The Commonwealth of Massachusetts
Massachusetts Gaming Commission

NOTICE OF MEETING and AGENDA

January 17, 2013 Meeting

Pursuant to the Massachusetts Open Meeting Law, G.L. c. 30A, §§ 18-25, notice is hereby given of a meeting of the Massachusetts Gaming Commission. The meeting will take place:

Thursday, January 17, 2013
1:00 p.m.
Division of Insurance
1000 Washington Street
1st Floor, Meeting Room 1-G
Boston, Massachusetts

PUBLIC MEETING - #46

1. Call to order
2. Approval of Minutes
   a. January 10, 2013 Meeting
3. Administration
   a. Master schedule
4. Application Process
5. Public Education and Information
   a. Report from Ombudsman
      i. Information requests from developers, communities or others
   b. Community disbursement
   c. Question 1 – Surrounding community draft regulation
6. Regulation Update
7. IEB Report
   a. Scope of licensing
   b. Investigations status report
8. Racing Division Report
   a. Transition update
   b. Pari-mutuel and simulcast statute review and discussion
   c. Proposed regulation changes to 205 CMR 3.00 and 4.00 - VOTE
9. Other business – reserved for matters the Chair did not reasonably anticipate at the time of posting

I certify that on this date, this Notice was posted as "Gaming Commission Meeting" at www.mass.gov/gaming/meetings, and emailed to: regs@sec.state.ma.us, melissa.andrade@state.ma.us, brian.gosselin@state.ma.us.

1/14/13
(date)

Stephen P. Crosby, Chairman

Date Posted to Website: January 15, 2013 at 1:00 p.m.

2.a

The Commonwealth of Massachusetts
Massachusetts Gaming Commission

Meeting Minutes

Date: January 10, 2013

Time: 1:00 p.m.

Place: Division of Insurance
1000 Washington Street
1st Floor, Meeting Room 1-E
Boston, Massachusetts

Present: Commissioner Stephen P. Crosby, Chairman
Commissioner Gayle Cameron
Commissioner James F. McHugh
Commissioner Bruce Stebbins
Commissioner Enrique Zuniga

Absent: None

Call to Order:

Chairman Crosby opened the 45th public meeting.

Approval of Minutes:

See transcript page 2.

Commissioner McHugh stated that the Commission has distributed the minutes for the January 3 meeting to all the Commissioners.

Motion made by Commissioner McHugh to adopt the minutes of January 3, 2013 as distributed. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.

Public Education and Information:

See transcript pages 2-68.

Report from the Ombudsman – Ombudsman Ziemba stated that he continues to have meetings and conversations with applicants and communities. He is visiting the City of Springfield tomorrow and will be meeting with an applicant there. He has spent time over the last week discussing the draft permitting documents and has fielded numerous questions regarding the timing of the RFA-1 licensing reviews and the timetable for referendum scheduling. He recommended discussing this timing after the Commission receives the RFA-1 applications.

He stated that the AIA will issue a white paper as a follow-up to the design forum held last month and he recommended that the Commission discuss design criteria for gaming establishments after receiving the white paper.

Mr. Ziemba stated that he has been working with regional planning agencies to fine tune the process for helping host and surrounding communities. He has been working with other agencies to develop a system to help communities and applicants work through the state permitting process and finalize plans for infrastructure improvements. He recommended developing a process to expedite the permitting that will occur after the Commission grants conditional licenses, and he will work on developing this process over the coming months. He stated that he also plans to inform communities, prior to the time they sign the host community agreements, about what agencies involved in the permitting and infrastructure approval processes expect.

Dave Mohler, the Executive Director of the Office of Transportation and Planning for the Mass Department of Transportation, and Maeve Vallely-Bartlett, Director of MEPA, joined Mr. Ziemba to discuss how other agencies will help with the review of applications. Ms. Vallely-Bartlett provided an overview of the MEPA process and stated that the process will be perfectly suited for the type of coordination the Commission will require. She stated that MEPA coordinates with all state agencies granting environmental permits in order to expedite the permitting process.

Mr. Mohler provided an overview of the Mass Department of Transportation (DOT) involvement in the permitting process. He stated that DOT permitting relates to access to the state highway system. Commissioner Zuniga asked what would happen if a preferred alternative were included in a host community agreement, but along the way applicants conduct additional studies that result in another alternative being preferred. Mr. Ziemba stated that a host community agreement could contain a provision to allow reopening negotiations to mitigate any impacts identified in the MEPA process or RFA-2 application. In addition, the Commission could retain its ability to condition a license upon a revision of a host community agreement. Commissioner McHugh stated that it is his understanding that it is very unlikely that applicants will complete the MEPA process before the Commission considers the Phase 2 applications. Determining whether the applicant is capable of executing the plan may take a significant period after the license is awarded. Ms. Vallely-Bartlett stated that this is a fair assessment of the process.

Commissioner Stebbins stated that, given the size of the anticipated gaming facilities, all applicants will likely go to the Environmental Impact Report (EIR) stage. He recommended that the Commission stress that applicants include as much information as possible in the Environmental Notification Form (ENF). Mr. Mohler agreed, but clarified that the quality of the information is more important than the quantity, because bad information will only result in delays when developers resubmit the information. Chairman Crosby stressed that, while the Commission appreciates the fact that a developer may not want to spend too much money upfront without knowing if it will get a license, developers that do not perform enough due diligence upfront may delay their own permitting process.

Mr. Ziemba reviewed the public comments that the Commission has received regarding Policy Question 12, which asks to what degree will an applicant be required to have progressed in federal, state, and local permitting, and other regulatory processes before submitting RFA-2 applications.

His recommendation is that the Commission not specifically mandate completion of local and state permitting, but still require that applicants file the ENF and proof of local zoning compliance.

Motion made by Commissioner Zuniga that the Commission accept the recommendations from Ombudsman Ziemba pursuant to Policy Question 12 as contained in his written memorandum. Motion seconded by Commissioner McHugh. The motion passed unanimously by a 5-0-0 vote.

Community Disbursement – Ombudsman Ziemba stated that he has been working with Attorney Grossman on an agreement for disbursement of a portion of the application fee to cities and towns for planning and community mitigation. Ombudsman Ziemba and Attorney Grossman have also been working with the Department of Revenue Division of Local Services to address municipal finance concerns. He stated that there are two issues to be decided: the purpose for which the funds can be utilized and which communities can receive these funds. Attorney Grossman stated that there are two potential options for reimbursement. The first option is straight reimbursement wherein a municipality expends appropriated funds and the Commission then reimburses the community if the community met the requirements of the statute and regulations. The second option is providing the community with a gift grant that allows the municipality to receive unappropriated funds. Mr. Ziemba stated that the Commission will discuss these items at an upcoming meeting.

Administration:

See transcript pages 68-86.

Director Glovsky introduced two MIT externs who are working with the Commission, Jamila Smith-Dell and Anthony Yu.

Master Schedule – Chairman Crosby reviewed the Master Schedule. He stated that RFA-1 applications are due January 15 and the goal is to move the process along expeditiously.

Director Glovsky stated that applicants had questions regarding the procedures for submitting the application fee submittal procedures, and the Commission will post additional instructions on the website. She stated that the procurements for equine testing and the research agenda have had a good response. The procurements are proceeding through Phase 1 and the Commission will be distributing the responses to the procurement teams. She stated that the audit services procurement for the Racing Division will be posted Friday afternoon.

Employee Manual – Commissioner Zuniga stated that he has provided the Commission with a revised version of Chapter 6 of the Employee Manual. Commissioner Stebbins recommended amending Chapter 6 to include in the press relations section the Executive Director as a contact person in the absence of the Director of Communications.

Motion made by Commissioner McHugh that the Commission adopt the Employee Manual Chapter 6 as amended. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.

Commissioner Zuniga stated that Attorney Grossman has drafted an update to Section 2 of the Employee Manual that enhances the public records request policy. This update incorporates a more

detailed procedure and centralizes the response and handling of public records with the Legal Department.

Motion made by Commissioner Zuniga that the Commission adopt the public records request policy as presented and incorporate it as part of the procedures in the Employee Manual. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.

Ombudsman Ziemba stated that MEPA regulations require that entities file an ENF form within ten days of filing for a state permit. He recommended clarifying in the regulations that this filing will occur during the RFA-2 application phase.

Finance Update – Commissioner Zuniga provided the Commission with a budget to actual expenditure report through the second quarter, which ended December 31, 2012. He stated that the Commission is incurring approximately $300,000 of non-salary expenditures each month and he anticipates being within the anticipated budget at the end of the fiscal year. He presented a proposal to enter a contract with Future Technologies Group to enhance the Commission's voice and data technology.

Motion made by Commissioner Zuniga that the Commission execute a contract with Future Technologies Group for $25,000 to enhance the voice and data services the Commission currently has. Motion seconded by Commissioner McHugh. The motion passed unanimously by a 5-0-0 vote.

A brief recess was taken.

Chairman Crosby reconvened the 45th meeting.

IEB Report:

See transcript pages 86-119.

Scope of Licensing – Commissioner Cameron stated that all interested parties who have requested scope of licensing meetings have had those meetings and the IEB has sent all qualifier determination letters. She stated that additional people are asking questions about RFA-1 but the Commission does not know if they will choose to have a scope of licensing meeting or submit an application. She stated that she is attending two clarification meetings with potential applicants today. She reminded everyone that the application deadline is January 15. The Commission received three applications to date, two of which the IEB has deemed to be administratively complete, and the IEB is now conducting background investigation on individuals and entities in those applications.

IEB Director Search Update – Commissioner Cameron stated that the Commission has completed the search for an IEB Director. The IEB received applications for the position from 54 individuals and the IEB informally interviewed eight of those individuals. Four candidates moved on to a formal interview with an advisory panel comprised of law enforcement executives, and the panel unanimously decided to recommend one candidate to Commissioner Cameron for an interview before the full Commission.

Commissioner Cameron introduced candidate Karen Wells, who is presently the Undersecretary for Law Enforcement at the Massachusetts Executive Office of Public Safety, and provided information on her background and qualifications. Secretary Wells addressed the Commission and answered questions addressed to her background and the IEB Director position. The Commission agreed that Ms. Wells was a candidate highly qualified to take over this position as Director of Investigations and Enforcement.

Motion made by Commissioner Cameron to appoint Karen Wells as the first Director of Investigations and Enforcement. Motion seconded by Commissioner McHugh. The motion passed unanimously by a 5-0-0 vote.

Commissioner Cameron excused herself from the remainder of the meeting in order to attend two previously scheduled applicant meetings.

Racing Division:

See transcript pages 119-151.

Report from Director of Racing Division – Director Durenberger addressed the Commission. She stated that Racing Division has completed the physical move of the racing documents from four different locations. She stated that with her were Danielle Holmes, Staff Attorney, and David Murray, Consultant, who were present to discuss pari-mutuel and simulcast statue review.

Mr. Murray stated that the Gaming Act recognizes the continuation of the vitality of the racing statute and authorizes the Commission to issue a simulcasting license to a gaming establishment and entities that were formerly licensed under the racing statute. However, the Gaming Act does not provide a regulatory framework for these new categories of simulcasting licenses. He stated that the Racing Division has concluded that Section 7B licensees should be subject to the same regulation as the racing licensees and the Commission should create a regulatory model to preserve the obligations to carry local signal and to make this system applicable to a non-racing licensee.

Mr. Murray stated that the Commission should revisit issues relating to the capital improvements and promotional activities trust fund. He stated that the Racing division sees no need for the Commission to providing supervision over the licensees' utilization of their own money for promotional activities and capital improvement funds. The current system is cumbersome and expensive and he stated that the Racing Division is close to recommending that the Commission scrap this system and set up a fund for capital improvements for those who need targeted, earmarked take-outs. Director Durenberger stated that these take-outs would be a small percentage of total amounts wagered.

Commissioner McHugh stated that the expanded gaming legislation requires the Commission to analyze and report on the efficacy of Chapters 128A and 128C and recommend either replacing those laws or keeping them. He questioned whether the Commission has the regulatory power to create a sound regulatory environment for pari-mutuel and simulcast racing, and could do so by reinstating necessary portions of Chapters 128A and 128C as regulations. Mr. Murray stated that the question then would become what statutory authority authorized a requirement that simulcast licensees carry local signals.

Commissioner McHugh recommended inviting comment on whether there is a need to replace Chapters 128A and 128C. Chairman Crosby asked Chief of Staff Reilly to post this request for comment on the Commission website. He stated that the Commission will seek further information from the legislature and continue this discussion at a future meeting.

Regulation Promulgation Process:

See transcript pages 151-161.

Attorney Grossman stated that he has submitted to the Commission a memorandum detailing a plan for writing and adopting the comprehensive RFA-2 regulations. He stated that it is important that the Commission put in place comprehensive regulations and develop a written process for drafting these regulations. He stated that his memorandum has been reviewed by the gaming and legal consultants, who will play a role in the process. He stated that the goal is to make any adjustments and approve this plan so that the drafting process can commence.

He recommended putting together a comprehensive outline of what the regulations will look like. This would include highlighting priority areas and determining who will write regulations in the different areas. The Commission will consider whether any individual Commissioner has an interest in either personally drafting regulations in a particular area or being involved in drafting of regulations in a particular area. The legal staff will then draft regulations in earnest, while serving as the point of contact to ensure that there is a uniform process in place and everyone knows where to go with inquiries. An outline of the policy decisions the Commission has made to date will be created and woven into the initial draft regulations. After the regulations have been drafted, the Commission will make all required notifications schedule a public comment period, and hold a public hearing. After the public hearings, the Commission will make any necessary changes and file the regulations with the Secretary of State. He stated that the legal staff is currently working on the timing for all these steps.

Key Policy Questions:

See transcript pages 161-162.

Meetings - Chief of Staff Reilly stated that the Commission has scheduled meetings to discuss key policy questions for Tuesday, January 22 and Wednesday, January 23 from 1:00 to 5:00 p.m. in the current meeting room. She stated that the Commission will post the questions to be covered for additional public comment; however, if anyone has already submitted comments, they do not have to resubmit those comments.

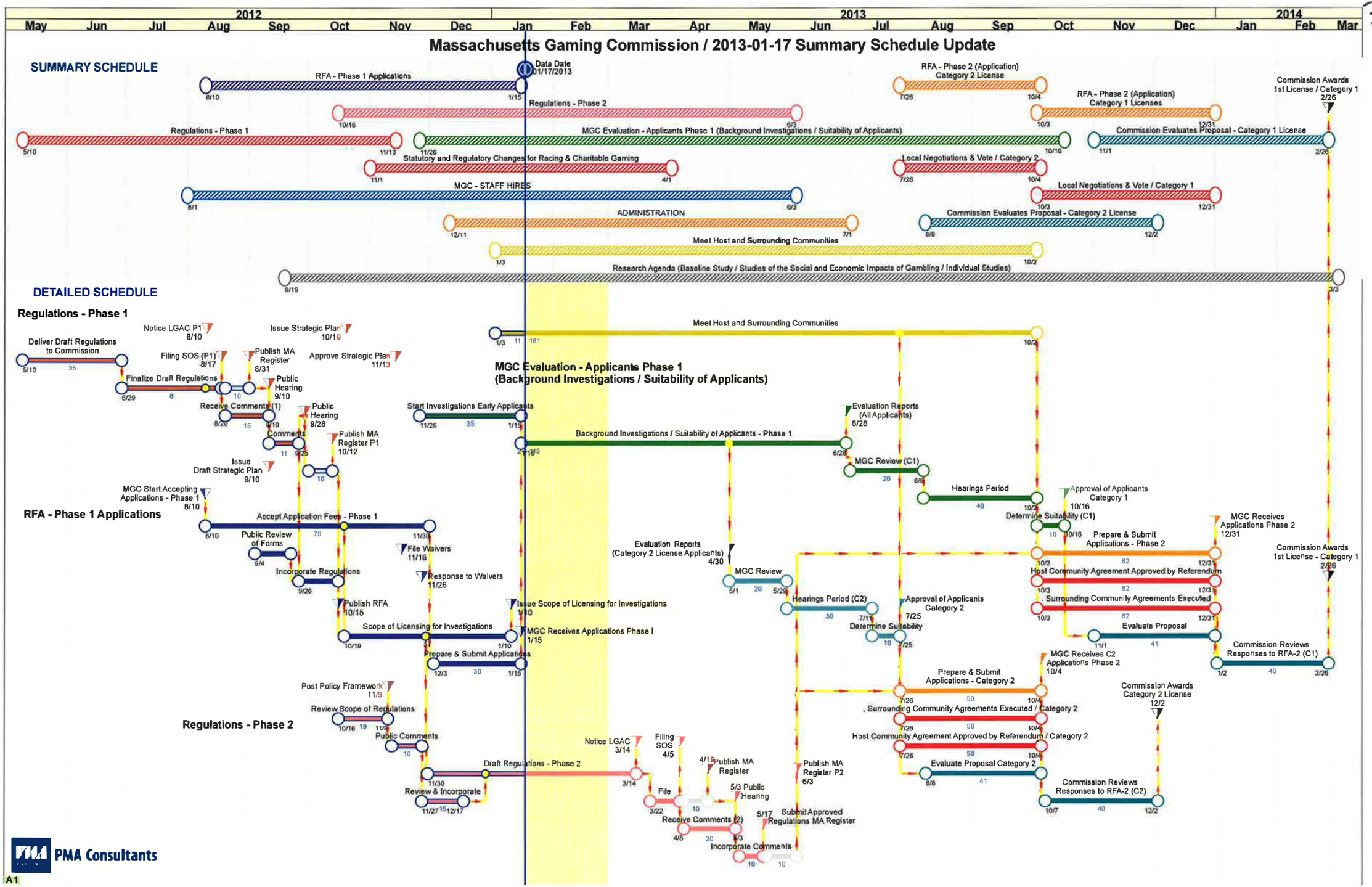
Motion made to adjourn, motion seconded and carried unanimously.

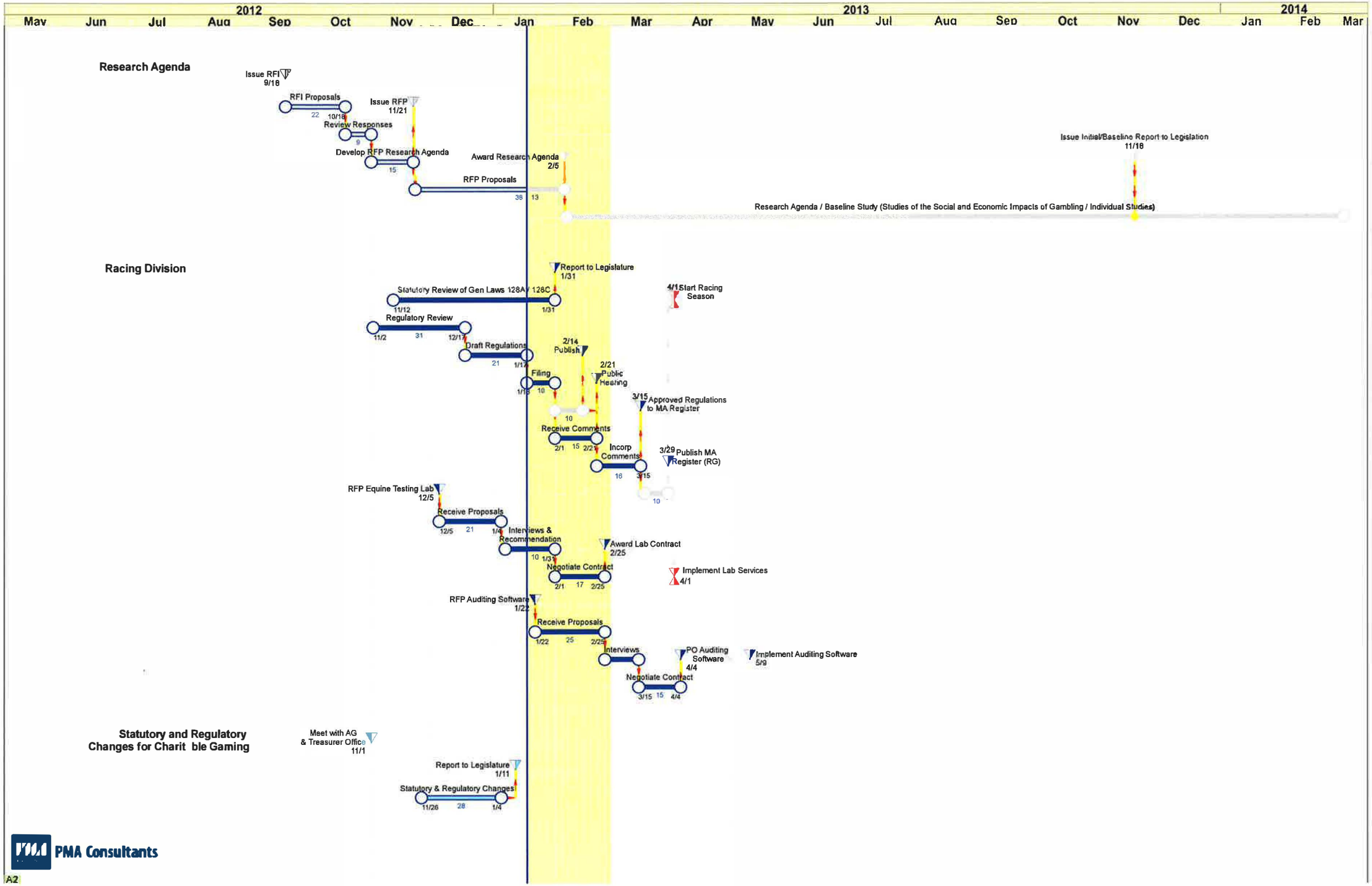
List of Documents and Other Items Used at the Meeting

1. Massachusetts Gaming Commission January 10, 2013 Notice of Meeting and Agenda
2. Massachusetts Gaming Commission January 3, 2013 Meeting Minutes
3. MAPC Response to Policy Question 12 Analysis

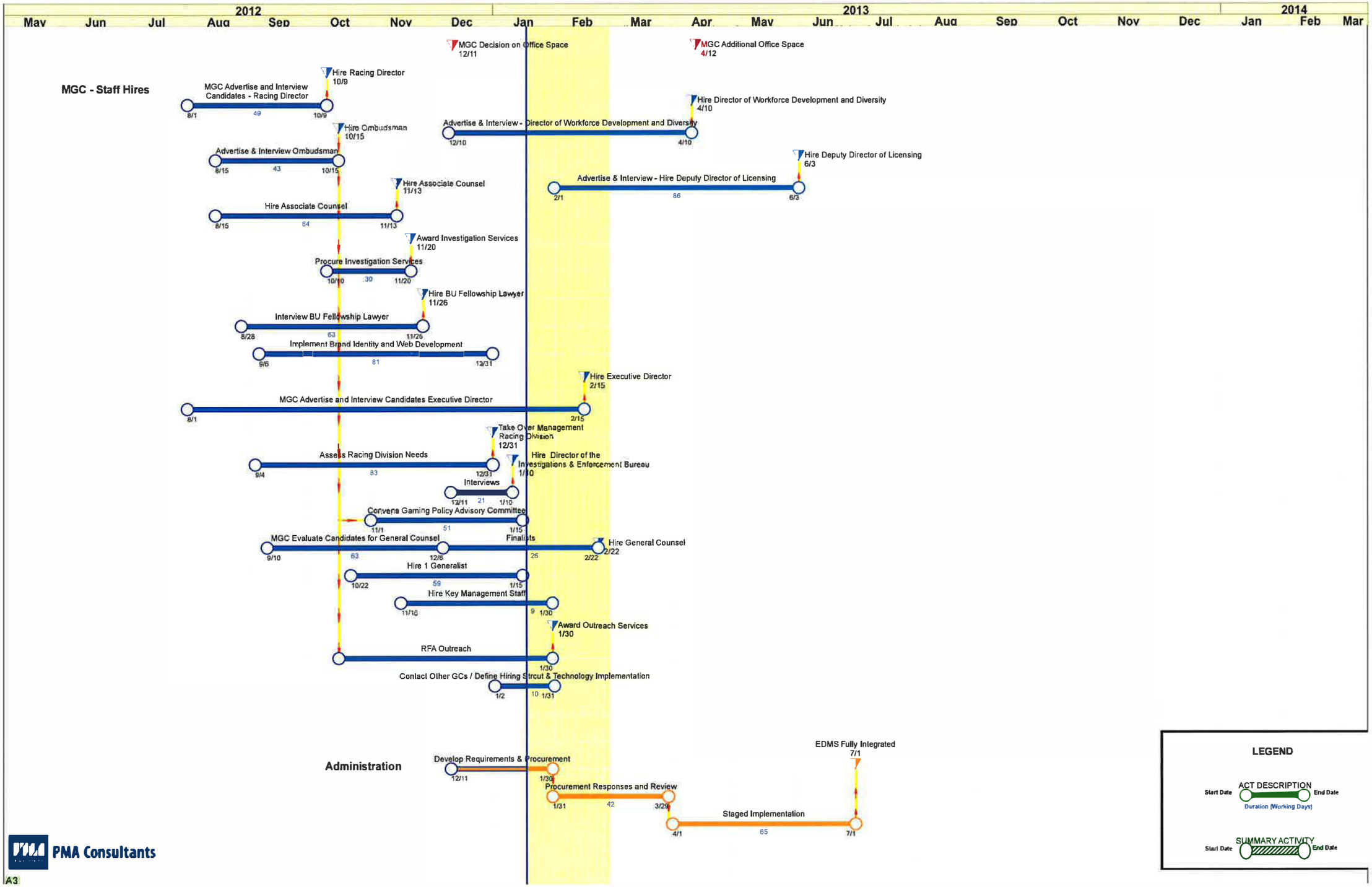
4. MMA January 9, 2013 Response to Policy Question 12 Analysis
5. DLA Piper January 9, 2013 Response to Policy Question 12 Analysis
6. Massachusetts Gaming Commission Section 6 of Employee Manual
7. Massachusetts Gaming Commission Public Records Request Policy
8. January 10, 2013 Memorandum Regarding Recommendation to Execute a Contract with FTG for Expansion of Voice & Data Technology
9. Massachusetts Gaming Commission 2nd Quarter Budget to Actual Expenditure Report
10. Racing Division Staff Update on Legislative Report Review
11. January 10, 2013 Memorandum Regarding Regulation Promulgation Strategy

/s/ James F. McHugh
James F. McHugh
Secretary


2012
2013
2014
May Jun Jul Aug Sep Oct Nov Dec Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec Jan Feb Mar
Massachusetts Gaming Commission / 2013-01-17 Summary Schedule Update
SUMMARY SCHEDULE
Data Date 01/17/2013
RFA - Phase 1 Applications
Regulations - Phase 2
Regulations - Phase 1
MGC Evaluation - Applicants Phase 1 (Background Investigations / Suitability of Applicants)
Statutory and Regulatory Changes for Racing & Charitable Gaming
MGC - STAFF HIRES
ADMINISTRATION
Meet Host and Surrounding Communities
Research Agenda (Baseline Study / Studies of the Social and Economic Impacts of Gambling / Individual Studies)
RFA - Phase 2 (Application) Category 2 License
RFA - Phase 2 (Application) Category 1 Licenses
Commission Awards 1st License / Category 1
Commission Evaluates Proposal - Category 1 License
Local Negotiations & Vote / Category 2
Local Negotiations & Vote / Category 1
Commission Evaluates Proposal - Category 2 License
DETAILED SCHEDULE
Regulations - Phase 1
Deliver Draft Regulations to Commission
Notice LGAC P1 8/10
Issue Strategic Plan 10/19
Filing SOS (P1) 8/17
Publish MA Register 8/31
Approve Strategic Plan 11/13
Finalize Draft Regulations
Public Hearing 9/10
Receive Comments (1)
Public Hearing 9/28
Comments
Publish MA Register P1 10/12
Issue Draft Strategic Plan 9/10
RFA - Phase 1 Applications
MGC Start Accepting Applications - Phase 1 8/10
Accept Application Fees - Phase 1
Public Review of Forms
File Waivers 11/16
Incorporate Regulations
Response to Waivers 11/26
Publish RFA 10/15
Scope of Licensing for Investigations
Issue Scope of Licensing for Investigations 1/10
MGC Receives Applications Phase I 1/15
Prepare & Submit Applications
Regulations - Phase 2
Post Policy Framework 11/9
Review Scope of Regulations
Public Comments
Draft Regulations - Phase 2
Review & Incorporate
Notice LGAC 3/14
Filing SOS 4/5
Publish MA Register 4/19
5/3 Public Hearing
File
Receive Comments (2)
Submit Approved Regulations MA Register 5/17
Incorporate Comments
Publish MA Register P2 6/3
MGC Evaluation - Applicants Phase 1 (Background Investigations / Suitability of Applicants)
Meet Host and Surrounding Communities
Start Investigations Early Applicants
Background Investigations / Suitability of Applicants - Phase 1
Evaluation Reports (All Applicants) 6/28
MGC Review (C1)
Hearings Period
Approval of Applicants Category 1 10/16
Determine Suitability (C1)
Evaluation Reports (Category 2 License Applicants) 4/30
MGC Review
Hearings Period (C2)
Approval of Applicants Category 2 7/25
Determine Suitability
Prepare & Submit Applications - Phase 2
MGC Receives Applications Phase 2 12/31
Host Community Agreement Approved by Referendum
Surrounding Community Agreements Executed
Evaluate Proposal
Commission Awards 1st License - Category 1 2/26
Commission Reviews Responses to RFA-2 (C1)
Prepare & Submit Applications - Category 2
MGC Receives C2 Applications Phase 2 10/4
Surrounding Community Agreements Executed / Category 2
Host Community Agreement Approved by Referendum / Category 2
Evaluate Proposal Category 2
Commission Awards Category 2 License 12/2
Commission Reviews Responses to RFA-2 (C2)
PMA Consultants
A1



PMA Consultants



PMA Consultants

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Massachusetts Gaming Commission

MEMORANDUM

Date: 1/11/13

To: Commissioner Gayle Cameron, Commissioner James McHugh, Commissioner Bruce Stebbins, Commissioner Enrique Zuniga

CC: John Ziemba, Janice Reilly, Elaine Driscoll

From: Chairman Stephen Crosby

Re: Evaluation Criteria for Casino Proposals

As Commissioner McHugh is developing an organized and more detailed version of the evaluation criteria from our enabling legislation, and at the same time collecting other evaluation criteria from the Commissioners, I want to propose a comprehensive effort to solicit the broadest possible package of amenities and non-gaming enhancements from our applicants.

It seems to me that the legislative intent was clear that we are attempting to develop true "destination resorts" rather than merely convenience casinos and that we have a responsibility to develop the selection criteria that will accomplish that objective (the statute assigns us the authority to "develop criteria, in addition to those outlined in this chapter, to assess which applications for gaming licenses will provide the highest and best value to the Commonwealth and the region in which a gaming establishment is to be located." It is obvious that convenience will be a major factor, and likely most of the customers in our casinos will be from a relatively nearby region within Massachusetts. However, I think this point bears constant reinforcement: *the high impact dollars from gaming that flow to the Commonwealth (both in discretionary spending and incremental tax revenue) are either those that are repatriated from out of state (the $900M or so that apparently is now gambled in other states) or that is brought into the Commonwealth from out of state. Money that is redirected from other discretionary spending within the Commonwealth is of little or no real value—and will likely be a heavy cost to some other business or institution (like the Lottery).*

Consequently we want to do everything we can so that our casinos are maximally truly "destination resort casinos," that are attractive to folks from other states and folks from out of the country. To do this, we need to influence the developers to design features and strategies that will help attract outsiders, create synergies with our other major travel and tourism institutions (MassPort, Convention Authority, hospitality industry, tourism attractions, MOTT, etc.) and perhaps even look for synergies with our other key industries—health care, higher education, life sciences, venture capital, financial services, etc., that can be combined with a destination resort casino to attract larger than expected numbers of gamblers and tourists from out of state and out of the country.

In a related issue, we are encouraging the casino developers to add amenities that will enhance the broader tourism goals of the Commonwealth. Commissioner Cameron and I recounted how the casinos in Singapore had phenomenal additional features (one had a convention center and an art museum, while the other had an MGM Universal theme park and a fabulous aquarium). We obviously don't have that kind of leverage, but we need to think strategically about how we can maximize such related and enhancing facilities. As the competitive environment for our licenses increases, this may be the time to articulate these objectives.

Commissioner Stebbins and I have discussed this at length, as well as had meetings with MOTT, other attraction and tourism professionals, and other interested parties. In the objective to encourage out of state visitors, we suggest we encourage the following kinds of initiatives:

- Work to develop links to Asian cities and Asian developers
- Market to the families of the big gamblers by promoting other tourism facilities in the region
- Market to the parents, families and alumni of the vast number of international and out of state students who attend our colleges and universities (being sensitive of course to the issue of marketing to underage people); MOTT already has emerging marketing efforts to out-of-state students and families, and casino operators could collaborate in those marketing efforts
- Encourage the developers to coordinate with our other national and international marketing institutions, including Mass Office of Travel and Tourism, the convention and visitors bureaus, cruise lines, the convention facilities in Boston and Springfield, Massport, and other hospitality industry representatives
- Develop a public-private partnership world class marketing budget and team; and/or coordinate with Mass Office of Travel and Tourism on its $4.5M international marketing campaign
- Require (or the casinos could offer) to have an active visitors center in each facility, promoting other regional attractions

It terms of encouraging developers to think innovatively about amenities, it seems to me that there are 3 questions we can pose:

1. What is the Boston or Western Massachusetts brand and how can developers merge their product positioning and marketing with those brands?
2. What kinds of tourism attractions do we not have that a developer could offer which would broaden the tourism appeal as well as deliver an additional profit center?
3. What assets do we have in our casino regions that can be leveraged by strategic relationships with the casinos?

Some of the kinds of things that could be proposed as answers to those questions are the following:

- Propose MICE (Meeting/Incentives market) facilities where we may be short-handed such as hotel-type meeting space in the mid-size market
- Provide a home for a Boston Museum and/or the Sports Museum, building on our strengths in American history (as the Pequot did with the Mashantucket Pequot Museum at Foxwoods)
- Provide site and resources for the Mass Horticultural Society "Garden Under Glass," with year-round green space
- Develop an advanced technology amusement park or theme park; perhaps coordinating with Science Museum, MIT or others; promoting gaming and related STEM technologies
- Offer to enhance related travel infrastructure, such as South Coast Rail or extending the Orange Line, etc.
- Commit a share of Gross Gaming Revenue to subsidizing a portion of the MBTA operating deficit

There are many more such ideas, and I'm sure there are many people who can weigh in on these ideas. I'd like to start the conversation as soon as the January 15 deadline for bidders is closed, in order that the serious bidders hear immediately what we are looking for.

Looking forward to this discussion.

5.6

The Commonwealth of Massachusetts

Massachusetts Gaming Commission

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CHAIRMAN
STEPHEN P. CROSBY
COMMISSIONERS
GAYLE CAMERON
JAMES F. MCHUGH
BRUCE W. STEBBINS
ENRIQUE ZUNIGA

MEMORANDUM

TO: Potential Host and Surrounding Communities
FROM: Massachusetts Gaming Commission
RE: Community Disbursements
DATE: January 17, 2013

I. Introduction

This memorandum is intended to outline the process by which a municipality that is a potential host or surrounding community to a proposed gaming establishment may receive Community Disbursements from the Massachusetts Gaming Commission ("Commission"). Community Disbursements are intended to reimburse the municipality for the "cost of determining the impact of a proposed gaming establishment and for negotiating community mitigation impact agreements . . . ." See G.L. c.23K, §15(11) and 205 CMR 114.03; see also G.L. c.23K, §4(7) ("the commission may receive and approve applications from a municipality to provide for reasonable costs related to legal, financial and other professional services required for the negotiation and execution of host and surrounding community agreements as provided in section 15, and to require that such costs be paid by the applicant for a gaming license . . . ."). There are two ways in which a municipality may apply for the disbursement of funds from the Commission; via reimbursement or grant. Each will be discussed below.

II. Letter of Authorization

A municipality may apply for funds under either, or both, of the methods. Regardless of method, the municipality must submit a *letter of authorization* to the Commission as part of its application. See 205 CMR 114.03(2). The letter of authorization, which must be on a form provided by the Commission, must contain the following information:

A. Name of the municipality
B. Name of department/entity within the municipality receiving the funds
C. Name and contact information of responsible party on behalf of municipality
D. Whether funds are sought for reimbursement or a grant

E. Itemization (including name and address of vendor/provider) of legal, professional, and other services that funds are to be/have been used for
F. A certification that the funds are to be used solely for the articulated purposes
G. The signature of an authorized representative of the applicant and of the host or surrounding community.

Documentation (i.e.- invoices, proposals, estimates, etc.) for the articulated services that is adequate for the Commission to ensure that the expenditure of the funds related/will relate to the cost of determining the impact of a proposed gaming establishment and/or for negotiating a community mitigation impact agreement must be attached.

III. Reimbursement

The first method for disbursement of funds is as a straight reimbursement. In this scenario, a municipality may simply submit a *letter of authorization* and indicate that it seeks reimbursement. Funds must be properly appropriated in order to be expended.

IV. Grant

The second method for disbursement of funds is as a grant in accordance with G.L. c.44, §53A. Under this method, the municipality must submit a *letter of authorization* for review by the Commission. If approved, the municipality will then have to execute a Grant Agreement with the Commission via an instrument prepared by the Commission. The model Grant Agreement will be made available for review on the Commission's website. The Grant of funds under this method must be for a specific amount for specific purposes outlined in the *letter of authorization*. Any further funds sought via grant must be applied for separately in the same manner. The municipality must agree to return any unexpended funds to the Commission and undergo an audit at the conclusion of the process.

THE COMMONWEALTH OF MASSACHUSETTS

MASSACHUSETTS GAMING COMMISSION

Grant, made as of DATE

Grant from the Massachusetts Gaming Commission to the City/Town of NAME in accordance with G.L. c.23K, §15(11) and 205 CMR 114 et seq.

This Grant Agreement, (the "Grant"), dated as of _____, 20___ ("Effective Date") is entered into by and between the Massachusetts Gaming Commission ("Commission"), an agency of the Commonwealth of Massachusetts, and the [city/town of NAME] ("city/town" or "NAME").

RECITALS

WHEREAS, the Commission has been created to ensure public confidence in the integrity of the gaming licensing process and in the strict oversight of all gaming establishments through a rigorous regulatory scheme; and

WHEREAS, the [city/town of NAME] has been identified as a potential host/surrounding community by the Commission as defined in G.L. c.23K, §2; and

WHEREAS, the [city/town of NAME] has engaged in the process of negotiating an agreement with [developer] and in studying the impact of locating a gaming establishment in [city/town]; and

WHEREAS, the [city/town of NAME] anticipates expending funds in the process of studying the potential impacts of the location of a gaming establishment in [city/town] and/or in negotiating an agreement with [developer];

WHEREAS, G.L. c.23K, §15(11) provides that not less than $50,000 of the application fee paid by applicants for a gaming license shall be used to reimburse the host and surrounding municipalities for the cost of determining the impact of a proposed gaming establishment and for negotiating community mitigation impact agreements; and

WHEREAS, in accordance with G.L. c.23K, §4(7) the Commission may receive and approve requests from a municipality to provide for reasonable costs related to legal, financial and other professional services required for the negotiation and execution of host and surrounding community agreements as provided in G.L. c.23K, §15; and

WHEREAS, the [city/town of NAME] and the applicant,[developer], have submitted a letter of authorization to the Commission in accordance with 205 CMR 114.03 authorizing disbursements to city/town from available amounts paid by the applicant to the Commission for such purposes; and

WHEREAS, the [city/town of NAME] has applied for and desires to receive monies from the Commission pursuant to the provisions of G.L. c.23K, §15(11) for [], as it is more particularly described elsewhere in this Grant instrument; and

WHEREAS, the [city/town of NAME] has submitted an application for a Grant of funds commensurate with anticipated expenditures associated with the negotiation of studying the potential impacts of the location of a gaming establishment in [city/town] and in negotiating an agreement with [developer]; and

WHEREAS, the Commission has determined that the [city/town of NAME] is eligible for the receipt of a Grant and that the [city/town of NAME] has agreed to accept the funds subject to all of the terms and conditions of this Grant; and

WHEREAS,, the Commission has determined that there are sufficient funds available in the custody of the Commission, as provided in 205 CMR 114.03(2), to make disbursements to the city/town; and
WHEREAS, the Commission has been granted the power to execute all instruments necessary or convenient for accomplishing the purposes of G.L. c.23K; and
WHEREAS, the Commission has been granted the power to enter into agreements or other transactions with a person, including, but not limited to, a public entity or other governmental instrumentality or authority in connection with its powers and duties under G.L. c.23K;

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained in this Grant, the receipt and legal sufficiency of which are hereby acknowledged, the Commission and the [city/town of NAME], intending to be legally bound, hereby agree as follows:

The Commission agrees to provide a Grant of funds to the [city/town of NAME], subject to all of the following terms and conditions:

SECTION 1
LETTER OF AUTHORIZATION

Letter of authorization shall mean the agreement entered into between the city/town and applicant for a gaming license detailing the agreed upon costs of determining the impact of a proposed gaming establishment and/or for negotiating community mitigation impact agreements. The *letter of authorization* shall include detailed estimates, including the scope of work, from prospective contractors, vendors, and/or service providers.

SECTION 2
THE GRANT

As of the Effective Date and subject to the satisfaction of or compliance with, as reasonably determined by the Commission: (a) all of the terms and conditions of this Grant, (b) the applicable provisions of G.L. c.23K, Chapter 194 of the Acts of 2011, and 205 CMR, and (c) any other rule, regulation, policy, guideline, approval, or directive of the Commission, the Commission hereby approves the following Grant: an amount that shall under no circumstances exceed $_____. The Parties hereby acknowledge and agree that the amount set forth in this section as determined by the Commission in its sole discretion, is the maximum amount of funding that the municipality may receive from the Commission under this specific Grant. To the extent that the municipality realizes a need to make further expenditures in the determination of the impact of a proposed gaming establishment and/or for negotiating a community impact mitigation agreement, it must submit a further *letter of authorization.*

SECTION 3
COVENANTS, REPRESENTATIONS, AND WARRANTIES

The city/town covenants and agrees that in exchange for this Grant, the city/town shall and shall cause its employees, agents, and representatives to perform and comply with the following covenants, and otherwise represents and warrants as follows:

3.1 The city/town shall and shall cause its employees to comply with all provisions of this Grant, and all provisions of law that are applicable to the Grant; the city/town shall take all action necessary to

fulfill its obligations under this Grant and under all other agreements related to the Grant that have been referenced herein or otherwise approved by the Commission.

3.2 The city/town hereby acknowledges and agrees that neither the city/town nor any of its employees, officials or agents has submitted nor shall submit any false or intentionally misleading information or documentation to the Commission in connection with this Grant, including the *letter of authorization*, and further acknowledges and agrees that the submission of any such information or documentation shall be a material breach of this Grant and may be cause for the Commission to revoke any and all payments otherwise due to the city/town, to recover any previous payments made to the city/town, and/or make the city/town ineligible for any further funding from the Commission. The city/town hereby further agrees that it shall have a continuing obligation to update and notify the Commission in writing when it knows or has any reason to know that any information or documentation submitted to the Authority contains false, misleading or incorrect information.

3.3. The city/town certifies that the funds from this Grant will be used solely for the purposes outlined in **SECTION 4- SCOPE OF GRANT**.

3.4 The city/town hereby agrees that it shall use its best effor s and resources to diligently satisfy and complete each of the terms and conditions of this Grant and the purposes for which the funding is being provided, as set forth in **SECTION 4- SCOPE OF GRANT**, as promptly as possible.

3.5 The city/town hereby acknowledges and agrees that all expenditures of Grant funds shall be subject to review and audit by the Commission.

3.6 The city/town hereby acknowledges and agrees that it shall provide the Commission with a monthly update on the expenditure of the Grant funds

3.7 The city/town hereby acknowledges and agrees that it shall keep all records and receipts related to or generated by any expenditure of Grant funds.

3.8 With respect to all actions taken in relation to the Grant, the city/town and all of its officers, agents and employees shall observe and obey, and shall include language in all of its contracts with the contractors and vendors requiring them to observe and obey all federal, state and local laws, regulations, ordinances, codes, statutes, orders and directives and any other applicable provisions of law.

3.9 The city/town shall furnish to the Commission such further affidavits, certificates, opinions of counsel, surveys and other documents and instruments as may be required by the Commission to ensure that the terms of this Grant are being observed and performed in all respects.

3.10 The city/town hereby acknowledges and agrees that the terms set forth in the Grant are intended solely to govern the disbursement of funds in accordance with G.L. c.23K, §15(11) and 205 CMR 114 *et seq*. Nothing herein shall be construed as advice to, nor create a duty to provide advice to, the city/town regarding legal or contractual requirements or best practices. Further, nothing in this Grant shall be construed as creating a duty or obligation on the part of the Commission to oversee or monitor the performance of any contractor, vendor, or other project participants.

3.11 The city/town represents that the acceptance of funding in accordance with the terms of this Grant does not and will not conflict with or result in the violation of any charter, by-law, ordinance, order, rule, regulation, statute or any other applicable provision of law or any order, rule, regulation or judgment of any court or other agency of government.

3.12 The city/town represents that it has duly obtained all necessary votes, resolutions, appropriations, and local approvals for the actions set forth in **SECTION 4- SCOPE OF GRANT**, and has taken all actions necessary or required by law to enable it to execute this Grant and to perform its obligations hereunder.

3.13 The city/town has read and fully understands the provisions of the Massachusetts Conflict of Interest law, M.G.L. c. 268A, and has implemented policies and procedures to ensure that all employees, agents, consultants and representatives working on or for any project for which Grant funds will be used are in compliance with G.L. c. 268A to the extent that it is applicable.

3.14 The city/town has implemented policies and procedures to prevent and eliminate fraud, waste and abuse of public funds in connection with the expenditure of the funds from this Grant.
3.15 The city/town represents that all meetings of all public bodies in the city/town that relate in any way to the expenditure of funds from this Grant have been conducted, and shall be conducted, in compliance with the provisions of G.L. c. 30A, §§18–25, 940 CMR 29.00 *et seq*., and all other applicable law.

SECTION 4
SCOPE OF GRANT

Having received and reviewed the *letter of authorization* dated DATE and supporting documentation submitted by the city/town and (developer), the Commission hereby finds that the following are necessary and reasonable costs in determining the impact of a proposed gaming establishment and/or for negotiating a community mitigation impact agreement:

1. Description of service/service performed by/estimated cost
2.
3.

SECTION 5
DISBURSEMENT OF THE GRANT

Subject to the terms and conditions set forth in this Grant, the Commission shall disburse Grant funds in accordance with the following:

1. Having completed review of the *letter of authorization* submitted by and between the city/town and [developer] the Commission has determined that the city/town is eligible for funding in the amount set forth in **SECTION 2- THE GRANT**.
2. The funding is solely intended for use towards the execution of the items delineated in **SECTION 4- SCOPE OF GRANT**.
3. Within 30 days of execution of this instrument the Commission shall either issue a check or transfer monies electronically to the city/town. The check shall be delivered via certified or registered mail to the city/town. The city/town shall provide the Commission, in writing, the name and address of the individual to whose attention the check should be directed or provide wiring instructions.
4. Acceptance and processing of the monies by the city/town shall indicate receipt of the grant funds in full satisfaction of the request articulated in the *letter of authorization.*
5. To the extent that the municipality realizes a need to make further expenditures in the determination of the impact of a proposed gaming establishment and/or for negotiating a community impact mitigation agreement, it must submit a new *letter of authorization* for review and consideration by the Commission for purposes receiving a separate Grant.

SECTION 6
FINAL REVIEW AND AUDIT

Upon expenditure of all funds distributed under this Grant, the city/town shall forward an accounting to the Commission of all expenditures made pursuant to the terms of this Grant which shall include, at a minimum, an itemization of all funds expended, a description of the work performed or service provided, the identification of the party that performed the work or provided the service, a copy of the final invoice, and proof of payment. The Commission may request any supplemental information it deems necessary to ensure that the funds were expended in accordance with **SECTION 4- SCOPE OF GRANT.** The Commission may conduct, or cause to be conducted, an audit of the transactions and expenditures made by the city/town in connection with this Grant.

In the event that the Commission detects any irregularity in the expenditure of any Grant funds, it may request reimbursement of those misspent funds or pursue any other remedy available by law.

Unused funds must be promptly returned to the Commission upon the completion of the municipality's review of the impact of a proposed gaming establishment and negotiation of a community mitigation impact agreement. In the event of disagreement, the Commission may make a final determination as to when the review and negation is complete.

SECTION 7
INDEMNIFICATION

To the fullest extent permitted by law, the city/town shall indemnify, defend, and hold harmless the Commission, commissioners, agents and employees from and against any and all claims, actions, damages, awards, judgments, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorney's fees and costs of investigation and litigation whatsoever which may be incurred by or for which liability may be asserted against the Commission, its commissioners, agents or employees arising out of any activities undertaken by, for, or on behalf of the city/town relative to the expenditure, disbursement, or use of the funds associated with this Grant or any activities, acts or omissions in relation to the Grant including, but not limited to, the performance of any contract or obligation directly or indirectly related to the Grant. This Section shall not be construed to negate or abridge any other obligation of indemnification running to the Commission which would otherwise exist.

No member or employee of the Commission shall be held personally or contractually liable by or to the city/town or the developer under any provision of this Grant, because of any breach of this Grant, or because of its execution or attempted execution.

SECTION 8
NOTICE

Any notices required or permitted to be given by either of the Parties hereunder shall be given in writing and shall be delivered to the addressee (a) in-hand (b) by certified mail, postage prepaid, return receipt requested; or (c) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

If to the Commission:

Massachusetts Gaming Commission
84 State Street, suite 720
Boston, MA 02109
Attention: Executive Director

If to the District:

or to such other address or addressee as the Commission and the city/town may from time to time specify in writing. Any notice shall be effective only upon receipt.

SECTION 9
AMENDMENTS

This Grant may be amended only through a written amendment signed by duly authorized representatives of the Commission and the city/town.

SECTION 10
ATTESTATION

All certifications, filings, and submissions to the Commission in furtherance of this Grant shall contain a statement, signed by a duly authorized representative of the city/town, that such certification, filing, or submission is true, complete and accurate, to the best of the city/town's knowledge.

SECTION 11
GOVERNING LAW, VENUE, AMENDMENT and SEVERABILITY

10.1 This Grant shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts. In case any provision(s) hereof shall be determined invalid or unenforceable under the applicable law, such provision(s) shall, insofar as possible, be construed or applied in such manner as will permit the enforcement of this Grant; otherwise, this Grant shall be construed as though such provision(s) had never been made a part hereof.

10.2 Any civil action brought against the Commission by the city/town, or any person or entity claiming through or under it, which arises out of the provisions of this Grant, shall only be brought in the Superior Court for Suffolk County, Massachusetts. The city/town, for itself and for any person or entity claiming by through or under it, hereby waives any defenses that it may have as to the venue to which it has agreed herein, including, but not limited to, any claim that this venue is improper or that the forum is inconvenient. The city/town for itself and for any person or entity claiming by through or under it, hereby waives all rights, if any, to a jury trial in any civil action against the Commission that may arise out of the provisions of this Grant.

10.3 This Grant and any amendments hereto shall be deemed null and void and of no further force or effect unless it is executed by a duly authorized representative of the Commission and a duly authorized representative of the city/town. The undersigned, who are signing on behalf of the city/town, hereby warrant and represent that they possess the full legal authority to execute this Grant on behalf of the city/town and to bind the city/town to its terms and conditions. In the event that the Commission later determines that the undersigned are not duly authorized to execute this Grant and to bind the city/town, the Commission may, in its sole discretion, take whatever action it deems necessary to terminate this Grant, to suspend or terminate payments to the city/town and to recover any funds disbursed to the city/town. Any rights and remedies available to the Commission under the provisions of this Grant shall be in addition to any other rights and remedies provided by law.

SECTION 12
WAIVERS

11.1 The terms, conditions, covenants, duties and obligations contained in this Grant may be waived only by written agreement executed by duly authorized representatives of the Commission and the city/town. No waiver by either party of any term, condition, covenant, duty or obligation shall be construed as a waiver of any other term, condition, covenant, duty or obligation nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or a different section, subsection, paragraph, clause, phrase, or other provision of this Grant. Forbearance or indulgence in any form or manner by either Party to this Grant shall not be construed as a waiver, nor in any way limit the remedies available to that party.

11.2 The Commission's payment(s) to the city/town under this Grant or its review, approval or acceptance of any actions by the city/town under this Grant shall not operate as a waiver of any rights or remedies available to the Commission under this Grant or as otherwise provided by law.

IN WITNESS WHEREOF, the Massachusetts Gaming Commission and the city/town of [NAME] have caused this Grant Agreement to be executed by their duly authorized representatives this _____day of _____ in the year 20____.

MASSACHUSETTS GAMING COMMISSION

By: _____
(signature)

_____
(print name)

Title: _____

CITY/TOWN OF XXXXXXXXXXX

By: _____
(signature)

_____
(print name)

Title: _____

5.c

Question 1 Analysis

Question: How will we define "surrounding communities" and should we publish that definition early in the process?

Discussion: There is a threshold question whether the MGC should further define surrounding communities. The issue of surrounding communities was a significant one in the legislative debate on the Gaming Act[1]. Although the Gaming Act requires the MGC to promulgate certain regulations in MGL c. 23K, §5, it does not require the MGC to further define "surrounding communities".[2] Instead, MGL c. 23K, §17(a) requires that the MGC shall identify "which communities shall be designated as the surrounding communities"... "after a review of the entire application and any independent evaluations." (emphasis added.) MGL c. 23K, §17(a) further states that in making the determination that a community is a surrounding community, "the commission shall consider the detailed plan of construction submitted by the applicant, information received from the public and factors which shall include, but not be limited to, population, infrastructure and distance from the gaming establishment and political boundaries." The structure of the MGL c. 23K application process anticipates that no statutory, and perhaps no regulatory definition, will fully resolve questions about what is a surrounding community, since the MGC is required to make a determination regarding such designations after the application is submitted. This suggests that the Legislature intended the MGC to make a case by case determination of the applicability of the surrounding community designation.

The definition of surrounding community is important both in the application stage and in decisions about how funds are allocated under the community mitigation fund. Another threshold question is whether a community can receive funds from the community mitigation fund even if it is not designated a surrounding community in the application stage. MGL c. 23K, §61 states that funds shall be available to assist communities and surrounding communities in offsetting costs related to gaming facilities including "communities ...in the vicinity of a gaming establishment". Because of the use of language (communities in the vicinity of a gaming establishment) distinct from the term "surrounding communities", it appears that a community need not be designated a surrounding community in order to receive funds from the community mitigation fund. This interpretation is further supported by MGL c. 23K, § 61's language specifying that "parties" instead of "host and surrounding communities" may request funds from the Mitigation Fund

Within this statutory context, the MGC has options:

1. Rely on just the statutory factors noted below in a case by case determination at the time of review of Phase 2 applications before the MGC, with no further guidance.
2. Through a guideline or a regulation, further refine the statutory factors with examples of the types of impacts that, taken together collectively, would result in a presumption that one is a surrounding community.

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[1] See the attached list of amendments filed to the Gaming Act during the debate in the Senate and House of Representatives.

[2] In comparison, MGL c. 23K, §5 requires the MGC to promulgate regulations covering 18 specific topics such as "the criteria for evaluation of the application for a gaming license including, with regard to the proposed gaming establishment, an evaluation of architectural design and concept excellence, integration of the establishment into its surroundings, potential access to multi-modal means of transportation, tourism appeal, level of capital investment committed, financial strength of the applicant and the applicant's financial plan"

3. Establish bright line tests through regulation prior to RFA-2 applications that would result in a surrounding community determination; or specifically determine which communities are surrounding communities to sites of gaming facilities identified by Phase 1 applicants.

Option 1. Option 1 places the most responsibility on the applicant to determine in the first instance which communities meet the definition and is consistent with the provisions of MGL c. 23K, §17(a) which states that the MGC shall make any surrounding community determination "a]fter a review of the entire application and any independent evaluations." While an unduly limited determination of surrounding communities by an applicant may limit the size of the applicant's mitigation financial commitments, applicants that fail to properly identify surrounding communities risk a less competitive application. Pursuant to MGL c. 23K, §18(19), the MGC shall weigh whether a potential facility has gained "public support in the host and surrounding communities." Further, such applicants risk the potential delay in the review of their application attendant to the MGC surrounding community determination process and potentially the requirement that the applicant negotiate an agreement with any newly designated surrounding community.

While Option 1 places proper responsibility on the applicant to make the first instance determination of surrounding communities, it is the least clear of the three options and fails to provide communities with guidance on whether an applicant should be engaging them in the application process.

Further, Option 1 may place a community at a disadvantage in determining the negative impacts that would be addressed in a surrounding community agreement. Because some communities may not be designated as a surrounding community until after the application is filed, those communities may not have access to resources to identify impacts prior to the application. MGL c. 23K, §17(a) establishes a window of thirty days within which an applicant and a newly designated surrounding community shall reach an agreement. Prior to the designation of becoming a surrounding community, no community can request funding from the applicant's application fee for review of impacts.[3] Thus, a newly designated surrounding community may have very little time to use any resources to determine impacts for the purpose of such regulations. In situations where no agreement could be reached in such thirty day period, perhaps evaluative resources could be utilized during the period after the thirty days when the MGC is required to help the parties to reach an agreement.

Option 2. Option 2 provides more guidance to both applicants and communities about what the MGC would deem to be a surrounding community. However, the determination of examples of impacts without the benefit of the specific details of an application is difficult. Below (in blue) we provide examples of impacts that could be considered by the Commission, after substantial input and revision. These examples are grouped within each of the factors that the statute directs in the consideration of what is a surrounding community. The examples are left intentionally broad and without numeric specificity.

It is anticipated that the examples (once finalized after substantial input) could be utilized by applicants and communities in a few important ways. First, applicants and potential surrounding communities could use such factors in any discussions prior to the filing of an application regarding the surrounding community status of a particular community. Also, applicants and potential surrounding communities could provide further evidence to the Commission after the application has been filed of the applicability of some or many of the factors and examples. In such event, each side could present evidence about

[3] MGL c. 23K, §4(7) (the powers of the Commission) states that "the commission may receive and approve applications from a municipality to provide for reasonable costs related to legal, financial and other professional services required for the negotiation and execution of host and surrounding community agreements as provided in section 15, and to require that such costs be paid by the applicant for a gaming license." Unless a community is a surrounding community, this section does not apply. However, there is no prohibition against potential surrounding communities requesting funding directly from applicants prior to the filing of the RFA-2 application.

the applicability of each of the factors, utilizing the provided examples or other evidence. At the time of deliberation, parties could provide more numeric, specific standards to provide further evidence that a particular factor or example provides evidence that a community either is or is not a surrounding community. For example, achievement or non-achievement of one of the MEPA thresholds (e.g. generation of 3,000 or more unadjusted new additional daily trips on roadways providing access to a single location, new withdrawal or expansion in withdrawal of 100,000 or more gpd from a water source that requires new construction for the withdrawal) impacting the particular community could be submitted as evidence.

The Gaming Act describes the factors that the MGC would take into account in making such a determination:

1. Geographic proximity. in order to be deemed a surrounding community, a municipality must be in "proximity to a host community" and "distance [of the community] from the gaming establishment and political boundaries" is to be considered.

While proximity to the host community and to the facilty could be viewed as independent factors, they might need to be considered in relation to each other. For example, while a common understanding of "surrounding communities" could be ones that geographically border a host community, such a definition fails to recognize that a gaming facility may be sited a far distance from a bordering community such that the community may face little or no impacts from the facility. This is a made more of a possibility when the host community is geographically large. Further, a community which has no border with a host community could experience significant impacts if its roads would be primary method of access to the gaming facility, for example. If the Legislature intended such a "common understanding" definition, it would have been very easy to include that standard in the Gaming Act. It did not do so. While sharing a common border with a host community should not result in a presumption of surrounding community status, the common border deserves to be considered as a factor.

If a community is one mile away from a gaming facility, it is likely to experience impacts. If a community is 50 miles away from a gaming facility, it is less likely to experience impacts. However, even within those extremes, arguments are possible that communities may or may not experience some impacts. For example, venue operators very far from the Connecticut casinos have indicated that their business is impacted. The Commission could set a number of miles or a commuting distance which it believes is a good indicator of the potential of impacts. However, absent some other justification, such a number or commuting distance could be attacked as being arbitrary. Instead, when the MGC is charged with determining whether a particular community before the MGC is a surrounding community, the MGC could instead just use the common sense approach that geographic proximity should be used as more of a factor in determining that a community is a surrounding community if that community is close to both the host community and the gaming facility. A potential surrounding community many miles away and of a lengthy commuting distance from a host community and gaming facility should be less likely to be viewed as a surrounding community. The Commission could potentially weigh the additional example of the proximity of residential areas in a potential surrounding community to the host community and gaming facility.[4] Proximity to residential areas is a commonplace tool in measuring impacts.

Below are a listing of potential examples that could be considered

- Proximity to host community
- Shared border with host community
- Proximity to gaming facility

[4] Please note that this suggestion was rejected by the Legislature as part of its consideration of amendments.

- Proximity of residential areas in potential surrounding community to gaming facility

2. Impact on transportation infrastructure. Pursuant to the MGL c.23K, §2 definition, surrounding communities include "municipalities from which the transportation infrastructure provides ready access to an existing or proposed gaming establishment." The term "ready access" is not defined. While a local road that feeds directly to a gaming facility would clearly provide "ready access", it is less clear whether "ready access" is provided by a community's federal interstate connection when that interstate also runs through many other communities.

Below are a listing of potential examples that could be considered:

- Level of service impacts on community including but not limited to projected changes in level of service at identified intersections and increased volume of trips on local streets
- Anticipated degradation of infrastructure from additional trips to gaming facility
- Transit ridership and station parking impacts
- Signficiant project vehicle trip generation weekdays and weekends for a twenty-four hour period and A.M. and P.M. peak vehicle trips generated on state and federal roadways intersecting a community

3. Development Impact. MGL c. 23K requires the MGC to evaluate the "detailed plan of construction" in making the surrounding communities designation and states that surrounding community is one impacted by the "development ... of a gaming establishment." Thus, the MGC shall evaluate pre-operational impacts on communities in making the surrounding communities designation.

Below are a listing of potential examples that could be considered:

- Construction noise
- Construction vehicles on community roadways
- Construction period traffic impact

4. Operational Impact. "[I]mpacts from the ...operation of a gaming establishment" are not further defined in the MGL c. 23K, §2 but may be described in other sections of the Gaming Act which describe impacts to be reviewed, including the [positive] impact on" local businesses in host and surrounding communities", the impact on "regional tourism industry", MGL. C. 23K, §18, the impact on the local and regional economy, including the impact on cultural institutions and on small businesses in the host community and surrounding communities (MGL c. 23K, §9(13), and "negative consequences of their business operations" (MGL c. 23K, §1) perhaps such as potential increased crime. MGL c. 23K, § 61 also lists certain potential operational impacts including local and regional education, transportation, infrastructure, public safety, housing, environmental impacts, and mentions impacts on water districts.

Below are a listing of potential examples that could be considered:

- Public safety impacts
- Increased demand on local and regional water and sewer systems
- Impacts from storm-run-off, associated pollutants, and changes in drainage patterns
- Stresses on community housing stock including any projected negative impacts on the appraised value of housing stock due to a gaming facility
- Negative impact on local, retail, entertainment, and service establishments
- Demonstrated impact on public education

5. Population. It is unclear how "population" shall factor into the determination of a surrounding community and whether the population shall include both the population of the host and surrounding community.

Option 3. Option3 would provide the most certainty regarding which communities are surrounding communities prior to the application. However, it is clear from the statute that the Commission shall make such definitive decisions about which communities are surrounding communities only "after a review of the entire application and any independent evaluations", pursuant to MGL c. 23K, §17(a). A pre-determination of which communities are surrounding communities prior to such an evaluation would seem to contravene the statute. Further, establishing bright line tests prior to review of the application may be akin to such a pre-application predetermination and thus may also not be in keeping with the statute. Further, given the wide ranging circumstances and impacts likely from each gaming facility and with each host community, establishing supportable bright line tests may not be possible.

Recommendation: It is recommended that the Commission adopt Option 2 and provide further refinement of the types of impacts that, taken in their totality, would have an impact on whether the Commission would determine a community to be a surrounding community after the Commission considers the RFA-2. The Commission would use the Option 2 factors and examples to organize its discussion in such a determination after an application has been filed.

In order to refine the above factors and examples, it is recommended that the MGC solicit immediate further public input relating to the discussion of this question. The MGC will then evaluate any comments received and publish a revised listing of factors and examples that the Commission will use in its discussions. Once finalized, the Commission would issue an advisory on the issue that can be utilized by host communities, surrounding communities, and applicants in their prior-to-application discussions. The advisory should stress that attention should be paid in such discussions to ensure that objective impacts are considered. In order to be useful to all parties involved in current discussions, the Commission should publish such advisory in January 2013.

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Statutory Language: MGL c. 23K, §2 defines "[s]urrounding communities" as "municipalities in proximity to a host community which the commission determines experience or are likely to experience impacts from the development or operation of a gaming establishment, including municipalities from which the transportation infrastructure provides ready access to an existing or proposed gaming establishment."

MGL c. 23K, §17(a) states: "After a review of the entire application and any independent evaluations, the commission shall identify which communities shall be designated as the surrounding communities of a proposed gaming establishment; provided, however, that any community that has negotiated a surrounding community memorandum of understanding with the applicant that was submitted with the application shall be considered a surrounding community by the commission. In making that determination, the commission shall consider the detailed plan of construction submitted by the applicant, information received from the public and factors which shall include, but not be limited to, population, infrastructure and distance from the gaming establishment and political boundaries. If the commission determines a city or town to be a surrounding community and the applicant has not finalized negotiations with that community in its application pursuant to section 15, the applicant shall negotiate a signed agreement with that community within 30 days and no action shall be taken on its application prior to the execution of that agreement. Notwithstanding clause (9) of said section 15, in the event that

an applicant and a surrounding community cannot reach an agreement within the 30-day period, the commission shall have established protocols and procedures for ensuring the conclusion of a negotiation of a fair and reasonable agreement between an applicant and a surrounding community in order to allow the applicant to submit a timely and complete application."

DRAFT FOR DISCUSSION PURPOSES ONLY

1/16/13

109.01: Determination of Surrounding Communities

(1) General. The following communities are determined to be surrounding communities concerning the development and operation of a specific gaming establishment for purposes of M.G.L. c. 23K §§ 2, 4(7), 4(33), 9(a)(13), 15(6), 15(7), 15(9), 15(11), 17(a), 17(c), 17(d), 18(2), 18(14), 18(19), 19(d), 61(b), 68, 71(2)(vii):

a. Each community located in the commonwealth that has been designated as a surrounding community by an applicant for a category 1 or category 2 license in the RFA-2 application, written notice of which designation shall be provided by the applicant to the community's chief executive officer as defined in M.G.L. c. 4, § 7, cl. fifth B, no later than the time the application is filed with the commission;

b. Each community located in the commonwealth that has executed a surrounding community agreement with the applicant for a category 1 or category 2 license which agreement was submitted with the RFA-2 application and is in compliance with M.G.L. c. 23K, § 15(9); or

c. Each community located in the commonwealth that has been designated a surrounding community by the commission under M.G.L. c. 23K, § 17, and 205 CMR 109.01(2) upon written request by the community's chief executive officer for the community to be designated a surrounding community with respect to the specific gaming establishment and the reasons therefor; provided, that any such request by a community to be so designated must be received by the commission no later than twenty-one (21) days after the commission's posting of a notice on its website that it has received the RFA-2 application for which the community requests to be designated as a surrounding community.

(2) Surrounding Community Determination by Commission. In addition to the communities designated as surrounding communities under 205 CMR 109.01 (1)(a) and 109.01(1)(b), the commission may designate additional surrounding communities after a review of the entire application for a category 1 or category 2 license and any independent evaluations. The commission will make its determination at an open meeting at least 30 days prior to the public hearing on the application held pursuant to M.G.L. c. 23K, § 17(c). The commission's determination shall be final and shall not be subject to further review. In determining whether a community is a surrounding community, the commission will exercise its discretion based on consideration of the RFA-2 application, the RFA-2 applicant's detailed plan of construction, any independent evaluations, pertinent information received from the community seeking to be designated as a surrounding community, the RFA-2 applicant, the host community, and the public, and any additional information that the commission

determines to be beneficial in making its determination. In exercising its discretion, the commission will consider factors pursuant to M.G.L. c. 23K, § 4(33) and 17(a) such as population, infrastructure, distance from the gaming establishment and political boundaries, and will evaluate whether:

(a) The community is in proximity to the host community and the gaming establishment included in the RFA-2 Application. The commission may take into account, but not be limited to, such factors as, any shared border between the community and the host community; and the geographic and commuting distance between the community and the host community, between the community and the gaming establishment, and between residential areas in the community and the gaming establishment.

(b) The transportation infrastructure in the community will be significantly and adversely affected by the gaming establishment. The commission may take into account, but not be limited to, such factors as ready access between the community and the gaming establishment; projected changes in level of service at identified intersections; increased volume of trips on local streets; anticipated degradation of infrastructure from additional trips to and from a gaming establishment; adverse impacts on transit ridership and station parking impacts; significant project vehicle trip generation weekdays and weekends for a twenty-four hour period; and peak vehicle trips generated on state and federal roadways within the community.

(c) The community will be significantly and adversely affected by the development of the gaming establishment prior to its opening. The commission may take into account, but not be limited to, such factors as noise and environmental impacts generated during its construction; increased construction vehicle trips on roadways within the community and intersecting the community; and projected increased traffic during the period of construction.

(d) The community will be significantly and adversely affected by the operation of the gaming establishment after its opening. The commission may take into account, but not be limited to, such factors as potential public safety impacts on the community; increased demand on community and regional water and sewer systems; impacts on the community from storm water run-off, associated pollutants, and changes in drainage patterns; stresses on the community's housing stock including any projected negative impacts on the appraised value of housing stock due to a gaming establishment; any negative impact on local, retail, entertainment, and service establishments in the community; and demonstrated impact on public education in the community.

(e) The community will be significantly and adversely affected by any other relevant potential impacts that the commission considers appropriate for evaluation based on its review of the entire application for the gaming establishment.

(f) In determining whether a potential impact on a community is a significant and adverse impact, the commission will consider whether the impact to be experienced by the community is different in kind or greater in degree than impacts on other communities that are geographically nearby the community, the host community and the gaming establishment. The commission's evaluation shall not be limited to the foregoing factors but may include any information considered pertinent by the commission in making a determination whether an impact is a significant and adverse impact.

(3) Surrounding Community Agreements. [RESERVED].

(4) Availability of Other Impact Funding. Any finding by the commission that a community is not a surrounding community for purposes of the RFA-2 application shall not preclude the community from applying to and receiving funds, if so available, from the Community Mitigation Fund established by M.G.L. c. 23K, § 61, the Transportation Infrastructure and Development Fund established by M.G.L. c. 23K, § 62 and the Public Health Trust Fund established by M.G.L. 23K, § 58.

(5) Limited Surrounding Community Definition to Encourage Community Disbursements. To encourage applicants to make funds available to communities to evaluate potential impacts and to potentially negotiate a community impact agreement prior to the submission of an RFA-2 application and prior to the commission's final designation of the surrounding communities of a proposed gaming establishment pursuant to 205 CMR 109.01(2), an applicant's execution of a letter of authorization pursuant to 205 CMR 114.03 shall not be considered evidence that the community receiving disbursements is or should be designated as a surrounding community pursuant to 205 CMR 109.01(2); rather, the applicant's execution of a letter of authorization and the community's receipt of funds pursuant to 205 CMR 114.03 shall designate the community as a surrounding community only for the limited purposes of providing funding to pay for the cost of determining the impacts of a proposed gaming establishment and for potentially negotiating a community impact mitigation agreement.

REGULATORY AUTHORITY

205 CMR 109.01: M.G.L. c. 23K, §1, §2, §4, §9(13), §15(19), §17(a).

DRAFTING ASSIGNMENTS

- Gaming Consultants
- MGC legal staff
- Anderson & Kreiger

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BRIEFING MEMORANDUM

To: Stephen P. Crosby, Chairman
Gayle Cameron, Commissioner
James F. McHugh, Commissioner
Bruce Stebbins, Commissioner
Enrique Zuniga, Commissioner

From: David A. Murray
Jennifer Durenberger, Director of Racing
Danielle Holmes, Staff Attorney

Date: January 14, 2013

INTRODUCTION

St. 2011, c. 194, §104 directs the Commission to review and analyze the current pari-mutuel and simulcast laws to determine "the efficacy of those laws and the need to replace [them]." G.L. c. 23K ("Gaming Act") authorizes the Commission to "enforce any general and special law related to pari-mutuel wagering and simulcasting[1]." These laws include: chapters 128A and 128C (collectively the "Racing Statutes"); and the provisions of the Gaming Act and other provisions of St. 2011 c. 194 affecting pari-mutuel wagering (including simulcasting).

Our review and analysis have looked at harmonizing the racing laws with the Gaming Act, in particular as they affect simulcasting. We have also looked at updating certain aspects of the pari-mutuel takeout formulas in Massachusetts in light of simulcasting changes arising out of the Gaming Act, and bringing them into line with best practices and with the approaches taken by others states. Other than for the subject matter of the changes recommended herein, we are satisfied that the Racing Statutes are effective to authorize all regulatory action necessary to maintain fair, effective and timely regulation of live horse racing and pari-mutuel racing in Massachusetts.

As a result of that review and analysis, we have identified four issues that we recommend for inclusion in the Commission's report to the Legislature. The first issue deals with harmonizing simulcasting under the Racing Statutes with simulcasting under the Gaming Act,

[1] The Gaming Act retains the conceptual separation of gaming from pari-mutuel wagering under the Racing Statutes. It makes clear that the Racing Statutes remain the primary sources of the Commission's authority over racing matters and pari-mutuel racing. While St. 2011 c. 194, §§39 and 41 provide for sunset of the Racing Statutes, the provisions of the Gaming Act anticipate "the continuation of chapters 128A and 128C of the General Laws in this act." St. 2011 c. 194, §104.

and in light of formulas used by other states. The second looks at the current simulcasting fee and premium formulas and structure under the Racing Statutes, in the context of simulcasting licenses for non-gaming licensees under the Gaming Act. The third considers rebating and wagering on credit under the Racing Statutes, in light of both being permitted under the Gaming Act. The fourth revisits the policy behind the capital improvements and promotional trusts, in light of expanded gaming.

While gaming and pari-mutuel wagering regulation have been merged into a single commission, the authority to regulate each derives from different statutes; gaming is governed by the Gaming Act, and pari-mutuel wagering (with few exceptions) by the Racing Statutes. This retention of a dual-source regulatory authority is evident from the provisions of the Gaming Act (e.g., §§19, 20, 24 and 60)[2]; and in the Legislature's formulation of the underpinnings for its permission to the Bristol and Suffolk county greyhound meeting licensees to continue to simulcast.[3] The Legislature did not simply declare that they could continue to simulcast, perhaps as licensees under §7(b) of the Gaming Act, in light of the greyhound racing ban. Instead, it premised that permission on those licensees continuing to "remain licensed as greyhound racing meeting licensees" pursuant to chapter 128A and chapter 128C. Then, because of the ban on greyhound racing, the Legislature again looked to the simulcasting statute (G.L. c. 128C) for the means to locate these simulcasting licenses within the regulatory framework of the simulcasting statute, yet preserve the ban: it declared that "the days of the year between January 1 and December 31 of each year shall be dark days pursuant to said chapter 128C . . . ." We interpret this legislative positioning of the right of these greyhound racing licensees to continue to simulcast within chapters 128A and 128C, even when racing itself is prohibited, as an affirmation that pari-mutuel wagering on simulcast races outside of the regulatory framework of the Racing Statutes continues to be prohibited in Massachusetts. We will again pick up this issue of the broader meaning and implications of St. 2011 c. 194, §92, in the context of our consideration of harmonizing simulcasting rules for gaming and racing licensees.

However, before turning to the 4 issues mention above, we preface that analysis with some observations about the general powers of the Commission to interpret the Racing Statutes and the Gaming Act, and in particular the power to harmonize them into an efficient, integrated regulatory construct that promotes efficient regulation of both, consistent with the intent of the Legislature. We also report on some stakeholders' views as expressed in submissions to the Commission; and a general snapshot of various funding sources for the racing industry.

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[2] For racing licensees that also hold a gaming license, §§19 and 20 make their continued gaming licensure conditional upon performance of their live racing and simulcasting obligations under M.G.L. c. 128A and c. 128C; §24 increases the live racing minimums for entitlement to simulcast; and §60 provides that "the commission shall make distributions from the Race Horse Development Fund to each licensee under chapter 128A."

[3] Pursuant to St. 2011 c. 194, §92.

Commission's Authority to Interpret its Statutes

Massachusetts courts have repeatedly affirmed the deference due to an agency's interpretation of its own statutes, especially in the context of the kind of complex statutory framework that exists in the Racing Statutes and the Gaming Act[4]. The level of deference due is very high. The court in *Goldberg v. Board of Health of Granby*, 444 Mass. 627, 633 (2005) characterized it as deference "unless a statute unambiguously bars the agency's approach." This deference extends even to where an agency's interpretation of the statute alters the statute's scope. In *City Council of Agwam v. Energy Facilities Siting Board*, 437 Mass. 821, 828 (2002) the court said: "In general, we have given agencies broad discretion to interpret statutes that they enforce, lending 'substantial deference' to their interpretations. This deference has included approving agency regulations that, while technically enlarging the meaning of a statute, are consistent with its intent." Illustrative of this principle is *Massachusetts Auto Body Association, Inc. v. Commissioner of Insurance,* 409 Mass. 770, 775 (1991), where the SJC held that a Division of Insurance regulation permitting insurers to have fewer than 5 repair shops on their referral list was permissible, even though the pertinent statute *mandated* 5 or more shops on such a referral list. The Court said: "[W]e must apply all rational presumptions in favor of the validity of the administrative action and not declare it void unless its provisions cannot by any reasonable construction be interpreted in harmony with the legislative mandate."

Stakeholders' Views

In the course of our review and analysis on this project, we invited racing stakeholders and their organizations to submit written comments in connection therewith. Invitees included all race meeting licensees (including the former greyhound tracks), and the thoroughbred and standardbred horsemen and breeders. We also hosted a round table discussion at Suffolk Downs,

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[4] *See, e.g., State Board of Retirement v. Contributory Retirement Appeal Board et al.,* 77 Mass. App. Ct. 452, 455 (2010) ("Where an agency's construction of a statute is reasonable, the court should not supplant it with its own interpretation;" citing *Foresta v. Contributory Retirement Appeal Bd.*, 453 Mass. 669 , 676 (2009)); *Attorney General v. Dept. of Public Utilities,* 453 Mass. 191, 196 (2009) ("We will 'accord [ ] due weight and deference to an agency's reasonable interpretation of a statute within its charge;'" citing *MCI Telecomm. Corp. v. DTE,* 435 Mass. at 151 (2001)); *Boston Edison Co. v. Town of Bedford,* 444 Mass. 775, 783 (2005) ("We afford substantial deference to an agency's interpretation of a statute that it is charged with administering;" citing *Franklin W. Olin College of Engineering v. Department of Telecomm. & Energy,* 439 Mass. 857, 861 (2003); *John R. Elander & Son, Inc. v. Luther*, 74 Mass. App. Ct. 1114 (2009) (Unpublished) ("Finally, we review questions of statutory interpretation de novo, *Commerce Ins. Co. v. Commissioner of Ins.,* 447 Mass. 478, 481, 852 N.E.2d 1061 (2006), giving "substantial deference to a reasonable interpretation of a statute by the administrative agency charged with its administration enforcement...." [fn.6]; [fn.6: "This includes approving an agency's interpretation of statutory language that may be read two ways, particularly in cases involving the interpretation of a complex statutory and regulatory framework.").

with invitations to all. From the comments we received, and as is well-known in the industry, it is clear that pari-mutuel wagering on simulcast races is and has been for many years the primary economic engine for the survival of the racing industry in Massachusetts. Without simulcasting revenues, the racing industry, as a stand-alone industry, would be imperiled. Such peril would affect not only the tracks but also dependent state agricultural/farming interests in breeding, stabling, training, feeding, and maintaining open space within the Commonwealth.

Suffolk Downs, in its written submission to the Commission, declared that "simulcasting has become the economic lifeblood of the racing industry, and any loss of simulcasting rights would devastate any racing licensee." The standardbred breeders, in their comments, wrote that "an end to simulcast extensions would have a devastating impact on the breeders program and the farming sector in the Commonwealth." Plainridge commented that current law "maintains a carefully considered and developed balance of racing and simulcasting interests that have been forged since 1992," but urged that simulcasting should be limited to locations at which live racing occurs. Clearly, the success of the simulcast model is critical to the profitability of the tracks and as a source of funding for purses and breeding programs. The thoroughbred horsemen, however, criticize the current simulcasting schedules and formulas as "carve-outs" for tracks at the expense of those purses and breeding programs.

In our meetings with thoroughbred horsemen and their representatives, and in their written submissions, there were calls for a "universal percentage" takeout from all simulcast wagering to be allocated to purses and breeding programs. The sentiment expressed by the horsemen was that, rather than "tweaking" the simulcast rules, those rules should be rewritten in their entirety. They contend that the thoroughbred industry over the years has subsidized the greyhound and standardbred industries through below-market premiums, and sometimes no premiums at all. These horsemen contrast the 10% takeout from simulcast revenues under §7(b) of the Gaming Act with the 2% and 3% premiums paid by Plainridge and Raynham respectively. They say, moreover, that Raynham is an off-track betting facility and should not be subsidized by live racing at all. They suggest that the simulcasting provisions of the Gaming Act reveal a legislative intent to replace the current complexities with the flat 10% provided for in §7(b).

Racing Industry Funding

After passage of the Gaming Act, funding for the racing industry is currently derived from both pari-mutuel wagering and gaming revenue sources:

(i) Under the Racing Statutes

Under the Racing Statutes, industry funding comes, in the main, from a statutorily mandated takeout from the gross amounts wagered on live and simulcast races at thoroughbred and harness tracks, at state/county fairs, and from wagering on simulcast races presented by

greyhound licensees (under their St. 2011 c. 194, §92 statutory license). The takeout (exclusive of "breaks"[5]) comprises 19% of the gross amount wagered on so-called "straight" wagers[6], and 26% of the gross amount wagered on so-called "exotic" wagers[7]. The remainder of the gross amounts, net of the "breaks" and this takeout, is distributed to winning patrons. A portion of that takeout is returned to the licensee (as "commission" -- its share of the take), and the remainder supports horsemen's organizations, thoroughbred and standardbred breeding programs, jockey organizations, local aid to host communities, capital improvement projects and track promotion activities, Tufts veterinary school, health and other social services to backstretch employees (including to alleviate hardship due to illness or unforeseen tragedy), health and other welfare benefits to jockeys, combating compulsive gambling, and reimbursing the General Fund.

(ii) Under St. 2011 c. 194

Under the Gaming Act and other provisions of St. 2011 c. 194, funding is through the Racehorse Development Fund and the Racing Stabilization Fund. Revenue for the Racehorse Development Fund comes from 10% or more of the simulcasting revenues of a gaming licensee licensed to simulcast under the Gaming Act; 9% of the gross gaming revenues of the Category 2 gaming licensee; 2.5% of the Gaming Revenue Fund (comprising gross gaming revenues from each Category 1 gaming licensee); and 5% of the Gaming Licensing Fund. The Racehorse Development Fund benefits purses, thoroughbred and standardbred breeding programs, and horsemen and jockey organizations. The Racing Stabilization Fund (established by St. 2011 c. 194, §86) receives deposits from unclaimed winnings and "breaks," and the amounts that had formerly been in the Greyhound Capital Improvements Trust Fund and in the Greyhound Promotional Trust Fund. The Racing Stabilization Fund supports the humane care, maintenance and adoption of greyhounds, and kennel owners that housed racing dogs.

ANALYSIS

We now take up the following four, previously identified, issues:

1. Harmonizing simulcasting rights under the Racing Statutes and the Gaming Act.

2. Revisiting the current simulcasting fee and premium formulas and structure under the Racing Statutes, in the context of simulcasting licenses for non-gaming licensees under the Gaming Act.

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[5] Defined as "the odd cents over any multiple of 10 cents of winnings per $1 wagered." G.L. c. 128A, §1.

[6] Defined as "wagering on the speed or ability of any 1 running horse." G.L. c. 128A, §5(c).

[7] "Wagering on the speed or ability of a combination of more than 1 horse in a single pool." *Id.*

3. Rebating and wagering on credit under the Racing Statutes, in light of both being permitted under the Gaming Act.

4. Revisiting the policy criteria for the capital improvements and promotional trust funds, in light of expanded gaming.

I. Harmonizing simulcasting rights under the Racing Statutes and the Gaming Act.

Under current law, simulcasting is the subject not only of the Racing Statutes, but also of a number of provisions of the Gaming Act and of other provisions of St. 2011 c. 194. We have already, in the Introduction, mentioned St. 2011c. 194, §92 which established the continuing right of the former greyhound tracks to simulcast races pursuant to G.L. c. 128C, notwithstanding there being no live greyhound racing. In this section, we look at the effect of sections 7, 19, 20 and 24 of the Gaming Act upon simulcasting under the Racing Statutes.

Section 7(b), in material part, authorizes the Commission to "grant simulcasting licenses to a gaming establishment or an entity previously licensed pursuant to chapter 128A or chapter 128C . . . ." Section 19(e) provides, in material part, that if a Category 1 gaming license is awarded to an applicant with a "live racing license under chapter 128A" the gaming license shall be conditional upon the racing licensee maintaining and completing "the annual racing season under chapter 128A." Section 19(f) provides, in material part, that if a gaming license is awarded to an applicant with a "simulcasting license under chapter 128C" the gaming license shall be conditional upon the licensee "maintain[ing] the simulcasting license under said chapter 128C." The penalty for failure to do either of those things is mandatory suspension of the gaming license[8]. Section 20 has the same provisions and penalty, applicable to a Category 2 gaming licensee. Section §24, in material part , provides that a gaming licensee that also holds a racing licensee under c. 128A must, in order to keep the gaming license, "maintain an existing racing facility on the premises," and increase the number of live racing days to a minimum of 125 days [over a 3 year period]." Failure to do so also requires mandatory suspension of the gaming license. Thus, there are 3 varieties of simulcasting right:

(1) Simulcasting right possessed by a racing licensee that does not have a gaming license;

[8] The phrase "maintain a simulcasting license under said chapter 128C" is a locutionary error. There is no simulcasting "license" under G.L. c. 128C. Under c. 128C, the *right* to simulcast is appurtenant to a racing meeting license under c. 128A, providing that certain racing frequency thresholds are met. Presumably, the legislative intent in using this phrase is to import into §19, as a condition of continued gaming licensure, the entire body of pertinent c. 128A and c. 128C requirements related to simulcasting and live racing.

(2) Simulcasting right possessed by a gaming licensee that also has a racing license; and

(3) Simulcasting right, pursuant to §7(b) of the Gaming Act, granted to a gaming licensee that has no racing license, or to a former racing licensee.

While the first 2 are simulcasting rights vested, pursuant to G.L. c. 128C, in a race meeting licensee, the third is not.

The §7(b) license is a *gaming*, not a racing, license; it is a license to simulcast that is not dependent on licensure under the Racing Statutes. In evaluating a gaming licensee's application for such a license, the Commission must consider the effect of its issuance upon "preexisting facilities;" and issuance of such a license is conditioned upon payment of 10% of its simulcast revenues into the Race Horse Development Fund. Because by its very nature the §7(b) is not held by a racing licensee, the license does not appear to be subject to the conditions placed on a gaming license by §§19, 20 and 24. Moreover, §7 is silent on, and has presumptively left to the Commission to determine, the details of the regulatory regime under which the simulcasting license application is to be evaluated, is to be issued, and to which it is to be subject.

Section §7(b) creates a new simulcasting right that allows former racing licensees to seek simulcasting licensure. Because the §7(b) license is not expressly stated to be issued pursuant to the Racing Statutes, the sunset provisions of St. 2011 c. 194, §§39 and 41 (including the ultimate fate of rights granted thereunder) do not appear to apply to such a license, at least in the absence of further action by the Legislature of the Commission. There is also the question whether, e.g., the transferee of the Suffolk county *greyhound* license could (after expiration of St. 2011 c. 194, §92) use its status as an entity previously licensed under the Racing Statutes to simulcast as a §7(b) licensee, free of the live racing obligations it would have in relation to its simulcasting as a *horse* racing meeting licensee. Because a §7(b) simulcasting license is arguably neither a gaming license (because pari-mutuel wagering is not "gaming" as defined by the Gaming Act) nor a license under the Racing Statutes, the argument might be made that such a license is not subject to the prohibition in §19(a) (not more than 1 gaming license per region) or the one license per person rule ("no person shall . . . hold . . . more than 1 gaming license issued by the commission." §23(d)).

As against all of that, however, the Legislature has plainly demonstrated a commitment to continued racing and thoroughbred and standardbred breeding in Massachusetts[9], and an intent to

[9] As evidenced, e.g., by the establishment of the Race Horse Development Fund (Gaming Act §60), which anticipates substantial revenues, the largest beneficiaries of which are horsemen and breeders (80% of the Fund to the horsemen and purse accounts, and 16% to breeders). This also appears to be at least part of the intent behind the increase in racing days pursuant to G.L. c. 23K, §24, and the linking of suspension of a licensee's *gaming* license to failure to maintain and complete the racing season or to simulcast.

promote them. Any argument that §7(b) has decoupled simulcasting from the simulcasting regulatory framework under the Racing Statutes is highly improbable, especially because such decoupling would incentivize a gaming licensee, whose annual racing license has expired, to decline to renew that license, to abandon racing and to opt for obtaining a §7(b) license, which would (should it be decoupled from the Racing Statutes' regulatory framework) provide all the economic benefits of simulcasting, without the expense of live racing. Such a reading of §7(b) would also undermine legislative intent with respect to the obligations under §§19 and 20 of the Gaming Act to continue to "conduct live racing," or to "conduct simulcast wagering," and arguably convert them into 12-month obligations, well short of the term of their gaming license. With the revenues from simulcasting overwhelming those from live racing, such a reading of the Gaming Act would impute a legislative intent to open the door to tactical refusal to renew a racing license as a means of avoidance of the §§19, 20 and 24 obligations. Given what we conclude to be the intent of the Legislature regarding continued racing, we consider such a reading insupportable. "[I]t is a well-established canon of statutory construction that a strictly literal reading of a statute should not be adopted if the result will be to thwart or hamper the accomplishment of the statute's obvious purpose, and if another construction which would avoid this undesirable result is possible." *Watros v. Greater Lynn Mental Health & Retardation Ass'n, Inc.*, 421 Mass. 106, 113 (1995).

Decoupling would be a windfall for §7(b) licensees in that they would, under such a theory, be freed from all the current simulcast licensees' obligations under the Racing Statutes. Unlike other gaming licensees who happen to hold racing licenses, they would be exempt both from paying various chapter 128C fees to other Massachusetts tracks, and from being subject to the statutory takeouts (19% and 26%) from the total simulcast handle. This would mean that the payout on a winning bet on a simulcast race placed with a §7(b) licensee would likely be greater than that received from a chapter 128A licensee[10]. There is no support for the notion that such results were intended by the Legislature. They would incentivize manipulation of the system in a manner that would be calculated to thwart the Commonwealth's interests in protecting the agricultural as well as the commercial interests of the racing industry. They would tend to create regulatory uncertainty and inequities in connection with the implementation of a rational, equitable and uniform simulcasting framework.

[10] Section 7(b) of the Gaming Act provides that 10% of the total simulcasting wagers be withheld by the §7(b) licensee (to be placed in the Race Horse Development Fund). If the Legislature's silence as to the destination of the remaining 90% were to be construed as excluding Commission regulation thereof, it would mean that the licensee would arguably have a free hand as to the allocation of that 90% as between itself and winning patrons. Chapter 128A simulcasting licensees, on the other hand, must withhold 19% of all straight wagers and 26% of all exotic wagers, with the remainder (net of "breaks") returned to the winning patrons. Such differences in the amounts statutorily withheld would plainly constitute a competitive disadvantage for the gaming licensee who also holds a chapter 128A license. There is no basis in the Gaming Act or in the Racing Statutes for concluding that the Legislature intended such a result.

On the other hand, there is a reasonable basis for construing the Legislature's silence in §7(b) as authorizing regulatory action by the Commission to ensure that all those authorized to simulcast, whether under the Racing Statutes or under the Gaming Act, are treated equally. Any notion that §7(b) signals a legislative intent to decouple it from the simulcasting regulatory framework of chapters 128A and 128C is flatly contradicted by the Legislature's own approach to simulcasting licensure of the only current non-racing simulcasting licensees, i.e., the former greyhound tracks. In St. 2011 c. 194, §92, in authorizing simulcasting by these dog tracks, the Legislature did not just declare that the tracks could continue to simulcast. Instead, it premised the permission to simulcast on those tracks continuing to "remain licensed as greyhound racing meeting licensees" pursuant to chapter 128A and chapter 128C. Then, because of the ban on greyhound racing, the Legislature declared, again utilizing a statutory construct from the simulcasting statute, that "the days of the year between January 1 and December 31 of each year shall be dark days pursuant to said chapter 128C . . . ." Locating the right of those tracks to simulcast firmly within the regulatory framework of chapters 128A and 128C, even when dog racing itself is prohibited, amounts to a repudiation by the Legislature of the notion that simulcasting rights can exist outside that framework, and is inconsistent with any contention that the intent behind §7(b) was to decouple the simulcasting rights permitted therein from the c. 128C framework. We think it also significant that §7(b) itself provides for the Commission to set the level of takeout from the licensee's simulcast wagering pool; it would make no sense to grant such powers to the Commission but exclude general oversight powers with respect to simulcasting generally thereunder.

Bearing all this in mind, our conclusion is that, though the Gaming Act is silent on specific evaluation criteria for processing §7(b) simulcasting license applications (other than considering the effect on existing facilities), and on any conditions that may be attached to an issued license, the Commission's regulatory powers are broad enough to promulgate regulations regarding such criteria and conditions of issuance. The Commission's regulatory powers are broad enough to authorize supervision and control of all aspects of the §7(b) license and licensee activities consistent with the framework of the Racing Statutes. That authority derives, at least in part, from the Legislature's signaled intent not to authorize simulcasting outside of the regulatory framework of the Racing Statutes. Such a regulatory approach provides certainty and equity in simulcasting regulation among the various entities, and is calculated to promote fair and uniform regulation.

II. HARMONIZING CURRENT SIMULCASTING FEES AND PREMIUMS FORMULAS IN 128C, §2.

Although treated separately, this issue is integral to the matters raised in the previous section, particularly the regulatory tools (signal fees/premiums and the obligation to carry local

signals) that have traditionally been considered necessary to establish equitable conditions for simulcasting within the state.

Massachusetts racing licensees are generally permitted (at certain times and under certain conditions) to simulcast thoroughbred, harness and greyhound races from within, and from outside, Massachusetts. However, equal time must be given to a local licensee's signal if the signal being brought into Massachusetts is for a racing performance for which that local licensee is licensed. For example, if Suffolk is simulcasting a harness race from outside Massachusetts, it must give equal time to Plainridge's harness signal. The fee for carrying that local signal is statutorily fixed at 11%. In addition to that fee, however, Plainridge (in our example) will also receive a premium of 2% of the handle from Suffolk for the interstate signal. The same rules apply if Plainridge carries a thoroughbred signal from out of state. The premiums, by statute, go to fund "purse accounts of the horsemen or dogmen, respectively, at the race track licensee where the premiums were received and paid to the horsemen or dogmen as purses . . . ." Greyhound purses, of course, no longer exist.

There are exemptions from the obligation to make these premium payments related to "special events," with respect to which no premium is paid, and to a discretionary 12 week period chosen by the racing licensee during which no premium need be paid at all. The thoroughbred horsemen have taken exception to these exemptions, arguing (presumably because these specials event, and the lion's share of the 12-week premium exemption, relate mostly to thoroughbred racing) that these are simply carve-outs for tracks at the expense of thoroughbred purses and breeding programs. Presumably, they are reacting, at least in part, to the fact that these exemptions are *premium* exemptions that reduce revenues for purses.

Section §60 of the Gaming Act, which establishes a Race Horse Development Fund (Fund), might go some way to ameliorating the thoroughbred horsemen's concerns. The Fund is the principal statutory funding source for the racing industry from gaming. It is administered by the horse racing committee (Committee), the members of which include representatives of the thoroughbred and harness horsemen, and of the thoroughbred and standardbred breeding programs. Revenues for the Fund consist of at least 10% of the simulcast wagers from gaming licensees licensed under §7(b) of the Gaming Act; 9% of the gross gaming revenues of the Category 2 gaming licensee; 2.5% of the tax on gross gaming revenue from each Category 1 gaming licensee; and 5% of the Gaming Licensing Fund[11]. Distributions from the Fund benefit horsemen and purse accounts (80%); thoroughbred and standardbred breeding programs (16%); and fund health and pension, life insurance and other benefits for members of horsemen's organizations, including jockeys and drivers (4%). Thus, the Fund's principal beneficiaries sit on the Committee and have a voice in the amounts of the annual distributions, and any timing or other conditions considered appropriate to attach to those distributions. The beneficiaries of the

[11] This fund receives all gaming licensing fees; it expires on 12/31/2015.

Fund are generally the same as those benefitting from funding under the Racing Statutes except: the various promotional and capital improvement trust funds; the Division of Fairs (not to exceed $50,000); Tufts School of Veterinary Medicine (½% of the 26% take-out from exotic wagers – total for 2011 was $22,017.09); and an amount set aside for economic assistance to stable, backstretch, etc., employees facing hardship due to illness or unforeseen tragedy ($20,000).

In view of the §7(b) 10% minimum takeout, and the horsemen's and breeders' seats on the horse racing committee of the Race Horse Development Fund, and bearing in mind that, with gaming in full swing, substantial sums will likely be available for purses, we consider the current system of funding through *premiums* to be now superseded[12]. We recommend that the Commission suggest to the Legislature that it repeal the purse-funding premium provisions of G.L. c. 128C, §2, while leaving in place the 11% fee (or other fee established by the Commission) and the obligation to carry local signals.

Removing the premium will level the simulcasting costs for racing and non-racing simulcast licensees. It will also address the complaint of the thoroughbred horsemen that the premium formula is anachronistic. If simulcasting is to be expanded to non-racing gaming licensees, the need for reducing any competitive imbalance should be separated from the funding of purses if that funding can be handled separately. Moreover, this recommended approach is consistent with that taken by most states, as shown in the accompanying spreadsheet. This would bring Massachusetts in line with the rest of the country and modernize its approach to this critical element of the future of pari-mutuel wagering.

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[12] Other than through premiums and the §7(b) 10% minimum takeout, funding for purses under c. 128A currently include (for thoroughbreds) 8.5% of the 19% takeout from straight wagers and 9.5% of the 26% takeout from exotic wagers; and (for harness) 8% of the 19% takeout and 10% of the 26% takeout. Under c. 128C, §4, if simulcasting thoroughbreds as a guest track, when the host track is in Massachusetts, 5% of the 19% goes to the host track for purses, and 8.75% of the 19% takeout and 11.75% of the 26% takeout is retained by the guest track, of which at least 3.5% of that retained amount is paid to purses; if the host track is outside Massachusetts, between 4% and 7.5% goes to purses/horsemen. Under c. 128C, §5, if simulcasting harness races as a guest track, when the host track is within Massachusetts, 5% of the 19% takeout goes to purses at the host track, 7.33% of the 19% takeout is retained by the guest track, 3.5% of which goes to purses; 6% of the 26% takeout goes to purses at the host track, and of the 11% of the 26% retained by the guest track, at least 3.5% goes to purses; if the host track is outside Massachusetts, between 4% and 7.5% of the remainder of the amount retained by the guest track from the 19% and 26% takeouts are paid to purses/horsemen. Section 60 of the Gaming Act provides that 80% of the funds in the Race Horse Development Fund shall be deposited in an interest-bearing purse account for the benefit of the horsemen.

III. REBATING AND WAGERING ON CREDIT UNDER THE RACING STATUTES

Currently, both rebating and wagering on credit is prohibited in Massachusetts, whereas gaming on credit, rebating, and other modern marketing techniques applicable to gaming are permitted under the Gaming Act. Part of the modernization of pari-mutuel wagering is bringing it up to a status equivalent with that of gaming. In pursuance of that equal status, the Commission should consider recommending to the Legislature that it remove these prohibitions from pari-mutuel wagering.

Any difference in the nature of a wager (cards/dice/roulette-wheels/slots vs. horses) does not in our view justify disparate treatment. The Commonwealth long ago accepted the propriety of its sharing in revenues from pari-mutuel wagering; more recently, it has added gaming revenues. The modern racing business model has changed. As pointed out by Suffolk Downs in its written comments to the Commission, "racing facilities across the country commonly provide volume discounts, rewards or rebates to customers as an effective marketing tool." The national trend (described by Suffolk Downs as a "well-established business practice"), as shown in the accompanying spread sheet, is not to prohibit these marketing tools, except to the extent that some states prohibit the extension of credit by the licensee itself, while allowing the patron to use his or her own credit. Indications are that the removal of these prohibitions will tend to increase revenues for the Commonwealth. We have been unable to identify any consequences that might ensue from permitting pari-mutuel wagering on credit that are distinguishable from those that might be attendant to gaming on credit.

IV. CAPITAL IMPROVEMENTS AND PROMOTIONAL TRUST FUNDS

Under current law, the Commissioners serve as trustees for the Running Horse Capital Improvements Trust Fund, the Running Horse Promotional Trust Fund, the Harness Horse Capital Improvements Trust Fund, and the Harness Horse Promotional Trust Fund. The capital improvement fund is to be used for "alterations, additions, replacements, changes, improvements or major repairs to or upon the property owned or leased by the licensee and used by it for the conduct of racing, but not for the cost of maintenance or of other ordinary operations." M.G.L. c. 128A, §5(g). Promotional funds are to be used for "promotional marketing, to reduce the costs of admission, programs, parking and concessions and to offer other entertainment and giveaways." *Id.*

Under the current statutory scheme, the licensee pays the "breaks" and other statutorily identified takeouts into these funds. To use them, the licensee is required to submit "detailed business plans describing the specific promotions and capital improvements contemplated" (*Id.*), and the Commissioners, as trustees, review the proposals. The Commissioners, as trustees, are

required to "hire the services of architectural and engineering consultants, or the services of such other consultants as they deem appropriate, to advise them generally and to evaluate proposed capital improvement and promotional projects submitted to them for their approval." *Id.* This is a cumbersome and costly process which, in light of the Commission's broad powers with respect to the regulation of plant and equipment standards, could be better used to target specific beneficiaries that are in need of earmarked funds.

We recommend that the Commission suggest to the Legislature the elimination of both trust funds, with the concomitant authorization for the racing meeting licensees to keep the "breaks" monies. However, to protect the interests of the horsemen licensees as well as supporting the health and welfare of the horses, we recommend the creation of a new Backside Improvements Fund, funded by some percentage of the "breaks." These funds would be earmarked solely for use to maintain racing infrastructure on the backside, under the supervision of the Commission. The allocation would reduce the burden on the track licensees, while making sure that, for the first time, backside infrastructure needs will be elevated to direct beneficiary funding. This will put Massachusetts in the vanguard of this nascent national effort. This approach will also free the Commission from the current statutorily mandated burdens of hiring consultants to review proposals with respect even to relatively small expenditures.

STATE	MANAGED COMPETITION	WAGERING ON CREDIT	REBATES	GAMING SIMULCASTING	BACKSIDE IMPROVEMENTS
MASSACHUSETTS	Licensees' are permitted to simulcast out-of-state racing so long as they also carry in-state signals at a statutorily set price. The licensee is required to pay a fee to the in-state host track for their signal. The guest track is also required to pay a premium to the in-state licensee conducting the same type of racing (running or harness) as that which is being simulcast for each signal the guest track receives. (MGL 128A and 128C)	Licensees may not extend credit for pari-mutuel wagering . (MGL c 128A section 5C) Gambling on credit for gaming is permitted. (MGL c 23K)	Rebates on wagering are statutorily prohibited (MGL c 128A section 5C)	Section 7(b) of Ch. 23K allows for casino's to obtain a simulcasting license. The takeouts and distributions are different from the simulcasting provisions that are tied to live racing.	No earmark for backside improvements found.
MICHIGAN	Statutes require certain tracks to make their signal available to all tracks outside a geographic range (12mi), with a cap of 3% charge for the signal. Additionally, tracks are required to receive signals from certain tracks outside the same geographical range. If simulcasting interstate racing, the track must waive any rights it has to restrict simulcasting of other tracks per the Interstate Horse Racing Act of 1978. Additionally, if simulcasting interstate racing, the track must receive signals of certain intertrack simulcasts. If a racing meeting wants to simulcast a different breed than it is licensed to race it must obtain permission of all race meeting licensees in a certain area that are licensed to race that breed at their live racing meeting. (M.C.L.A. 431.318)	No mention of wagering on credit in the statute or regulations. Wagering on credit is allowed for casino gaming. (M.C.L.A. 432.209 Section 9(8))	No mention of rebates in the statute or regulations	Simulcasting at casino's is not allowed. (M.C.L.A. 432.209b.) However, if it is amended to be allowed and if video lottery is being conducted at horse racetracks, a casino licensee may apply for authorization to simulcast horse races. A casino licensee that is authorized to simulcast shall comply with all applicable provisions of the horse racing statutes. (M.C.L.A. 432.212 (9))	No earmark for backside improvements found.
NEW YORK	Written agreements are required between the sending and receiving tracks and other tracks running horses of the same breed (although consent cannot be withheld if the other live racing track is more than 30 miles away). If a signal is sent to one receiving track it is usually required to be made available to all receiving tracks and off-track betting offices. If agreements are unable to be made between the sending tracks and receiving tracks then binding arbitration takes place. OTBs are required to get letters of consent from tracks conducing the same type of meeting during the period of which simulcasting is proposed. OTBs must also receive written permission of tracks in a certain geographical radius (40mi). If OTBs receive interstate simulcasting then they must carry in-state simulcasting and accept wagers on the same. (McKinney's Racing, Pari-Mutuel Wagering and Breeding Law § 1007-09, 1014-17)	Prohabition againt wagering on credit (NY RAC PARI-M § 104-b) (there is proposed legislation to repeal this section)	No mention of rebates in the statute or regulations	A portion of gaming revenue from video gaming facilities (located only at racetracks) goes to support racing, breeding, and purses. *See,* N.Y. Tax Law § 1612	At least once annually the board shall, together with the track operator and representatives of the horsemen's organization and representatives of the jockeys organization representing licensed jockeys, inspect the entire facility, including the area commonly referred to as the backstretch, in order to determine whether the capital improvement plan submitted by the corporation for board approval includes adequate provision for expenditures relating to the continued health, safety and well-being of patrons, jockeys, backstretch personnel and the horses in their care. Different percentages are paid into the fund depending on whether it is a Thoroughbred or Harness track NY RAC PARI-M §236, §237(2)(b), and §319(2)(a),(b)

PENNSYLVANIA	The simulcasts shall be limited to horse races conducted at facilities outside of PA and televised to race track enclosures within PA. The State Horse Racing Commission and the State Harness Racing Commission shall only permit intrastate simulcasting of live racing between two licensed corporations, subject to requirements for the amount of live racing days and number of races per day. 4 P.S. § 325.234	Allows wagering on credit via account wagering. Credit can be added to the account via: cash deposits, check, money order or negotiable order of withdrawal, or made to the holders debit or credit card. Credit from winning wagers are also credited to the account. (4 P.S. § 325.218) Slot machine licensees may not extend credit for use with the slot machines, however, slot machine licensees who also have table games may extend credit for the table games as well as the slots (in the form of checks or cash equilivants) (Proposed legislation prohibits licensees who also have table games from extending credit). (4 Pa.C.S.A. § 1504)	No mention of rebates in the statute or regulations	No simulcasting without live racing. 4 Pa.C.S.A. § 1303(d)(2),(4) A percentage of each gaming licensee's revenue goes into a Race Horse Development Fund (4 Pa.C.S.A. §1405) Only gets distributed to Cat. 1 licensee's w/ live racing. Payout percentages are very similar to MA's.	A slot machine licensee or management company that also conducts racing shall file a report of planned future improvements to the licensed racetrack backside area with the Board no later than the 30 days following the end of each calendar year. The report must include: (1) A list of the improvements to be undertaken over the next 3 years. (2) The projected start date and completion date of each improvement. (3) The estimated cost of each improvement. (4 Pa.C.S.A. § 1404)(PA code 441a.22)
DELAWARE	Simulcasting- each host association simulcasting its performance, if requested, may contract with an authorized receiver for the purpose of providing authorized users its simulcast. No managed competition built into the statutes or regulations; all done via private contract. (DE Administrative Code: 3 Del. Admin. Code 501-9.0)	No mention of wagering on credit in the statute or regulations	No mention of rebates in the statute or regulations	DE's charitable gaming / bingo do not provide for revenue to racing. Video lottery facilities are only allowed at racetracks, and a certain percentage goes to the purses and improving the breed of horses. (3 Del.C. § 10048)	No earmark for backside improvements found.
KENTUCKY	Has a moderate managed competition scheme, focusing on requiring tracks to offer their signal if they wish to conduct interstate simulcasting and requiring the carrying of other tracks signals. Specifically: Interstate simulcasting is allowed so long as the receiving track remits to the host track (the track in KY offering the simulcast) the amounts provided in the statute. Additionally, the host track which receives the interstate simulcasts and conducts interstate wagering must offer the simulcasts to all receiving tracks and simulcast facilities through the intertrack wagering system. A receiving track must conduct intertrack (tracks within the state) wagering on all live races of all host tracks on any day on which it receives interstate simulcasts for interstate wagering. If more than one track conducts live racing at the same time on the same day then no track / simulcast facility may receive interstate simulcasts unless all tracks running live races agree to the interstate simulcasts. (KRS § 230.377-380)	Agreements to lend money or advance credit for gambling or wagering are void. Kentucky Off-Track Betting, Inc. v. McBurney (Ky. 1999) 993 S.W.2d 946 However, the commission may establish regulations for adding money to a telephone account for wagering via credit card. (KRS § 230.379)	No mention of rebates in the statute	No form of KY lottery or gaming funds racing.	.05% of the pari-mutual pool of tracks averging a daily handle of less than $1,200,000 goes into the Backside Improvement Fund. The fund is used to improve the backside of Thoroughbred racing associations averaging $1,200,000 or less pari-mutuel handle per racing day on live racing. The fund shall be used to promote, enhance, and improve the conditions of the backside of eligible racing associations. Conditions considered shall include but not be limited to the living and working quarters of backside employees. KRS § 230.218, KRS § 230.3615
NEW JERSEY	Permits interstate simulcasting with an in-state sending track pursuant to private contracts between the sending and receiving track. Tracks are permitted to receive out-of-state simulcasts if the in-state receiving track agrees to simulcast any races which an in-state sending track wishes to transmit to it. An in-state receiving track may deduct a fee from the wagers on the out-of-state track for the transmission of the simulcast. (NJ Simulcast Racing Act, 5.5-111 to 126)	No advance credit is allowed to be given by a licensee to allow a patron to wager on simulcasting or gamble in a casino. (N.J.S.A. 5:12-101) Telephone account wagering for racing is allowed to be funded via credit card. (N.J.S.A. 5:5-142)	No mention of rebates in the statute or regulations	Casino's are permitted to simulcast, with different take outs and distributions as those in live racing. Annual amounts are allocated to supporting horse racing in New Jersey Taxes upon internet wagering to go funding racing. (N.J.S.A. 5:12-198, N.J.S.A. 5:12-225)	No earmark for backside improvements found.

MINNESOTA	Simulcast is permitted if there are agreements with the sending and receiving tracks and the horsemen's organization. There are restrictions on the "class" (A,B,C,D) of license and the ability to simulcast. (M.S.A. § 240.13)	No mention of wagering on credit in the racing or gaming statutes	No mention of rebates in the racing or gaming statutes	Simulcasting is limited to racing licensees (M.S.A. § 240.13)	No earmark for backside improvements found.
LOUISIANA	Simulcasting facilities are permitted subject to geographical and ownership restrictions. No mention in the statute regarding managed competition between the tracks and the simulcasting facilities. (LSA-R.S. 4:213, LSA-R.S. 4:149.2, LSA-R.S. 4:214)	No mention of wagering on credit it the racing statutes or regulations.	No mention of refunds in the racing statutes	Simulcasting is limited to racing licensees (who may obtain licenses to conduct off-track wagering if they are a certain "class" of licensee) (LSA-R.S. 4:214)	No earmark for backside improvements found.

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The Commonwealth of Massachusetts

Massachusetts Gaming Commission

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January 17, 2013

Ms. Marilyn Contreas
Department of Housing & Community Development
100 Cambridge Street, Suite 300
Boston, MA 02114

&

Mr. John Robertson
Massachusetts Municipal Association
One Winthrop Square
Boston, MA 02110

RE: Amendment of 205 CMR

Dear Ms. Contreas and Mr. Robertson,

The Massachusetts Gaming Commission ("Commission") is proposing amendments to 205 CMR 3.19: *Urine, Other Tests and Examinations*, 205 CMR 3.22: *Veterinarians*, 205 CMR 4.32: *Urine, Other Tests and Examinations*, and 205 CMR 4.38: *Veterinarians.* These amendments can be broadly described as the adoption of the bulk of the Association of Racing Commissioners International ("ARCI") *Model Rules of Racing for the use of the Pari-Mutuel Industry* as they pertain to veterinary practices, medication and testing. These proposed new rules do several important things including, but not limited to:

- repealing the current regulation which permits the use of a non-steroidal anti-inflammatory medication (phenylbutazone) on raceday;
- providing a split, or referee, sample provision to afford owners and trainers additional due process protection in the event of an alleged medication violation;
- preventing the transfer of horses in a suspended trainer's care to his or her spouse during the period of suspension; and
- providing clear withdrawal times for accepted therapeutic medications to veterinary practitioners and trainers in the form of treatment restriction windows.

The Commission does not anticipate that any part of these proposed changes would affect local governments or municipalities.

The Commission will convene a public hearing on this amendment on February 25, 2013, at 1:00 P.M. at 1000 Washington Street, Boston, MA 02108. If you have any questions regarding this proposal, please feel free to contact me at (617) 979-8423.

Respectfully submitted,

Jennifer Durenberger, DVM, JD
Director of Racing