

The Commonwealth of Massachusetts

Massachusetts Gaming Commission

NOTICE OF MEETING and AGENDA

February 28, 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, February 28, 2013

1:00 p.m.

Division of Insurance

1000 Washington Street

1st Floor, Meeting Room 1-E

Boston, Massachusetts

PUBLIC MEETING - #54

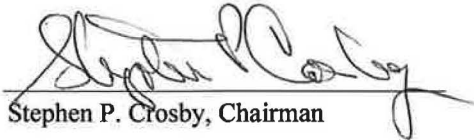
1. Call to order
2. Approval of Minutes
 - a. February 21, 2013 Meeting
3. Administration
 - a. Master schedule
 - i. Category 2 Licensing Schedule
 - b. Personnel update
4. Public Education and Information
 - a. Report from the Ombudsman
 - b. Evaluation Criteria
 - i. March 12th Meeting
 - ii. Review updated Evaluation Criteria Matrix
 - c. Preparation for Region C discussion
5. Regulation Update
 - a. Review of draft regulations
 - i. Surrounding Community Agreement protocol and procedures
 - ii. Surrounding Community definition
 - b. Schedule update
 - i. Meeting - March 13th
 - c. License fee discussion
6. IEB Report
 - a. Investigations status report
 - b. Discussion of processing public records requests for applications
 - i. Dissemination process
7. Racing Division
 - a. Administrative Update
 - b. Proposed changes to 205CMR 3.00 and 4.00 – Update

8. Research Agenda

9. Other business – reserved for matters the Chair did not reasonably anticipate at the time of posting

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

2/26/13
(date)


Stephen P. Crosby, Chairman

Date Posted to Website: February 26, 2013 at 1:00 p.m.

The Commonwealth of Massachusetts
Massachusetts Gaming Commission

Meeting Minutes

Date: February 21, 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 53rd public meeting.

Approval of Minutes:

See transcript pages 2-3.

Commissioner McHugh stated that he has distributed the February 14, 2013 minutes for review.

Motion made by Commissioner McHugh that the minutes of February 14, 2013 be approved as amended. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.

Administration:

See transcript pages 3-56.

Master Schedule – Chairman Crosby stated that the Commission is continuing to tighten up the schedule for regulation promulgation and processing RFA-2 applications.

Personnel Update – Chairman Crosby stated that the Director of Supplier Workforce and Diversity Development, Director of Research and Problem Gaming, and Director of Licensing

interview processes are ongoing and that Executive Director Day will be involved in these processes.

Commissioner McHugh stated that the Commission began the search for a General Counsel some months ago with the assistance of the search firm Isaacson Miller. He stated that Isaacson Miller contacted over 175 people in the course of this search, which resulted in a pool of 60 candidates from across the country. He stated that he and Isaacson Miller then narrowed this pool to ten individuals whom he interviewed. He introduced the finalist for this position, Catherine Blue, who is currently General Counsel at MassDevelopment, and provided information on her background and qualifications. Ms. Blue addressed the Commission and answered questions addressed to her relative to her background and the General Counsel position. The Commission was in agreement that Ms. Blue was a qualified candidate to assume the position of General Counsel.

Motion made by Commissioner McHugh that the Commission hire Catherine Blue as its first General Counsel under the terms previously agreed upon with an anticipated start date of March 11, 2013. Motion seconded by Commissioner Zuniga. The motion passed unanimously by a 5-0-0 vote.

Sites for Western Massachusetts Meetings – Commissioner Stebbins stated that the Commission should determine whether to hold a Commission meeting in Western Massachusetts and where the Commission might hold such a meeting. He recommended not meeting in a surrounding community to avoid any misconceptions about the meaning of the chosen location. He recommended potentially meeting in Palmer and West Springfield. Commissioner McHugh recommended that the Commission also consider meeting in other locations that are not gaming hotbeds, as the gaming process affects the Commonwealth as a whole. Chairman Crosby asked Chief of Staff Reilly to work on setting up these meetings and locations. He stated that Ms. Reilly is also looking at space in western Massachusetts for a potential office location for the Commission.

Enhanced Code of Ethics – Commissioner McHugh stated that the Commission is under a statutory mandate to create an Enhanced Code of Ethics, in addition to those ethics codes already applicable to all state employees. This Code will apply to the Commission and its partners from the State Police and Alcoholic Beverages Control Commission. The Attorney General's Office will also have its own Enhanced Code of Ethics. He stated that he and Commissioner Cameron have met with representatives of the State Police and ABCC to work out this Enhanced Code of Ethics and have distributed to the Commission a draft which is the product of their collaborative effort.

Attorney Grossman stated that this requirement for an Enhanced Code of Ethics comes to the Commission by way of Chapter 23K, Section 3(m), which provides that the Commission shall establish a code of ethics for itself and all employees that is more restrictive than the existing ethics laws. He stated that the Commission intended that the Enhanced Code of Ethics supplement the existing ethics and campaign finance laws, but not be an all-encompassing, one-stop code. The existing ethics and campaign finance laws will still apply to the Commission. He stated that included in the draft Enhanced Code of Ethics is a provision for annual training for all

employees and Commissioners. He stated that employees and Commissioners may request advice from the Legal Department regarding compliance with the enhanced code and may reasonably rely on any advice that the General Counsel gives. He also stated that the Code includes annual filing requirements to allow the Commission to enforce the provisions of G.L. c.23K, §3, which prohibit certain involvement during the three years prior to employment with applicants or other entities involved in the gaming process. He stated that in order to avoid being overly burdensome on consultants, Chapter 23K allows designating consultants as special employees. He reviewed several of the key provisions in the Code including conflict of interest, prohibition of gifts, prohibition of use of licensee facilities, prohibition of wagering at a facility that is owned or operated by an entity that also has a license in Massachusetts, and conduct unbecoming an employee of the Commission. He reviewed restrictions that only apply to Commissioners relative to communications.

Commissioner Stebbins questioned the section that prohibits Commissioners from participating in fundraising events or being a guest speaker at such events. Commissioner McHugh stated that the Commission designed this restriction to avoid having people with an interest pending before the Commission flock to events and enrich the coffers of the event holder. Commissioner Cameron commended Attorney Grossman on the work he has done on the Enhanced Code of Ethics. Chairman Crosby asked whether the Commission should require that applicants disclose to the Commission any request they received to provide gifts or anything of value. Commissioner McHugh stated that Applicants are already required to disclose some of this information in the application. Chairman Crosby stated that he would like to continue discussion of applicant disclosure at the Commission's next meeting so that the Commission may receive public comment and conduct further research.

Motion made by Commissioner McHugh that the Commission adopt as its Enhanced Code of Ethics the draft described by Mr. Grossman. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.

Mr. Grossman stated that the Commission must file this document with the State Ethics Commission. However, the Attorney General's office has requested that the Commission wait until its enhanced ethics policy is ready and file both policies together.

Public Education and Information:

See transcript pages 56-86.

Report from the Ombudsman – Ombudsman Ziembra stated that he has been working with Commissioner McHugh and Attorney Grossman on protocols and procedures for resolving disputes between applicants and surrounding communities that have not reached an agreement by the time the applicant submits its RFA-2 application. He stated that he hopes to have this information available for discussion by as early as next week. He stated that he has received a number of comments on the surrounding community definition, and the Commission can discuss how to revise the definition at its next meeting. He stated that he continues to have meetings in the communities and continues to work on developing the Regional Planning Agency process.

Discussion of Preliminary Evaluation Criteria Matrix – Chairman Crosby stated that he has distributed a redraft of Commissioner McHugh’s structure for the preliminary evaluation criteria matrix. He asked that the Commissioners review this redraft and provide any comments for discussion at the next Commission meeting.

Preparation for Region C Discussion – Chairman Crosby stated that the question for the Commission is whether or not to open Region C for a commercial license. He asked whether the Commission should discuss this issue during a separate meeting or during a regular Commission meeting. Commissioner McHugh suggested holding a separate meeting and inviting interested parties to come before the Commission to provide ten minute presentations. Commissioner Zuniga agreed with Commissioner McHugh and pointed out that such a meeting would need to be scheduled soon because the March 15 decision date is quickly approaching. Chairman Crosby stated that the Commission will also need an update from the Governor’s office regarding the compact process. Commissioner Stebbins stated that it would be helpful to identify the parties that the Commission would like to hear from at a meeting and have protocols in place for members of the general public who wish to sign up and offer comments. Chairman Crosby stated that the Commission has tentatively planned to set aside a major portion of the March 21, 2013 regular meeting to discuss Region C. The Commission will hold this meeting in Region C.

Report from Director of Communications and Outreach – Director Driscoll addressed the Commission regarding the new website. She stated that JackRabbit Designs, the company the Commission hired to create the website, has done a tremendous job and considers this to be one of the best websites it has ever created. She stated that the Commission has a historic opportunity to set an industry standard on effective external communication as it goes through the licensing process. She stated that the purpose of developing this site was to create a one stop resource for all of the expanded gaming now happening in the Commonwealth.

Director Driscoll played an introductory video, which was created to familiarize people with the Commission and its mission, with the goal of using this video at speaking engagements. She also provided a visual overview of the new Commission website, which is currently live and operational.

A brief recess was taken.

Chairman Crosby reconvened the 53rd meeting.

Regulation Update:

See transcript pages 86-90.

Review of Draft Regulations – Commissioner McHugh stated that the Commission’s internal target date for draft regulations is March 14, 2013. He invited Attorney Grossman to provide an update. Attorney Grossman stated that he is on track to meet the March deadline. He stated that he emailed a copy of the regulation grid to the Commission members and indicated that the

Commission has met many of the target dates for first drafts of the regulations. He is currently in the process of improving the draft language, with the goal of discussing actual language at the next Commission meeting.

License Fee Discussion – Commissioner McHugh stated that the Commission has posted a request for comments regarding license fees, with a deadline of Tuesday, February 26, 2013, so that the Commissioners may discuss the question at the next Commission meeting.

IEB Report:

See transcript pages 90-104.

Scope of Licensing – Commissioner Cameron stated that she will be reporting on the IEB's progress in Director Wells' absence. She stated that the IEB has completed the scope of licensing decisions, although it anticipates additional financial qualifiers for many of the applicants. She stated that two applicants, Mass Gaming and PPE Casino Resorts Mass, had previously not advised the Commission regarding which category of license they were seeking, but both applicants have now stated that they are interested in pursuing Category 2 licenses while also requested the right to change. She stated that the unknown situation in Region C has influenced these unanticipated developments. Chairman Crosby stated that the Commission should consider whether to allow applicants to change their application from Category 2 to Category 1. Commissioner McHugh recommended allowing changes up to the point of the RFA-2 application submittal. Commissioner Zuniga was in agreement with this suggestion.

Investigations Status Report – Commissioner Cameron stated that all eleven investigations are underway and the IEB will begin the interview process as soon as next week.

Discussion of Processing Public Records Requests for Applications – Commissioner Cameron stated that the State Police are working very hard on the redacted applications. She stated that most applicants have asked for additional redacted materials and the IEB will have to evaluate these requests. She believes that making a decision on dissemination would be premature. Commissioner Zuniga stated that the public records regulations exempt from disclosure those records that are part of an ongoing investigation and he questioned whether the Commission could disseminate the RFA-1 applications prior to completing investigations. Commissioner McHugh stated that the statute requires that the application be a public record and he believes that this investigatory exemption does not apply. He stated that the applicants have expressed a great deal of concern about posting the applications on the web and this concern should be alleviated when the redaction process is complete. Chairman Crosby stated that there is a public misconception that the Commission is trying to break new ground by posting the applications in an effort to continue its policy of transparency. However, the legislation has already mandated that the Commission make public the applications.

Racing Division:

See transcript pages 104-128.

Administrative Update – Director Durenberger reported that the Racing Division issued an RFP on December 5, 2012 for laboratory testing services to conduct equine drug testing for live horse racing, with a response deadline of January 7, 2013. She stated that she received and reviewed three responses. The respondent that ranked the highest was Truesdail Laboratories, Inc. She recommended that the Commission approve the initiation of a contracting process with this vendor.

Motion made by Commissioner Stebbins that the Commission support approval of executing a contract with Truesdail Laboratories, Inc. for equine drug testing and laboratory services. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.

Director Durenberger stated that she has a second RFP, which the Racing Division issued on January 16, 2013 for pari-mutuel auditing services, with a response deadline of February 11, 2013. She stated that she received one qualified response, and she recommended that the Commission approve the initiation of executing a contract with Pari-Global Solutions, Inc. She stated that Pari-Global Solutions, Inc. is proposing a web based program that will capture tote information from the tote providers and will integrate with the Commission's financial reporting software.

Motion made by Commissioner McHugh that the Commission support approval of executing a contract with Pari-Global Solutions, Inc. for auditing services. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.

Legislative Review Update – Director Durenberger stated that she distributed to the Commission the report on the current pari-mutuel and simulcast laws in the Commonwealth. David Murray, consultant, joined Director Durenberger to provide information on the draft report. He stated that once the Commission approves the ultimate recommendations related to simulcasting, abolition of restrictions on rebating, wagering on credit, and establishment of the backstretch improvement fund, he can proceed to finalize the statutory language.

He provided a summary for the Commission. He stated that the current system accounts for three types of racing: thoroughbred, harness, and dog racing. Dog racing is no longer permitted in the Commonwealth. He stated that they have tried to create a uniform system for simulcasting which would balance the interests of Suffolk Downs, Plainridge, and gaming establishments that are likely to request simulcasting licenses. He stated that, in considering all the interests, they are recommending that the Commonwealth: allow unlimited simulcasting, within which there would be a continued obligation to carry local signals; permit fee negotiation rather than setting fees for intrastate simulcasting; abolish premiums and signal limitations; put all the unclaimed winnings from both the racing and non-racing licensees into the racehorse development fund or directly into purses; and require all licensees to carry local harness and thoroughbred signals. He stated that they also propose abolishing restrictions on pari-mutuel wagering on credit and prohibiting rebating in the pari-mutuel context. He stated that they looked at the current system for capital improvements and promotional activities by licensees, and instead of making those monies available for use only by licensees, they recommended carving out of the old system a targeted, earmarked fund for backstretch improvements that benefit the most disadvantaged folks

associated with racing. Mr. Murray stated that they also recommend ending the periodic sunseting of racing laws.

Director Durenberger stated that the cleanest way to accomplish all of these changes would be to come up with a model chapter, which they would prepare next week. Chairman Crosby stated that the pari-mutuel and simulcasting review needs an introduction stating that the Commission has reviewed these laws and recommends replacing them in their totality. Commissioner McHugh stated that he found pages 10 through 12 very hard to follow and agreed with Chairman Crosby's recommendation for a more straightforward approach. Commissioner Zuniga recommended including some of the research that the Commission has done relative to other states and the context of some of the recommendations being made. Mr. Murray stated that he can incorporate these suggestions in short order and get the document back to the Commission. Commissioner McHugh stated that the changes suggested are not substantive and the document is ready for a vote. Commissioner Cameron stated that she agrees that the changes are stylistic and recommended that the Commission vote at this time.

Motion made by Commissioner Cameron to accept the report with the caveat that the changes discussed are made to add clarity. Motion seconded by Commissioner Zuniga. The motion passed unanimously by a 5-0-0 vote.

Motion made to adjourn, motion seconded and carried unanimously.

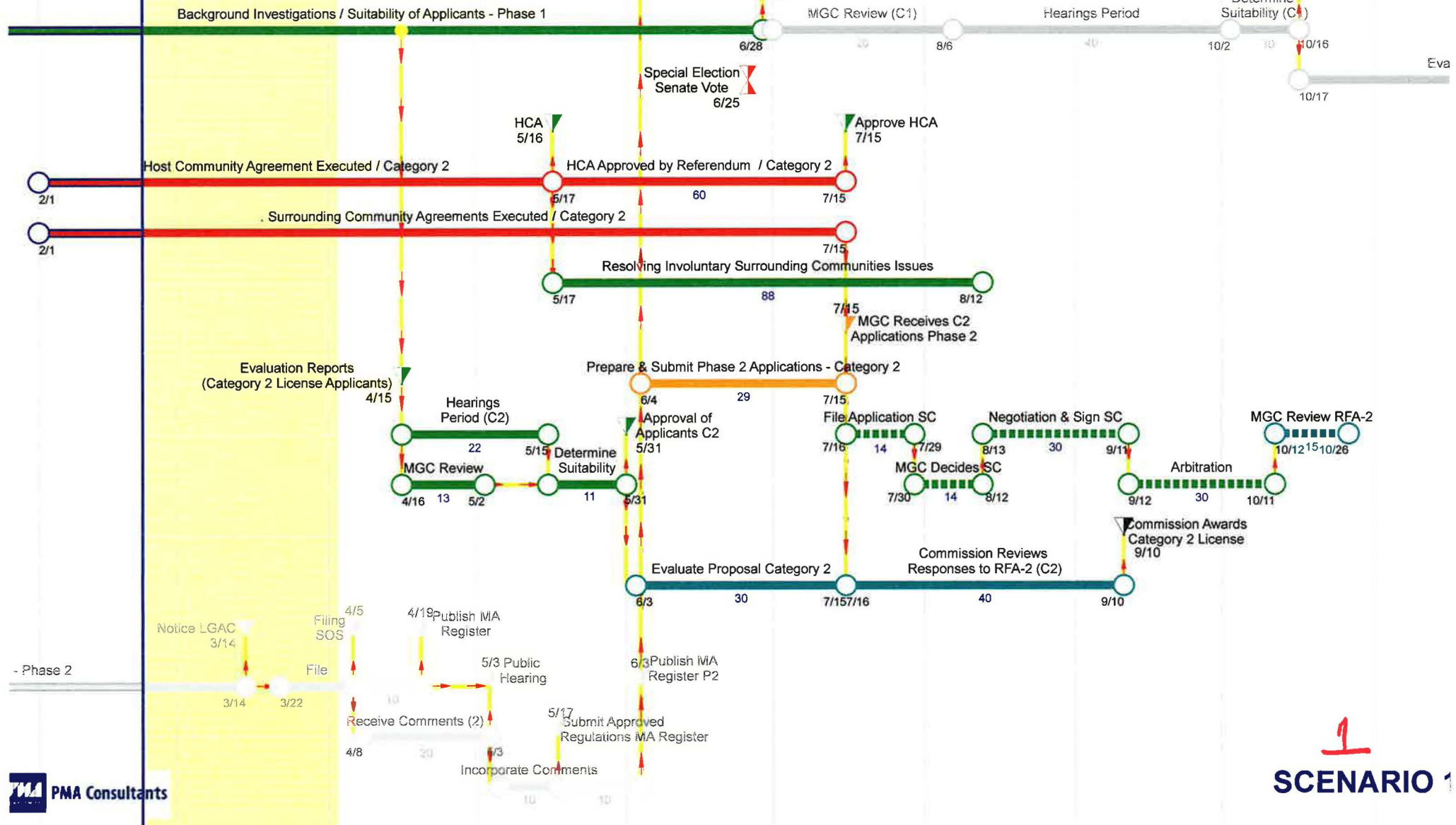
List of Documents and Other Items Used at the Meeting

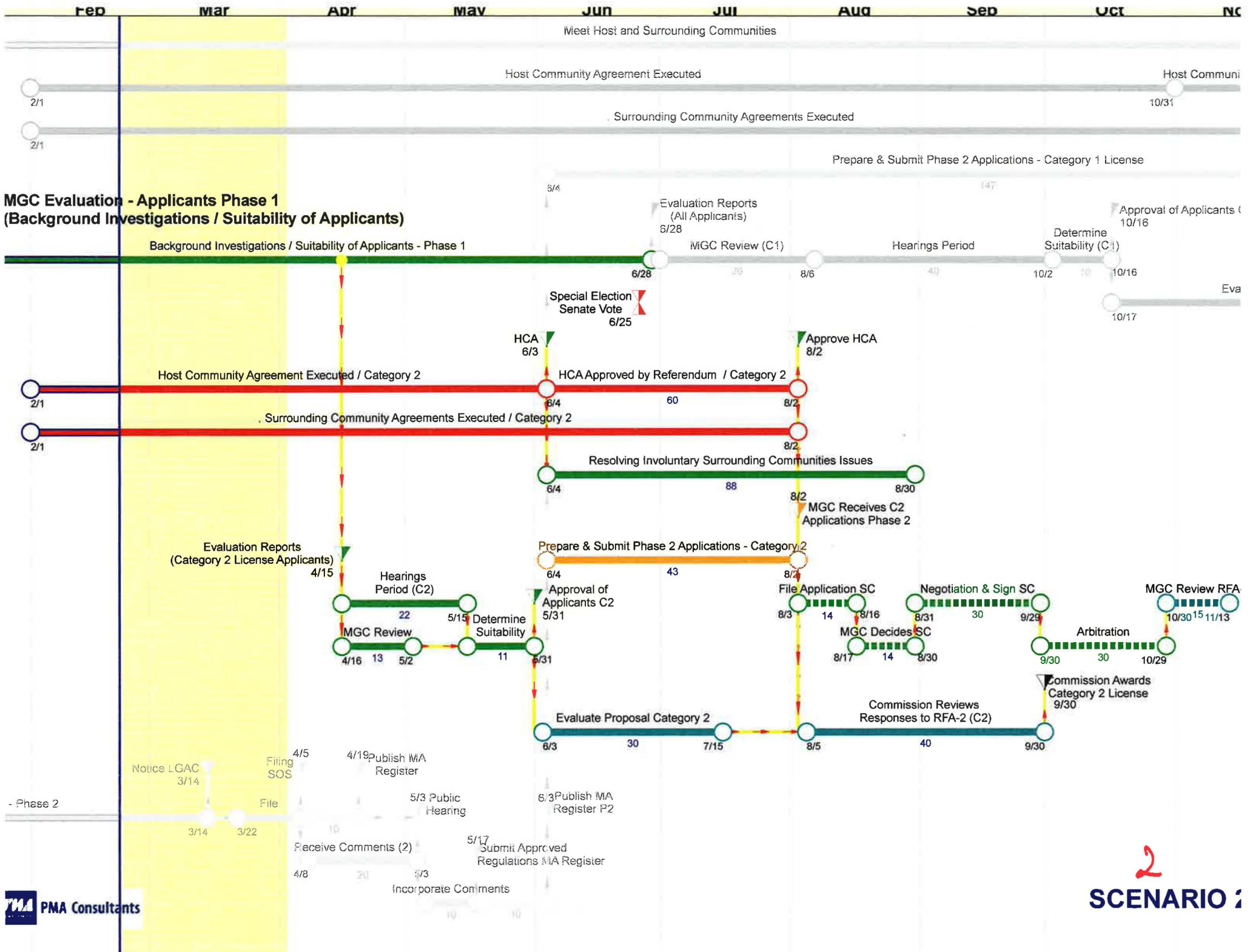
1. Massachusetts Gaming Commission February 21, 2013 Notice of Meeting and Agenda
2. February 14, 2013 Massachusetts Gaming Commission Meeting Minutes
3. Resume of Catherine A. Blue
4. Massachusetts Gaming Commission Enhanced Code of Ethics First Edition
5. February 21, 2013 Memorandum Regarding Recommendation for Approval of a Primary Laboratory for Equine Drug Testing Services
6. February 21, 2013 Memorandum Regarding Recommendation for Approval of a Service to Provide Pari-Mutuel Auditing Services
7. Report of the Massachusetts Gaming Commission to the Senate and House of Representatives Pursuant to Chapter 194, Section 104, of the Acts of 2011, Analyzing the Commonwealth's Pari-Mutuel and Simulcasting Laws, with Recommendations as to Their Efficacy and Need to be Replaced

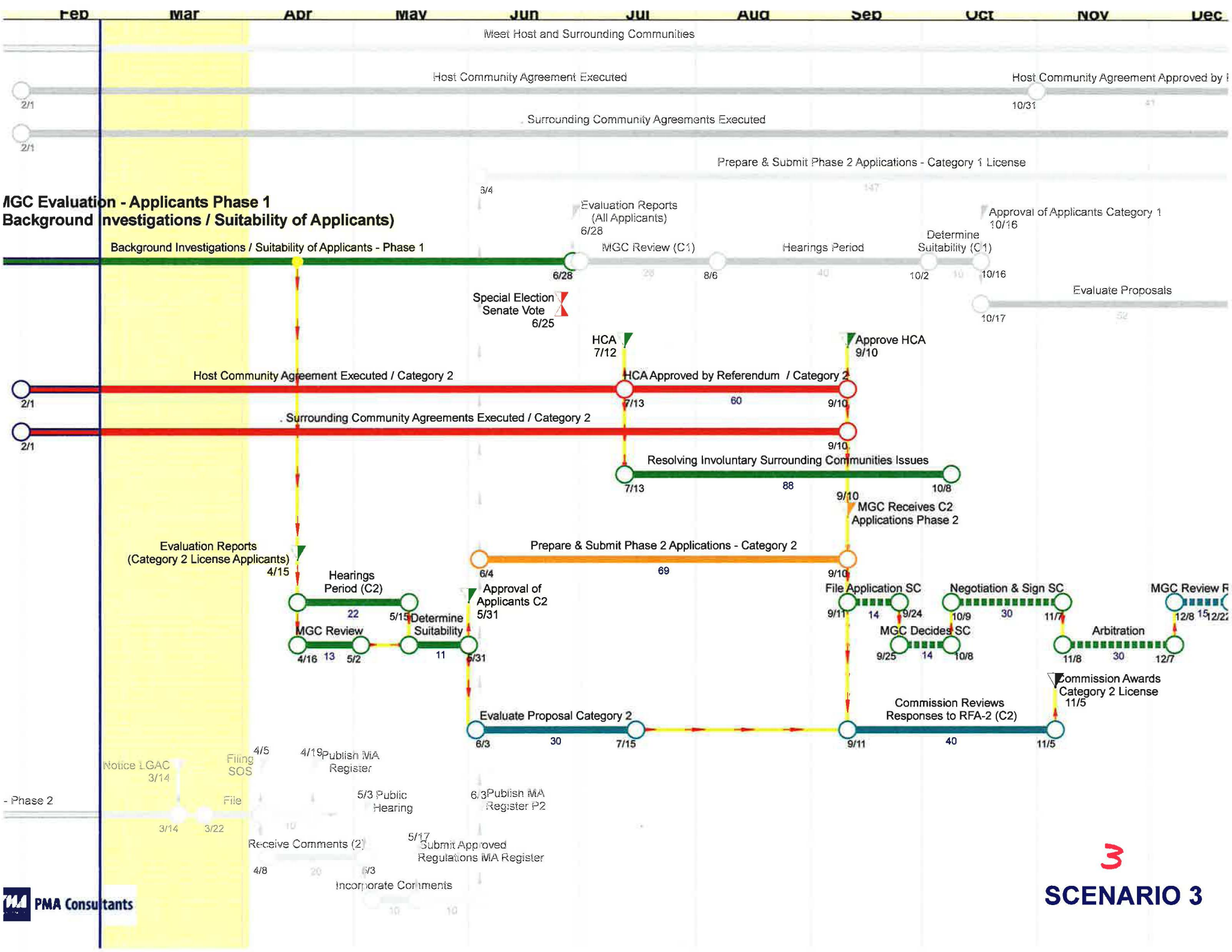
/s/ James F. McHugh
James F. McHugh
Secretary

3.a.i

**MGC Evaluation - Applicants Phase 1
(Background Investigations / Suitability of Applicants)**







MGC Evaluation - Applicants Phase 1
Background Investigations / Suitability of Applicants

CATEGORY 1 and CATEGORY 2
EVALUATION CRITERIA

Massachusetts Gaming Commission				
Draft Evaluation Criteria				
Update Date: February 26, 2013				
		Minimum requirements under G.L. c. 23K, § 15		
		Considerations required by G.L. c. 23K, § 18		
		Commission factors		
Criteria Grouped by Topic	Sub-topic	Second sub-topic	Required Evidence	Evaluation
I FINANCIAL				
PREREQUISITES				
(4) (11) Pay license deposit				
(5) Demonstrate ability to pay license fee				
(2) Invest not less than required capital into the gaming establishment				
(3) Own land within 60 days of license issuance				
EVALUATION CRITERIA				
Investment & Capital Structure	(3) Realize maximum capital investment exclusive of land and infrastructure		Financing structure and plan Financial strength (equity participation & other factors)	
Revenue generation & marketing strategies	(13) Offer highest and best value to create secure and robust gaming market (11) Maximize revenues to the Commonwealth	Construction costs Gaming revenue (Casino) Non-gaming operating revenue (Casino facilities)	Labor Suppliers MA Tourist MA Tourist	

CATEGORY 1 and CATEGORY 2
EVALUATION CRITERIA

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Update Date: February 26, 2013				
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		Commission factors		
Criteria Grouped by Topic	Sub-topic	Second sub-topic	Required Evidence	Evaluation
		Tax revenue (Casino & casino facilities)	Gaming Non-gaming	
		Local agreements designed to expand casino draw	(7) Market analysis showing benefits of the site location and the estimated recapture rate of gaming-related spending by residents travelling to out-of-state gaming establishments	
		Non-gaming operating revenue (Casino facilities)	MA Tourist	
Financial projections			Business plan describing how applicant will meet revenue generation plans in the near term and over time	
Third-party revenue impacts		(2) Promote local businesses in host and surrounding communities	Economic projections for increased generation of local revenue	
		Revenue generated outside casino complex		

CATEGORY 1 and CATEGORY 2
EVALUATION CRITERIA

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Criteria Grouped by Topic	Sub-topic	Second sub-topic	Required Evidence	Evaluation
			Plan for building on regional culture and existing tourist attractions to increase overall revenue generation	
	History of meeting economic projections in other jurisdictions where operating			

CATEGORY 1 and CATEGORY 2
EVALUATION CRITERIA

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II ECONOMIC DEVELOPMENT				
PREREQUISITES				
	(6) demonstrate plan for workforce development as set forth in memoranda of understanding			
	(15) Formulate marketing program with percentage of total dollar amount of overall contracts for utilization of:			
		(i) mbe, wbe, vbe as contractors in the design of the gaming establishment		
		(ii) mbe, wbe, vbe as contractors in the construction of the gaming establishment;		
		(iii) mbe, wbe, vbe as vendors for goods and services to gaming establishments and any businesses operated as part of the gaming		
	(16) formulate affirmative action plan			
EVALUATION CRITERIA				
Workforce development				
	(4) Implement workforce development plan that utilizes and enhances existing labor force and			
		(12) provides high number of quality jobs inside casino		
		17(i) incorporates an affirmative action program that includes people with disabilities		
		17 (ii) utilizes the existing labor force in the commonwealth;		
		17(iv) identifies the establishment's workforce training programs		

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EVALUATION CRITERIA

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		17(v) identifies the methods for accessing employment		
		Focus on areas and demographics of high unemployment		
	(9) Establish, fund and maintain HR practices that promote development of skilled and diverse workforce			
		(i) Establish transparent career paths		
		(ii) Provide means for employee training and education necessary for advancement		
		(iii) Provide on-site day care		
		Demonstrated commitment to employee retention		
	(18) Have contracts with and support from organized labor and			
			(i) show in application the number of jobs and the rate of pay for them	
			(ii) show the total investment in the facility and infrastructure	
			(iii) completed economic studies as required by the Commission including economic benefits to the Commonwealth and the region	
			(iv) show plans for labor harmony	

CATEGORY 1 and CATEGORY 2
EVALUATION CRITERIA

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			17(iii) estimate the number of construction jobs and provide equal employment opportunities for them	
Supplier development & relations	(16) Implement marketing program that IDs specific goals for utilization of			
		(i) minority, women and veteran businesses as design contractors		
		(ii) minority, women and veteran businesses as building contractors		
		(iii) minority, women and veteran businesses enterprises to participate as vendors for goods and services		
	(10) Contract with local business owners for provision of goods and services			
		Develop plans to assist businesses owners ID needed goods and services		
(15) Purchase domestic slot machines				
Cross-marketing with other attractions				
Coordination with regional economic plans				
History over last 10 years				
			Labor relations	
			Supplier relations & growth	
			Workforce development	
			Employee retention & promotion	
			Wages in specified categories	

CATEGORY 1 and CATEGORY 2
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III BUILDING & SITE DESIGN				
	PREREQUISITES			
	(12) comply with state & local building codes & local ordinances & bylaws			
	EVALUATION CRITERIA			
	Demonstrate creativity in design and overall concept excellence			
		(5) Build a gaming establishment of high caliber with quality amenities in partnership with local facilities		
		vehicular and pedestrian access		
		parking		
			safe and pleasantly designed if hidden, parking is centrally linked to appearance and function of other design elements	
		design of building including height, massing, window design, articulation of the facades, material and building details		
			exterior elevations do not present blank facades but contain multiple entry points and storefronts that present an inviting and welcoming streetfront experience	
		design makes appropriate use of public art		
	Compatibility with surroundings			
		plans show creative landscaping and use of open space		

CATEGORY 1 and CATEGORY 2
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	design contains adequate provisions for loading and trash			
	signage is energy-efficient and sensitive to surroundings			
	site is integrated with and provides access to surrounding areas			
	facilities are available as community resources in extreme weather			
	site provides amenities to surroundings that are supported by a dedicated funding stream			
	site design minimizes impact of noise on surroundings			
	access to site takes advantage of all modes of transportation with emphasis on public transit			
	access to site minimizes adverse impact on regional traffic			
(8) Utilize sustainable development principles	(i) LEED Gold or Higher		Show how building and site comply with LEED-ND, LEED Existing Describe plan for commissioning audit and periodic audits thereafter	
	(ii) Meet or exceed stretch energy code requirements	Exceed code		
	(iii) Mitigate vehicle trips			
	(iv) Conserve water and manage storm water	Target use of 40% less water than standard buildings of same size and		

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		Use ISI techniques to minimize impact of storm water and		
	(v) EnergyStar electrical and HVAC			
		All gaming equipment conforms to best practices for energy use		
	(vi) 10% of power generated on site from renewables			
		25% generated on site from renewables		
		Obtain off site power from renewables or with renewable		
	(vii) Submeter and monitor major energy consumers			
			Plan for annual improvement based on monitoring data	
		Use centralized & efficient heating and cooling systems, e.g., co-		
			Plan for operation of one 50m ft ² building at net zero energy within 3 years	
	Use imaginative and high quality materials			

CATEGORY 1 and CATEGORY 2
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IV MITIGATION				
	PREREQUISITES			
	(1) Agree to be lottery agent and not to run competing games			
	(6) demonstrate plan for mitigation of lottery impact and compulsive gambling problems, community development and host and			
	(7) identify the infrastructure costs of the host and surrounding from construction and operation and commit to a mitigation plan			
	(8) (13) provide a signed host community agreement with favorable community vote			
	(9) provide surrounding community agreements			
	(10) provide impacted live entertainment venues agreements			
	(14) Pay agreed upon community impact fee			
	EVALUATION CRITERIA			
	Quality of host community agreement			
	Quality of surrounding community agreements			
	(1) Protect and enhance lottery			
	(6) Implement measures to address problem gambling			
	Quality of impacted live entertainment venue agreements			
	Traffic			
			Traffic mitigation plans and studies	
	History in other jurisdictions			

CATEGORY 1 and CATEGORY 2
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V UNIQUE ATRIBUTES, AMENITIES & ENHANCEMENTS				
Unique business & marketing strategies				
Out-of-state and international marketing plans				
Community support				
	(19) Obtain public support in host and surrounding communities which may be demonstrated through public comment received by the commission or gaming applicant			
Collaboration with tourism and other related industries				
Attractions beyond hotel, casino, restaurants and in-house entertainment				
	Attractions within property boundaries			
	Attractions through cross-marketing agreements			
	Other			
Community enhancements not covered by Section III				

5.a



The Commonwealth of Massachusetts
Massachusetts Gaming Commission

84 State Street, Suite 720
Boston, Massachusetts 02109

TEL: (617)979-8400
FAX: (617)725-0258
www.mass.gov/gaming

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

MEMORANDUM

TO: Massachusetts Gaming Commission
FROM: Todd M. Grossman, staff attorney
RE: précis of draft phase 2 regulations- part 1
DATE: February 27, 2013

In an effort to further the dialogue relative to the promulgation of the Phase 2 regulations, the following synopses are provided as a broad summary of the concepts contained the first batch of the drafts that you will be asked to consider.

Host Community designation

The host community process is largely set by statute so these regulations are primarily intended to do 2 things: (1) clarify that that if a proposed gaming establishment is situated in 2 or more cities or towns each shall be a host community, and (2) that upon the request for the election, the applicant shall forward a copy of the host community agreement to the Commission. This will allow the Commission to post the agreement on its website as a means of notifying prospective surrounding communities and impacted live entertainment venues that the process is moving forward.

Host Community elections

The election process is largely set by statute so these regulations are solely intended to clarify some areas. For example, the regulations specify that an election may not be requested until the Commission has made a positive determination of suitability on the applicant's RFA 1 application, that the polls must be open for a prescribed period of time, and that no Commission approval is required prior to holding the election.

Surrounding Community

This section is intended to govern the manner in which a community becomes designated as a surrounding community and provides the procedure for the conclusion of negotiations of a surrounding community agreement. The section provides 3 ways that a community can become designated a surrounding community by the Commission: (1) The applicant designates the community in the RFA 2 application and the community assents to the designation in writing, (2) the applicant and the community execute a surrounding community agreement that is submitted as part of the RFA 2 application, or (3) the community petitions the Commission for designation as a surrounding community no later than 10 days after the RFA 2 application is submitted. The statute provides that a surrounding community agreement must be executed within 30 days of the designation as a surrounding community by the Commission. This would apply to situations (1) and (3). In the event that the parties are unable to execute an agreement in the 30 day period, the draft regulations require the parties to enter into binding arbitration. The arbitration would have to be complete and a final report issued within 20 days of the conclusion of the 30 day negotiation period. The arbitration is premised on a “best and final offer” approach intended to encourage the parties to enter into an agreement voluntarily. After the arbitrator’s report is issued, the parties are provided 5 days in which to sign an agreement or the report is deemed to be the surrounding community agreement. For situation (3) the regulations provide the factors that the Commission must consider in determining whether a community is a surrounding community under c.23K.

Reopeners

This section is intended to provide parties to a host or surrounding community agreement or an impacted live entertainment venue agreement a mechanism by which to reopen the agreement for purposes of renegotiating a term(s) upon the occurrence of a specific event. The intent is to balance the necessity of reopening an agreement in limited circumstances in recognition that unforeseeable events may occur in the permitting process, or otherwise, against the importance of leaving agreements, that may have been ratified at a local election, undisturbed. The standard by which the Commission will review and allow such requests to reopen an agreement is one that deserves particularly careful consideration.

Community disbursements

This proposal would add language into the existing regulations governing community disbursements. The existing system allows for the disbursement of funds to a community to study potential impacts and for the negotiation of a host or surrounding community agreement only upon authorization by the applicant. The proposed amendment will allow for so-called involuntary disbursements; that is, without the assent of the applicant. Due to the involuntary nature, the draft language provides that the community will have to meet a high threshold by making a showing that there is a reasonable likelihood that the community will be designated a

surrounding community and that the risk that the community will not be able to properly determine the impacts of a proposed gaming establishment without the requested funds outweighs the burden of the actual financial cost that will be borne by the applicant. Provision for this type of disbursement is needed in order to ensure that all prospective surrounding communities have an opportunity to fairly study impacts from a proposed gaming establishment. The Commission, however, will have to consider the timing provisions of the involuntary disbursement language. In the present draft, it is permissible only after the applicant has called for a host community election.

Permitting

This section sets forth the documentation that the Commission will require to be provided as part of the RFA 2 application relative to the permitting of the project. This is intended to address all federal, state, and municipal permits and approvals, the MEPA process, and zoning issues. The applicant would be required to provide a chart of all projected permits that will be needed to complete the project, including the legal citations governing the issuance of the permits, and copies of any submitted permit applications. Further, documentation of progress in the MEPA process would have to be attached. Additionally, a statement would be required from the host community zoning officer, town counsel or city solicitor essentially stating that the proposed project would be allowed under the applicable zoning by-laws or ordinances. Finally, the language mandates that all gaming establishment licenses be issued on the condition that the MEPA process is completed and that all necessary permits are issued.

Impacted live entertainment venues

The draft provisions governing the designation of impacted live entertainment venues and the effort to ensure the execution of a fair and reasonable agreement between the parties are largely reflective of those in the surrounding community draft regulations. That is, the methods that a venue may be designated and the arbitration process are identical. The only material distinction is the factors the Commission will evaluate in reviewing the petitions. The draft language provides that in determining whether a venue will be designated as an impacted live entertainment venue, the Commission shall ensure that the venue meets the definition of *impacted live entertainment venue* as set forth in M.G.L. c.23K, §2, and shall, in accordance with M.G.L. c.23K, §4(39), consider factors including, but not limited to, the venue's distance from the gaming establishment, venue capacity and the type of performances offered by that venue. Further, the regulations would require the Commission to consider whether the applicant intends to include a geographic exclusivity clause in the contracts of entertainers at the proposed gaming establishment, or in some other way intends to limit the performance of entertainers within Massachusetts.

Capital investments

The Commission has determined by way of policy that the minimum capital investments in category 1 and 2 projects shall be \$500,000,000 and \$125,000,000 respectively. These draft regulations establish those minimums and establish the manner in which the capital investment is to be calculated. The draft categorizes items that can be included in the calculation and those that cannot be included. The most noteworthy is the categorization of the costs associated with the purchase or lease of the land where the gaming establishment will be located and the infrastructure outside the property boundaries designed to support the site. At present those are classified as costs that may not be included in the calculation. The draft also includes provisions allowing for either the deposit of 10 percent of the total investment into an interest bearing account or the posting of a deposit bond. Finally, the draft begins to address the manner in which the 10 percent cash deposit can be returned to the applicant at the final stage of the construction by requiring a written request and a finding that the amount held in escrow exceeds the amount of capital required to complete the project.

Recommendations for Amendment of Surrounding Communities Definition

Respondent	Comment / Recommended Amendment	Adopt (y/n) and Explanation
Sterling Suffolk Racecourse	Do not promulgate regulations	No – Commission decided to promulgate additional regulations
	Establish “protocols and procedures”	Yes – under development
	Require communities to notify applicant of desire to be surrounding community within 21 days of ENF Certificate	No – would lead to uneven application of surrounding community regulation because ENF’s filed at different times
Lakeville	Surrounding Community defined as one within 10 miles or less	No – Commission decided to base on impacts, not an arbitrary mile based standard
Joseph Chamberlain	Communities close could experience little impacts while those 18 miles away may experience impacts	Yes - Commission decided to base on impacts, not an arbitrary mile based standard
Agawam City Council	Community with shared border should be surrounding community	No- Commission and Legislature decided against such definition / Shared border a factor
	Establish impact zones – 5/10/15 miles	No – Commission decided to base on impacts, not an arbitrary mile based standard
Medway Selectmen	Community with shared border should be surrounding community	No- Commission and Legislature decided against such definition / Shared border a factor
Scott McAdams	Borders should not limit the ability of citizens to decide, instead of just share an opinion	

Jay Marsden	Opposes language stating that Commission decision shall not be subject to further review	Yes – deletion recommended
Scott Crabtree, Saugus Town Manager	Supports definition and believes it applies to Saugus in relation to Suffolk Downs	
Town of Holliston	Applicant should notify community of surrounding community designation 90 days before application	No - new regulation requires applicant to notify Commission of the date of request for referendum and posting of host community agreement on MGC Website; communities that request notice of filing of application are provided written notice, and requires applicant to forward impact statements from application to requesting communities
	Delete requirement that community express reasons for request for surrounding community status	No – necessary for a reasoned decision
	Extend deadline for community application from 21 days to 30 days	No - new regulation requires applicant to notify Commission of the date of request for referendum and posting of host community agreement on MGC Website; communities that request notice of filing of application are provided written notice, and requires applicant to forward impact statements from application to requesting communities
	All communities within 5 miles of host community shall be designated surrounding community upon request	No – Commission decided to base on impacts, not an arbitrary mile based standard
	Extend Commission decision time from 30 to 90 days before public hearing	No – Commonwealth and communities receive significant benefits from an expedited schedule

Representative Orrall	Needs of communities affected by tribal casino not addressed	Hold for Region C Discussion / Compact is Controlling
Penn National	Supports Commissions focus on impact	
	Recommends the use of PVPC / and great weight placed on independent analysis	Yes – under active consideration
	All impacts must be able to be objectively verified	No – Commission will evaluate all arguments put forward by parties and decide based on the strength of the arguments
	Regulation fails to address positive impacts of a casino	Yes- positive impacts should also be considered.
Phil Palanza / Rep. Barrow's Office	Mansfield will experience impacts	
	Instead of CEO, specify town manager, board of selectmen, etc. for notice	No- need for one notice from a community
Town of Rehoboth	Written notice should be provided to communities instead of requiring them to monitor Website	Yes – new procedure allows for written notice and copies of impact statements for communities that request notices
	Opposes language stating that Commission decision shall not be subject to further review	Yes – deletion recommended
	Allow a town to reopen request for surrounding community status	No – one determination necessary, communities not precluded from seeking community mitigation fund
	Each community should have the ability to engage independent consultants	Yes – involuntary disbursements by applicants under consideration and a part of protocols and procedures
	How would the Commission determine what is a significant and adverse impact?	Commission will make decision based on the strength of arguments and its determination

	Adopt an approach to assess regional impacts	of significance of impacts Commission actively working on regional reviews involving Regional Planning Agencies.
MAPC	Clarify language to ensure that surrounding community status isn't just upon request	Yes – clarified
	Allow for new surrounding communities upon conclusion of MEPA	No – one determination necessary, communities not precluded from seeking community mitigation fund
	Specifically delineate impacts on rental units	No – can be part of information provided on housing impacts
	Add increased social service needs, including gambling addiction services to impacts	Yes – to be added
Miyares and Harrington LLP on behalf of Town of Hopkinton	Eliminate section that make a community a surrounding community if it has been identified as one in the application	No- statute requires applicants to detail impacts on “surrounding communities”
	21 days for application for surrounding community status too short, must find out about application, get a copy, assess impact, etc.	Yes / No - new regulation requires applicant to notify Commission of the date of request for referendum and posting of host community agreement on MGC Website; communities that request notice of filing of application are provided written notice, and requires applicant to forward impact statements from application to requesting communities
	Forcing a community to demonstrate impacts is not appropriate and too burdensome	No – necessary for a reasoned decision
	Requirement of demonstration	No – more than one community

	<p>of an impact that is different in kind or greater in degree than other communities is unfair and may require demonstration of uniqueness</p> <p>Opposes language stating that Commission decision shall not be subject to further review</p> <p>Communities within 5 miles should designated</p>	<p>may be designated</p> <p>Yes – deletion recommended</p> <p>No – Commission decided to base on impacts, not an arbitrary mile based standard</p>
MGM Resorts	<p>Commission should empower regional planning boards, using third party economic impact consultants, to do an independent analysis</p> <p>Regulation should take into account positive impacts</p>	<p>Yes – RPA assistance under active consideration</p> <p>Yes – language recommended</p>
Northampton	<p>Establish presumption in favor of towns with strong downtowns (retail, entertainment, etc.)</p> <p>Establish a presumption in favor of central cities within the same MSA</p> <p>Opposes language stating that Commission decision shall not be subject to further review</p>	<p>No – economic impacts are part of analysis</p> <p>No – not based on impacts</p> <p>Yes – deletion recommended</p>
Old Colony Planning Council	<p>Specify who the CEO is</p> <p>Unclear if Commission may designate a community without its permission</p> <p>Include additional means to</p>	<p>No – should be determined with reference to local standards</p> <p>Yes- clarifying language added</p> <p>Yes – new language required</p>

	notify communities rather than posting on website	notifications of those communities that request it
	Further define transportation metrics	No – applicants and communities will provide further specificity of impacts
	Further define educational impacts	No- applicants and communities will provide further specificity of impacts
	Establish a tiered system of impacts	No – one decision of surrounding community status is envisioned in Gaming Act
Foley Hoag on behalf of Mohegan Sun	Regulation should be clarified to ensure that both proximity and impact are necessary	Yes – will be clarified
	Supports significant and adverse impact language	
	Commission should establish protocols and procedures – use only one arbitrator	Yes – in process
	Commission may not be able to require a community to accept an agreement – default should be no agreement	To be addressed in protocols and procedures
	Term commuting distance too vague	No – applicants and communities will provide more specificity
	Proximity to residential areas is misplaced, more of an impact than a proximity question	No – applicants and communities can include arguments on impact
	Ready access should be a mandatory factor	No – definition will cross reference statutory definition
	Amend projected changes in level of service to projected to increases in level of service at identified intersections	No – negative impacts should be considered
	Amend impact language “state	Yes – clarification to be made

	and federal roadways” to just roadways to also include local roads	
	Eliminate phrase “and intersecting the community”	No – elimination unnecessary
Mark Pralat	Use BIA standard of 25 miles	No – Commission decided to base on impacts, not an arbitrary mile based standard
	Provide notice of designation by applicants no later than 90 days before application	No - new regulation requires applicant to notify Commission of the date of request for referendum and posting of host community agreement on MGC Website; communities that request notice of filing of application are provided written notice, and requires applicant to forward impact statements from application to requesting communities
	Extend 21 day surrounding application date to 30 days	No – see immediately above
	Extend Commission decision time from 30 days to 90 days before public hearing	No – Commonwealth and communities receive significant benefits from an expedited schedule
Iron Horse Entertainment Group	Extend protection for non-profit performance venues to for-profit performance venues	No – statutorily defined.
Representative Dykema	Adopt regulatory changes recommended by Holliston and Hopkinton	

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The Commonwealth of Massachusetts

Massachusetts Gaming Commission

84 State Street, Suite 720
Boston, Massachusetts 02109

TEL: (617)979-8400
FAX: (617)725-0258
www.mass.gov/gaming

CHAIRMAN

STEPHEN P. CROSBY

COMMISSIONERS

GAYLE CAMERON

JAMES F. MCHUGH

BRUCE W. STEBBINS

ENRIQUE ZUNIGA

RESOLUTION

WHEREAS, the Massachusetts Gaming Commission is committed to creating and maintaining a regulatory structure that promotes industry best practices in order to protect the integrity of racing and to safeguard the safety and welfare of its many participants.

WHEREAS, the Massachusetts Gaming Commission recognizes the importance of uniformity in the regulation of medication and veterinary practices, particularly in the mid-Atlantic and Northeast region, where many occupational licenses may participate in more than one jurisdiction.

WHEREAS, a group of regulators from the Mid-Atlantic and Northeast region met at Delaware Park on February 6th, 2013 and will meet again on March 5th to discuss the principles associated with the uniform adoption of medication rules establishing decision levels and withdrawal guidelines for enumerated substances agreed to be of therapeutic value to the horse in training.

WHEREAS, it is believed that specific model rule language pertaining to such rules is to be considered and potentially adopted by the Association of Racing Commissioners International in the coming weeks.

BE IT RESOLVED THAT: The Massachusetts Gaming Commission is in agreement with and committed to this effort toward uniform adoption of such rules.

Stephen P. Crosby, Chairman

Date



The Commonwealth of Massachusetts
Massachusetts Gaming Commission

84 State Street, Suite 720
Boston, Massachusetts 02109

TEL: (617)979-8400
FAX: (617)725-0258
www.mass.gov/gaming

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STEPHEN P. CROSBY

COMMISSIONERS

GAYLE CAMERON

JAMES F. MCHUGH

BRUCE W. STEBBINS

ENRIQUE ZUNIGA

March 1, 2013

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

&

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

RE: Amendment of 205 CMR 4.00

Dear Ms. Contreas and Mr. Robertson,

The Massachusetts Gaming Commission (“Commission”) is proposing amendments to 205 CMR 4.00, in particular 205 CMR 4.11: *Rules of the Race*, 205 CMR 4.15: *Jockeys*, and 205 CMR 4.21: *Licenses, Registrations and Fees for Participants in Racing*.

These amendments can be broadly described as amendments to existing rules and adoption of the bulk of the Association of Racing Commissioners International (“ARCI”) *Model Rules of Racing for the use of the Pari-Mutuel Industry* as they pertain to the health and safety of racing’s participants. These proposed changes do several important things including, but not limited to:

- Amending the scale of weights for jockeys;
- Amending language regarding specifications and use of the riding crop;
- Adopting model rule standards for safety helmets and vests;
- Eliminating heel traction devices on front horseshoes; and
- Developing guidance for consideration of occupational license applications.

Many of these regulations have been already been in practice as “house policy” at Suffolk Downs in recent years. Their adoption by the Commission is in line with industry best practices.

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

The Commission will convene a public hearing on this amendment on April 8, 2013, at 10:00 A.M. at 84 State Street, 7th Floor, Boston, MA 02109. If you have any questions regarding this proposal, please feel free to contact me at (617) 979-8423.

Respectfully submitted,

Jennifer Durenberger, DVM, JD
Director of Racing