NOTICE OF MEETING and AGENDA

March 21, 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, March 21, 2013
4:00 p.m.
Bristol Community College
Commonwealth College Center
777 Elsbree Street
Fall River, MA 02720

PUBLIC MEETING - #59

1. Call to order
2. Approval of Minutes
   a. February 28, 2013
   b. March 12, 2013 Meeting
   c. March 14, 2013
3. Public Education and Information
   a. Report from the Ombudsman
4. Regulation Update
5. Research Agenda - VOTE
6. Region C discussion
7. 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.massgaming.com and emailed to: regs@sec.state.ma.us, melissa.andrade@state.ma.us, brian.gosselin@state.ma.us.

3/19/13
(date)

Stephen P. Crosby
Stephen P. Crosby, Chairman

Date Posted to Website: March 19, 2013 at 4:00 p.m.

2.a

The Commonwealth of Massachusetts
Massachusetts Gaming Commission

Meeting Minutes

Date: February 28, 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 54th public meeting.

Approval of Minutes:

See transcript pages 2-4.

Commissioner McHugh stated that he has distributed the February 21, 2013 minutes for review. Commissioner Stebbins recommended one addition to the minutes.

Motion made by Commissioner McHugh that the minutes of February 21, 2013 be approved as amended. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.

Licensing Process:

See transcript pages 4-35.

Master Schedule – Commissioner McHugh reviewed the schedule and discussed the process required for awarding the gaming establishment licenses. He stated that four categories of interested parties -- the Commission, the applicant, the host community, and the surrounding communities -- must work together throughout the licensing process for, without the cooperation of all parties, the Commission cannot achieve licensing time line it proposes. At present, the

Commission's schedule calls for issuance of a Category 2 slots license on December 2, 2013. Under that schedule, the Commission would complete Category 2 suitability investigations by the end of April, though it can only do so if the prospective applicants submit required information in timely fashion. The current schedule then calls for applicants and host communities to sign a host community agreement no later than August 5, 2013, with a referendum on that agreement following no later than October 5, 2013. The schedule also calls for applications, including signed surrounding community agreements, to be filed by approximately the same day. Thereafter, the Commission would hold the necessary public hearing, engage in other processing and issue the license by December 2, assuming that it did not have to resolve surrounding community issues the applicant and the community were unable to resolve by themselves.

Commissioner McHugh stated that the Commission cannot make a final determination on an application until all host and surround community agreements are signed. Therefore, the Commission must have a procedure for dealing with situations in which a prospective surrounding community and an applicant cannot reach an agreement on their own. He indicated that the legal team has recommended that if an applicant and a community disagree as to whether the community is a surrounding community, the Commission make the determination after receiving and reviewing the Phase 2 application. If the Commission determines that the community is a surrounding community, then the community and the applicant have 30 days to reach an agreement. If they cannot, they will proceed to binding arbitration. All of that, of course, will cause a delay in the license issuing process.

Commissioner McHugh then stated that the Commission is exploring scenarios under which it could issue the Category 2 license before December 2. The first scenario targets early September. To meet that target, the applicant and the host community would have to execute a host community agreement by mid-May and applicant would have to resolve all surrounding community issues voluntarily by mid-July.

Ombudsman Ziemba stated that he has contacted the four Category 2 applicants about a potential September target. Plainridge Racecourse and Raynham have indicated that such a target is completely within reason. The PPE Casino applicant believes that November is more realistic than September as a target but will work with the Commission to expedite the process as much as possible. Massachusetts Gaming and Entertainment thinks that the Commission should move the deadline to a later date but will meet any deadlines and requirements that the Commission sets. Mr. Ziemba stated that the latter two applicants cited concerns with completing host and surrounding community agreements as well as with site considerations. Commissioner Cameron stated that, in discussing this matter with Director Wells, a September target creates problems for background investigations because several applicants have not yet identified all of their qualifiers. Commissioner Zuniga stated that a September target will make it difficult to have host and surrounding community agreements in place and an October target would be more likely.

Commissioner McHugh then reviewed a second scenario in which the Commission extends the time for executing host community agreements by two weeks, from mid-May to the beginning of June, thus pushing the referendum into early August. That scenario would have the Commission

issuing a Category 2 license two weeks later than in the first scenario but an August referendum might be problematic for a number of reasons.

Commissioner McHugh outlined a third scenario in which the host community agreements are signed in mid–July. Under that scenario, the referendum would take place in early September, leading to issuance of a Category 2 license in mid-November. If the applicants and surrounding communities cannot sign the required agreements, then, even under this scenario, the Commission may need to extend the process into late December to finalize the surrounding community agreements. Commissioner Zuniga stated that the determination of suitability in this scenario is as early as late May and the host community could theoretically schedule its referendum for the next day.

Chairman Crosby asked that Ombudsman Ziemba and Director Wells talk to all of the Category 2 applicants and develop a recommendation for a date by which the Commission should require that applicants submit all additional qualifiers and bring that recommendation back to the Commission at its next meeting.

Commissioner Zuniga introduced Scott Libby and Angel Arvelo from PMA, the consultants who helped developed the scheduling timeline. He stated that they have developed a presentation outlining the scenarios just discussed, and the Commission will post this presentation on its website.

Personnel Update – Chairman Crosby stated that the Commission has started a process for hiring a CIO and a CFO, in addition to the ongoing hiring process of Director of Research and Problem Gambling, Director of Workforce Supplier and Diversity Development, and Director of Licensing.

Chairman Crosby introduced Representative Keiko Orrall, who represents the 12th Bristol District, which includes Taunton, Middleborough, Lakeville, and Berkley. She stated that she wanted to ensure that the Commission is aware that the surrounding communities are in a very different situation with the tribal casino than they are with commercial casinos and wanted to advocate on behalf of those communities. She stated that these communities have not had the safeguards or money available for communities potentially impacted by commercial applicants, and those communities will not know the extent of the assistance that they will receive until a compact is approved.

Regulation Update:

See transcript pages 35-59

Surrounding Community Agreement – Associate Commission Counsel Todd Grossman stated that the Commission circulated a draft of a surrounding community regulation for public comment and received many comments. The legal team has reviewed all the comments and incorporated many of them into new draft regulations. That draft contains three methods for determining which communities are surrounding communities. First, a community would be a surrounding community if an applicant designates that community as such in its RFA-2

application and the community assents to that designation within 10 days. Second, a community would be a surrounding community if it signs a surrounding community agreement with the applicant and the applicant submits that agreement as part of its RFA-2 application. Third, a community would be a surrounding community if it petitions the Commission for designation as a surrounding community and the Commission assents. He stated that the Commission's finding that a community is a surrounding community has legal significance because it triggers a 30 day period during which the community must negotiate a surrounding community agreement with the applicant and eventual binding arbitration is no agreement is reached.

Attorney Grossman stated that he has also submitted a draft regulation to the Commission to amend the community disbursement section of the regulations to allow for involuntary disbursements of the mitigation funds. He stated that the amended language requires that the community demonstrate to the Commission a reasonable likelihood that it is a surrounding community and needs funds to determine whether or not the proposed gaming establishment will impact the community.

Attorney Grossman stated the draft regulations will proceed to a public promulgation process during which communities will have an opportunity to comment.

Public Education and Information:

See transcript pages 59-72.

Report from the Ombudsman – Ombudsman Ziemba stated some communities have provisions in their local bylaws or charters that relate to the types of contracts that municipal officials can execute without approval by a town meeting. He stated that bylaws in some communities require a town meeting to approve contracts with a term longer than three years. He stated that he is working with outside counsel on this issue to determine whether the Commission should make further official advisories on what communities can do in these instances.

Mr. Ziemba stated that he is also considering what restrictions applicants face when they are involved in a ballot process. The Office of Campaign and Political Finance has supplied some parameters to guide applicants, and the Commission will post these parameters on its website.

Evaluation Criteria – Commissioner McHugh stated that Chairman Crosby suggested some additional evaluation criteria and restructuring of existing criteria. He, along with Commissioner Zuniga, used those suggestions to create a second version of the evaluation criteria matrix. He stated that the matrix still includes five categories with a number of criteria, both statutory and Commission originated, in each. As a result of the Commission's work on the matrix, the required evidence column now includes information that will flow directly into the RFA-2 application form the Commission will create. He stated that the Commission needs to agree on major topics and subtopics in order to inform applicants about how the Commission will evaluate applications and to move forward with the design of the actual application form. He stated that the Commission has scheduled a meeting for March 12, 2013 for an extensive discussion of this matrix.

Commissioner Zuniga stated that the Commission has just begun to populate some of the matrix areas relating to required evidence and will include more information at a later date. Commissioner Cameron stated that this matrix is very well done and easy to understand. She commended Commissioners McHugh and Zuniga for their hard work. Chairman Crosby recommended substituting the language "subtopic and second subtopic" for "sub criteria" In the matrix. He also recommended including environmental and other considerations as part of the mitigation evaluation criteria. Commissioner McHugh stated that he will take another look at the matrix because many of the environmental considerations are categorized as design criteria. He also asked the Commissioners to consider other mitigation that he should include in the matrix. He stated that the Commission may be able to start discussion on the weighting factors at the next meeting, but it may be too early to be specific as the matrix is not yet complete.

Preparation for Region C Discussion – Chairman Crosby reminded everyone that the Commission's March 21 meeting will be held in Region C, although the Commission has not yet confirmed a location. The major topic for discussion will be how to proceed in Region C and comments are welcome. He stated that any representative of a public or private entity or group who would like to speak at the meeting should let the Commission know ahead of time. The Commission will not open the March 21 meeting for general public comment.

Regulation Update (Continued):

See transcript pages 72-127.

Review of Draft Regulations – Attorney Grossman stated that he has circulated a copy of the draft regulations grid, which he has updated to reflect the current status of the Phase 2 regulations. He stated that the legal team has drafted language that applies to the host community designation. Chapter 23K largely addresses host community designation, but several areas require clarification. If a proposed gaming establishment is situated in two or more cities or towns then each will be considered the host community. As soon as the applicant and the host community sign a host community agreement, the applicant must forward a copy of the agreement to the Commission so that everyone has notice that the process is proceeding.

Attorney Grossman stated that the General Laws contain provisions governing the host community elections, but there are a few areas that require further regulations. For example, a regulation establishing the length of time polls for the referendum must remain open is necessary to ensure that all interested citizens have an opportunity to vote. For another example, a regulation stating that no community can hold an election until the Commission issues a positive RFA-1 determination of suitability is also necessary to implement the Commission's policy decision in that regard. Chairman Crosby stated that the Commission had previously determined that, although a community cannot hold an election prior to the positive determination of suitability, an applicant can request an election before the determination is made. Attorney Grossman stated that the legislation mandates holding an election within 60-90 days after it is requested, thus creating a potential problem if the IEB cannot complete its investigations or the Commission cannot make its suitability finding before the election date.

Commissioner Stebbins stated that that the Commission should further discuss whether a community with multiple applicants must hold the vote for all the projects on the same day. He also asked whether all host communities in a region, or both host communities if an applicant's proposed gaming establishment is situated in two communities, should hold host community votes on the same day. Commissioner McHugh stated that the Commission needs to consider this issue. Chairman Crosby stated that his predisposition would be to leave the decision to the local communities. Commissioner Zuniga stated that he believes that the Commission should enforce holding votes on a single day in order to create fairness and public trust. Ombudsman Ziemba recommended that the Commission reserve its judgment on this question because the Commission does not know whether two applicants will proceed in one community and there is time before the regulations are promulgated to consider the issue.

Attorney Grossman stated that another section of the draft regulations covers reopening a host or surrounding community agreement in the event of unforeseen circumstances. He stated that the Commission should give great thought to then type of event that would allow reopening because reopening would have major consequences. He stated that the current draft regulations require a significant and material adverse impact prior to reopening an agreement. That requirement is based upon a principle of contract law known as frustration of purpose. Commissioner McHugh stated that he discussed this at length with Attorney Grossman and the Commission does need to determine what the trigger for the reopener will be.

Attorney Grossman stated that the another section of the draft regs deals with permitting requirements and the information the Commission will require applicants to submit as part of the RFA-2 application. This section does not address how this information will be evaluated, but simply lays out the documentation the Commission wants to review. The applicant should provide, among other information, a chart of required permits, MEPA process documents, and a certification from the municipality that the project as proposed would not run afoul of zoning ordinances.

Attorney Grossman stated that the process for determining impacted live entertainment venues in the absence of an agreement between a community and a venue would be similar to the surrounding community process. He stated that the draft regulations provide that the Commission will consider the elements set forth in the statute, including the distance of the venue from the gaming establishment, the capacity of the venue, the type of performances the venue offers, whether the venue meets the definition of nonprofit or municipally owned, and whether the applicant intends to include a geographic exclusivity clause.

Attorney Grossman stated that the Commission has discussed whether it would require applicants to commit simply to the minimum capital investment set forth in the statute or would require them to commit to a higher minimum. The statute sets a minimum for Category 1 and 2 investments at $500 million and $125 million respectively. He stated that draft regulations provide a means for calculating the amount of the capital investment. The Commission must determine whether an applicant can include infrastructure costs or the cost associated with the purchase, lease or optioning of the land on which the applicant proposes construction of the gaming establishment. He stated that Commission will also have to determine when to return the deposit or bond money to the licensee. The draft regulation states that the applicant will have to

request that the Commission return the money, and the Commission will do so if it determines that the project is in the final stage of construction. Commissioner Stebbins recommended that the Commission review the statutory definition of capital investment. Commissioner Zuniga stated that he understands that the term "capital investment" includes only assets that will be in existence for many years, including structures outside the boundaries of the gaming establishment site, such as a bridge. Commissioner Cameron stated that she envisioned that the term "capital investment" only includes structures within the site.

Chairman Crosby stated that he would like to discuss requiring applicants to disclose instances when they were requested to give or actually gave items of value to a public official. Commissioner McHugh stated that the existing regulations require that the application disclose any political or community contributions that an applicant made since the statute was passed on November 21, 2011. He recommended that the regulations also require that the applicant disclose solicitations in the same fashion.

Commissioner McHugh stated that the overall goal is to have the regulations promulgated and effective on June 7 or May 24, 2013. He recommended extending the date for sending a notice to the Local Government Advisory Committee from March 15, 2013 to March 29, 2013, and publishing the regulations by May 24, 2013, or at the latest June 7, 2013. The other Commissioners agreed with this recommendation.

A brief recess was taken.

Chairman Crosby reconvened the 54th meeting.

License Fee Discussion – Chairman Crosby stated that the Commission had previously discussed whether the Commission would refund license fees under certain circumstances, and after reviewing Commissioner Zuniga's economic analysis and Commissioner Cameron's research indicating that refunds are not consistent with industry norms, he agrees that the Commission should not refund license fees. Commissioner Zuniga stated that these fees are a huge incentive for project completion and the payoff for the applicant will come when the facilities are open.

IEB Report:

See transcript pages 127-142.

Investigations Status Report – Director Wells stated that the IEB is currently conducting all eleven investigations. The IEB has prioritized the four applicants for Category 2 licenses and is moving forward with those investigations at an accelerated rate in an effort to meet the target date the Commission has set.

Discussion of Processing Public Records Requests for Applications – Director Wells stated that Chapter 23K provides that, subject to three exceptions, applications for licenses are "public records," a term defined in the General Laws, and the Commission has no discretion in that regard. She stated that the IEB is in the process of reviewing all the applications for the

redactions in accordance with the specimen form. She stated that a large percentage of the applicants' redacted RFA-1 forms applicants contain errors in complying with the specifications contained in the Commission's specimen form. She stated that 75-80% of the errors are over-redactions by the applicants. She emphasized that the IEB has meticulously reviewed 21,000 pages of documents at this point and needs to develop an efficient process to correct the errors it has found. Director Wells stated that, in addition to the redactions specified in the specimen form, applicants are requesting additional redactions. She stated that the IEB is taking these requests very seriously and is looking at each request one-by-one. In light of the time required to correct the redaction mistakes and respond to the confidentiality requests, this process is going to take some time and she cannot determine when the IEB will make the information public.

Commissioner McHugh expressed concern that the IEB is using investigatory resources to review the redacted applications due to repeated mistakes by the applicants. He stated that that the Commission's intention to post the redacted applications on the Web apparently is driving a great deal of the concern on the applicants' part. He stated that although the Commission is perfectly within its rights to respond to a public records request by posting the requested material on the Web, he recommended that the Commission make a decision not to post the applications on the Web and instead respond individually to requests when they come in, after developing a process that minimizes the labor required for each response. Commissioner Zuniga stated that he supports this recommendation as the IEB should focus on completing investigations. Commissioner Cameron recommended that Director Wells issue a letter stating to applicants that: this is the process, here are your errors, and compliance is necessary as it will reflect on suitability.

Chairman Crosby reiterated that public disclosure of these applications is not a concept the Commission invented to ensure transparency. Instead, the law requires that the Commission make the applications public. He stated that the Commission wants to protect the privacy of its bidders and but still must comply with the law. He stated that he is in agreement with the recommendation not to post this information on the Web and to concentrate on the accuracy of these documents. Commissioner Zuniga informed Director Wells that, as previously discussed, the IEB should pass on to the applicant any additional costs incurred in correcting inaccurate information.

Racing Division:

See transcript pages 142-158.

Administrative Update – Director Durenberger reported that the Racing Division is working with the successful respondents to two RFPs for laboratory testing services and auditing services. She stated that the Racing Division is 99% complete with the seasonal hiring process and is creating a training schedule.

Legislative Review Update – Director Durenberger stated that she will make available to the Commissioners tomorrow morning the report amended to address the stylistic suggestions provided by the Commission at its last meeting. She will also finalize the proposed statutory language by the end of day tomorrow.

Director Durenberger stated that the Commission has received comments from the Secretary of the Commonwealth and the public for the Phase 1 amendments to 205 CMR 3.00 and 4.00. The Racing Division is incorporating these comments and will provide the Commission with a final recommended version of the amendments well in advance of the public meeting scheduled for March 14, 2013. If approved at that meeting, the final version would go to the Massachusetts Register for publication with an effective date of March 29, 2013. This date is two weeks prior to the start of the live racing season.

Director Durenberger recommended that the Racing Division start the second phase of the 205 CMR 4.00 amendment process. She provided the Commission with a copy of the draft notification to the Local Government Advisory Committee and stated that the Commission has scheduled a public hearing for April 8, 2013, which will allow the rules to become effective prior to live racing at Suffolk Downs.

Motion made by Commissioner Stebbins to initiate Phase 2 of the Racing Division rulemaking. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.

Director Durenberger stated that she has been participating in a consortium dialogue regarding implementation of the next wave of industry reform. The consortium includes Mid-Atlantic States, some eastern states, and possibly Illinois. These proposed reforms will be primarily rooted in a uniform approach to medication, with a distinction between therapeutic medications and those medications that have no business in a race horse at all. She stated that Racing Commissioners International has given preliminary approval to the consortium approach and she read a resolution on the matter that she recommended the Commission adopt. Commissioner Cameron stated that she agrees with the consortium principles and recommended adoption of the resolution.

Motion made by Commissioner Cameron that the Commission adopt this resolution. Motion seconded by Commissioner Zuniga. The motion passed unanimously by a 5-0-0 vote.

Chairman Crosby asked about a letter that the Commission received from the law firm Engel and Schwartz regarding racing aid payments. Director Durenberger indicated she had just received this letter and has not had time to do a substantive review.

Research Agenda:

See transcript pages 158-159.

Commissioner Zuniga stated that he has no schedule update, but the Commission has scheduled a conversation for next week to address a cost clarification.

Motion made to adjourn, motion seconded and carried unanimously.

List of Documents and Other Items Used at the Meeting

1. Massachusetts Gaming Commission February 28, 2013 Notice of Meeting and Agenda
2. February 21, 2013 Massachusetts Gaming Commission Meeting Minutes
3. Massachusetts Gaming Commission Master Schedule, Category 2 License Schedule
4. Massachusetts Gaming Commission Category 1 and Category 2 Draft Evaluation Criteria Matrix
5. February 27, 2013 Memorandum Regarding Précis of Draft Phase 2 Regulations – Part 1
6. Comments for Recommendations for Amendment of Surrounding Communities Definition
7. Resolution – Racing Division
8. March 1, 2013 Memorandum to the Local Advisory Government Council Regarding 205 CMR 4.00

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

5

Massachusetts Gaming Commission

MEMORANDUM

Date: March 20, 2012

To: Commissioners

From: Enrique Zuniga

Re: Recommendation regarding Research Agenda Responses

Recommendation: That the Gaming Commission authorize Commissioner Enrique Zuniga to begin the process of further refining the scope of work and undertake contract negotiation and execution for the research project with the team comprised of U-MASS Amherst et al as part of their response to the RFR # MGC–RESEARCH-2012 dated January 7, 2013.

Description of the Procurement Process

The Commission issued a Request for Responses for firms and organizations qualified in the fields of research, problem gambling, and public health on November 21, 2012. The response deadline was January 7, 2013.

The Commission received four (4) responses prior to the deadline.

Phase I Review: Eileen Glovsky conducted a "Phase I" review of all responses. This review was undertaken to ensure compliance with administrative provisions of the RFR, and verify the inclusion of mandatory forms and attachments. Respondents were not scored on the Phase 1 review, and all respondents proceeded to the Phase II review.

Phase II Review: This phase consisted of the review and evaluation of the technical proposal. The evaluation criteria were part of the RFR and were put forth in advance (prior to the receipt of the proposals) and it was as follows:

- 20% for Qualifications and Experience:
    - Vendor History
    - Experience with Contracts of Similar Size and Scope

- Vendor Qualifications
- Contract Management
- Organizational Support
- Staff and Organization (resumes and business references)

- 28% for the research approach, methodology and deliverables
- 12% the understanding of the issues, needs and impacts
- 12% for the comprehensiveness of the proposal
- 8% for supplier diversity

The figures above add up to 80%. The remaining 20% of the score was reserved for the cost proposal (Phase III review – see below).

Phase III Review: Firms were asked to submit a cost proposal in a separately sealed envelope. After the review of the technical proposal was completed, the procurement management team moved on to the phase III review. The Cost proposals (phase Three) were assigned a weigh of 20% of the overall score.

PMT – Evaluation of the Technical Proposal – Phase II

The procurement management team (PMT) was comprised of myself and a representative from the Mass Council on Problem Gambling and a representative of the Department of Public Health. Eileen Glovsky attended the meetings of the PMT as an observer and for documentation purposes. Steve Crosby also attended certain meetings as an observer.

After scoring the four respondents of the technical proposals, the PMT decided to invite the top two (2) ranked groups for a face-to-face oral presentation. The top ranked groups were:

a) M-GAME (The Massachusetts Center for Gambling Assessment, Measurement and Evaluation) a consortium of researchers, academics and consultants comprised of principals in the Division of Addiction at the Cambridge Health Alliance, Spectrum Gaming Group, Regional Economic Models Inc. (REMI) and U-Mass Boston – Center for Survey and Research.
b) U-Mass, a consortium of researchers and academics from U-Mass Amherst, U-Mass department of public health, Donohue Institute, U-Mass Dartmouth and MIT.

Each group was given the same amount of time and guidelines to present (a maximum of four presenters), and summarize their approach and experience to the PMT.

Post Interviews and Phase III

After the interviews the PMT proceeded to open the cost proposals. As part of the RFR, respondents were asked to present alternatives in their pricing structure. The team from U-MASS Amherst presented three levels of pricing (as requested/suggested in the RFR) and a detailed description of these differences, whereas the M-GAME team presented one lump sum. M-GAME's rationale was that they

were presenting one pricing option as they believed it was required to do the scope of work in the right way. For this reason, the PMT believes the response from U-Mass is a more flexible response.

The PMT decided to ask for further cost clarification of both teams, given the variability and assumptions in the cost responses. U-Mass Amherst further clarified the differences among the pricing levels, and what would and would not be included in the different scenarios. M-GAME clarified a clerical error, and soon thereafter provided a revised cost proposal.

It is important to note, that as part of the cost clarification, the respondents were asked to isolate certain elements of cost (specific cost relative to the baseline study only, as well as other costs components like overhead rates).

Taking into consideration the cost proposals (further clarified and revised), the scores between the two respondents are a virtual tie (M-Game with the slightly higher score in the technical proposal, while U-Mass with the higher score due to a more flexible and cost effective response).

However, at this juncture and only after better understanding some of the assumptions behind the cost response, the PMT came to further understand some of the key differences *in the technical response* between the top two respondents. The approach (and hence cost) of the proposals were different in a subtle but fundamental way: the unit of analysis is different.

Peer Review and Further Clarification and Understanding of Approach

In light of this further understanding of the differences, the PMT decided to consult an independent researcher in this field, to provide an independent assessment to the review team of the two highest ranked proposals. This individual, acting as a "peer reviewer" further clarified the benefits and considerations of each approach.

The peer review confirmed that both teams are exceptional in their collective qualifications and experience. Further, all count with a large body of relevant research and pertinent subject matter expertise. Both responses were thoughtful and comprehensive. The initial scoring by the PMT had in my opinion demonstrated this.

Both proposals appear to meet the technical requirements of the RFR. The project investigators from both teams could be described as a "dream team" assembled precisely to meet the objectives of the RFR, which is broad and comprehensive in nature.

The survey methodologies differ between each of the top two ranked proposals. The described methodologies both have their advantages and disadvantages over one another. The U-Mass Amherst methodology appears more consistent with Section 71(2) of the gaming act which emphasizes the investigation of social impacts and may better address section 71(1) reference to informing services.

Both methodologies rely on the use of secondary data sources, such as governmental agency databases.

A principal component of M-GAME's proposal includes a "cohort survey." The unit of analysis is a group of individuals (or a "cohort group"). Their approach to the baseline survey is very robust in order to track certain individuals over time. The survey includes a sampling of 6,000 individuals in three geographic subsets based on the gaming regions in the Commonwealth. This approach would fundamentally allow for the examination of how people change and/or adapt over time with the introduction of gaming. The survey methodology of this team is perceived to and may very well yield excellent response rates, and one that would allow for the examination of how people change over time (even if say, they were to leave Massachusetts). In addition to the problem gambling aspect, one could argue that the M-GAME proposal has a stronger economic research strategy.

U-Mass Amherst proposal deliberately distinguished among a cohort versus a longitudinal survey. This proposal takes an "epidemiology" approach, and instead of a cohort study relies on a "cross sectional" survey, as a way to study and measure the impacts of the new gaming venues at the state, regional and community levels (as opposed to individuals). The baseline sample is of 17,500 individuals, and while seemingly large, this approach is thought to better allow for analyzing impacts to communities and identifying and capturing changes due to transient groups, and changes within different groups, or different communities. The methodology was likely selected as the subject of greatest interest is the community as opposed to a cohort of individuals. Further, their larger sample is not necessarily an over-expenditure of resources, but one needed to capture data on different groups many (most) of them with rather low incidence of problem gambling, or the effects and impacts of gambling. In other words, this approach defines the unit of analysis as the community. It would appear that U-Mass Amherst has a stronger social impact strategy, which response may be more in line with what the legislation originally intended.

Recommendations

The research mandate contained in the Gaming Act is quite broad and incorporates several disciplines (epidemiology, etiology of problem gambling, etc.), but can perhaps be better summarized as societal impacts.

The M-Game proposal employs a longitudinal design to follow a household sample and would produce interesting data that adds to the field of understanding how time and exposure impacts individuals (e.g. test adaptation hypothesis and add further evidence to the proposition that gambling problems are largely transient). However, from a <u>societal impact</u> standpoint, the adaptation of individuals over time may be less important to understand than changes in population prevalence of gambling related health issues. That is, to varying degrees, populations change as people migrate in and out of communities, which may be particularly true to say the greater Boston or greater Springfield areas with a high density of university students.

The U-Mass Amherst methodology would comparatively allow for the ability to drill down the survey data to explore discrete areas of interest. Given its large sample size, for example, it could detect with a slightly higher degree of confidence differences among population subsets (e.g. within 25 miles of casino

by ethnicity). From the standpoint of a problem gambling service administrator, detecting at-risk groups with some degree of precision holds greater intervention implications than understanding the natural course of gambling behaviors across time in a single cohort.

As described above, the recommendations of the PMT are not unanimous and perhaps this sole fact demonstrates the inherent difficulty in selecting between two groups with a comprehensive and thoughtful response, yet difference in methodology. What was originally perceived by the PMT as a better methodology and resulted in an "edge" in the technical response to M-Game, if scored the same with the other methodology (U-Mass), results in a higher overall score by U-Mass. But neither methodology should be thought of as better than the other in a vacuum. Perhaps more importantly the question is which one better accomplishes the goals described in the RFR, the overall mission of the Commission, and of course the legislative mandate relative to identifying and protecting the at-risk groups.

So, rather than making this an exercise in scoring, the PMT has decided to give an overall recommendation (albeit a 2-1 split recommendation) in favor of the team of U-Mass, as the one which methodology is perhaps better suited for the goals contained in the legislation relative to the societal impacts, and could better inform programs, target specific populations and/or subgroups and identify locations for the benefit of service administrators, which is also a subsequent and important goal of the Gaming Act.

SPEAKER	AFFILIATION
Cedric Cromwell	Tribal Council Chair, Mashpee Wampanoag Tribe
Rep. Robert Koczera	11th Bristol District
Rep. Keiko Orrall	12th Bristol District
Rep. Alan Silvia	7th Bristol District
Rep. Antonio Cabral	13th Bristol District
Rep. Shaunna O'Connell	3rd Bristol District
Hon. William Flanagan	Mayor of Fall River
Hon. Tom Hoye	Mayor of Taunton
David Alves	Councilor at Large – City of New Bedford
Allin Frawley	Vice Chair, Middleborough Board of Selectman
Kerri Babin	President & CEO – Taunton Area Chamber
KG Urban	
Elias Patoucheas	President, Claremont Corp.
Michelle Littlefield	Chairman, Preserve Taunton's Future
Carol Kelley	Secretary, Citizens Equal Rights Alliance/Plymouth
Vince Longo	South Shore Music Circus
Thomas Flaherty	Vice President, Sprague Operating Resources
David Fenton	Business Manager, IBEW – Local 223
Stephen Carroll	Real Estate Manager, NSTAR

Reilly, Janice (MGC)

From: Driscoll, Elaine (MGC)
Sent: Tuesday, March 19, 2013 3:12 PM
To: McHugh, James (MGC); Reilly, Janice (MGC)
Subject: FW: REVISED Request to address the Commission

From: Knowlton, Jeanine (HOU) [mailto:jeanine.knowlton@mahouse.gov]
Sent: Tuesday, March 19, 2013 3:11 PM
To: mgccomments (MGC)
Cc: Driscoll, Elaine (MGC)
Subject: REVISED Request to address the Commission

Good afternoon,

State Representative Keiko Orrall of the 12th Bristol district would like to address the Commission at the meeting being held on Thursday March 21 at 4 PM at Bristol Community College.

She would like to speak to:

1) Addressing specific mitigation concerns regarding surrounding communities in the 12th Bristol district.

2) Address concerns of the tribe's ability of getting their land into trust.

Thank you for this consideration, Representative Orrall appreciates the opportunity to address the Commission. Feel free to contact me if you have any questions.

Regards, Jeanine

Jeanine Knowlton Legislative Aide
The Office of Representative Keiko Orrall
State House Room 540 Boston MA 02133
Jeanine.Knowlton@mahouse.gov
617-722-2090

Reilly, Janice (MGC)

From: mgccomments (MGC)
Sent: Wednesday, March 20, 2013 8:54 AM
To: Reilly, Janice (MGC)
Subject: FW: Opportunity to Address Mass Gaming Commission

From: Clara Fallon [mailto:claramfallon@gmail.com]
Sent: Tuesday, March 19, 2013 4:20 PM
To: mgccomments (MGC)
Subject: Opportunity to Address Mass Gaming Commission

Alan Silvia, State Representative, 7th Bristol District

I would like to address the commission briefly discussing the need to move forward quickly opening the door to a commercial casino. My concern by waiting a federal ruling regarding the tribe we at the South Coast will go many years without a casino.

Thank You.

Alan Silvia
State Representative
7th Bristol District
774-526-1122

Reilly, Janice (MGC)

From: mgccomments (MGC)
Sent: Wednesday, March 20, 2013 8:55 AM
To: Reilly, Janice (MGC)
Subject: FW: Request to address the Commission

From: Chase, MacKenzie (HOU) [mailto:mackenzie.chase@mahouse.gov]
Sent: Tuesday, March 19, 2013 5:43 PM
To: mgccomments (MGC)
Subject: Request to address the Commission

Good afternoon-

Representative Antonio F.D. Cabral (D-New Bedford) would like to address the Gaming Commission at the public hearing on Thursday, March 21, 2013. Rep. Cabral is concerned that Region C is being left behind while other regions of the state move toward opening casinos. He would like the opportunity to advocate for the interests of the South Coast by asking the Commission to ensure that Region C has access to the economic development that a casino would bring.

Please let me know if it will be possible for him to speak.

Thank you,
Mackenzie Chase

Mackenzie Chase
House Committee on Bonding, Capital Expenditures and State Assets
Office of Representative Antonio F. D. Cabral
State House, Room 466
(617) 722-2017
Mackenzie.Chase@mahouse.gov

COMMONWEALTH OF MASSACHUSETTS
HOUSE OF REPRESENTATIVES
STATE HOUSE, BOSTON 02133-1054

ANTONIO CABRAL
STATE REPRESENTATIVE
13TH BRISTOL DISTRICT
STATE HOUSE, ROOM 466
BOSTON, MA 02133
TEL. (617) 722-2017

CHAIRMAN
HOUSE COMMITTEE ON BONDING, CAPITAL EXPENDITURES AND STATE ASSETS

(508) 997-8113 (DISTRICT)
E-Mail:
Antonio.Cabral@MAhouse.gov

March 20, 2013

Chairman Stephen Crosby
Massachusetts Gaming Commission
84 State Street, Suite 720
Boston, MA 02109

Re: Class III Gaming License, Region C

Chairman Crosby,

I write yet again—now two years after voting for the 2011 Massachusetts Expanded Gaming Act in hopes that it would quickly create jobs in the Commonwealth--to urge the Commission to act today to allow Region C potential bidders to join the Request for Applications Phase I ("RFA-1") process currently under way for Regions A and B and to consider proposals from across Massachusetts equally going forward.

As you know, the Legislature crafted the Gaming Act to provide tribes eligible to pursue gaming under federal law a very brief window to explore their opportunities for casino development because we recognized the substantial hurdles any tribe would face in receiving federal approval to build a casino on non-tribal land and because of the importance we placed on insuring that Region C not be left behind in exploring casino development opportunities.

Today, it is so unlikely that the sole remaining tribal applicant could satisfy the terms of the Gaming Act that it would be irresponsible to drag out this process any longer. As you know, the only possible candidate for a tribal casino under state law is actually a group of Malaysian investors called the Genting Group who, according to several media reports, are pursuing their hopes of opening a casino in Massachusetts by financing the application of the Mashpee Wampanoag Tribe. The United States Department of Interior has rejected the Tribal Compact signed by the Commonwealth last year. The Department's reasoning for that rejection strongly suggests that they will reject the revised Compact the Governor has proposed as well. That revision now faces review by both the Massachusetts Legislature and the U.S. Department of Interior and with the Legislature about to begin its annual budget process, it could be many months before the Legislature considers this revised Compact, even if it were to gain federal approval.

Even if the Genting Group and the Tribe were to jump all of these hurdles, their application would still face the greatest challenge of all: the requirement that the Department of the Interior take land into trust for the Tribe. As Commissioner McHugh noted in his December 4, 2012 Memorandum to the Commission, recent federal court decisions have made this applicant's successfully taking land into trust even less likely now than it was when we passed the Gaming Act.

Therefore, it is difficult to imagine how the Tribe could be perceived as being close to receiving approval for a casino in Massachusetts. It is imperative that the Commission move immediately to allow Region C to join the rest of the Commonwealth in the ongoing licensing process in order to ensure that Southeastern Massachusetts benefit from the economic development the rest of the Commonwealth anticipates from casino development.

We in Southeastern Massachusetts began the discussion of bringing casinos to Massachusetts more than two decades ago. The residents of my city, New Bedford, have twice voted to express their desire for casino development. The Massachusetts Legislature passed the Gaming Act because it expected that economic development would quickly follow. I urge the Commission to act today to allow our Region to join the rest of the Commonwealth and investigate casino development opportunities.

Sincerely,

ANTONIO F.D. CABRAL
State Representative, 13th Bristol District
Chairman, Committee on Bonding, Capital Expenditures and State Assets

Cc: Commissioner Gayle Cameron
Commissioner James McHugh
Commissioner Bruce Stebbins
Commissioner Enrique Zuniga

Reilly, Janice (MGC)

From: mgccomments (MGC)
Sent: Wednesday, March 20, 2013 8:55 AM
To: Reilly, Janice (MGC)
Subject: FW: Request to address the Commission

From: David Alves [mailto:counciloralves@hotmail.com]
Sent: Monday, March 18, 2013 8:40 PM
To: mgccomments (MGC)
Subject: Request to address the Commission

Gentlemen,

Please consider this email my formal request to appear before the Massachusetts Gaming Commission to make a brief oral presentation.

David Alves
Councilor at Large
Chairman of the Council Committee on Gaming
City of New Bedford

City of New Bedford
MASSACHUSETTS

OFFICE OF THE CITY CLERK
133 WILLIAM STREET 02740-6182
TEL 508-979-1450 / FAX 508-991-6225

RITA D. ARRUDA
CITY CLERK

STEPHANIE MACOMBER
ASSISTANT CITY CLERK

SUSAN M. HENRIQUES
ASSISTANT COUNCIL CLERK

March 15, 2013

RECEIVED
MAR 18 2013
BY:

Richard Day, Executive Director
Massachusetts Gaming Casino
84 State Street – 10th Floor
Boston, MA 02109

Dear Director Day:

At a meeting of the New Bedford City Council held on March 14, 2013, the City Council Adopted a Written Motion by Councillor at Large David Alves, "Requesting, in anticipation of the upcoming Massachusetts Gaming Commission meeting scheduled to be held on March 21, 2013, that the City Council go on record requesting, that the Commission take a vote to open up the South East Area (Area 3) to an open, fair and competitive bidding for a Full Casino in the area for both Commercial and Indian Developers, in an effort to ensure the Commonwealth and the entire Region has an equal opportunity to maximize the full economic potential that a Casino Development can bring to the area and to give to all Cities in the area, including New Bedford, the opportunity to compete and provide their Residents with equal employment and economic opportunities, if the community can offer the best response to the Request for Proposal that will be issued."

Thank you, in advance, for any consideration given on this important matter.

Yours truly,

Rita D. Arruda

Rita D. Arruda
City Clerk/Clerk of the City Council

cc: Councillor at Large David Alves
File

Reilly, Janice (MGC)

From: mgccomments (MGC)
Sent: Monday, March 11, 2013 10:27 AM
To: McHugh, James (MGC); Reilly, Janice (MGC)
Subject: FW: Request to address the Commission

-----Original Message-----
From: i mac [mailto:allinfrawley@hotmail.com]
Sent: Friday, March 08, 2013 5:27 PM
To: mgccomments (MGC)
Subject: Request to address the Commission

My is Allin Frawley and I currently serve on the Middleborough Board of Selectmen as the Vice-Chairman.
I would like an opportunity to address the MGC, at the March 21st meeting, concerning the License for Region C.
As a neighboring community of the proposed Mashpee Wampanoag Casino in Taunton, and as a community that has been involved in this issue longer than any other in the Commonwealth, I believe I may be able to offer a unique perspective.

Thank you for your consideration of this request,

Allin Frawley

Reilly, Janice (MGC)

From: mgccomments (MGC)
Sent: Thursday, March 07, 2013 9:09 AM
To: Driscoll, Elaine (MGC)
Cc: Reilly, Janice (MGC)
Subject: FW: Contact the Commissioner Form Submission

From: MGC Website [mailto:website@massgaming.com]
Sent: Wednesday, March 06, 2013 6:48 PM
To: mgccomments (MGC)
Subject: Contact the Commissioner Form Submission

Name

Allin Frawley

Email

allinfrawley@hotmail.com

Phone

(508)243-7072

Subject

MGC Public Meeting, March 21

Questions or Comments

I was wondering if the Commission was going to allow any public comment, at the March 21st meeting?
I would greatly appreciate the opportunity to address the Board regarding Region C and opening up the region to all applicants. As a resident of the Town of Middleborough, and as the Vice-Chairman of the Board of Selectmen in Middleborough, I believe that I could offer a unique perspective on this decision and the history of the pursuit of Land into Trust by the Mashpee Wampanoag Tribe.
I greatly appreciate your time and attention to Region C and sincerely hope you will allow me to help shed some light on this complicated process.
Thank you for your consideration of this request,

Allin Frawley

Reilly, Janice (MGC)

From: mgccomments (MGC)
Sent: Wednesday, March 20, 2013 8:54 AM
To: Reilly, Janice (MGC)
Subject: FW: Region C' Request to address the Commission'

-----Original Message-----
From: Kerrie Babin [mailto:kerrie@tauntonareachamber.org]
Sent: Tuesday, March 19, 2013 4:27 PM
To: mgccomments (MGC)
Subject: Region C' Request to address the Commission'

Good Afternoon
I would like to request to speak at the meeting at BCC on Thursday. I will be speaking about job creation in the greater Taunton area. Thank you

Kerrie Babin
President & CEO
Taunton Area Chamber of Commerce
90 Route 44, Suite 1
Raynham, MA 02767
PH: 508-824-4068
FX: 508-884-8222
Like us on Facebook

Reilly, Janice (MGC)

From: Holmes, Danielle (MGC)
Sent: Tuesday, March 19, 2013 3:19 PM
To: McHugh, James (MGC); Reilly, Janice (MGC)
Subject: FW: Request To Address the Commission
Attachments: SAJER.pdf

Here is the request from KG

-Danielle

From: Mark Donovan [mailto:mdonovan@considinefurey.com]
Sent: Tuesday, March 19, 2013 1:32 PM
To: Holmes, Danielle (MGC)
Cc: kconsidine@considinefurey.com
Subject: FW: Request To Address the Commission

Danielle,

I just spoke to Kevin Considine and he asked me to resend this information.

We are requesting that three (3) people be allowed to address the Commission on behalf of KG Urban Enterprises and a short extension of the 10 minute time limit.

Please let me know if that is acceptable, please see the email below.
Thank you,
Mark Donovan

From: Mark Donovan [mailto:mdonovan@considinefurey.com]
Sent: Tuesday, March 19, 2013 12:34 PM
To: 'mgccomments@state.ma.us'
Cc: kconsidine@considinefurey.com; afurey@considinefurey.com
Subject: Request To Address the Commission

Dear Commission,

The following people would like to address the Commission at the "Region C" meeting this Thursday, March 21, 2013 in Fall River.

Barry M. Gosin, Equity Partner and Principal at KG Urban Enterprises;
Andrew Stern, Managing Director and Principal at KG Urban Enterprises; and
Marsha A. Sajer, of K&L Gates, legal counsel to KG Urban Enterprises.

Mr. Gosin and Mr. Stern would like to address the Commission regarding opening up "Region C" for competitive bidding and a proposal to build a casino in New Bedford.

Ms. Sajer would like to discuss the "Land In Trust" issue. Her resume is attached.

Please let me know if you need more information

Thank you,

Mark D. Donovan
CONSIDINE & FUREY, LLP
One Beacon Street, 23rd Floor
Boston, Massachusetts 02108
617-723-7200

K&L GATES

K&L GATES LLP
17 NORTH SECOND STREET, 16TH FLOOR
HARRISBURG, PA 17101-1507
T 717.231.4500 F 717.231.4501

March 18, 2013

Marsha A. Sajer
D 717.231.5849
F 717.231.4501
marsha.sajer@klgates.com

Chairman Stephen Crosby and Commissioners
of the Massachusetts Gaming Commission
Massachusetts Gaming Commission
84 State Street, 10th Floor
Boston, MA 02109

Re: Gaming on Indian Lands under the Indian Gaming Regulatory Act; Process to Apply for Land-in-Trust under the Indian Reorganization Act

Dear Commissioners:

I represent KG Urban Enterprises, LLC. In connection with the Commission's discussion on March 21 regarding a competitive bidding process for Region C, KG Urban requested that I prepare a brief overview of the Department of the Interior's ("DOI") land-in-trust process and review timeline and the prerequisites for tribal gaming under the Indian Gaming Regulatory Act ("IGRA").

I. Summary

- The Supreme Court's decision in *Carcieri v. Salazar* precludes the Secretary of the Interior from taking land into trust for tribes recognized after 1934.
    - Tribes may only operate casinos on tribal lands pursuant to the IGRA. Possession of tribal lands is a prerequisite to tribal gaming.
    - The Secretary of the Interior is authorized to take land into trust for the benefit of a tribe under the Indian Reorganization Act ("IRA").
    - In *Carcieri v. Salazar*, however, the Supreme Court held that the Secretary lacks authority under the IRA to take land into trust for a tribe that was not under federal jurisdiction at the time of the IRA's enactment in 1934.
    - Congress has not enacted legislation to overcome the prohibition of *Carcieri*.
    - Although the Secretary has begun to take land into trust for a handful of recently recognized tribes under a theory that they were under "federal jurisdiction" as of 1934, the Secretary's first acquisition of trust land for the

Cowlitz Tribe under that theory has been challenged in federal court and is not likely to be resolved for years.

- That legislative proposals have been repeatedly introduced to overcome *Carcieri* demonstrate Congressional recognition that legislative action is necessary to empower the Secretary of the Interior to take land into trust for tribes federally recognized after 1934, and that the Secretary presently has no authority to do so.

- Even if *Carcieri* were to be overruled by Congress, the land-in-trust process is a lengthy, deliberate review that mandates public input at multiple stages.
  - BIA recognized that the taking of land into trust for casino development is an undertaking with significant environmental impacts. Accordingly, BIA is proceeding to assess the impact of the proposed Taunton casino under the most deliberative and rigorous process – preparation of an environmental impact statement.
  - Data regarding the periods of time required by BIA to conduct environmental review of other proposed acquisitions of land for tribal casino development indicates that the review process takes six or more years.
  - BIA's preparation of an environmental impact statement for the Taunton casino proposal is at the start of the process.

- Tribal gaming under IGRA, whether Class II bingo or Class III casino gaming, is permitted only on "Indian lands," not on any land owned by a tribe.
  - Without a reservation or trust land, a tribe cannot conduct gaming of any kind.
  - Without land-in-trust, any subsequent steps towards gaming under IGRA (gaming ordinance, determination of exception to gaming on land acquired after 1988) are without effect and may never become effective.
  - The Secretary may designate qualifying land taken into trust as a tribe's initial reservation under IGRA to allow a tribe to operate gaming, but only if that land is first taken into trust under the IRA. IGRA provides no authority for the Secretary to take land into trust.
  - Were the Secretary to take land-in-trust for a tribe recognized after 1934, that decision will not end the uncertainty, but will instead prolong it for at least an additional six years pending legal challenges allowed under the Supreme Court's *Patchak* opinion.

II. Federal Legal Overview

The U.S. Constitution grants Congress treaty authority and plenary power to regulate commerce with Native American tribes. That authority, coupled with the federal government's enactment of IGRA, means that apart from the tribes, only the federal government may regulate tribal gaming on Indian land. A state has no authority to regulate tribal gaming except pursuant to IGRA's limited authority to enter into compacts with tribes to permit casino gaming on Indian lands within the state.

IGRA governs tribal gaming on Indian lands, e.g., reservations and land taken into trust for a tribe and over which the tribe exercises governmental power.

The Secretary of the Interior is authorized to take land into trust for the benefit of a tribe under the Indian Reorganization Act ("IRA"). However, in *Carcieri v. Salazar*, the Supreme Court held that the Secretary lacks authority under the IRA to take land into trust for a tribe that was not under federal jurisdiction at the time of the IRA's enactment in 1934. Congress has not enacted legislation to overcome the prohibition of *Carcieri*. Although the Secretary has begun to take land into trust for a handful of recently recognized tribes under the theory that they were under "federal jurisdiction" as of 1934, the Secretary's first acquisition of trust land for the Cowlitz Tribe[1] under that theory has been challenged in federal court and is not likely to be resolved for years. Furthermore, the fact that legislative proposals have been repeatedly introduced to overcome *Carcieri* demonstrates that a legislative fix – and not court action – is required before land can be taken into trust for tribes that were not federally recognized in 1934.

The land-into-trust process – even if *Carcieri* were to be overruled by Congress – is lengthy and subject to litigation, especially for the purpose of developing a tribal casino. Once a tribe applies to have land taken into trust, affected state and local governments have the right to comment on the impact of removing the land from the tax rolls and of anticipated jurisdictional problems or potential conflicts of land use. The environmental impact of taking the land into trust must also be assessed under National Environmental Policy Act ("NEPA"). The land-in-trust process to acquire land for gaming involves a lengthy administrative review that includes a series of stages with public input at each stage and typically takes years to complete. Litigation challenging the Secretary of the Interior's decision to take land into trust adds further delay. Finally, the Supreme Court's recent decision in the *Patchak* case extended the period in which challenges may be brought to the Secretary's decision to take land into trust from **thirty days to six years**, and authorized challengers to raise, among other issues, the *Carcieri* issue that the Secretary lacks authority under the IRA to take land into trust for tribes recognized after 1934.

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[1] The nearly decade-long efforts of the Cowlitz Indian Tribe to acquire land-in-trust for a casino are detailed in Section II.C.1., below.

III. Discussion

A. The U.S. Constitution assigns plenary authority to Congress in the arena of Indian affairs.

Article I, § 8, cl. 3 of the U.S. Constitution provides that the "Congress shall have Power … To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." Congress, because of its constitutional authority to enter treaties and to regulate commerce with Indian tribes,[2] has plenary power to legislate in the field of Indian affairs.[3] The broad and exclusive power of Congress over Indian affairs, through the Supremacy Clause, substantially limits the powers of the states and leaves little room for state regulation of Indian tribes and their activities (including gaming) on Indian lands.[4]

Congress has affirmatively legislated in the area of tribal gaming. Congress enacted the IGRA[5] to provide a statutory basis for the operation and regulation of gaming by Native American tribes on Indian land.[6] IGRA "expressly preempt[s] the field in the governance of

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2 "The plenary power of Congress to deal with the special problems of Indians is drawn both explicitly and implicitly from the Constitution itself. Article I, § 8, cl. 3, provides Congress with the power to 'regulate Commerce . . . with the Indian Tribes,' and thus, to this extent, singles Indians out as a proper subject for separate legislation. Article II, § 2, cl. 2, gives the President the power, by and with the advice and consent of the Senate, to make treaties. This has often been the source of the [federal] Government's power to deal with the Indian tribes." *Morton v. Mancari*, 417 U.S. 535, 551-52(1974).

3 *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 192 (1989) (citing *Morton v. Mancari*, 417 U.S. 535, 551-552 (1974) (noting the unique legal status of Indian tribes under federal law and the plenary power of Congress, based on a history of treaties and the assumption of a "guardian-ward" status, to legislate on behalf of federally recognized Indian tribes). "With the adoption of the Constitution, Indian relations became the exclusive province of federal law." *County of Oneida v. Oneida Indian Nation of N.Y.*, 470 U.S. 226, 234 (1985).

4 *See* 1-5 COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 5.02[1], 5.02[2] ("The courts have recognized that Congress has "plenary and exclusive authority" over Indian affairs. The term "plenary" indicates the breadth of congressional power to legislate in the area of Indian affairs, and the term "exclusive" refers to the supremacy of federal over state law in this area."); *see also United States v. Lara*, 541 U.S. 193, 200 (2004) (Congress has "broad general powers to legislate in respect to Indian tribes"); *Washington v. Confederated Bands & Tribes of the Yakima Nation*, 439 U.S. 463, 470 (1979) (noting the plenary and exclusive power of Congress over Indian affairs); *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 72 (1996) (reaffirming that Indian commerce is "under the exclusive control of the Federal Government.").

5 25 U.S.C. §§ 2701-2721.

6 *Seminole Tribe*, 517 U.S. at 48.

gaming activities on Indian lands"[7] and eliminates a state's ability to regulate tribal gaming on Indian lands located within the state except to the limited extent authorized by IGRA.[8] Congress enacted IGRA expressly to preserve and balance mutual and competing federal, state, and tribal interests in Indian gaming on Indian lands.[9] Tribal-state compacts are at the core of the scheme Congress developed to strike this balance. Accordingly, the only avenue for significant state involvement in tribal gaming is through Secretary of the Interior-approved tribal-state compacts covering class III casino gaming.[10]

In short, tribal gaming is solely a matter of federal law. Neither Massachusetts nor any other state has authority to regulate "tribal gaming" outside of IGRA.[11] Thus, an IGRA casino in Taunton, as proposed by the Mashpee, will be subject to state regulation only to the very limited extent permitted under a tribal-state compact.

B. IGRA regulates tribal gaming on "Indian lands."

Under IGRA, tribal gaming, whether Class II bingo or Class III casino gaming, is permitted only on "Indian lands" and not on any land owned by a tribe. IGRA defines "Indian lands" as (1) land within an Indian reservation, and (2) land that has been taken into trust by the federal government or held by the federal government subject to restriction against alienation and over which a tribe exercises governmental power.[12] Without a reservation or trust land, a tribe cannot conduct gaming of any kind. A tribe cannot simply purchase land and offer gaming on it. As the Ninth Circuit has explained, "IGRA pertains only to Indian lands," and "regulates activities only on Indian lands."[13] This limitation is

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7 S. Rep. No. 100-446, 100th Cong., 2d Sess., at 6, *reprinted in* 1988 U.S. Code Cong. & Admin. News, at 3071, 3076.

8 *See, e.g., Gaming Corp. of America v. Dorsey & Whitney*, 88 F.3d 536 (8th Cir. 1996) (the text and structure of IGRA, its legislative history and its jurisdictional framework indicate that Congress intended it to completely preempt state law); *Tamiami Partners v. Miccosukee Tribe of Indians*, 63 F.3d 1030 (11th Cir. 1995) (occupation of Indian gaming field by IGRA is evidenced by broad reach of IGRA's regulatory and enforcement provisions and underscored by comprehensive regulations adopted under IGRA).

9 *See Confederated Tribes of Siletz Indians of Or. v. United States*, 110 F.3d 688, 693 (9th Cir. 1997); S. Rep. No. 100-446, at 1-2 (1988), *reprinted in* 1988 U.S.C.C.A.N. 3071.

10 *See Gaming Corp.*, 88 F.3d at 544.

11 *See Gaming Corp.*, 88 F.3d at 549 ("If a state, through its civil laws, were able to regulate the tribal licensing process outside the parameters of its compact with the [tribal] nation, it would bypass the balance struck by Congress.").

12 *See* 25 U.S.C. § 2703(4) (definition of "Indian lands").

13 *Artichoke Joe's v. Norton*, 353 F.3d 712, 735 (9th Cir. 2003).

"critical," given the "well-established connection between tribal lands and tribal sovereignty."[14] A tribe's "governing powers and economic rights extend only as far as the borders of Indian lands," and tribes "shed their sovereignty" once "outside" those lands.[15]

In addition, IGRA generally prohibits gaming on land acquired by the Secretary of the Interior in trust for the benefit of an Indian tribe after October 17, 1988 unless one of the exceptions specified in IGRA is met.[16] These exceptions include land taken into trust in settlement of a land claim, as the initial reservation of a tribe, or as a restoration of lands for a tribe restored to federal recognition.[17] Whether lands taken into trust qualify for gaming under an exception to IGRA's prohibition against gaming on land acquired after 1988 is a legal determination, not a policy decision.[18] Indian land decisions are issued by either the DOI Solicitor's Office or by the National Indian Gaming Commission's general counsel.[19]

On February 7, 2013, Kevin Washburn, DOI Assistant Secretary – Indian Affairs, issued a letter to the Mashpee (the "Washburn Letter") conveying a preliminary policy determination that, **if taken into trust,** the lands sought to be acquired would qualify as the tribe's initial reservation under an exception to IGRA's prohibition on gaming on land acquired after 1988. The Washburn Letter likely means that because the Mashpee do not have a reservation, any land that might be taken into trust would, **if actually taken into trust**, constitute the Mashpee's first or "initial" reservation. It is unclear at this time whether the DOI solicitor has issued a legal opinion regarding whether the lands in Mashpee and Taunton sought to be acquired in trust meet the legal requirements of IGRA.[20] As of the date

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14 *Id.*

15 *Id.*

16 25 U.S.C. § 2719(a).

17 *See* 25 U.S.C. §2719(b)(1)(B)(i-iii). IGRA itself provides no authority to take land into trust for a tribe. *See, e.g.*, Testimony of George T. Skibine, Acting Deputy Assistant Secretary – Indian Affairs for Policy and Economic Development, Department of the Interior, at the Oversight Hearing Before The Senate Committee On Indian Affairs Concerning Taking Land Into Trust, May 18, 2005, at 2 (*available at* http://www.gpo.gov/fdsys/pkg/CHRG-109shrg21427/html/CHRG-109shrg21427.htm).

18 *See* June 18, 2010 Secretary Salazar Memorandum to Assistant Secretary - Indian Affairs, re: Decisions on Indian Gaming Applications ("For applications or requests submitted under one of these exceptions [settlement of land claim, initial reservation, or restoration of lands for a tribe restored to federal recognition] in IGRA, their approval largely depends upon a legal determination as to whether the application or request meets one of the delineated exceptions under IGRA. I recommend that you obtain such a legal determination from the Solicitor's Office."). *See also* 25 C.F.R. § 292.3(b) (tribe may obtain opinion whether newly acquired land meets IGRA exception to allow gaming).

19 *See* 25 C.F.R. § 292.3.

20 *See* 25 C.F.R. § 292.6.

of this memorandum, no such legal opinion has been posted to the National Indian Gaming Commission website where such opinions are ordinarily made available to the public[21] or to the website of the DOI Office of Indian Gaming.[22]

Furthermore, this policy determination, like others that pertain to implementation of gaming under IGRA (e.g., approval of gaming ordinance,[23] execution of tribal-state gaming compact[24]), **is without effect unless and until a tribe has land in trust.** A prospective determination that land, if taken into trust, would satisfy an exception to IGRA to permit gaming is a separate determination from the land-in-trust process itself, which is governed not by IGRA but by the IRA.[25]

It is unlikely that issuance of the Washburn Letter, which addresses a prospective exception to IGRA, will speed up the processing of the Mashpee's trust land application under the IRA. By way of example, in the case of the Cowlitz Tribe, the NIGC general counsel issued a legal opinion in November 2005 finding that land to be taken into trust for the Cowlitz was "restored land" or an "initial reservation" and thus could be used for gaming if taken into trust. DOI did not issue a decision on the trust land application until December 2010 – **five years after issuance of the NIGC general counsel legal opinion regarding the land.** As of 2013, **more than seven years after issuance of the NIGC general counsel opinion** that land proposed to be taken into trust for the Cowlitz would qualify for gaming under an IGRA exception, the Cowlitz effectively still do not have land in trust.

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21 *See* http://www.nigc.gov/Reading_Room/Indian_Land_Opinions.aspx.

22 *See* http://www.bia.gov/WhatWeDo/ServiceOverview/Gaming/index.htm.

23 *See* June 5, 2012 letter from Tracie L. Stevens, Chairwoman, National Indian Gaming Commission, to Cedric Cromwell, Mashpee Wampanoag Tribe (noting that the Tribe has no Indian lands and advising that "approval [of gaming ordinance] is granted for gaming only on Indian lands, as defined in IGRA, over which the Tribe has jurisdiction.").

24 *See* Tribal-State Compact between the Mashpee Wampanoag Tribe and the Commonwealth of Massachusetts, July 12, 2012 at ¶ 2.6 ("IGRA requires that a tribe's gaming must be conducted on Indian lands, which includes land taken into trust by the United States."); ¶ 2.8 ("Neither federal nor Commonwealth law requires the Governor … to negotiate a compact with a tribe before it has land that is qualified under IGRA for gaming by the tribe"); ¶ 9.1.1 ("The Tribe presently has no lands held in trust, for Gaming purposes or otherwise."). *See also* October 12, 2012 letter from Kevin K. Washburn, Assistant Secretary – Indian Affairs to Deval Patrick, Governor of the Commonwealth of Massachusetts (disapproving compact).

25 *See* Skibine testimony, n.16, supra, at 2 (Section 20 of IGRA, 25 U.S.C. § 2719, which prohibits gaming on land acquired after October 17, 1988 unless one of the specified exceptions is met, is "a separate and independent requirement to be considered before gaming activities can be conducted on land taken into trust after October 17, 1988, the date IGRA was enacted into law").

C. The land in trust review process is lengthy; it is precluded by *Carcieri* for tribes that were not federally recognized until after 1934.

1. The land-in-trust process

Subject to the limitation imposed by the U.S. Supreme Court's opinion in *Carcieri v. Salazar*, 555 U.S. 379 (2009), discussed below, the Secretary of the Interior is authorized to take land into trust for the benefit of a tribe under the IRA.[26]

The land-in-trust process is a lengthy undertaking[27] that requires the Secretary to evaluate the tribe's connection to the parcel in question; environmental impacts; jurisdictional issues; potentially conflicting land uses; the effect on state and local governments and tax rolls; and the claimed economic benefits to the tribe.[28] Much of this analytical work is done by the Bureau of Indian Affairs ("BIA") during the course of the review process required under NEPA to assess the environmental impact of taking the land into trust. Such a review typically takes many years and is subject to court challenge.

The uncertain and lengthy process of acquiring land in trust is illustrated by the Cowlitz Indian Tribe's trust land application review process. On November 12, 2004, BIA issued a notice of intent to prepare an Environmental Impact Statement ("EIS") pursuant to NEPA to address the potential environmental impacts of taking 151.87 acres into trust for the Cowlitz to use for a casino and hotel.[29] It was not until December 17, 2010, **six years later,** that the Assistant Secretary – Indian Affairs issued a final agency determination to acquire land in trust for the Cowlitz Tribe.[30] That decision was followed immediately by two

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26 Indian Reorganization Act, Ch. 576, §5, 48 Stat. 985, *codified at* 25 U.S.C. § 465.

27 *See KG Urban Enterprises, LLC v. Patrick*, 693 F.3d 1, 27 (1st Cir. 2012) (quoting *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 132 S. Ct. 2199, 2203 (2012) for the "lengthy administrative review" of a request to have land taken into trust for the purpose of operating a casino).

28 *See* 25 C.F.R. Part 151.

29 *See* http://www.cowlitzeis.com/.

30 This chart summarizes the Cowlitz land-in-trust review process:

November 12, 2004	BIA issues Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Cowlitz Indian Tribe's Trust Acquisition and Casino Project, Clark County, WA
December 1, 2004	Public Scoping meeting
November 12 – December 13, 2004	Scoping Comment Period

lawsuits challenging the DOI decision to take land into trust for the Cowlitz Tribe and is not likely to be resolved for years.[31] As a result of the complexity of the land-in-trust process and, in many cases, resulting litigation relating to DOI land-in-trust decisions, land-in-trust acquisitions have taken many years to be reviewed and finally determined, while others remain pending despite the passage of many years. As noted below, the Supreme Court's *Patchak* decision has significantly compounded the uncertainty of the land-in-trust process.

February 2005	BIA issues Draft Environmental Impact Statement Scoping Report for Cowlitz Indian Tribe Casino Project outlining the range of environmental issues to be addressed, the types of project effects to be considered and the range of project alternatives to be analyzed
April 12, 2006	Notice of Availability for the Draft Environmental Impact Statement solicits public comment
April 12 – August 25, 2006	Public comment period on Draft Environmental Impact Statement
June 14 & 15, 2006	Public hearing on Draft Environmental Impact Statement
May 2008	BIA issues Final Environmental Impact Statement which addresses filing of the final environmental impact statement with the USEPA for the Tribe's proposed fee-to-trust transfer, reservation proclamation, casino-resort project in Clark County, WA and approval by NIGC of a gaming management contract
May 30, 2008	BIA issues Notice of Availability of Final Environmental Impact Statement for the Cowlitz Indian Tribe's Proposed 151.87 Acre Fee-to-Trust Transfer, Reservation Proclamation, and Casino-Resort Project, Clark County, WA, for public comment
December 17, 2010	Final agency determination to acquire approximately 151.87 acres of land into trust for the Cowlitz Tribe

[31] The Secretary's decision to take land into trust for the Cowlitz Indian Tribe of Washington, which was federally recognized in 2002, was immediately challenged in two lawsuits. *See Clark County v. United States Department of the Interior*, U.S. District Court for the District of Columbia, No. 1:11-cv-00278-RWR (complaint filed on January 31, 2011); *Confederated Tribes of the Grand Ronde Community of Oregon v. Salazar*, U.S. District Court for the District of Columbia, No. 1:11-cv-00284-RWR (complaint filed on February 1, 2011). Interior advised that it will not take the land into trust for the Cowlitz until 60 days after the date of the federal district court decision, **which is expected to take more than three years to resolve**. Stephanie Rice, *La Center casino a high-stakes case*, The Columbian, March 20, 2011 (*available at* http://www.columbian.com/news/2011/mar/20/high-stakes-case/). On March 13, 3013, because of defects in the Cowlitz record of decision, the district court remanded the case to the Department of the Interior to prepare a new record of decision.

The following chart illustrates the length and complexity of the land-in-trust process for a sample of tribes seeking to operate gaming on land to be acquired in trust.

Estom Yumeka Maidu Tribe (Enterprise Rancheria)	BIA commenced the process to take 40 acres of land into trust for a casino in Yuba County, California on May 20, 2005. The trust land application process was not completed until November 2012 – **seven years later**. *See* http://www.enterpriseeis.com/.
Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians of Michigan (a/k/a the Gun Lake Tribe)	This is the land acquisition at the center of the *Patchak* litigation. The Gun Lake Tribe submitted its application to have land in Wayland Township, Michigan, taken into trust on August 8, 2001. *See Patchak v. Salazar*, 646 F. Supp. 2d 72 (D.D.C. 2009). The Secretary took land into trust for the Gun Lake Tribe on April 18, 2005. *Id.* Three years later, on August 1, 2008, Patchak filed suit, asserting that the Secretary lacked authority under the IRA to acquire land for the Gun Lake Tribe because the tribe was not a federally recognized when the IRA was enacted in 1934 and, therefore, the land acquisition was in violation of *Carcieri*. Ultimately, on April 24, 2012, **more than ten years after the Gun Lake Tribe applied to have land taken into trust**, the U.S. Supreme Court found that Patchak had standing to raise these challenges and remanded the case. *See Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 132 S. Ct. 2199 (2012).
Federated Indians of Graton Rancheria	In February 2004, BIA issued a notice of intent to assess the environmental impact of taking 254 acres of land into trust for a casino project in Sonoma County, California. A decision was issued **more than six years later**, in October 2010. *See* http://gratoneis.com/.
North Fork Rancheria of Mono Indians	In October 2004, an EIS was prepared to assess the environmental consequences of taking 305.49 acres into trust for a casino resort in Madera County, California. **Eight years later**, in November 2012, the Assistant Secretary made a final agency determination to acquire the land in trust. *See* http://www.northforkeis.com/.
Menominee Indian Tribe of Wisconsin	On July 7, 2004, BIA issued a notice of intent to prepare an EIS to assess the environmental effects of taking 223 acres (the site of the Dairyland Greyhound Park in Kenosha, Wisconsin) into trust for a casino hotel project. *See* http://www.kenoshaeis.com/. **After more than eight years, no final decision has been made to take land into trust.**
Ione Band of Miwok	On November 7, 2003, BIA began to assess the environmental impact of taking 228 acres in Amador County, California into trust for a

Indians	proposed casino project. **Nearly nine years later**, on May 24, 2012, DOI announced its intent to take the land into trust. *See* http://www.ioneeis.com/. Two suits were filed in federal court challenging the decision.[32]
Samish Indian Nation	On August 11, 2011, BIA began work to assess the environmental effects of taking approximately 11.41-acres into trust for the construction of a casino in Skagit County, Washington. A draft EIS has not yet been issued for public comment. *See* http://samisheis.com/. After that, a final EIS must be completed and issued for public comment before a decision to take land into trust can be made.

The Mashpee land-in-trust application process is in the initial stages of review.[33] On May 31, 2012, BIA issued a notice of intent to prepare an EIS to address the potential environmental impacts of taking 170 acres of land in Mashpee, Massachusetts and 151 acres of land in Taunton, Massachusetts into trust, to include a casino on the land in Taunton. BIA issued a scoping report outlining the issues to be considered as part of the review in November 2012, but has yet to issue a draft EIS for public comment, conduct further review in response to those comments, prepare and issue a final EIS for public comment, or issue a record of decision on the land-in-trust application.

2. Limitation imposed by *Carcieri v. Salazar* on the authority of the Secretary of the Interior to take land into trust for tribes recognized after 1934.

As discussed above, there is little prospect that the Mashpee will obtain land-in-trust in the foreseeable future. The federal land-in-trust process has been in a state of paralysis since the Supreme Court's decision in *Carcieri v. Salazar*, 555 U.S. 379 (2009). In *Carcieri*, the Court held that the Indian Reorganization Act – which authorizes the Secretary of the Interior to acquire land in trust "for the purpose of providing land for Indians," 25 U.S.C. § 465 – authorizes the acquisition of land in trust only for tribes that were under federal jurisdiction when the statute was enacted in 1934. 555 U.S. at 381-382. While, Justice

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32 *See County of Amador v. U.S. Dept. of Interior*, No. 2:12-cv-01710, U.S. District Court for the Eastern District of California (filed June 27, 2012); *No Casino in Plymouth and Citizens Equal Rights Alliance v. Salazar*, No. 2:12-cv-01748, U.S. District Court for the Eastern District of California (filed June 29, 2012).

33 *See* 77 Fed. Reg. 32132, May 31, 2012 (BIA notice of intent to prepare environmental impact statement for proposed fee-to-trust transfer of property in Taunton, MA and Mashpee, MA by the Mashpee Wampanoag Tribe); Scoping Report, Mashpee Wampanoag Tribe Fee-to-Trust Acquisition and Destination Resort Casino Mashpee and Taunton, Massachusetts, November 2012.

Thomas did not explicitly say that Congressional action would be needed to reverse the Court's decision. But that is implicit in every statutory decision the Court issues, so there is rarely a need to say it. A holding that the Secretary lacks statutory authority to take certain actions is generally understood to mean what it says unless Congress takes action to undo that decision. As a result, the Secretary currently has no statutory authority to take land into trust for tribes, such as the Mashpee, that were recognized by the federal government after 1934.

Absent an act of Congress, *Carcieri* bars the Secretary from taking any land into trust for the Mashpee.[34] Since 2009, there have been various proposals by members in both houses of Congress to overrule *Carcieri* by statute, but all of those efforts have failed. The recognition by Congress that legislative action is necessary to empower the Secretary of the Interior to take land into trust for tribes federally recognized after 1934 indicates that Congress concurs that the Secretary presently has no authority to do so. Chief Judge Sandra Lynch echoed the position of both the Federal judiciary **and** the United States Congress during the oral argument before the United States Court of Appeals for the First Circuit on KG Urban's appeal. Chief Judge Lynch suggested that an act of Congress is required to authorize the Secretary to take land into trust for tribes federally recognized after 1934, and observed that Congress has not adopted Justice Breyer's theory that tribes may have been under federal jurisdiction in 1934 although the federal government did not then know it.[35]

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[34] DOI has sought to take land into trust for tribes federally recognized after 1934 under the theory articulated by Justice Breyer in his concurring opinion in *Carcieri* that a tribe may have been "under federal jurisdiction" in 1934 although the federal government did not believe so at the time. 555 U.S. at 397-8 (Breyer, J., concurring). That theory is currently being tested in the courts and will not be resolved until a case reaches the U.S. Supreme Court. But even under that narrow view, a tribe seeking land in trust would have to prove that it was "under federal jurisdiction" in 1934 in order to even be *eligible* to have land taken into trust. That additional showing would only further delay the land-in-trust process and create one more obstacle to a tribe's acquisition of such land.

[35] Oral argument before the United State Court of Appeals for the First Circuit, *KG Urban Enterprises v. Patrick*, Case No.: 12-1233, June 7, 2012 (posted to http://www.ca1.uscourts.gov/files/audio/audiorss.php). The colloquy between Chief Judge Lynch and counsel for the Commonwealth included the following:

> COUNSEL FOR THE STATE: And if by July 31st the legislature were to approve a tribal compact, then Section 91E, the dismissal of the claim, should be upheld on the ground that it's subject to rational basis review and easily meets it.
>
> CHIEF JUDGE LYNCH: Why? Why when there are no Indian lands? You know, this is a bit of an extraordinary step, given that, at present, there is no power in the Secretary to approve a compact if a compact is reached, because the tribe does not have reservation land, does not have Indian lands, and it totally depends on an act of Congress.

The Attorneys General of 17 states, **including the Attorney General for the Commonwealth of Massachusetts**, signed a letter in April 2009 to the ranking members of the Senate Committee on Indian Affairs and the House Committee on Natural Resources urging them not to rush a legislative overturn of *Carcieri* that ignores legitimate state and local interests.[36] They noted frustration with the land-into-trust process and expressed concern that a rush by Congress to override *Carcieri* will undermine the ability of states and local communities to exercise their core governmental functions, including civil and criminal enforcement and taxing. To date, all legislative "fixes" to *Carcieri* have failed largely because of concerns – especially in the Senate[37] – about the acquisition of land for gaming.

3. *Patchak* expanded standing to sue and extended the time to challenge land-in-trust decisions, including challenges to the ability of the Secretary of the Interior to take land into trust for tribes recognized after 1934.

COUNSEL FOR THE STATE: So at least a few points in there, taking the last one first, it may or may not depend on an act of Congress.

CHIEF JUDGE LYNCH: Why not? You better explain that to me, because the way I presently understand it, it does depend on an act of Congress.

COUNSEL FOR THE STATE: As Justices Breyer and Souter pointed out, in their opinions in Carcieri, a tribe that is federally recognized after 1934, might be able to make a factual showing that they were nonetheless, under federal jurisdiction as of 1934 with respect to the--

CHIEF JUDGE LYNCH: Yes, but Congress has not adopted the position of the dissent, that's not the basis for it at all.

36 *See* April 24, 2009 letter from the State Attorneys General of Alaska, Colorado, Connecticut, Florida, Hawaii, Iowa, Kansas, **Massachusetts**, Michigan, Mississippi, Ohio, Rhode Island, South Carolina, South Dakota, Tennessee, Texas and Utah to Senators Dorgan and Barrasso of the Senate Committee and Representatives Rahall and Hastings of the House Committee on Natural Resources, re: Congressional Committee hearings re: Carcieri v. Salazar, 555 U.S. __ (2009) (*available at* http://turtletalk.wordpress.com/2009/04/29/seventeen-state-ags-urge-congress-not-to-quick-fix-carcieri/).

37 Senators expressing such concerns include Senator Diane Feinstein (D-Calif.) and Senator Charles Schumer (D-NY). Senator Schumer cautioned the Secretary of the Interior not to circumvent the legislative process and the decision of the Supreme Court in an effort to address the Carcieri decision unilaterally. *See* March 8, 2010 letter from Senator Schumer to Secretary Salazar (*available at* http://www.schumer.senate.gov/record.cfm?id=322881). Senator Schumer noted that "[t]he specific words chosen by Congress demonstrate that it was the will of legislature to limit the authority of the Secretary with respect to taking land into trust. This limitation can be changed only by another act of Congress, not unilaterally by the executive branch. Indeed, the Court noted 'Congress left no gap in 25 U. S. C. §479 for the agency to fill.'" *Id.* (citing *Carcieri*, 555 U.S. at 391).

Federal litigation of the issues raised by the Mashpee's application to acquire land-in-trust for gaming, including the Secretary's authority to take land into trust under *Carcieri*, likely will delay implementation of tribal gaming in the Commonwealth for years.[38] The potential for delay was significantly increased by the Supreme Court's 2012 decision in *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 132 S.Ct. 2199 (2012). *Patchak* expanded the pool of potential challengers and extended the time limit to bring a legal challenge to the Secretary's decision to acquire land in trust for a tribe.

In that case, the Supreme Court ruled that Patchak, a property owner near the land taken into trust, had standing under the Administrative Procedure Act ("APA") to challenge both the acquisition of the land based on its proposed use as a casino and the authority of the Secretary under the IRA to take the land into trust for the Gun Lake Tribe, which had not been federally recognized until 1998.[39] Patchak brought suit three years after the Secretary had taken land into trust. **Prior to *Patchak*, a party challenging a decision to acquire land in trust for a tribe had only a thirty-day window under DOI regulations to seek judicial review.[40] Under *Patchak*, however, a challenge to a land-in-trust decision may be brought within the APA's six-year statute of limitations.[41]**

I would be happy to discuss these issues further with the members of the Commission.

Sincerely,

Marsha A. Sajer

cc: Barry M. Gosin
Andrew M. Stern

---

38 The *Carcieri* case is a useful example. The *Carcieri* case began in 1998 when the Governor of Rhode Island challenged the decision of the Secretary of the Interior to take land into trust for the Narragansett Indian Tribe. That case **concluded eleven years later**, when the Supreme Court held that the Secretary lacks authority to take land into trust for tribes that were not under federal jurisdiction as of 1934.

39 132 S.Ct. at 2204, 2211-12.

40 *Id.*, 132 S.Ct. at 2217 (Sotomayor, J., dissenting) (citing 25 C.F.R. § 151.12).

41 *Id.*

CLAREMONT COMPANIES
One Lakeshore Center, Bridgewater, Massachusetts 02324

February 26, 2013

Massachusetts Gaming Commission
84 State Street, Suite 720
Boston, MA 02109

Dear Chairman Crosby and Members of the Gaming Commission:

The Claremont Companies are a 45-year-old, nationally recognized real estate investment, development and asset management firm located in Bridgewater, Massachusetts.

Claremont owns a 170-acre site at the intersection of Route 24 and Interstate 495 in Bridgewater. The company has had discussions about a potential casino resort on the site with both town officials and representatives of most of the world's largest casino operators. The operators all expressed an interest in developing a casino resort at what they all described as a perfect site.

The uncertainty around the casino process for Southeastern Massachusetts, however, has served to stop any operator from making any investment in the development of a non-tribal casino resort anywhere in the region.

Southeastern Massachusetts is in dire need of jobs. A recent report by the Southeastern Regional Planning & Economic Development District described the region as the "economic stepchildren of the state -- always lagging behind in indicators of economic strength such as employment, income, education and new investment."

The uncertainty about the path of casino gaming in Southeastern Massachusetts threatens to relegate residents of the region to "stepchildren" status once again.

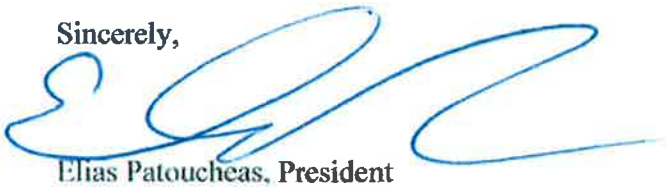
While we understand and respect the idea of giving a Native American tribe the opportunity to build a casino in the region, we do not believe that the interests of any potential casino operator should be put ahead of the economic interests of the region.

It has become clear from developments at the federal level that a Native American casino in Southeastern Massachusetts is, at best, many years away. At worst, it is an illusion.

We urge you to begin the process of considering commercial license applications for Southeastern Massachusetts. The region cannot afford for another potential economic boom enjoyed elsewhere in the state to pass it by.

We welcome the opportunity to discuss this matter with the commission further and we look forward to seeing you at your March 21 hearing.

Sincerely,



Elias Patoucheas, President
Claremont Companies

Reilly, Janice (MGC)

From: mgccomments (MGC)
Sent: Monday, March 11, 2013 10:27 AM
To: McHugh, James (MGC); Reilly, Janice (MGC)
Subject: FW: Request to address the Gaming Commission

From: Tyllyn@aol.com [mailto:Tyllyn@aol.com]
Sent: Friday, March 08, 2013 4:28 PM
To: mgccomments (MGC)
Cc: tyllyn@aol.com
Subject: Request to address the Gaming Commission

Good Afternoon,

I would like to address the Gaming Commission on March 21 in Fall River. As the Chairman of the grassroots community organization, Preserve Taunton's Future, addressing the issues we have been plagued with since this process began. I would like to address the issued facing this tribe at the local, state and federal levels, as well as address the procedures for Land In Trust, which this tribe does not qualify for, despite the misrepresentations by it's leaders.
If you would like more information, please contact me.
Thank you,

Michelle Littlefield
192 Erin Road
East Taunton, MA. 02718
(508) 328-9285

Michelle Littlefield, Private Investigator
DCS Investigations, Inc.

President
Jennifer Lynn Fay Foundation for Missing Children, Inc.
www.jenniferlynnfayfoundation.org

(508) 328-9285

Reilly, Janice (MGC)

From: mgccomments (MGC)
Sent: Monday, March 18, 2013 1:51 PM
To: Reilly, Janice (MGC)
Subject: FW: Request to address the commission

-----Original Message-----
From: Scott [mailto:tpgscott@yahoo.com]
Sent: Sunday, March 17, 2013 10:17 PM
To: mgccomments (MGC)
Subject: Request to address the commission

To whom it may concern

My name is Scott Rodrigues and I am a member of the board of directors for the group Preserve Taunton's Future. I am requesting to speak at the open meeting on 3/21/13. I would be speaking about opening up Region C for economic development of the region.

Scott Rodrigues

Reilly, Janice (MGC)

From: mgccomments (MGC)
Sent: Monday, March 11, 2013 10:27 AM
To: McHugh, James (MGC); Reilly, Janice (MGC)
Subject: FW: Request to Address the Commission

From: Bill [mailto:billdocarmo@comcast.net]
Sent: Friday, March 08, 2013 2:33 PM
To: mgccomments (MGC)
Subject: Request to Address the Commission

To: The Massachusetts Gaming Commission:

Re: Request to Address the Commission:
William do Carmo, New Bedford, MA., a Civil Rights Advocate, Consultant, Past President of the NBNAACP, Election Commissioner, and much more.

A commercial option casino license for Greater New Bedford's economic development, along the waterfront, namely the Cannon Street Power Plant location. This location is ideally suited for redevelopment and would benefit a depressed community in need of employment and additional benefits that will include the area and the Aquinah Tribe whose roots are historically embedded in the community at large.

Thank you,

William do Carmo, New Bedford, MA

Reilly, Janice (MGC)

From: mgccomments (MGC)
Sent: Monday, March 11, 2013 10:26 AM
To: McHugh, James (MGC); Reilly, Janice (MGC)
Subject: FW: Request to address the Commission

From: Carol Kelley [mailto:ckocean@yahoo.com]
Sent: Friday, March 08, 2013 12:26 PM
To: mgccomments (MGC)
Subject: Request to address the Commission

----- Forwarded Message -----
From: Carol Kelley <ckocean@yahoo.com>
To: "mgccomments@state.ma.us" <mgccomments@state.ma.us>
Sent: Friday, March 8, 2013 12:24 PM
Subject: request to speak

Request to speak at the March 21, 2013 meeting in Fall River.

Carol Kelley
14 Indian Hill Rd.
Plymouth, MA 02360
508-224-3885
ckocean@yahoo.com

Citizens Equal Rights Alliance
Secretary

In support of a commercial casino license and KG Urban, for Southeast Massachusetts

The tribe was never under federal jurisdiction and is not eligible for land into trust in the Commonwealth.
I have the lists of tribes who are eligible. There will be no "Carcieri Fix" by Congress since 34 states supported Governor Carcieri of Rhode Island. Massachusetts wrote an amicus brief for the Supreme Court supporting Rhode Island.

The 1834 Trade and Intercourse Act clearly states that there is no Indian County east of the Mississippi River.
Will present you with a copy of a letter from the Commissioner of Indian Affaires, 1899 clearly stating
that no tribes in the original 13 colonies were ever under Federal jurisdiction.

Thank you.

Carol

Reilly, Janice (MGC)

From: Ziemba, John S (MGC) <john.s.ziemba@massmail.state.ma.us>
Sent: Wednesday, March 20, 2013 10:49 AM
To: Reilly, Janice (MGC)
Subject: Fwd: Performing Arts Centers, SE region casino

Sent from my iPhone

Begin forwarded message:

> **From:** "Crosby, Steve (MGC)" <Steve.Crosby@MassMail.State.MA.US>
> **Date:** March 19, 2013, 1:58:02 PM EDT
> **To:** Troy Siebels <Troy@thehanovertheatre.org>
> **Cc:** "Ziemba, John S (MGC)" <John.S.Ziemba@MassMail.State.MA.US>
> **Subject: RE: Performing Arts Centers, SE region casino**
>
> Great.
>
> ---
>
> **From:** Troy Siebels [mailto:Troy@thehanovertheatre.org]
> **Sent:** Tuesday, March 19, 2013 12:55 PM
> **To:** Crosby, Steve (MGC)
> **Cc:** Ziemba, John S (MGC)
> **Subject:** RE: Performing Arts Centers, SE region casino
>
> Thanks so much – Vince Longo, one of our members representing South Shore Music Circus and Cape Cod Melody Tent, plans to be there and to speak.
> Troy
>
> ---
>
> **From:** Crosby, Steve (MGC) [mailto:steve.crosby@state.ma.us]
> **Sent:** Tuesday, March 19, 2013 12:35 PM
> **To:** Troy Siebels
> **Cc:** Ziemba, John S (MGC)
> **Subject:** RE: Performing Arts Centers, SE region casino
>
> Thank you Troy. You are welcome to sign up to speak at our Thursday meeting in Fall River if you wish.
>
> I will distribute your letter.
>
> ---
>
> **From:** Troy Siebels [mailto:Troy@thehanovertheatre.org]
> **Sent:** Tuesday, March 19, 2013 11:56 AM
> **To:** Crosby, Steve (MGC)
> **Cc:** Ziemba, John S (MGC)
> **Subject:** Performing Arts Centers, SE region casino
>
> Dear Chairman Crosby,

Attached is a letter expressing our concerns related to the potential impact a Native American Tribal casino in the southeastern region may have on our venues; and our understanding that the protections offered to us in the legislation may not apply under the pending compact.
I understand that your ability to apply those protections may be limited, but wanted to at least convey our concerns to stay on your radar.
Respectfully Yours,
Troy

Troy Siebels
Chair, Mass Performing Arts Center Coalition
Executive Director, The Hanover Theatre
2 Southbridge Street
Worcester, MA 01608
508.471.1760 tel
508.890.2320 fax
troy@thehanovertheatre.org
Follow me on Twitter at @TroySiebels

The HANOVER THEATRE for the Performing Arts

March 19, 2013

Mr. Stephen Crosby, Chairman
Massachusetts Gaming Commission
84 State Street, 10th Floor
Boston, MA 02109

Dear Chairman Crosby,

As you know, the performing arts centers that make up our membership have expressed concerns regarding unfair competition from casino live entertainment venues, based on their ability to pay more for touring performers and shows, and to prevent those performers and shows from appearing at other venues throughout the commonwealth. You have been consistently willing to hear our concerns and to seek to address those concerns, and affirm the protections our legislators included in the expanded gaming act, in a fair minded way. We are grateful to you for that, and look forward to continuing to work with you and the Commission as you complete the drafting of regulations and the licensing process.

I write today on the topic of the Mashpee Wampanoag Tribe and the process by which it seeks to secure a license to operate a resort casino in the southeastern region of the state. We understand that the Tribe's casino will be governed by the terms of its compact with the Commonwealth, rather than by Massachusetts General Law and the expanded gaming act. We face the same potential negative impact from the southeastern region casino as from the others, but are uncertain as to how to protect ourselves.

We implore the Commission to ensure that the provisions in the expanded gaming act that are so critical to us are applied to a Mashpee Wampanoag casino as well through the regulatory and licensing process, to the extent allowable under any compact. Those key provisions are 1) the prohibition against a casino incorporating a live entertainment venue of between 1,000 and 3,500 seats; and 2) the requirement of gaming license applicants to sign agreements with impacted live entertainment venues. Our member theatres located in Cohasset, New Bedford and Hyannis and particularly concerned about the resort casino in this region; though the rest of our theatres are impacted as well because of the radius exclusivity clauses typically employed by casino entertainment venues.

We would be appreciative of any clarification you might provide as to how a Tribal casino will be regulated. We will remain in touch with the Commission through Ombudsman Ziemba, and look forward to continuing to work with you.

Respectfully Yours,

Troy Siebels
Chair, Massachusetts Performing Arts Center Coalition

Reilly, Janice (MGC)

From: mgccomments (MGC)
Sent: Wednesday, March 20, 2013 1:29 PM
To: Reilly, Janice (MGC)
Subject: FW: Request to Address the Commission on March 21, 2013

From: Flaherty, Tom [mailto:TOM@spragueenergy.com]
Sent: Wednesday, March 20, 2013 12:38 PM
To: mgccomments (MGC)
Subject: Request to Address the Commission on March 21, 2013

Dear Sir or Madame,

My name is Thomas Flaherty and I am a Vice President of Sprague Operating Resources based in Portsmouth, NH. We are the owners of the site in New Bedford on which KG Urban Enterprises is planning on developing a gaming facility in the event they are awarded a gaming license. We currently operate a petroleum products storage and distribution business on the property. Our site contains the building that will be the centerpiece of the project – the former Cannon Street Power Station. We have been working with KG Urban on this project for six years and have hosted dozens of visits from environmental clean-up, architects and engineers to the Cannon Street Power Station in furtherance of the development effort. I would like to speak on the topic of the readiness of the site for immediate availability once a gaming license is awarded.

I would very much appreciate the opportunity to address the Gaming Commission in person.

Sincerely

Thomas Flaherty

Sprague Operating Resources LLC O|603 430 7213 M|603 502 9400

Reilly, Janice (MGC)

From: mgccomments (MGC)
Sent: Wednesday, March 20, 2013 3:21 PM
To: Reilly, Janice (MGC); Driscoll, Elaine (MGC)
Subject: FW: Request to address the Commission

From: David Fenton [mailto:dfenton@ibew223.org]
Sent: Wednesday, March 20, 2013 1:44 PM
To: mgccomments (MGC)
Subject: Request to address the Commission

My name is David Fenton Business Manager of the International Brotherhood of Electrical Workers Local 223.

I would like to address the commission concerning the Mashpee Wampanoag tribe's effort to move forward with their resort project and the commitment it has made for good paying jobs for the southeastern Massachusetts region.

David W. Fenton
Business Manager/
Financial Secretary
P. 508-947-8555 Ext 203
F. 508-946-5417
Web: www.ibew223.org

Sent from my iPad

Reilly, Janice (MGC)

From: mgccomments (MGC)
Sent: Wednesday, March 20, 2013 3:21 PM
To: Reilly, Janice (MGC); Driscoll, Elaine (MGC)
Subject: FW: Request to address the Commission - Region C

From: Carroll, Stephen [mailto:Stephen.Carroll@nstar.com]
Sent: Wednesday, March 20, 2013 2:48 PM
To: mgccomments (MGC)
Subject: Request to address the Commission - Region C

My name is Stephen Carroll, Real Estate Manager for NSTAR, the owner of a majority of the Cannon Street site in New Bedford. NSTAR has approximately 200 employees that work out of this site, which includes a power substation located on the property. I respectfully wish to address the commission at tomorrow afternoon's hearing.

Stephen Carroll
Real Estate Manager
NSTAR, a Northeast Utilities Company
One NSTAR Way, SUMSE 210
Westwood, MA 02090
Phone: (781) 441-3547
Fax: (781) 441-8909
E-Mail: stephen.carroll@nstar.com

COMMENTS SUBMITTED

NAME	AFFILIATION
Rep. Antonio Cabral	New Bedford – submitted letter 12/7/12
Barry Gosin	Principal, KG Urban – submitted letter 12/14/12
David Littlefield	Preserve Taunton's Future – email 03/09/13
Paula Morrison	East Taunton Resident – email 03/08/13
Francis Lagace	East Taunton Resident – submitted letter 03/05/13
Troy Siebels	Chair, Mass Performing Arts Center Coalition
Carolyn Crowell	
Rep. Robert Koczera	11th Bristol District – email 12/14/12
Rep. Shauna O'Connell	3rd Brisol District – submitted letter 12/17/12
Dominic Tigano	East Taunton Resident – email 12/17/12
Thomas K. Lynch	Barnstable Town Manager–submitted letter 12/18/12
Rita Garbitt	Lakeville Town Admin. – submitted letter 12/18/12
Rep. Angelo D'Emilia	8th Plymouth District
Charles J. Cristello	Middleborough Town Manager

COMMONWEALTH OF MASSACHUSETTS
HOUSE OF REPRESENTATIVES
STATE HOUSE, BOSTON 02133-1054

ANTONIO CABRAL
STATE REPRESENTATIVE
13TH BRISTOL DISTRICT
STATE HOUSE, ROOM 466
BOSTON, MA 02133
TEL. (617) 722-2017

CHAIRMAN
HOUSE COMMITTEE ON BONDING, CAPITAL EXPENDITURES AND STATE ASSETS

(508) 997-8113 (DISTRICT)
E-Mail:
Antonio.Cabral@MAhouse.gov

December 7, 2012

Chairman Stephen Crosby
Massachusetts Gaming Commission
84 State Street, Suite 720
Boston, MA 02109

Re: Class III Gaming License, Region C

Chairman Crosby,

I want to thank you and your fellow commissioners for considering how to ensure that the recently opened application process for Class III casino licensure is fair for every region of the Commonwealth. I write to urge the Commission to move immediately to allow Region C potential bidders to join the Request for Applications Phase I ("RFA-1") process currently under way for Regions A and B.

As you know, native tribes seeking to open a casino offering Class III gaming in Massachusetts faced substantial hurdles at the time we in the Legislature passed the Gaming Act in 2011. As a member of that Legislature, I share your view, expressed in your recent public remarks, that the Legislature crafted the Gaming Act to allow for only a brief window for tribes to explore their opportunities for casino development in recognition of these substantial hurdles the tribes faced and of the importance of insuring that Region C not be left behind as the other Regions moved toward opening casinos.

The United States Department of Interior's rejection of the Tribal Compact agreed between the Commonwealth and the Mashpee Wampanoag Tribe on October 12, 2012 and recent federal court decisions have added substantially to those hurdles, as Commissioner McHugh noted in his December 4, 2012 Memorandum to the Commission. In fact, it is now even more challenging for any tribe to be able to offer Class III gaming in Massachusetts pursuant to existing law in any reasonable time frame. It is, therefore, imperative that the Commission move immediately to allow Region C to join the rest of the Commonwealth in the ongoing licensing process. The Commission can and should open the existing RFA-1 application process to Region C bidders and extend the deadline for filing applications pursuant to 205 CMR 110 to allow Region C bidders to adequately prepare their applications.

We in Southeastern Massachusetts began the discussion of bringing casinos to Massachusetts more than two decades ago. The residents of my city, New Bedford, have twice voted to express their desire for casino development. I hope the Commission will immediately exercise the discretion granted to them in the Gaming Act to allow our Region to join the rest of the Commonwealth and investigate casino development opportunities.

Sincerely,

Tony Cabral

ANTONIO F.D. CABRAL
State Representative, 13th Bristol District
Chairman, Committee on Bonding, Capital Expenditures and State Assets

Cc: Commissioner Gayle Cameron
Commissioner James McHugh
Commissioner Bruce Stebbins
Commissioner Enrique Zuniga

KG Urban Enterprises

Barry M. Gosin
Principal

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December 14, 2012

Mr. Steven Crosby
Chairman
Massachusetts Gaming Commission
84 State Street, Suite 720
Boston, Massachusetts 02109

RE: Region C Status Review

Dear Chairman Crosby:

I write as an equity principal in KG Urban Enterprises. As you are aware, KG has been working for many years on our plan for an urban waterfront resort casino in the City of New Bedford, in Region C.

At its meetings on December 4 and December 11, 2012, the Massachusetts Gaming Commission (the "Commission") discussed at some length the status of Region C. At both meetings, there was extensive discussion of the possibility of a "dual" or "parallel" track application process for a commercial resort gaming license in Region C. Since the Commission has invited public comment before voting on the implementation of a dual or parallel track process, I am writing to express KG's views on this concept. We wish to respectfully state that such a parallel or dual track is profoundly problematic from both a business and legal standpoint.

It is imperative that once the commercial licensing process is opened in Region C, that process must not be subject to revocation or suspension on any basis which is not also applicable to the processes in Regions A and B. Specifically, the Region C commercial license process cannot be conditional, subject to, or contingent upon the progress the Mashpee Wampanoag tribe might make toward an Indian casino. A contingent process will leave many gaming investors unable to commit the substantial capital as well as the time, effort and personnel resources necessary to proceed as an applicant in a process that could be aborted for reasons having nothing to do with the quality of a proposed project. Under the "dual track" process discussed by the Commission, an applicant is forced to assess not just its own ability to win a license on the merits, as in Regions A and B, but faces an additional and highly-significant variable totally outside each applicant's control, or even ability to influence through its own business decisions. Specifically, there is the possibility that the strength of a Region C applicant's qualifications, and the quality of the proposal itself, could be rendered irrelevant if the Mashpee tribe is deemed to have achieved "sufficient progress" toward an Indian casino.

Region C has been thus far ignored by most of the commercial gaming industry because of the Massachusetts Gaming Act's preference for the Mashpee tribe. The implementation by the Commission of a conditional or contingent process will simply compound this existing inequity. A contingent process will continue to leave the Southeast in an inferior position relative to Regions A and B by fundamentally distorting the economics of applying for the Region C license, and thereby discouraging investment in Region C.

The Commissioners have all correctly noted during your deliberations regarding Region C that commercial applicants in Regions A and B will all expend substantial resources to compete for a resort gaming license with no guarantee of winning that license. But that competition will occur solely on the merits. Any competition for a single commercial concession in a particular jurisdiction presupposes that everyone who competes cannot win. In fact, all competitors enter the process knowing that all but one of them will in fact lose. But they also enter the process knowing that the wise investment of additional time and effort in their proposal will increase their chances of prevailing. A decision to compete thus becomes a classic business decision regarding both the allocation of resources and the tactical and strategic decision-making (both on selection and deployment of personnel, and on the substance of the proposal itself) which causes an applicant and its investors to conclude that the company's qualifications and proposal will best all others. The process in Regions A and B is the same for everyone -- the existence of the process, and of the commercial license on which the applicants are bidding, are not in doubt.

Moreover, all applicants in Regions A and B enter the licensing process with both the knowledge and expectation that the process will proceed to a conclusion. Each applicant's risk hangs only on its own ability to put forward the best proposal. An applicant is wagering its own resources on its own ability to be better than its competitors and that is the very essence of the business a casino builder and operator is in. And while several Commissioners have noted that the Commission can decline to issue a license at the close of the process in those Regions, the Act permits this only should the Commission fail to receive any meritorious proposal. Thus every applicant in Regions A and B enters the competitive fray with the certainty that as long as its proposal is sufficiently meritorious, it will win -- either because it beats out other meritorious proposals, or because the Commission deems it meritorious even in the absence of other meritorious proposals. Neither the actions of any one applicant, nor the actions of an outside party, can suspend the process itself, affect the very existence of the process itself, nor affect the availability of the license itself.

In stark contrast, a contingent process in Region C will cause the Southeast to be viewed by investors not as a conventional allocation of resources to compete in an open commercial licensing process on the merits as they do in other jurisdictions, but as a fundamentally flawed business proposition: an uncertain and therefore potentially reckless investment in a process that remains subject to being aborted based on outside events beyond an applicant's control. This is a risk that quite simply does not exist in Regions A or B. And it is a risk of an entirely different nature than the risk taken by Region A and B applicants. Those applicants are betting solely on their own ability to put forth the winning application. Indeed, it is the very fairness of the process mandated by the Commission for Regions A and B, a process with no variables other than merit and quality, which has already attracted such a deep pool of interested applicants and will result in such a wide variety of proposals in those Regions.

We understand that the Commission proposes at this time to commence only with Phase I under the dual or parallel track, and intends to reassess the Indian situation once applicants have been qualified before deciding whether to open Phase II of the process to formal applications and proposals. This does not mitigate or fundamentally alter the critical flaws of a dual or parallel track process outlined above – it magnifies them. True, the $400,000 fee to pre-qualify is not, by itself, onerous in the context of qualifying to propose and build a $500,000,000 casino resort property. But when one factors in the internal and outside resources needed to complete the pre-qualification process, the fatal flaw remains the same: the Commission is creating and commencing with a contingent process that may or may not ultimately proceed. This obligates Region C applicants to commit to a creeping expenditure of substantial resources to qualify for a Phase II that may not ever actually begin. It is exactly this type of uncertainty that

frightens away those who invest in high-visibility, large-scale commercial gaming development. Applicants for pre-qualification in Regions A and B faced no such uncertainty when the Commission commenced with Phase I.

Finally, even beyond the business implications of the entire Region C process possibly being aborted based on an extraneous factor, that the process would be aborted specifically because of the Mashpee's pursuit of tribal gaming implicates the fundamental violation of the Equal Protection Clause inherent in Section 91 of the Massachusetts Gaming Act. In fact, a dual or parallel track process for Region C created and implemented solely because of the Mashpee Wampanoag Tribe's existence, while Regions A and B proceed on a single track that guarantees a decision on the merits, only serves to underscore the serious Constitutional issues which have already been raised. As the Commission is aware, we continue to vigorously pursue our Constitutional claims before Judge Nathaniel Gorton in the United States District Court in Boston, as directed by the United States Court of Appeals for the First Circuit.

For all of the foregoing reasons, we urge the Commission to level the playing field in the entire Commonwealth by opening Region C to commercial gaming applicants on terms identical to those upon which the Commission has opened Regions A and B. Such action by the Commission will not only keep Region C from falling further behind the other Regions, it will attract the largest and deepest pool of qualified applicants, and thereby reap for Southeastern Massachusetts the economic benefits the legislature intended to deliver to the entire Commonwealth of Massachusetts when it passed the Gaming Act. To be clear, KG asks not that the Commission implement our notion of a "fair" process for Region C. We ask the Commission to do no more, but no less, than implement in the Southeast the Commission's own concept of a fair commercial licensing process: the one the Commission itself created for and is presently implementing in Regions A and B.

I hope that the foregoing is helpful to the Commission as it continues to discuss and deliberate the future of Region C.

Thank you for providing KG Urban Enterprises with the opportunity to comment.

Very truly yours,

Barry M. Gosin

KG Urban Enterprises

Barry M. Gosin
Principal

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December 17, 2012

Mr. Steven Crosby
Chairman
Massachusetts Gaming Commission
84 State Street, Suite 720
Boston, Massachusetts 02109

RE: Region C Status Review

Dear Chairman Crosby:

I am in receipt of your e-mail of December 16, 2012. Thank you for the reply.

KG's internationally regarded gaming market analysts, potential investors, and our investment banker who finances these projects, all agree that Southeastern Massachusetts is one of the strongest potential markets in the United States for a resort gaming property of the type we propose. Neither the presence of a Class II slot property licensed by the Commonwealth, nor the eventual presence of a federally licensed Class II Indian gaming property, nor both, fundamentally alters the economics of our proposed Category I casino property in New Bedford. We have consistently advised those who conceived and crafted the Gaming Act that KG has been and remains unfazed by and unafraid of the future competition that an Indian Property in Southeastern Massachusetts might present. We remain committed to this position today.

Moreover, KG's urban waterfront redevelopment and industrial building re-use concept is a sufficiently unique product that a property of the sort we propose at Cannon Street will experience a bare minimum of lost business to either category of slot property discussed above.

Once again, thank you for providing KG Urban Enterprises with the opportunity to comment.

Very truly yours,

Barry M. Gosin

Reilly, Janice (MGC)

From: mgccomments (MGC)
Sent: Monday, March 11, 2013 9:25 AM
To: Reilly, Janice (MGC)
Subject: FW: request to speak at the hearing on march 21st in fall river

-----Original Message-----
From: David Littlefield [mailto:bodyshop@southshorechrysler.com]
Sent: Saturday, March 09, 2013 8:36 AM
To: mgccomments (MGC)
Subject: request to speak at the hearing on march 21st in fall river

Greetings,

My name in David Littlefield, i am the co -chairman of the organized group "preserve tauntons future". an organization that has been on the fore front of coordinating local residents in conducting meetings for the mepa scoping sessions, the bia hearings,local city meetings, as well as this meeting coming up. I have been educating the local community on the impacts to a sovereign nation to our state lands.
i am not against a casino, however i will not give our state land to another nation. This region should be open to a commercial entity, allowing the state to have jurisdiction, and oversight to the project. I have been studying Federal Indian Policy for over a year now. and can prove that the Mashpee Wampanoags are not eligible for land in trust anywhere, including mashpee. The exception to sect. 20 of IGRA only applies to this tribe IF they can get land in trust and IF they can secure a reservation proclamation. They can do neither, and i have the proof to present to you on march 21st. Please do not leave this region behind to continue to entertain the delays of the mashpee wampanoag tribal government. They are no closer to attaining land in trust than they were when they showed up in our community. i will prove it to you on march 21st.

thank you,
dave littlefield

Reilly, Janice (MGC)

From: mgccomments (MGC)
Sent: Monday, March 11, 2013 10:27 AM
To: McHugh, James (MGC); Reilly, Janice (MGC)
Subject: FW: "Request to address the Commission"

From: gpjmorri@comcast.net [mailto:gpjmorri@comcast.net]
Sent: Friday, March 08, 2013 4:33 PM
To: mgccomments (MGC)
Subject: "Request to address the Commission"

Paula Morrison

East Taunton Resident

I plan to encourage the commissioner to open up Region C for a commercial license. The federal government does not have the legal authority to offer Land in Trust to Native American Tribes and land in this area is governed by the Commonwealth of Massachusetts. In addition, it is detrimental to South East Massachusetts to require it to wait until all obstacles against the tribe are remedied.

Francis R. Lagace
36 Stevens Street
East Taunton MA 02718

Massachusetts Gaming Commission
84 State Street, Suite 720
Boston, MA 02109

March 5, 2013

Re: Opening of Region C for Commercial Casino License Applications

Dear Chairman Crosby,

I am writing to you regarding the Commission's consideration of opening Region C for a Commercial Class III gaming license. I submit to you that at the Commission's meeting scheduled for March 21, 2013 that the Commission open Region C to commercial bidders for a Class III license and put in place a mechanism to begin accepting commercial Class III applications immediately.

Since the Mashpee Indian tribe's preference in the Expanded Gaming Act is problematic for Region C, its issues will be discussed as causing delays. Given the following discussion, and a recommendation here that the Commission perform due diligence research of the information presented, the Commission should find itself compelled to open Region C to commercial casino applicants because of substantial delays associated with an Indian casino proposal.

Currently Region C is being held hostage to many delays; legally, structurally and politically because of the unique aspect of the Expanded Gaming Act's provision for an Indian tribe to be a preferred casino developer in Region C. As you are aware, the Expanded Gaming Act provides preference for the Mashpee Indian tribe to negotiate a Compact with the Commonwealth for a casino to be operated in Region C. (A Compact was negotiated with the Governor, approved by the General Court, submitted for approval and rejected by the Bureau of Indian Affairs and purportedly requires a new Compact, a second vote by the General Court and a second submission and approval period by the Bureau of Indian Affairs).

There are also internal and external issues regarding the Mashpee tribe that will certainly delay or deny a casino development in Region C. These internal and external issues are detrimental to Region C because of typical business cycles and saturation of commercial casinos in other regions and neighboring states that have no such delaying impediments caused by an Indian

tribe's federal requirements. (An example is Rhode Island where Twin Rivers will very soon be operating a Class III casino on the immediate border of Region C).

Internal issues include the Mashpee tribe being deficient in governing itself according to a competent scholarly study and challenges to the last two tribal elections.

The Mashpee tribe had commissioned the Harvard Project on American Indian Economic Development – Native American Institute, to provide an Inventory Assessment of the Mashpee tribe's government. The Inventory Assessment released in 2011 identified and analyzed strengths and weaknesses of the Mashpee government and made recommendations to remedy deficiencies. The Harvard Project's Inventory Assessment revealed myriad, glaring deficiencies in the Mashpee tribe's ability to govern itself and see to its people's needs. For example, necessary documents for effective governance were not extant. These documents included the following:

1. Mission Statement,
2. Strategic Plans,
3. Annual Reports,
4. Financial Operations Manuals,
5. Organizational Policy Manuals,
6. Organizational Reviews and Assessments and
7. Tribal Gaming Authority Documents.

The lack of these documents denies tribal members, who are entitled to participate in the Mashpee's government affairs and the opportunity to participate in the process of securing their well being. Tribal members are confused in the least in knowing where their tribe is going, how they will get there, where funding is coming from, where funds are spent, debt obligations (debt alleged to be $48,000,000 in soft costs for their casino proposal; debt which is believed to be held by Genting Group) and if their government is effective. If the Mashpee government can not maintain important documents or keep its tribal members informed, it certainly can not act timely to remedy its government's deficiencies and to demonstrate its ability to develop and operate a casino to benefit the Commonwealth.

Also, the Mashpee tribe's election in 2009 is being called into question by certain tribal members who have implored the Bureau of Indian Affairs for investigation and suit has been filed in the First Circuit of the Federal Court by nine tribal members to compel the Bureau of Indian Affairs to investigate that 2009 election. The U.S. Department of Justice has taken up to investigate the Mashpee's 2009 election for impropriety. In addition, the most recent election has been challenged by a former candidate for Chairman, Richard Oakley, who is said to have hired council. Mr. Oakley claims he has affidavits from 100 tribal members who claim that they

voted for him. Official results of the election for Chairman show that Mr. Oakley received only about 23 votes vs. his claim of at least 100 votes for him supported by his supposed affidavits. A re-count has upheld the most recent election, but it is uncertain whether or not a Court challenge is in the offing.

Given the above two governmental issues, one must reasonably conclude that the Mashpee tribe's internal problems most likely will delay the forward movement of a casino development in Region C. The Mashpee's organizational structure is woefully inadequate. Their ability to correct the deficiencies in their government cannot reasonably be completed in time for them to operate a casino with a sound financial future without competitive saturation weakening their proposal. The potential of upending the 2009 and 2013 election creates unacceptable uncertainty and potential further delay. These tasks can not be completed in time for the Mashpee tribe to prepare itself to operate a casino properly. In essence, the Mashpee tribe must organize its government and resolve its election issues for its benefit before taking up a casino project and Region C must not be burdened with the Mashpee tribe's difficulties.

Next, the Mashpee are burdening the Commonwealth and Region C with unacceptable delay due to the Land into Trust process which I am sure you are aware is required by the United States Department of the Interior for a federally recognized Indian tribe to operate a gaming operation. The Mashpee submitted a second Land into Trust application to the Bureau of Indian Affairs on June 5, 2012 (the first was for a casino proposal in Middleboro). The second application was incomplete. Lacking was an "expert's" report which is required for the Mashpee to prove that they lived, hunted, or buried their dead in East Taunton to satisfy necessary aboriginal proof for Land into to Trust to be approved. It is believed that they have recently submitted the expert's portion of their Land into Trust application untimely and allegedly claiming that they are now a part of the Pokonket tribe that claims aboriginal rights to Taunton. This late submission and a new claim of descent from another Indian tribe further delays their proposal due to the need for further research and analysis.

Also, Land into Trust applications take a long period of time to process. Amongst other things, much archeological research is required to prove that an Indian tribe has aboriginal claim to the lands on which they wish to acquire Land into Trust so that they may construct a casino in addition to an Environmental Impact Statement which takes several years to research, process, write, and submit for stakeholders' comments.

The record is rife with time consuming Land into Trust applications for Indian tribes. Below is a list of just four tribes' applications and the time frames to illustrate the extreme length of time required for a Land into Trust application to be processed and to illustrate the unreasonableness of allowing the Mashpee to proceed while not accepting commercial applications for Region C.

Cowlitz

Clark County WA.

Application submitted January 2002

Decision rendered December 2010

Time span – Eight years

Ione Band of Miwok

Amador County CA

Application submitted 2005

Decision rendered May 2012

Time span – Seven years

Scotts Valley Band of Pomo Indians

Contra Costa County CA

Application submitted November 2005

Decision rendered May 2012

Time span – Seven years

Enterprise Rancheria of Maidu

Yuba County CA

Application submitted June 2002

Decision rendered August 2011

Time span – Nine years

Clearly the historic trend is that a significant amount of time is in front of the Mashpee to get a decision on their Land into Trust application. While Chairman Cromwell states that the Bureau of Indian Affairs is processing the Mashpee Land into Trust application rapidly, the above examples demonstrate that this is doubtful as it is highly unlikely that the Bureau of Indian Affairs is favoring the Mashpee over other tribes. It took thirty years for the Mashpee to become a federally recognized tribe. Their Land into Trust application in all probability will not be treated any differently than their federal recognition as an Indian tribe or the way the above listed tribes have been treated. An average of eight years for a Land into Trust application decision certainly exceeds credulity to allow the Mashpee approximately eight years to move ahead with a casino proposal. The market will surely be satiated by then.

In addition, the Land into Trust process will initiate substantial litigation. In Carcieri v. Salazar, 555 U.S. 379 (2009), the Supreme Court ruled that the Department of Interior is prohibited from taking land into trust for a tribe not recognized before 1934. If the Mashpee's Land into Trust application is approved, it is most probable that the Carcieri ruling will spawn litigation and cause delay. The Carcieri decision is very persuasive as the U.S. Supreme Court delivered the ruling and it has cited the Carcieri case in three subsequent cases thereby establishing that the Supreme Court will not deviate from Carcieri (the United States Congress can provide a so called "Carcieri fix" however this will cause unreasonable delay for Region C as well).

If a successful Land into Trust application is approved it will probably also prompt a "Patchak" suit. (See Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak, 567 U.S. 2012).

This case went to the U.S. Supreme Court and the Court ruled that simply a neighbor (and neighbor appears to be defined broadly as any entity affected by Land into Trust for the purpose of gaming) has standing and up to six years to file suit against the Department of the Interior for taking Land into Trust in violation of the Carcieri ruling. Patchak filed suit against

the Department of Interior after land for the Gun Lake Band's casino was taken into trust, a casino constructed and operations commenced. The complainant in Patchak has the potential to close an operating Indian casino with his case. The ramifications are astounding.

Therefore, the internal legal challenges of the Tribe regarding their elections, the tribe's inability to govern itself, a long and arduous Land into Trust process, a failed Compact, a second Compact negotiation, Bureau of Indian Affairs approval and General Court vote, and current and certain future litigation in the event that Land into Trust occurs are insurmountable factors in bringing a casino to Region C in a timely manner. It is now time to open Region C to commercial casino developers and end the uncertainty plaguing the Commonwealth and wasting its resources.

Respectfully,

Francis R. Lagace

Reilly, Janice (MGC)

From: Crosby, Steve (MGC)
Sent: Tuesday, March 19, 2013 12:36 PM
To: Reilly, Janice (MGC)
Subject: FW: Performing Arts Centers, SE region casino
Attachments: Commission ltr re Tribal casino 3-19-13.pdf

For Thursday packets. And include all other written submitted comments.

From: Troy Siebels [mailto:Troy@thehanovertheatre.org]
Sent: Tuesday, March 19, 2013 11:56 AM
To: Crosby, Steve (MGC)
Cc: Ziemba, John S (MGC)
Subject: Performing Arts Centers, SE region casino

Dear Chairman Crosby,
Attached is a letter expressing our concerns related to the potential impact a Native American Tribal casino in the southeastern region may have on our venues; and our understanding that the protections offered to us in the legislation may not apply under the pending compact.
I understand that your ability to apply those protections may be limited, but wanted to at least convey our concerns to stay on your radar.
Respectfully Yours,
Troy

Troy Siebels
Chair, Mass Performing Arts Center Coalition
Executive Director, The Hanover Theatre
2 Southbridge Street
Worcester, MA 01608
508.471.1760 tel
508.890.2320 fax
troy@thehanovertheatre.org
Follow me on Twitter at @TroySiebels

The
HANOVER THEATRE
for the Performing Arts

March 19, 2013

Mr. Stephen Crosby, Chairman
Massachusetts Gaming Commission
84 State Street, 10th Floor
Boston, MA 02109

Dear Chairman Crosby,

As you know, the performing arts centers that make up our membership have expressed concerns regarding unfair competition from casino live entertainment venues, based on their ability to pay more for touring performers and shows, and to prevent those performers and shows from appearing at other venues throughout the commonwealth. You have been consistently willing to hear our concerns and to seek to address those concerns, and affirm the protections our legislators included in the expanded gaming act, in a fair minded way. We are grateful to you for that, and look forward to continuing to work with you and the Commission as you complete the drafting of regulations and the licensing process.

I write today on the topic of the Mashpee Wampanoag Tribe and the process by which it seeks to secure a license to operate a resort casino in the southeastern region of the state. We understand that the Tribe's casino will be governed by the terms of its compact with the Commonwealth, rather than by Massachusetts General Law and the expanded gaming act. We face the same potential negative impact from the southeastern region casino as from the others, but are uncertain as to how to protect ourselves.

We implore the Commission to ensure that the provisions in the expanded gaming act that are so critical to us are applied to a Mashpee Wampanoag casino as well through the regulatory and licensing process, to the extent allowable under any compact. Those key provisions are 1) the prohibition against a casino incorporating a live entertainment venue of between 1,000 and 3,500 seats; and 2) the requirement of gaming license applicants to sign agreements with impacted live entertainment venues. Our member theatres located in Cohasset, New Bedford and Hyannis and particularly concerned about the resort casino in this region; though the rest of our theatres are impacted as well because of the radius exclusivity clauses typically employed by casino entertainment venues.

We would be appreciative of any clarification you might provide as to how a Tribal casino will be regulated. We will remain in touch with the Commission through Ombudsman Ziemba, and look forward to continuing to work with you.

Respectfully Yours,

Troy Siebels
Chair, Massachusetts Performing Arts Center Coalition

Reilly, Janice (MGC)

From: Milby, Brandon (MGC) on behalf of mgccomments (MGC)
Sent: Monday, December 17, 2012 8:08 AM
To: Reilly, Janice (MGC)
Subject: FW: Region C

Brandon P. Milby
Massachusetts Gaming Commission
84 State St., Suite 720
Boston, MA 02109
(617)979-8410
brandon.milby@state.ma.us

-----Original Message-----
From: Carolyn Crowell [mailto:cawcaw33@verizon.net]
Sent: Sunday, December 16, 2012 3:18 PM
To: mgccomments (MGC)
Subject: Region C

I am for the Wampanaog 's request for gaming in Mass.

There should be no other licenses given to other groups in eastern Mass. The competition with 2 other licenses in the state is enough competition for the gambling dollar, with the proximity with those already existing in Conn.

Carolyn Crowell

Reilly, Janice (MGC)

From: Milby, Brandon (MGC) on behalf of mgccomments (MGC)
Sent: Friday, December 14, 2012 12:24 PM
To: Reilly, Janice (MGC)
Subject: FW: Region C

First comment

Brandon P. Milby
Massachusetts Gaming Commission
84 State St., Suite 720
Boston, MA 02109
(617)979-8410
brandon.milby@state.ma.us

-----Original Message-----
From: Koczera, Robert (HOU) [mailto:robert.koczera@mahouse.gov]
Sent: Friday, December 14, 2012 12:24 PM
To: mgccomments (MGC)
Subject: Region C

Dear Members of the Massachusetts Gaming Commission:

The Massachusetts Gaming Commission should make a timely decision on the ability of the Mashpee Wampanoag tribe to secure land in federal trust in light of the Carcieri Supreme Court decision. The unlikelihood that Congress will pass legislation to address the Carieri decision adds to the urgency for the Gaming Commission to allow for a commercial category 1 license for region C. To do otherwise would be a great disservice to the people of the southeast region of the Commonwealth, who would benefit from the job opportunities a commercial casino would bring to the area. The Carcieri decision effectively blocks land being taken into trust, at a minimum it ensures the process to place land in federal trust will be litigated taking years, not months to resolve, with the definite possibility of an adverse result.

I strongly encourage the Commission to pursue the schedule Commissioner McHugh is proposing relative to pre-qualifying commercial developers for region C, to ensure this region does not fall behind the other two regions of the Commonwealth. The Massachusetts Gaming Commission should affix a date no later than June 2013 to allow commercial bids for a category 1 license in region C. Such a timeframe would ensure region C is not left behind relative to the issuance of category 1 license in the other two regions of the Commonwealth. It is important for the Commission to use their authority to set a date certain from which the Commission will act on the issuance of a commercial casino license in region C.

Sincerely,

Robert M. Koczera
Massachusetts State Representative
Eleventh Bristol District

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES
STATE HOUSE BOSTON, MA 02133-1020

Committees:
House Ways and Means
Ethics
Personnel and Administration

SHAUNNA L. O'CONNELL
STATE REPRESENTATIVE
3RD Bristol District

STATE HOUSE, ROOM 237
TEL. (617) 722-2305
FAX (617) 626-0397
shaunna.o'connell@mahouse.gov

December 17, 2012

Massachusetts Gaming Commission
84 State Street, Suite 720
Boston, MA 02109

Dear Commissioner Crosby,

I write in reference to recent discussion by the Massachusetts Gaming Commission regarding Region C. As you may know, the district I represent as State Representative includes most of the City of Taunton, who has partnered with the Mashpee Wampanoag Tribe to host the Tribe's destination resort casino.

During the debate over expanded gaming in the Commonwealth, careful consideration was given to the rights of federally recognized Indian tribes to conduct gaming and how the Commonwealth would work with a gaming-eligible federally recognized tribe in a fair, practical way that would acknowledge their unique rights while also protecting the Commonwealth's interests and maximizing job creation and economic development in Southeastern Massachusetts.

Legislators engaged in extensive debate over these matters before we ultimately passed the Expanded Gaming Act of 2011 and sent it to Governor Patrick for his signature. Among the issues debated were the requirements the law would impose on a tribe as well as whether any deadlines should be imposed.

The law required the tribe to purchase or have an option to purchase land, negotiate an intergovernmental agreement with the host community, schedule and win a popular referendum in that community, negotiate a Tribal-State compact with the Governor, and have that compact approved by the legislature. The deadline to meet all of these requirements was established as July 31, 2012. Much to the surprise of many observers, the Mashpee Wampanoag Tribe met all of these requirements on their proposed destination resort casino in Taunton.

It is important to point out two requirements that the law did not make. First, although the law required the Tribe to negotiate a compact with the Governor and receive legislative approval before July 31st, it was silent on the issue of federal approval of said compact. While we all wish the compact had been approved by the Department of the Interior, the disapproval does not indicate that the Tribe has somehow failed to meet a requirement; thus, the Tribe and the Governor should be afforded time to reach another agreement which the legislature can again consider.

Second, the legislature considered setting a deadline on the Tribe to receive its land in trust. Amendments were filed that would have imposed this deadline, they were debated, and the legislature voted not to include such a deadline. The statute clearly provides that the gaming commission can consider bids for a Category 1 license in Region C only if the commission first determines that the tribe will not have land taken into trust by the United States Secretary of Interior.

Like the Commission, I am eager to see the jobs and economic benefits of a destination resort casino in Southeastern Massachusetts. Significant progress has been made by the Mashpee Wampanoag Tribe and the City of Taunton and its residents to move this project forward.

I am also aware of the feelings of some of my colleagues who wish to see proposals for destination resort casinos in their cities or towns; however, the fact remains that the Expanded Gaming Act respects the federal rights of the Mashpee Wampanoag Tribe to conduct gaming in Southeastern Massachusetts. The Tribe has met every requirement of this law.

The City of Taunton and its residents have overwhelmingly approved the project and are deeply invested in bringing this incredible economic opportunity to the city, which eagerly looks forward to the good careers and influx of resources this project will provide.

Thank you for the opportunity to comment on this matter.

Sincerely,

Shaunna O'Connell
State Representative

Reilly, Janice (MGC)

From: Milby, Brandon (MGC) on behalf of mgccomments (MGC)
Sent: Tuesday, December 18, 2012 8:49 AM
To: Reilly, Janice (MGC)
Subject: FW: Region C

I am printing this one too.

Brandon P. Milby
Massachusetts Gaming Commission
84 State St., Suite 720
Boston, MA 02109
(617)979-8410
brandon.milby@state.ma.us

From: Nick Tigano [mailto:nicktigano@gmail.com]
Sent: Monday, December 17, 2012 6:33 PM
To: mgccomments (MGC)
Subject: Region C

Dear Chairman and Commisioners of the MGC,

I would like to start by thanking you for accepting input on this very important issue. I feel as though you have done an exceptional job in regards to transparency, and care for the residents of this great state. Your management thus far of the process makes me confident that you will effectively administer the legislation, and regulate the casinos that will soon be built across the Commonwealth.

That being said, it is that same confidence that turns into fear for the lack of regulatory oversight this same commission will have over a tribal casino. With all other issues aside, that very fact alone concerns me dearly.

I write to you today to make 2 points. The first point is that it is imperative to the region that you accept bids from commercial developers. I think that in doing so, you will be able to clearly identify the benefits of a commercial casino over that of a tribal. I think that we as a state have done a fair job and gave sufficient time for a tribal casino to take hold, but facing the facts that the Mashpee Wampanoag will NEVER get land into trust is imperative. It is imperative not only to the Gaming Commission and the Commonwealth, but to the residents, municipalities, and businesses of Region C.

The other item in which I would like to point out, to help you in coming to a decision on how to move forward with the region is that even if the Mashpee Wampanoag do get their land in trust application approved, I want to make it very clear to you that I will be among the first of at least a few local residents to file suit, halting any and all development until the higher court has made a decision. This has been done as in the Patchak decision (Doc. #11-247). Even in the absence of my lawsuit, it is evident that others in the region, including businesses, will likely file suit as well.

Please understand that I do not mean this as a threat of any means, simply as a reminder that there are too many uncertainties with allowing this tribe more and more time to meet the requirements under IGRA, and the expanded gaming legislation, and this will hold up the region indefinitely until this very commission, with their rightful jurisdiction, decides to open the region and show the tribe that

the only thing "inevitable" about their casino is the fact that it will never come, and that the members of the tribe, along with their children will forever be indebted by this horse and pony show.

I thank you again for allowing the residents of this great state to be a part of the process, and wish you all a very merry holiday season.

Best Regards,

Dominic Tigano
1701 County Street
East Taunton, MA 02718

The Town of Barnstable

Office of Town Manager

367 Main Street, Hyannis MA 02601
www.town.barnstable.ma.us

Office: 508-862-4610
Fax: 508-790-6226
Email: tom.lynch@town.barnstable.ma.us

Thomas K. Lynch, Town Manager

December 18, 2012

Stephen Crosby, Chair
Massachusetts Gaming Commission
84 State Street, Suite 720
Boston, MA 02109

Chairman Crosby,

Thank you for the opportunity to comment on the re-opening of Region C to Phase 1 Request for Applications as the Gaming Commission begins to reassesss gaming in Region C as the tribal process proceeds.

While we understand the Commonwealth's approach to gaming we have grave concerns about the impact of such large scale development in Barnstable and offer the following comment for your consideration.

The Town of Barnstable serves as the regional hub for Cape Cod. Barnstable's village of Hyannis, the urban core of the Cape, serves as the job and service center, hosts regional transportation systems, healthcare and government facilities all set within an environment of natural systems. Natural systems within Barnstable, and as they connect to regional systems, are integral to our economy and quality of life.

Rapid growth in past decades created a demand for infrastructure capacity that Barnstable strives to provide for itself and regional users. Barnstable's infrastructure systems are planned to provide capacity for existing development and modest economic growth. Implementing improvements to address unmet needs for wastewater and roadway safety and congestion infrastructure to appropriately accommodate existng development is ongoing and will continue into the future.

The impacts inherent with the large scale development contemplated for gaming in Region C can not be supported in Barnstable – not by our envrionment, not by our infrastructure and not by our economy.

Kind regards,

Thomas K. Lynch
Town Manager

Town of Lakeville

Town Office Building
346 Bedford Street
Lakeville, MA 02347

OFFICE OF
SELECTMEN
TELEPHONE (508) 946-8803
FAX (508) 946-0112

December 18, 2012

Stephen Crosby, Chairman
Massachusetts Gaming Commission
84 State Street, Suite 730
Boston, MA 02109

RE: Comments on Potential Region C
Gaming License Applications

Dear Chairman Crosby:

At their meeting held on December 17, 2012, the Lakeville Board of Selectmen discussed the email received from SRPEDD regarding comments to the Massachusetts Gaming Commission on Potential Regional C Gaming Licenses Applications.

Due to the short notice for comments to be received, the Selectmen have not had a chance to thoroughly investigate the matter. However, the Selectmen are concerned about the possibility of there being both a Commercial and Tribal Casino being located in Region C (southeastern Massachusetts), and are opposed to the potential for two (2) casinos being located in the southeastern Massachusetts area.

If you have any questions, please do not hesitate to contact me at (508) 946-8803.

Sincerely,

Rita A. Garbitt
Town Administrator

The Commonwealth of Massachusetts
House of Representatives
State House, Boston 02133-1020

ANGELO D'EMILIA
STATE REPRESENTATIVE
Bridgewater, Easton (Precinct 6), Raynham

Committees on
House Ways & Means
Community Development and Small Business
House Personnel & Administration

ROOM 448, STATE HOUSE
TEL. (617) 722-2582
FAX. (617) 626-0170
Angelo.D'Emilia@MAhouse.gov

March 19, 2013

Stephen P. Crosby, Chairman
Gaming Commission
84 State Street, Suite 720
Boston, MA 02109

Dear Chairman Crosby:

In advance of the Massachusetts Gaming Commission's public meeting on March 21st at Bristol Community College we are writing to address our concerns relative to the state of casino gaming in the southeastern region of Massachusetts.

In enacting legislation authorizing casino gaming in Massachusetts, the entire General Court saw fit to set aside Southeastern Massachusetts (Region C) provisionally for potential tribal use. With the best of intensions, we provided Native American tribes with an opportunity to develop a resort style casino before any private developers in that area. Regrettably because of the complexities of the federal Native American gaming process, it appears that a Native American resort casino may not happen for some time, certainly not within the time frame provided by the General Court.

While that reality is indeed unfortunate, I do not believe the Commission should lose sight of the principal objective which is to create economic opportunity in Southeastern Massachusetts. The legislature viewed, and continues to view, casino gaming as an opportunity to stimulate economic activity in the form of new jobs, capital investments, as well as opportunities for local business in our communities. We must do what is necessary to improve the economic climate in our region as it needs and deserves nothing less.

Accordingly, I urge you to allow the southeastern region the same economic benefits and fairness as the other two regions by accepting commercial applications for resort style casinos in Southeastern Massachusetts.

I respectfully ask for your timely consideration of this request. Thank you once again. If you have any questions, please do not hesitate to contact me.

Sincerely,

ANGELO D'EMILIA
State Representative
8th Plymouth

Reilly, Janice (MGC)

From: mgccomments (MGC)
Sent: Thursday, March 21, 2013 11:32 AM
To: Reilly, Janice (MGC)
Subject: FW: Region C

From: Charles Cristello [mailto:ccristello@middleborough.com]
Sent: Thursday, March 21, 2013 8:16 AM
To: mgccomments (MGC)
Cc: Pacheco, Marc (DTA); Rep. Thomas Calter (Thomas.Calter@mahouse.gov) (Thomas.Calter@mahouse.gov); Rep. Susan Gifford (Susan.Gifford@mahouse.gov) (Susan.Gifford@mahouse.gov); 'Orrall, Keiko - Rep. (HOU)'; Selectman Distribution; Jacqueline Shanley
Subject: Region C

Dear Commissioner Crosby,

The Middleborough Board of Selectmen at a recent meeting voted to support the proposal before the Massachusetts Gaming Commission to open Region C to commercial gaming proposals. The Board sees no harm in the Massachusetts Gaming Commission proceeding on parallel tracks in regards to casino development in Region C.

Please feel free to contact me at 508 947-0928 if you have any questions

Charles J. Cristello
Town Manager
Town of Middleborough