTON

By Mike Lowry Dated: 26<sup>th</sup> day of December, 1994.  
Mike Lowry  
Governor

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## APPENDIX C

APPENDIX C

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RULES AND REGULATIONS GOVERNING CLASS III  
SATELLITE (OFF-TRACK) WAGERING ON HORSE RACES  
ON THE TULALIP INDIAN RESERVATION

SECTION 1.0 SATELLITE (OFF-TRACK) WAGERING ON HORSE RACES

1.1 DEFINITIONS.

1.1.1 "Conventional parimutuel pool" means the total wager under the parimutuel system on any horse or horses in a particular race to win, place, or show.

1.1.2 "Commission Regulations" means Title 260 WAC.

1.1.3 "Exotic parimutuel pool" means the total wagers under the parimutuel system on the finishing position of two or more horses in a particular race, such as Quinella or Exacta wagers, or on horses to win two or more races, such as Daily Double wagers, Pick Six wagers, or on other wagers other than conventional parimutuel pool wagers.

1.1.4 "Horse Racing Law" means Chapter 67.16 RCW.

1.1.5 "Parimutuel wagering" means a form of wagering on the outcome of horse races in which those who wager purchase tickets of various denominations on a horse or horses in one or more races. When the outcome of the race or races has been declared official, there is a distribution of the total wagers comprising each pool, less any amounts permitted to be retained by law or under this Compact to holders of winning tickets on the winning horse or horses.

1.1.6 "Satellite Wagering" means parimutuel wagering on simulcast results.

1.1.7 "Satellite wagering facility" means any facility in which satellite wagering is conducted.

1.1.8 "Simulcast" means the simultaneous television or radio transmission of a race to a facility other than where the race meet is being held.

1.1.9 "Wagering employee" means any person who is employed by the Tribe or at any satellite wagering facility hereunder to handle any monies, materials, records or equipment related to the satellite wagering permitted herein, or who supervises any person who does so or supervises any such supervisor.

1.1.10 Except as otherwise provided herein, meanings

ascribed to terms used in the Horse Racing Law and the Commission Regulations are hereby adopted by reference wherever such terms are used in this Compact.

1.2 APPLICABILITY OF LAWS. Wagering at the Tulalip tribal satellite wagering facility will be conducted in accordance with this Compact, the Indian Gaming Regulatory Act, the Interstate Horseracing Act, any ordinances or regulations adopted by the Tribe, and those Washington Horse Racing Laws as made applicable herein. Nothing herein shall otherwise be deemed a prohibition upon or limitation upon tribal operation of a satellite wagering facility by the Tribe or on behalf of the Tribe.

1.3 REGULATION OF SATELLITE (OFF-TRACK) WAGERING.

1.3.1 Wagering Permitted. The Tribe is entitled to operate a single satellite wagering facility pursuant to this Compact subject to the following terms and conditions:

a. Unless permitted in accordance with subparagraph c., below, the Tribe may conduct satellite wagering only on events simulcast from any Washington State track (whether of a live race, or an authorized simulcast of an out-of-state signal) on the same terms and conditions permitted any other satellite wagering facility in the State without limitation on the distance such tribal facility is from a live race meet, provided, the Tribe is entitled to receive simulcast signals from each Washington State track on terms at least as advantageous as those made available by such track to any other satellite facility operated at a track holding a Class A or Class B Washington Horseracing Commission license or at any other facility operated or leased by an entity holding such a license. Negotiations conducted between the Tribe and the track shall cover areas including, but not limited to, the following: percent of handle received; equipment required and who provides such equipment; who provides wagering employees; and how and on what schedule funds will be transferred. The track shall provide at no expense to the Tribe and upon request all information deemed necessary by the Tribe relating to the areas covered by the negotiations. All wagers accepted at the tribal facility on such events shall be made into the parimutuel pool of the Washington State track which provides the simulcast signal. Nothing herein shall prohibit assessment by the Tribe of taxes, fees or other charges for wagering conducted at the tribal facility; nor shall the State or any of its political subdivisions be authorized to impose any taxes, fees, charges or other assessments upon the Tribe or upon any person or entity authorized to engage in such activities by the Tribe on the activities regulated hereunder, other than those generally applicable to the parimutuel pool; provided such taxes, fees,

charges or other assessments generally applicable to the parimutuel pool are consistent with the holding of Cabazon Band of Mission Indians, et al. v. Wilson, et al., 1994 WL 541987 (9th CIR. [CAL.]), \_\_\_\_\_ F.3d \_\_\_\_\_ (1994) and 25 USC Section 2710(d)(4).

b. In the event the Tribe believes it is not offered simulcast signals from a Washington State track on terms at least as advantageous as those made available by such track to the other satellite wagering operators as set forth in subparagraph a., above, the Tribe may request a formal determination from the Commission. The sole issues in such determination will be whether the Washington State track provides terms to those other satellite wagering operators which are more advantageous than those offered to the Tribe and, if so, what terms are less advantageous to the Tribe. Provided, the Commission shall conduct a hearing and render a decision within ninety (90) days after receipt of the request for a determination from the Tribe; and further provided, that if the Commission decision is not rendered within that time, the Tribe is entitled to conduct satellite wagering in accordance with the provisions of subparagraph c., below. If the Commission determines that the terms offered Tribe are less advantageous, the Washington State track shall have thirty (30) days to offer terms that are at least as advantageous to the Tribe, or the Tribe will be entitled to conduct satellite wagering in accordance with subparagraph c., below. If the Tribe disputes the determination of the Commission regarding whether the terms offered to the Tribe are less advantageous, the Tribe may request dispute resolution under Section 12(c) of this Compact.

c. If, following an adverse determination from the Commission, the Washington State track does not offer the terms identified by the Commission in accordance with subparagraph b., above, the Tribe shall be entitled to negotiate for and receive simulcast signals from out-of-state races on such terms and conditions as it may obtain. Acceptance of signals from out-of-state tracks shall be made in compliance with the Interstate Horseracing Act, 15 USC §3001, et seq. Nothing in this Appendix C shall be deemed to limit acceptance of satellite wagers to the extent permitted under the Interstate Horseracing Act. Consent of the Commission, as required under the Interstate Horseracing Act shall not be unreasonably withheld. For disputes concerning whether the Commission has unreasonably withheld its consent, the Tribe may request dispute resolution under Section 12(c) of this Compact.

1.3.2 Hours of Operation. The wagering authorized in the Tribe's satellite wagering facility shall be conducted within the one hundred forty (140) hours per week, averaged annually, as authorized for Class III gaming under Section 3(h) of this Compact. Provided, however, when a track providing a simulcast to the tribal

facility operates outside the Tribe's regularly scheduled hours of operation, then the satellite wagering portion of the Class III facility authorized under this Compact may be open to the public during the time the sending track is open to the general public.

1.3.3 Approval of Facility. Subject to approval of the physical adequacy of the facility, Tulalip Tribal Lands are hereby approved as a location for the conduct of satellite wagering as permitted under this Compact. The right of Tribe to conduct satellite wagering from a facility at such location shall not be affected by its distance from any live race meet being broadcast to such facility, and statutes and regulations imposing distance limitations on the location of satellite wagering facilities relative to live race meets, including but not limited to RCW 67.16.200(c), shall not be applicable to Tribe.

1.3.4 Wagering Rules. All of the rules set forth in Chapter 260-48 WAC ("Mutuels") are hereby incorporated by reference as being applicable to any satellite wagering facility authorized hereunder, subject to the following qualifications:

1.3.4.1 References therein to "racing associations" shall mean the Tribe.

1.3.4.2 References therein to "enclosure of any race track" shall mean the satellite wagering facilities authorized hereunder.

1.3.4.3 Parimutuel machines shall be locked at the time and by the same means as are applicable to parimutuel machines at other satellite wagering facilities within the State or as otherwise required by the parimutuel pool operator at the host race track or other authorized source, if different therefrom, but in all cases prior to the start of any race for which bets are being accepted.

1.3.4.4 References to "the manager of the parimutuel department" shall refer to any person appointed to manage the satellite wagering facility authorized under this Compact.

1.3.4.5 The Tribe may accept exotic bets, including but not limited to daily doubles, quinellas, exactas, wagering on "short fields," daily triples, "Pick n," trifectas, and other exotic bets to the extent made available through parimutuel pools by the parimutuel pool operator.

1.3.5 Other Facilities Within Area. In the event the Commission considers allocation of exclusive or limited areas in which satellite wagering facilities may be located, other than the Tribal facility authorized herein, the Commission shall give their

good faith consideration to designating the Tulalip satellite wagering facility as one of those exclusive or limited area satellite wagering sites. Notwithstanding the foregoing, the conduct of satellite wagering at any other facility, including a live racing facility, in the State shall not affect the right of the Tribe to operate a satellite wagering facility at any time.

1.3.6 Amounts Received by Tribe. The Tribe may receive from parimutuel wagers made at its satellite wagering facility such amounts as may be negotiated between it and the operator of the parimutuel pool (track).

1.3.7 Security Control. The Tribe shall maintain such security controls over any satellite wagering facility authorized hereunder as would be required by the Commission for a comparable facility off the Reservation. The Tribe shall remove, deny access to, eject or exclude persons whose presence within such facility would be contrary to the interests of the Tribe or the State in operating an honest, legitimate facility or in meeting the goals and objectives of this Compact or the Act.

1.3.8 Accounting Practices and Audits. Any satellite wagering facility authorized hereunder shall maintain its books and records in accordance with generally accepted accounting principles and such like rules and regulations, if any, as are applied to satellite wagering facilities in the State.

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