



**MASSACHUSETTS GAMING COMMISSION
PUBLIC MEETING #179**

February 18, 2016
10:00 a.m.

Massachusetts Gaming Commission
101 Federal Street, 12th Floor
Boston, MA



Massachusetts Gaming Commission



NOTICE OF MEETING and AGENDA

February 18, 2016

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 18, 2016

10:00 a.m.

**Massachusetts Gaming Commission
101 Federal Street, 12th Floor
Boston, MA**

PUBLIC MEETING - #179

1. Call to order
2. Approval of Minutes
 - a. February 4, 2016
3. Workforce, Supplier and Diversity Development – Jill Griffin, Director
 - a. Access and Opportunity Committee Update
 - i. Ron Marlow, Former Chair of the Massachusetts Gaming Commission’s Access and Opportunity Committee
 - ii. Jason Garand, Business Manager, - Carpenters Local 108, Springfield
 - iii. Beverly Johnson, President – MA Minority Contractors Association
 - iv. Jennie Peterson, Manager / Development – Wynn Everett
 - b. Diversity Goal Loan Program
 - i. Larry Andrews, President – Massachusetts Growth Capital Corporation
 - ii. Robert Clark Williams, Loan Officer – Massachusetts Growth Capital Corporation
4. Administration – Ed Bedrosian, Executive Director
 - a. General Update
 - b. Enterprise-Wide Risk Management Function – Commissioner Zuniga
 - c. Region C Update – J. Ziemba, Ombudsman
 - d. Wynn Permitting Update and Permitting Appeal – J. Ziemba, Ombudsman
 - e. Vendor Primary License – L. Lillios, Deputy Director – Investigations and Enforcement Bureau
5. Legal Division – Catherine Blue, General Counsel
 - a. Skill Based Gaming Regulations (First Draft) – T. Grossman, Deputy General Counsel
 - b. Amended Small Business Impact Statement and Final Promulgation for 205 CMR 129: Review of a Proposed Transfer of Interests, 205 CMR 116: Persons Required to be Licensed or Qualified, and 205 CMR 102: Construction and Application (Transfer of interests) - **VOTE**
 - c. Amended Small Business Impact Statement and Final Promulgation for 205 CMR 134: Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations (Temporary Licenses) - **VOTE**



Massachusetts Gaming Commission

- d. Amended Small Business Impact Statement and Final Promulgation for 205 CMR 134: Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations (Term of Licenses).- **VOTE**
 - e. Small Business Impact Statement for 205 CMR 143: Gaming Devices and Electronic Gaming Equipment - **VOTE**
 - f. Amendments to Exclusion Regulations 205 CMR 152.04 and 07 – **VOTE**
6. Research and Responsible Gaming – Mark Vander Linden, Director
- a. Voluntary Self Exclusion Regulations – T. Grossman, Deputy General Counsel - **VOTE**
7. Racing Division – Alexandra Lightbown, Director of Racing and Chief Veterinarian
- a. Payments from Suffolk Downs 2014 Outs Book to individual patrons - **VOTE**
 - b. Recovery of unclaimed winnings (outs) for 2014 from Suffolk Downs - **VOTE**
 - c. Recovery of unclaimed winnings (outs) for 2014 from Wonderland Park-**VOTE**
 - d. Recovery of unclaimed winnings (outs) for 2014 from Plainridge Park - **VOTE**
 - e. Recovery of unclaimed winnings (outs) for 2014 from Raynham Park - **VOTE**
 - f. Small Business Impact Statement for 205 CMR 3.00: Harness Horse Racing – **VOTE**
 - g. Small Business Impact Statement for 205 CMR 4.00: Rules of Horse Racing – **VOTE**
8. 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 “Massachusetts Gaming Commission Meeting” at www.massgaming.com and emailed to: regs@sec.state.ma.us, melissa.andrade@state.ma.us.

2/16/16
DATE


Stephen P. Crosby, Chairman

Date Posted to Website: February 16, 2016 at 10:00 a.m.



Massachusetts Gaming Commission

101 Federal Street, 12th Floor, Boston, Massachusetts 02110 | TEL 617.979.8400 | FAX 617.725.0258 | www.massgaming.com



Meeting Minutes

Date/Time: February 4, 2016 – 10:00 a.m.

Place: Massachusetts Gaming Commission
101 Federal Street, 12th Floor
Boston, Massachusetts

Present: Commissioner Gayle Cameron
Commissioner Lloyd Macdonald
Commissioner Bruce Stebbins
Commissioner Enrique Zuniga

Absent: Chairman Stephen P. Crosby

**Time entries are linked to
corresponding section in
Commission meeting video**

Call to Order

See transcript page 2

[10:00 a.m.](#) Commissioner Zuniga called to order the 178th Commission Meeting and noted the absence of Chairman Crosby.

Approval of Minutes

See transcript pages 2-3

[10:00 a.m.](#) *Commissioner Macdonald moved for the approval of the January 21, 2016 meeting minutes subject to any corrections, typographical errors, or other nonmaterial matters. Motion seconded by Commissioner Stebbins. Motion passed unanimously.*

Presentation of Wynn/Boston Agreement and License Amendment and Related Actions

See transcript pages 3-31

[10:01 a.m.](#) David Mackey, from the law firm of Andersen and Kreiger and Special Assistant Attorney General, representing the Massachusetts Gaming Commission in the litigation matters pertaining to the Region A licensing process, summarized the history of the litigation with the City of Boston and the context of the draft motion before the Commission. Attorney Mackey stated that there has been a resolution of the issues raised by Boston pertaining to the Wynn Everett project. In the spring of 2014, the Commission determined that Boston was not a host community but a

surrounding community to the Wynn project. Boston did not reach a surrounding community agreement with Wynn, Boston declined to participate in arbitration, and the Commission determined that Boston waived its status as a surrounding community. The Commission conditionally awarded Wynn the casino license in the fall of 2014 and provided mitigation provisions for Boston. Litigation was brought by Boston challenging the conditional license award. The Commission moved to dismiss Boston's complaint and the court granted the Commission's motion. Wynn on its behalf filed a lawsuit alleging defamation against the City of Boston. Attorney Mackey stated that within the past week, Boston and Wynn have agreed to terms of a surrounding community agreement and want to resolve all litigation. Boston and Wynn signed a settlement agreement and release resolving claims, litigation and a surrounding community agreement. Attorney Mackey described the provisions of the settlement agreement and release. He also highlighted the draft motion for the Commission's consideration which contained the following: determination by the Commission to reinstate Boston as a surrounding community, acceptance of the newly negotiated surrounding community agreement, reservation of the Commission's authority to impose additional conditions on the license when it issues its Section 61 Findings, release to Boston of the check for \$1 million that was issued by Wynn and held by the Commission, and authorize the Commission's Executive Director or General Counsel to sign the settlement agreement and release on behalf of the Commission.

- [10:12 a.m.](#) Attorney Jacqui Krum, representing Wynn Resorts, presented on the surrounding community agreement for the Commission's consideration. She noted Wynn's commitment to the project and mitigating traffic impacts. She stated that it is a collaborative process and they are anxious to move the project forward.
- [10:18 a.m.](#) Eugene O'Flaherty, Corporation Counsel for the City of Boston, stated that he appreciates the hard work of the Commission and that Boston is looking forward to developing a new relationship with Wynn and the Commission. He also noted that the Mayor sends his goodwill.
- [10:22 a.m.](#) General Counsel Catherine Blue noted that Commissioner Macdonald will abstain from voting on the motion because he did not participate in the Wynn Everett licensing process.
- [10:27 a.m.](#) Executive Director Edward Bedrosian, Jr. recommended that General Counsel Blue sign the agreement on behalf of the Commission.
- [10:31 a.m.](#) *Commissioner Cameron moved that the Commission approve the agreement found on page ten in the packet which includes: surrounding community agreement, a settlement agreement, a release request for amendment to license condition, request for execution of release, request for release of the check, and the reinstatement of Boston as a surrounding community. Motion seconded by Commissioner Stebbins. Roll call vote: Commissioner Cameron – Aye, Commissioner Macdonald – Abstain, Commissioner Stebbins – Aye, and Commissioner Zuniga – Aye. Motion passed three to zero and one abstention. SEE MOTION ATTACHED*
- [10:32 a.m.](#) The Commission took a short recess.
- [10:44 a.m.](#) The meeting resumed.

Administration

See transcript page 31-56

- [10:45 a.m.](#) CFAO Derek Lennon provided an update on the Commission's fiscal year 2016 second half budget which included the following: Gaming Control Fund projected expenditures and revenues, budget adjustments from CMS late start will result in decreases to spending, licensing revenues will exceed projections, and areas to watch for possible future underspending (licensing management system, document management project, and ISA for the Attorney General's Office). He also reported on the potential exposure of the indirect rate and stated he is working with the Executive Office for Administration to try and get it either decreased or waived.
- [10:55 a.m.](#) Agnes Beaulieu, Finance and Budget Office Manager, provided a second quarter supplier diversity update which included the following: reached and surpassed the small business benchmark, behind on minority and woman owned businesses benchmark, and trouble with reaching the disabled veterans benchmark. CFAO Lennon noted that Director Jill Griffin has been sitting in on the procurements to provide guidance and help identify vendors which has made a positive impact.
- [11:02 a.m.](#) Ombudsman John Ziemba provided an update on the Region C schedule which included the following: March 31st is still the potential date for a determination regarding a Region C award; the host community meeting has been scheduled for March 1st in Brockton, from 4:00-6:00 p.m., at the Conference Center at Massasoit Community College; neither of the parties in arbitration (Easton and West Bridgewater) filed fundamental inconsistency petitions; and arbitrations are due to conclude with a report on February 8th.
- [11:04 a.m.](#) Commissioner Zuniga noted for the record that it was unintended to schedule the host community meeting on a primary voting date, March 1st.
- [11:06 a.m.](#) Commissioner Stebbins noted that the Commission received a letter from the Town of Berkley indicating that they want to speak at the host community hearing.
- [11:07 a.m.](#) Commissioner Macdonald urged all Commissioners to read the letter from the Town of Berkley. He stated that the letter raised the potential dilemma that if the Commission approves a casino in Brockton, the surrounding communities of a Taunton casino would not be in line for mitigation funds from the Tribe.
- [11:09 a.m.](#) Commissioner Zuniga noted that the Community Mitigation Fund guidelines can be revised depending upon the actions the Commission takes.
- [11:10 a.m.](#) Executive Director Bedrosian, on behalf of Director Karen Wells, reported on temporary key gaming employee licenses that were issued to the following individuals at Plainridge Park Casino: Daniel Connors, Assistant Count Team Supervisor; Alyssa Hines, Surveillance Supervisor; John Kent, Lead Surveillance Supervisor; James Frank Hood, Security Shift Supervisor; and Russell Lizotte, Security Shift Supervisor.
- [11:11 a.m.](#) Executive Director Bedrosian requested that agenda item number six be moved up because someone for the racing presentation is not present.

Legal Division

See transcript pages 57-66

[11:12 a.m.](#) Deputy General Counsel Todd Grossman presented on the Plainridge Park Casino nondisclosure agreement for the Commission's consideration. He noted that two items have been added to the agreement - inventory of locks and keys and compliance report on RFA-2 conditions. Deputy General Counsel Grossman stated that Plainridge Park Casino submitted an application for nondisclosure of information that they considered a trade secret or detrimental if made public, MGC staff reviewed the application, and he recommended that the Commission approve execution of the agreement.

[11:22 a.m.](#) *Commissioner Macdonald moved that the Commission approve the nondisclosure agreement. The motion was amended by Commissioner Stebbins to authorize the Executive Director to sign the agreement. Motion seconded by Commissioner Cameron. Motion passed unanimously.*

[11:23 a.m.](#) The Commission took a short recess.

[11:29 a.m.](#) The meeting resumed.

Racing Division

See transcript pages 66-125

[11:30 a.m.](#) Dr. Alexandra Lightbown, Director of Racing, stated that she would like to update the racing regulations, by emergency, to bring them in accordance with the Association of Racing Commissioners International ("RCI") regulations. She reported on the changes to the medication rules and helmet guidelines for both the Standardbred and thoroughbred regulations.

[11:39 a.m.](#) *Commissioner Stebbins moved that the Commission adopt on an emergency basis and begin the formal regulatory promulgation process for 205 CMR 3.29(5)(a)(3), 205 CMR 3.29(8)(b), 205 CMR 4.52(5)(a)(1) and 205 CMR 4.52(8)(b). Motion seconded by Commissioner Cameron. Motion passed unanimously.*

[11:40 a.m.](#) *Commissioner Stebbins moved that the Commission adopt on an emergency basis the appropriate change to 205 CMR 4.11(6)(c)(7) and 205 CMR 3.11(5), the helmet regulations, and begin the formal regulatory promulgation process. Motion seconded by Commissioner Cameron. Motion passed unanimously.*

[11:41 a.m.](#) Steve O'Toole, General Manager of Racing at Plainridge Park Casino, recognized Dr. Lightbown and Doug O'Donnell and commended them for what they do for racing. He provided an update on the 2015 Plainridge Park Casino Harness Racing season which included highlights on the following: operational changes and challenges, racing renovations and improvements, economic impact, racing highlights, and new projects for 2016.

[12:06 p.m.](#) Commissioner Cameron noted that recent appointments from the Governor's Office and Treasurer's Office have been made for the Horse Race Committee.

- [12:09 p.m.](#) Bill Abdelnour, Director of the Harness Horseman's Association of New England, reported on the owner's seminar conducted by the United States Trotting Association in collaboration with Penn National. He noted the event had a great turnout and provided exposure for investors and a tour of the barn.
- [12:18 p.m.](#) Commissioner Cameron commended Mr. O'Toole on a smooth transition. She noted that the patrons were patient and the facility looks great. She also noted that she has received comments about the potential of using casino advertising to promote racing, including racing in the casino entrance signage, and utilization of the upper room as a viewing area for track patrons. Mr. O'Toole noted that he is working on those issues.
- [12:30 p.m.](#) Ed Noak, President of the Standardbred Owners of Massachusetts, noted that it was an interesting transition year, they more than tripled their purses, and they have taken steps to encourage breeding in Massachusetts.
- [12:36 p.m.](#) A video was shown showcasing the breeding program in Massachusetts.
- [12:41 p.m.](#) Dr. Lightbown recommended that the Commission approve the request of the Standardbred Owners of Massachusetts to be recognized as the group to do the Standardbred Sire Stakes program.
- [12:41 p.m.](#) *Commissioner Cameron moved that the Commission approve the request of the Standardbred Owners of Massachusetts, Inc. to be recognized as the group of representative Standardbred breeders to administer the Massachusetts Standardbred breeding program and the Sire Stakes races for 2016. Motion seconded by Commissioner Stebbins. Motion passed unanimously.*

Other Business Not Reasonably Anticipated

See transcript page 125

- [12:42 p.m.](#) *Having no further business, a motion to adjourn was made by Commissioner Cameron. Motion seconded by Commissioner Macdonald. Motion passed unanimously.*

List of Documents and Other Items Used

1. Massachusetts Gaming Commission, Notice of Meeting and Agenda, dated February 4, 2016
2. Massachusetts Gaming Commission, Draft Meeting Minutes, dated January 21, 2016
3. City of Boston and Wynn's Settlement Agreement and Release with exhibits
4. Massachusetts Gaming Commission, Memorandum, dated February 4, 2016, regarding Fiscal Year 2016 (FY16) Second Budget Update with attachments
5. Region C Southeastern Massachusetts Estimated Category 1 (Resort-Casino) Timeline, last updated 2/1/16
6. Massachusetts Gaming Commission, Memorandum, dated February 4, 2016, regarding Temporary Key Gaming Employee Licenses Issued
7. Amendments to 205 CMR 3.00: Harness Horse Racing
8. Amendments to 205 CMR 4.00: Rules of Horse Racing
9. Plainridge Park Casino 2015 Racing Season Update, PowerPoint presentation
10. Massachusetts Gaming Commission, Memorandum, dated January 29, 2016, regarding the Standardbred Owners of Massachusetts Recognition

11. Letter from Standardbred Owners of Massachusetts to the Massachusetts Gaming Commission, dated January 25, 2016, regarding request for recognition
12. Nondisclosure Agreement between the Massachusetts Gaming Commission and Plainville Gaming and Redevelopment
13. Plainville Gaming and Development Request for Nondisclosure Agreement, dated 2/01/16
14. Plainville Gaming and Development Request for Nondisclosure Agreement, dated 1/29/16
15. Letter from the Town of Berkley to the Massachusetts Gaming Commission, dated January 27, 2016, regarding the Taunton casino

/s/ Catherine Blue

Catherine Blue, Assistant Secretary

DRAFT

Massachusetts Gaming Commission

Vote Regarding Litigation Release and Surrounding Community Agreement

PROJECT NAME: Wynn Everett
PROJECT LOCATION: 1 Horizon Way in Everett, Massachusetts
PROJECT PROPONENT: Wynn MA LLC (“Wynn”)
MUNICIPALITY: City of Boston (“Boston”)
APPROVAL SOUGHT: Massachusetts Gaming Commission’s Vote Regarding Litigation Release and Surrounding Community Agreement between Wynn MA LLC and the City of Boston

WHEREAS, pursuant to Massachusetts General Laws Chapter 23K, the Massachusetts Gaming Commission (the “Commission”) awarded a conditional Category 1 gaming license (the “License”) to Wynn to develop a gaming establishment (the “Project”) on property in Everett, Massachusetts.

WHEREAS, during the proceedings leading to the License, the Commission determined that Wynn’s proposed gaming establishment is located within Everett; Boston is not a host community to the Project; and Boston was a surrounding community to the Project.

WHEREAS, after Boston declined to participate in the Commission’s binding arbitration process under 205 CMR 125.01, the Commission concluded that Boston had waived its surrounding community status with respect to Wynn’s application for the License.

WHEREAS, in the absence of a surrounding community agreement between Wynn and Boston, the Commission included in the License conditions to mitigate potential impacts of the Project on Boston. See License Conditions Section 3 (Conditions Required to Mitigate Impacts to the City of Boston) and Section 4 (Conditions Required to Mitigate Traffic and Other Impacts Caused by the Construction and Operation of the Gaming Establishment) (collectively “Sections 3 and 4 of the License Conditions”).

WHEREAS, litigation ensued entitled:

- *City of Boston v. Massachusetts Gaming Commission, et al.*, Case No. SUCV2015-00012-BLS2 (the “Licensing Action”),
- *City of Boston v. Wynn MA, LLC*, Case No. SUCV2015-02932-BLS2 (the “Environmental Action”), and
- *Wynn Resorts et al. v. Does 1 through 20*, Case No. SUCV2015-03010-BLS2 (the “Defamation Action”).

WHEREAS, on December 3, 2015, the court granted the Commission's motion to dismiss in the Licensing Action and, on December 8, 2015, the court entered final judgment dismissing the Licensing Action.

WHEREAS, Boston and Wynn have submitted to the Commission a partially executed Settlement Agreement and Release dated January 27, 2016 (the “Release”), in which Boston and

Wynn have agreed to resolve all disputes between them, asserted or unasserted, arising from or relating to the Licensing Action, the Environmental Action, and the Defamation Action, without admission of any liability.

WHEREAS, Paragraphs 2a and 2b of the Release would, upon full execution, provide for the grant of releases to the Commission Releasees and from the Commission Releasers as defined in the Release.

WHEREAS, Boston and Wynn have executed and submitted to the Commission a Surrounding Community Agreement dated as of January 27, 2016 (the "Surrounding Community Agreement"), to address the impacts of the Project on Boston and to facilitate the successful development and operation of the Project.

WHEREAS, Section 11 of the Surrounding Community Agreement provides as follows:

Promptly following the execution of this Agreement, including execution of Exhibit C [the Release], the Parties shall submit this Agreement to the Commission for its approval. If approved by the Commission, the terms of this Agreement will replace all portions of Sections 3 and 4 of the License Conditions related to the City of Boston. The Parties acknowledge and agree that this Agreement is conditioned upon and subject to the approval of the Commission. In the event that the Commission does not approve this Agreement or approves it subject to any modifications, unless otherwise agreed upon by the Parties in writing, this Agreement shall terminate without further action by the Parties, and Sections 3 and 4 of the License Conditions related to the City of Boston will remain in force.

WHEREAS, License Condition Section 2.32 provides that:

At any time prior to the Opening Date, Wynn and the City of Boston may negotiate and enter into a surrounding community agreement to mitigate impacts pursuant to 205 CMR 125.00. In the event that Wynn and the City of Boston enter into a surrounding community agreement, the parties will submit the agreement to the Commission. The Commission will determine if any of the conditions of the License should be amended or modified and if the Commission so determines, the Commission has the authority to make such amendments or modifications to the License conditions.

NOW THEREFORE I move that the Massachusetts Gaming Commission take the following actions:

1. Reinstate the City of Boston as a surrounding community to Wynn MA LLC's proposed Category 1 gaming establishment in Everett, Massachusetts, subject to and effective upon the submission to the Commission by Wynn MA LLC and the City of Boston of their joint written consent to that reinstatement;
2. Consistent with License Conditions Section 2.32, accept the Surrounding Community Agreement dated as of January 27, 2016, submitted by Wynn MA LLC and the City of

Boston; and determine and approve that the terms of said Surrounding Community Agreement will replace Sections 3 and 4 of the License Conditions related to the City of Boston;

3. Reserve the Commission's discretion and authority to impose additional conditions in its Section 61 Findings for the Project and its final Agency Action regarding the Category 1 Gaming License for Region A, pursuant to G.L. c. 30, § 61 and 301 CMR 11.12(5) and pursuant to G.L. c. 23K and the Commission's regulations including without limitation 205 CMR 120.02(1) and 127.00;
4. Authorize the release to the City of Boston pursuant to Section 2.2 of the Surrounding Community Agreement of Wynn's check held by the Commission, in the amount of One Million Dollars (\$1,000,000); and
5. Authorize its General Counsel and/or the Executive Director to sign (as to Paragraphs 2a and 2b only) the Settlement Agreement and Release between the City of Boston and Wynn MA LLC dated January 27, 2016, on behalf of the Commission Releasers in their official capacity only.

DATED: February 4, 2016
 MOVED BY: Commissioner Cameron
 SECONDED BY: Commissioner Stebbins
 RECORD OF VOTE:

Commissioner	In Favor	Opposed	Abstained	Recused
Stephen Crosby				X
Gayle Cameron	X			
Enrique Zuniga	X			
Bruce Stebbins	X			
Lloyd Macdonald			X	

Attest:

Catherine Blue
 Catherine Blue, Assistant Secretary

Dated: 2/4/16



ON THIS 21ST DAY OF JANUARY, 2016, THE

MASSACHUSETTS GAMING COMMISSION

PROUDLY PRESENTS THIS CERTIFICATE OF APPRECIATION TO



Ron Marlow



IN RECOGNITION OF YOUR COMMITMENT TO DIVERSITY AND YOUR EXCEPTIONAL LEADERSHIP PROVIDED AS THE CHAIRMAN OF THE MASSACHUSETTS GAMING COMMISSION'S ACCESS AND OPPORTUNITY COMMITTEE. YOUR GUIDANCE IN FULFILLING AN IMPORTANT ASPECT OF THE COMMISSION'S MISSION OF ECONOMIC INCLUSION IS GREATLY APPRECIATED.

Gayle Cameron, Commissioner

Lloyd Macdonald, Commissioner

Stephen P. Crosby, Chairman

Bruce Stebbins, Commissioner

Enrique Zuniga, Commissioner





Learn how your company can be a trade partner on the historic \$1.7 billion Wynn Resort in Everett project.

Representatives from Wynn and Suffolk Construction will provide an overview of project requirements and timelines and will be on hand to answer questions, make introductions and inform interested trade partners on how to get pre-qualified.

Wednesday, February 17, 2016

9:00am - 12:00pm

Everett High School

100 Elm Street, Everett, MA 02149

All potential bidders are required to participate and all interested trades are invited to attend, including:

- Certified Minority Business Enterprises
- Certified Women Business Enterprises
- Certified Veteran Business Enterprises
- Local Contractors & Suppliers of All Sizes
- Non-Certified Firms

ADVANCE REGISTRATION IS REQUIRED BY END OF DAY MONDAY, FEBRUARY 15th.

To register, please go to the link below:

<https://www.surveymonkey.com/r/WynnEverettTPS>



build
smart



Massachusetts Growth Capital Corporation-MGCC works to create and preserve jobs at Massachusetts small businesses, women and minority owned businesses, and promotes economic development in underserved, Gateway Cities and low and moderate income communities. MGCC is a central state resource that offers working capital, loan guarantees, and targeted technical assistance to solve specific financial and operational problems for local businesses. MGCC works with traditional financial institutions to make challenging loans bankable, working with community development corporations and other non-profits to provide financing for job-producing projects, and assisting a wide range of small businesses find the growth capital they require. MGCC specifically targets manufacturers that are expanding, other growth sectors, and small businesses in our older Gateway Cities. Since inception, MGCC has assisted more than 263 companies with over 9,100 employees with customized working capital financing commitments totaling over \$83,800,000. www.massgcc.com

Small Business Financial Products

MGCC is enhancing capacity and capital access to Massachusetts small businesses and community development initiatives. Each loan request is unique simply because companies, their economic circumstances and conditions, are unique. Mass Growth Capital Corp, therefore, does not operate with a one-size-fits-all approach.

Loan Officers at MGCC have the experience to help a prospective borrower identify the most appropriate loan product for its needs and to structure the loan accordingly. These loan products are the most frequently used loan types. They can be used in combination and, in some cases, are converted from one type to another:

Term Loans

Working capital requirements are not often easily handled within one year. Cash flow is typically insufficient to repay all but the smallest loan in a year. Five year Term Loans therefore provide a useful time frame – long enough for cash flow to increase and to allow MGCC to be repaid.

Contract and Purchase Order Financing

Winning a contract or a purchase order usually requires a firm to support labor, materials and overhead cost before billing and being paid for the work. Contract and Purchase Order financing can bridge this timing gap. Typically, a percent of the order value will be loaned, and repaid when the firm receives payment.

Lines of Credit

When a company needs to receive partial advances of loan proceeds to meet working capital needs, such as for a seasonal business, a one year Line of Credit may be appropriate. A Line of Credit may be renewed for a second year or may be converted to a Term Loan.

Working Capital

Working capital can be provided for most business operational purposes. We do not typically finance real estate development.

Subordinated Loans

Many of our loans are made in conjunction with bank financing. Typically, the bank will have a senior position on assets and MGCC will be in a subordinated position. These loans are usually written as 5 year Term Loans

Guarantees

If a bank cannot extend needed credit because the collateral is inadequate, MGCC can provide a partial and limited Guarantee to enable the bank to make the loan.

Technical Assistance to Business Borrowers

MGCC provides targeted technical assistance to solve specific financial and operational problems. MGCC will provide 50% of the cost of such assistance while the company being assisted will invest the other 50%. To learn more about our small business grants and lending products please contact us at:

Massachusetts Growth
Capital Corporation
529 Main Street
Schrafft Center, Suite 1M10
Charlestown, MA 02129

Tel: +1 [617-523-6262](tel:617-523-6262)

Fax: +1 617-523-7676

<http://www.massgcc.com/>



Diversity Goal Support Program - Contract Financing

The Financing Program

MGCC will provide contract financing to Massachusetts based companies to produce work under a diversity goal contract with a credit worthy source.

1. Business is awarded the contract and delivers a copy of it to MGCC.
2. MGCC will advance up to 75 % of the contract value to the business to provide working capital for materials, equipment, and labor, to produce the job.
3. Funds will be advanced in amounts as requested for working capital needs.
4. Technical assistance may be provided.

There are two key conditions:

- a. Business will provide MGCC an analysis of how they intend to produce the job at a profit, taking into consideration typical contingencies such as schedule delays and budget increases.
- b. The contract shall be assigned to MGCC. Payments on accounts receivable will be made directly to MGCC. Each time a payment is received, a portion is used to pay down on the loan and the balance is remitted to the business.

Other Information Typically Requested

1. Current Personal Financial Statement
2. Latest year tax return - personal
3. Description of business – industry; ownership; staff experience;
4. Current Balance Sheet and most recent Income Statement (and, 3 prior years, if available)
5. Description of most recent jobs completed (if applicable)
6. Other jobs in the bidding pipeline
7. Cash flow plan for balance of year
8. Projected Income statement for next year
9. Name and contact for CPA and attorney

General Terms

- Financing is available from \$25,000 to \$500,000 on a revolving basis
- Interest rate range of Prime + 2% to Prime + 7% (currently 5.25% to 10.25%) based on risk
- Commitment fee starting at 1% at signing of commitment letter
- Legal Closing costs paid by borrower
- Personal guarantee required

Timing

- No decision can be made until all borrower's information is available for review and analysis
- Once all information is made available to MGCC, a lending decision can be made within a few days for loans under \$250,000.
- Loans over \$250,000 must be approved by MGCC Credit Committee. Company information is therefore required 30 days prior to the meeting date to allow time for underwriting and preparation of loan request to the Credit Committee.

Available to businesses meeting diversity goals, such as minorities, women and veterans

Contact(s): José Luis Rojas Villarreal, Community Group Manager, Tel: (617) 337-2815, Email: vrojas@massgcc.com
Robert Clark Williams, Loan Officer Tel: (617) 337-2823, Email: rwilliams@massgcc.com
Alison Moronta, Loan Officer and Grant Program Manager Tel: (617) 337-2820, Email: amoronta@massgcc.com.

No Documents

Memorandum:

To: Commissioners
From: Zuniga, Enrique (MGC)
CC: Executive Director, Directors
Date: 2/4/2016
Re: Internal Audit / Quality Assurance Status Report

A paramount objective of the Gaming Commission, or for that matter any agency of the Commonwealth, is to ensure and promote accountability and integrity of the operations. There are important areas of focus within the administrative, operational and fiscal procedures, including the safeguard of assets as well as prevention of fraud, waste or abuse.

In this regard, all state agencies are required to conduct at a minimum annual periodic risk assessments of their operations. This type of assessment is required by the Office of the Comptroller, and is also a best practice. Although the associated procedures or requirements may vary based on the functions of an agency, or other statutory requirements, risk assessments should take place periodically and may be performed in a variety of ways.

To date, the Division of Administration and Finance at the Commission has been the office that has performed the risk assessment, as well as established associated procedures *for internal controls and internal processes*. In my role as the Commission's treasurer, I have been serving as the Risk Officer. Initially, the associated procedures were limited to the expenditures of Commission's costs. Importantly, these procedures have begun to include the collection and reconciliation of taxes on Gross Gaming Revenues at the Plainridge Park Casino.

In parallel, but since inception, the Investigations and Enforcement Bureau, with the help of several other divisions (Licensing, Legal, others) has implemented many detailed procedures for the safeguarding and oversight of *external processes* (or the licensing and regulation of operations of the casinos). Notably, the division of Administration and Finance is the office with oversight of the gaming revenue operations of the casino, as previously mentioned, the taxes on Gross Gaming Revenues as well as other assessments on licensees.

We are at a point where it is important to expand the scope of the risk assessment function (or internal audit function) in a coordinated fashion. I have formed a working group to this effect. An internal audit/quality assurance function should report to the leadership of the agency, which is also widely perceived to be a best practice. For example, in public and many private companies audit committees report directly to boards of directors.

It is important to note that there are significant existing efforts at the Commission under this topic, not only at the IEB and A&F, but also within Legal and IT and other functions. The purpose of the working group is to simply coordinate and aggregate such efforts with an extensive effort to prioritize risks and direct resources at mitigating the activities with the highest risk and highest likelihood of occurring with careful attention to avoid duplication. The initial principal focus of the working group will be those existing efforts.

The purpose of this memorandum is to update the Commission on these efforts and report on the on-going approach to an Internal Audit and Quality Assurance Function.

Internal Audit/Quality Assurance Working Group

I, as the treasurer of the Commission in the role of Risk Officer, am the commissioner more directly involved in efforts related to risk assessments and internal audit. I recently convened a working group with senior staff, as an important step towards furthering the goals outlined above. The Executive Director is a key participant in this effort, and staff members also include IEB, A&F and Legal.

There are a number of variations and alternatives to the working group model. Some internal audit and risk assessment functions could be contracted out to an outside party (CPA firm), in part or in whole (though there should always be some level of internal “ownership”). In another variation to the approach, the group could have an outside member with relevant senior expertise, and an objective independence (which may be useful at certain times). These variations however, are always available on an ad-hoc basis to the group. Yet another alternative could be to establish an office of compliance, audit and risk with a position overseeing the three main areas. Designating a Risk Manager position would be at the discretion of the Executive Director as an administrative function. Whether or not an internal office is established at a later time, I have currently taken steps to organize this working group and associated coordination efforts, and can later recommend and/or implement variations or even alternatives to this model.

This group needs to include senior directors of different disciplines (as outlined above), but cannot be so big that it becomes unwieldy, or with the potential to lose focus and follow up. In that sense, the group can address different areas of the operations at different times (rotate members depending on the topic examined – including say, the input of licensees), and in different ways (contracting the examination of a particular set of procedures, or recommending modifications of an existing process as necessary).

The working group would meet periodically (monthly) and discuss specific areas of risk and/or focus and report to the Commission periodically (quarterly, annually or semi-annually). I assume that ad-hoc reporting may at times become necessary.

Summary of Areas of Focus

1. Risk Assessment: As stipulated above, a periodic review and analysis of areas of risk is both a necessity and a best practice and will help to drive the three areas listed immediately below this item. The working group would provide a forum for the department heads to identify potential areas of concern and available resources. Furthermore, the working group may take any one of the divisions and conduct or cause to conduct a gap analysis in specific areas across functional groups and/or among divisions. These areas typically include communications and approvals, segregation of duties, asset protection, data security, safeguarding of personally identifying information, disaster recovery, etc.
2. Compliance. The gaming act stipulates extensive requirements of licensees, applicants, qualifiers, gaming vendors and contractors, the Gaming Commission and other parties. The Commission has further promulgated regulations with extensive requirements of licensees and others. The Legal department has been aggregating compliance activities and reports, although these are often the responsibility of another department or external party. The working group would monitor the compliance calendar and review areas of compliance (or lack thereof) of internal and external parties, identify person(s) with the primary responsibility and communicate and address potential gaps.

For reference, the Legal department and in other respects A&F has and will maintain a calendar of compliance. The working group should periodically review these and anticipate potential barriers and resource constraints as early as possible to address them accordingly.

3. Internal Controls (IC's). These are internal procedures designed to foster accountability and the integrity of operations. IC's are typically a major area of analysis and consideration for an agency like the Commission, and they are also a major area of focus for the external operations as the agency that oversees the casinos. As such, Internal Controls will be a major area of concern and focus of the working group. There is already extensive documentation and regulation for the operations of casinos, including a waiver request process, but the working group will take high-level view of certain areas as needed.

For internal processes (A&F) the topic of Internal Controls though broad, is incorporated in an "Internal Control Plan." While such a plan permeates to other areas of the agency, there are discreet areas to examine and verify if and how they are being undertaken. Such areas will include: documentation of goals and procedures, training, adherence to Comptroller's IC guidelines, etc.

4. Reporting: As stated above, the working group would receive and evaluate specific areas of analysis (compliance details, internal risk, gap analysis, etc.), and report to the Commission with recommendations, if any. Although I don't anticipate happening often, it is conceivable that a report to the Commission may contain an item that may need to be redacted (fall under one of the exceptions of the public records law), and we will deal with that eventuality in the same fashion we have dealt in the past relative to both the public records and open meeting laws.

On-going Related Efforts

There are important existing efforts at the Commission that may have some perceived overlap with this working group. We will soon issue an "after-action" report that would culminate a lessons-learned effort that began around the opening of Plainridge Park Casino. Further, there is a High Performance effort to align the mission and goals of the organization to the tasks, procedures, information and reporting of each area of the organization. Both projects (After-Action and High Performance) are part of a culture of continuous improvement that the Commission has and always intended to create. Although the Risk Assessment/Quality Assurance process falls under the large umbrella of a culture of continuous improvement, it is not intended to duplicate, substitute or undermine any of such efforts.

GARETH I. ORSMOND

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Admitted in: MA and NH

February 11, 2016

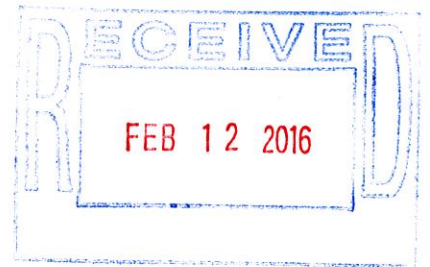
2016-004

BY HAND

MassDEP
Case Administrator
One Winter Street, 2nd Floor
Boston, MA 02108

BY HAND

MassDEP
Waterways Regulation Program
One Winter Street, 5th Floor
Boston, MA 02108



RE: Matter of Wynn MA, LLC, Waterways Application File No. W15-4480-N

Dear Sir or Madam:

Enclosed for filing on behalf of the City of Somerville in the above matter, please find a Notice of Claim, as well as a copy of the Adjudicatory Fee Transmittal Form.

Also enclosed is a copy of the Notice of Claim. Please date-stamp this copy and return it to me via my courier.

If you have any questions, please call me at (603) 373-2014.

Thank you for your courtesy in this matter.

Very truly yours,

Gareth Orsmond

Gareth I. Orsmond

GIO/smg
Enclosures

- cc: Wynn MA, LLC (by certified mail with enclosures)
- Fort Point Associates, c/o Jamie Fay (by certified mail with enclosures)
- Mayor Carlos DeMaria, City of Everett (by certified mail with enclosures)
- Tony Starr, Esq., Mintz Levin (by regular mail with enclosures)

COMMONWEALTH OF MASSACHUSETTS
Executive Office of Energy and Environmental Affairs
Department of Environmental Protection
One Winter Street, Boston, MA 02108

February 11, 2016

)	Docket No. _____
)	Waterways Application No. W15-4480-N
Matter of Wynn MA, LLC)	Everett, MA
)	

NOTICE OF CLAIM

The petitioner, Mayor Joseph A. Curtatone, in his capacity as Mayor of the City of Somerville (“Somerville,” or the “City”), and acting on behalf of the City, respectfully requests an adjudicatory hearing with respect to the Written Determination pursuant to G.L. c. 91 and G. L. c. 30, § 61 (the “Written Determination”) issued to Wynn MA, LLC (“Wynn”) for the construction of the proposed Wynn Resort Casino (the “Casino,” or “Project”). Although dated January 22, 2016, the Written Determination was not received by the City until February 3, 2016.

Somerville submits that the Written Determination does not conform to the waterways regulations promulgated by the Department of Environmental Protection (“DEP”) and set forth at 310 CMR 9.00. Moreover, the prerequisites to the issuance of the Written Determination – including the approval of a municipal harbor plan by the Secretary of the Executive Office of Energy and Environmental Affairs (the “Secretary”), the Secretary’s issuance of a certificate on Wynn’s Second Supplemental Final Environmental Impact Report (“SSFEIR”) to conclude his review under the Massachusetts Environmental Policy Act (“MEPA”) and the MEPA regulations at 301 CMR 11.00, and the Secretary’s issuance of a public benefit determination pursuant to G.L. c. 91, §18B – are all flawed and based on legally untenable grounds and are the subject of pending appeals by the City. The City asserts that the Written Determination was issued inappropriately given that the prerequisite administrative actions upon which it relies are subject to the appeals identified above and thereby are not final, rendering the Written Determination premature and therefore invalid.

The grounds for this Notice of Claim are set forth in more detail below.

I. WATERWAYS APPLICATION FILE NUMBER, APPLICANT, PROJECT ADDRESS

Waterways Application File No.: W15-4480-N

Applicant: Wynn MA, LLC
3131 Las Vegas Blvd. South
Las Vegas, NV 89109
Contact: Robert DeSalvio

Represented by:

Fort Point Associates
Jamie Fay, President
31 State Street, 3rd Floor
Boston, MA 02109

Project Address: One Horizon Way, Everett, Massachusetts

II. REQUEST FOR FORMAL ADJUDICATORY HEARING

Joseph A. Curtatone, as Mayor of Somerville, requests a formal adjudicatory hearing on the Written Determination (hereinafter, the "Adjudicatory Appeal").

III. STATEMENT OF FACTS

A. The Casino Project

1. Wynn proposes to construct the Casino pursuant to Chapter 194 of the Acts of 2011, entitled "An Act Establishing Expanded Gaming In The Commonwealth," and G.L. c. 23K, as amended (the "Gaming Act"), and the regulations adopted by the Commission and set forth at 205 CMR 1.00, *et seq.* (the "Gaming Regulations"). The site for the Casino is an approximately 33.9-acre parcel of land located on Horizon Way and Lower Broadway (Route 99) in Everett (the "Casino Site," or "Site"). The Site borders the Mystic River, as does the City of Somerville.

2. According to Wynn's SSFEIR, the Project entails over 3,000,000 square feet of development, including a gaming facility with a total of 4,580 gaming positions; a 629-room, 386± foot high hotel¹ comprising 621,774± square feet; 629,391± square feet of retail, food and beverage space, gym/spa space, lobbies, lounges, meeting/convention rooms, and back-of-the-house space; a 1,627,751± square foot on-site parking facility, including 2,930 parking spaces; and 800 off-site parking spaces for employees. In prior reports, the number of on-site parking spaces has been reported as 3,700, then reduced to 3,400, then reduced further to 2,930, without

¹ Descriptions of the height of the hotel vary between 373 and 386 feet in various filings made by Wynn.

any reduction in the 1,627,751± square feet of area dedicated to parking facilities.

3. The Project entails a substantial amount of dredging in the Mystic River and shoreline alteration to construct improvements and attempt to address hazardous waste contamination caused by past industrial uses of the Casino Site. This work reportedly includes dredging approximately 17,335 cubic yards of sediment over approximately 68,140 square feet of the Mystic River below the mean low water mark.

4. The Site is bordered by the Mystic River on the south and an embayment on the east. According to Wynn's reports, the Site includes approximately 1,600 linear feet of shoreline along the flowed tidelands of the Mystic River. Approximately 8.3 acres of the Site are located below the present mean high water mark of the Mystic River. A substantial amount of the Site – approximately 10.63 acres – is filled tidelands below the historic mean high water mark.

5. The Site is listed as a confirmed hazardous waste disposal site by DEP pursuant to G.L. c. 21E, due to its former use as a Monsanto Chemical manufacturing site. It is required by law to be cleaned up to a level that presents no significant risk, regardless of whether the Casino is built.

B. Somerville

6. Somerville, a city of approximately 78,000 residents in a four square-mile area, is the densest city in New England. The City is on the south side of the Mystic River directly across from the Casino Site. The boundary between Somerville and Everett is located at or about the thread of the Mystic River.

7. At its closest point, the Casino Site is approximately 76 feet from Somerville; this is where the Site nears Somerville's municipal boundary in the Mystic River. Other areas of the Site are within 150 feet of Somerville. By road, the distance from the Casino Site to Somerville is approximately 1.2 miles. Roadways and traffic infrastructure connecting the Site to Somerville include Sullivan Square, Mystic Avenue, Route 28, Broadway (Route 99), Cambridge Street, and I-93. The Site is most directly connected to Somerville by Broadway (Route 99) and the I-93 Sullivan Square/Broadway exit through Sullivan Square to Route 99. Sullivan Square, which borders Somerville at East Broadway, is a gateway into Somerville from multiple directions. Current traffic conditions in Sullivan Square negatively impact numerous intersections within Somerville, and exacerbation of these conditions due to Casino traffic will further degrade Somerville intersections.

8. Several of Somerville's residential neighborhoods are among the closest residential neighborhoods to the Casino Site, closer than most Everett neighborhoods. These include East Somerville, Ten Hills, and the residential portions of Assembly Square, an urban renewal project in which the City and real estate developers have invested an enormous amount of time, money, and other resources. Many of the closest commercial areas to the Casino Site are found in Somerville as well, including Assembly Square, Innerbelt, East Somerville, and Union Square. The Site is less than 1,200 feet from Assembly Square, less than 3,500 feet from Somerville's Ten Hills residential neighborhood, and approximately 1.3 miles from Somerville City Hall. Due to its density, the City has less public parkland than many municipalities, but one

park that has been available to Somerville is Draw 7 Park, situated on the Mystic River across from the Casino Site.

9. Somerville has invested heavily in the mixed-use redevelopment of Assembly Square and is in the midst of planning the redevelopment of nearby Union Square. The City is also committed to investments in other underutilized neighborhoods, including Boynton Yards and Innerbelt. It has invested in substantial efforts to provide affordable housing and to develop a mixed-use, pedestrian-friendly, public transit-oriented community in which local businesses can flourish. The City's vision and comprehensive planning efforts are documented in its comprehensive plan known as "Somervision," which was adopted in 2012.

C. Permitting of the Casino

The Gaming License and MEPA Review

10. Wynn has been granted the only Category 1 gaming license (the "Gaming License") to be issued for a casino in "Region A" pursuant to the Gaming Act and the Gaming Regulations. "Region A" comprises Suffolk, Middlesex, Essex, Norfolk and Worcester counties. The Gaming License effectively grants Wynn a monopoly over the resort casino industry in Massachusetts's most populous region.

11. While applying for the Gaming License, Wynn also submitted filings under MEPA and the MEPA regulations, which culminated in the Secretary's issuance of a certificate dated August 28, 2015, determining that Wynn's Second Supplemental Environmental Impact Report ("SSFEIR") complied with MEPA (the "SSFEIR Certificate"). The SFEIR Certificate was issued close to one year after the Gaming Commission voted to award Wynn the Casino License.

The Municipal Harbor Plan

12. Also while Wynn was applying for the Gaming License, the City of Everett submitted a draft Everett Central Waterfront Municipal Harbor Plan dated October 15, 2013 (the "MHP") to the Executive Office of Energy and Environmental Affairs ("EOEEA") and EOEEA's Office of Coastal Zone Management ("CZM"). The MHP envisioned two possible build-out scenarios, one of which was the "Wynn Scenario." The Wynn Scenario modified the normally applicable height limitations (approximately 245 feet at the relevant distance from the Mystic River) to allow for construction of a 400-foot tall casino and hotel as part of the proposed "Wynn Everett project." Except in downtown Boston, no building in the Commonwealth (on tidelands or not on tidelands) is as tall, except for one in Springfield, and no municipal harbor plan has ever established height limits that would permit a building as tall as the one proposed in the Wynn Casino Scenario.

13. By letter dated February 10, 2014, the Secretary approved the MHP.

The Chapter 91 Application, Public Benefit Determination, and Written Determination

14. On or about August 24, 2015, Wynn submitted an application for a Chapter 91 license for the Project (the "Chapter 91 Application"). Among other things, the Chapter 91

Application requested that the license be granted for a 99-year term.

15. On September 25, 2015, the Secretary issued a public benefit determination for the Project pursuant to G.L. c. 91, §18B (the “Public Benefit Determination”). By law, the Public Benefit Determination must be incorporated into the record of the Chapter 91 Application.

16. By letter dated October 9, 2015, Mayor Joseph A. Curtatone, acting on behalf of Somerville, provided written comments on the Chapter 91 Application within the public comment period established by DEP. DEP has acknowledged timely receipt of these comments.

17. On or about January 22, 2016, DEP issued the Written Determination. As noted, Somerville did not receive a copy of the Written Determination until February 3, 2016.

18. The Written Determination proposes to grant a Chapter 91 license for the Project, subject to certain conditions, and purports to include Section 61 Findings made by DEP pursuant to MEPA and the MEPA Regulations. Moreover, the Written Determination proposes that this Chapter 91 license be granted for a term of 85 years, which is 55 years beyond the usual term of 30 years. See 310 CMR 9.15.

Additional facts concerning the Gaming License, the MHP, the MEPA process, the Public Benefit Determination, and the Written Determination are set forth in Section IV below.

IV. SPECIFIC OBJECTIONS TO THE WRITTEN DETERMINATION

A. Chapter 91 and the Waterways Regulations

1. Extended License Term. DEP’s proposal to grant a license with an extended term violates the waterways regulations at 310 CMR 9.15(1)(b). The Written Determination proposes to grant Wynn an 85-year license for a proposed non-water dependent use building and project. This is an extraordinary term that far exceeds the usual 30-year term pursuant to 310 CMR 9.15(1)(a), and does so without the necessary documentation and justification. The following points are notable:

- (a) The Site includes approximately 19.04 acres of tidelands, 10.74 of which are filled tidelands and 8.3 of which are flowed tidelands. The license term for flowed tidelands cannot exceed 65 years, except that where a site includes both flowed and filled tidelands, DEP may, upon request of the applicant, establish a single weighted average term for the entire project based upon the relative amounts of the surface area of the flowed and filled tidelands. In the Chapter 91 Application, Wynn requested a 99-year term, not a weighted average, and failed to provide justification for that 99-year term.² Insofar as 85 years is meant to be a weighted average, it does not comply with 310 CMR 9.15(1)(b) given that approximately 44% of the tidelands on-site are flowed tidelands. In the event that the 85-year term is not a weighted average, the Written Determination does not

² Insofar as Wynn later provided some additional documentation for its request after submitting the Chapter 91 Application, it is questionable whether this is procedurally proper to the extent it denied the public an opportunity to see and comment on this documentation.

comply with the regulations because it fails to articulate any meaningful basis for the term proposed and therefore is flawed and invalid.

- (b) Pursuant to the waterways regulations at 310 CMR 9.15(1)(b), 310 CMR 9.13(3), and 310 CMR 9.14, applications for an extended term for projects on Commonwealth tidelands require a public hearing on the extended term request. Further, DEP must issue written findings regarding the basis for an extended term. The Casino Site includes Commonwealth tidelands. It is not clear that the general public hearing on the Chapter 91 Application addressed this specific hearing requirement, or that the discussion of the term in the Written Determination constitutes written findings as required by 310 CMR 9.15(1)(b). In all events, the Written Determination does not contain written findings sufficient to satisfy the requirements of 310 CMR 9.15(1)(b) or other waterways regulatory provisions, and therefore an 85-year license term is not warranted or compatible with the regulations or the public interest.
- (c) The height and massing of the Project is extraordinary, if not unprecedented, but the proposed public amenities offer little more than the regulatory minimum. Among other things, the Written Determination proposes to require only that 4.36 acres of the Site be maintained as public open space; this is no more than the minimum 1:1 ratio of building footprint to open space required in the ordinary course by the waterways regulations.³ Given the extraordinary height and massing and the private benefit conferred upon Wynn, the public amenities are insufficient to support a license term nearly three times what is ordinarily allowed. Far greater public benefits are required to support the extended license term and a finding that the project serves a proper public purpose that provides greater benefit than detriment to the rights of the public in tidelands.
- (d) In sum, Wynn has asserted that an extended term is warranted but has not met the regulatory burden of providing sufficient justification that an extended term is warranted given the expected life of the structure, typical financing requirements, consistency with a municipal harbor plan, the appropriateness of long-term dedication of tidelands to the proposed use in the particular location, and other relevant factors. The proposed 85-year term is beyond that allowed and violates the Department's own regulations given the lack of justification for the extended term, compounded by the intense massing on the Site for non-water dependent uses.

2. Proper Public Purpose. The Written Determination and supporting record is insufficient to support a determination that the Casino serves a proper public purpose which provides greater benefit than detriment to the rights of the public, as required by 310 CMR 9.31(2).

³ While the Chapter 91 Application asserts that 6.38 acres of open space will be provided, the calculation of this space is unclear (the open space plan itself is not drawn to scale) and appears to categorize all jurisdictional areas of the Casino Site not occupied by a building footprint – including driveways – as open space. In all events the Written Determination proposes only to require open space of “not less than 4.36-acres (the area equal to size of footprint of building in jurisdiction) with no obstacles for safe, free and universally accessible public passage.”

- (a) For nonwater-dependent projects such as the Casino, DEP presumes that a project serves a proper public purpose which provides greater benefit than detriment only if the project (i) complies with 310 CMR 9.51 and 9.52 and any additional standards for activating Commonwealth tidelands, if applicable; and (2) if located in the coastal zone, complies with the standards governing consistency with the policies of the CZM Program.
- (b) The Written Determination and underlying record do not support this presumption or a finding that the Casino complies with 310 CMR 9.51. Among other things, 310 CMR 9.51(2) requires that non-water dependent use structures “be developed in a manner that protects the utility and adaptability of the site for water-dependent purposes by preventing significant incompatibility in design with structures and spaces which reasonably can be expected to serve such purposes, either on or adjacent to the project site,” considering such factors a surface coverage, scale, layout, and configuration of buildings. The regulation expressly acknowledges that non-water dependent structures may impact existing and potential public views of the water and marine-related features along the waterfront, and create wind, shadow, and other conditions at the ground level environment that affect users of water-dependent facilities. For purposes of 310 CMR 9.51, compliance with the height, mass and other building limitations of a municipal harbor plan is a minimum condition; it does not relieve DEP from its duty to protect water-dependent uses, navigability, and other overriding purposes of Chapter 91 and the waterways regulations at 310 CMR 9.00, let alone the rights of the public in tidelands. For reasons that include, but are not necessarily limited to, the deficiencies with respect to the analysis of the effect of building height and mass discussed below, DEP has erred in concluding that 310 CMR 9.51 has been satisfied.
- (c) Even if the Casino were entitled to a presumption that it serves a proper public purpose which provides greater benefit than detriment to the rights of the public, the presumption is rebuttable where (a) the basic requirements specified in 310 CMR 9.31(1) have not been met; or (b) a clear showing is made by a municipal, state, regional, or federal agency that requirements beyond those contained in 310 CMR 9.00 are necessary to prevent overriding detriment to a public interest which said agency is responsible for protecting....” 310 CMR 9.31(3). In this instance, the basic requirements of 310 CMR 9.31(1) have not been met for the reasons, among others, that the Project does not comply with MEPA and the MEPA regulations or the requirement for a valid public benefit determination pursuant to G.L. c. 91, §18B. Moreover, throughout the MEPA process, the Mayor of Somerville and officials for other municipalities raised issues showing that conditions beyond the usual requirements of 310 CMR 9.00 are necessary to prevent overriding detriment to public interests that they are responsible for protecting. These issues include, but are not necessarily limited to, the impacts attributable to the height and mass of the proposed building; the traffic caused by the use of tidelands for so massive and dense a project; the effect of this traffic on air quality and environmental justice communities, both within and outside of waterfront areas; the implications of decreased parking on-site; the effect of the

Casino on parklands, public spaces, and other open spaces in Somerville; the effect of increased boat traffic on the Mystic River, including, but not limited to, the use of the river as a transportation network; the balance between private gain and public benefit with respect to the Casino; and the extent to which public amenities are part of the controlled casino experience, serve to attract people to the casino more so than to the waterfront, and result in the types of issues recognized by the Gaming Act.⁴ Accordingly, Somerville is entitled to rebut any presumption that the Casino serves a proper public purpose providing greater public benefit than detriment.

3. Unassessed Impacts of Building Height, Mass, and Density.

- (a) As the Chapter 91 Application acknowledges, even assuming the validity of the MHP (discussed below), the 386± foot tall building can only be authorized by a Chapter 91 license if it is shown to have “no more adverse wind, shadow and other conditions.”
- (b) The Application is incomplete regarding quantification of the projected wind and shadow effects of the Project. The description of the studies, methodology, and results is insufficient to ensure the accuracy of these projections⁵ and in all events is limited to ground conditions on adjacent on-site tidelands for purposes of assessing the Casino’s compliance with the MHP. Moreover, the studies appear to have been focused predominantly, if not solely, on the impacts within the tidelands portion of the Project site, not on the impacts to tidelands and other properties in the vicinity. Discussion of off-site impacts is selective, at best, and insufficient to meet the regulatory burden of the applicant. For instance, the wind analysis appears to show that in the winter the Project will shift wind impacts away from the site and toward Somerville. It also shows the most pronounced wind conditions at ground level immediately adjacent to the Site.
- (c) The Chapter 91 Application and the Written Determination fail to demonstrate that there will be no impact of the building on navigation due to wind impacts (which, as noted, are being shifted toward the water in Somerville’s direction),

⁴ Notably, many of Somerville’s comments bear on issues intended to be served by the CZM policies with which the Project is required to be consistent, including, but not limited to, Growth Management Policy #1 (“*Encourage sustainable development that is consistent with state, regional, and local plans and supports the quality and character of the community*”), Public Access Policy #1 (“*Ensure that development (both water-dependent or nonwater-dependent) of coastal sites subject to state waterways regulation will promote general public use and enjoyment of the water’s edge, to an extent commensurate with the Commonwealth’s interests in flowed and filled tidelands under the Public Trust Doctrine*”), and Public Access Policy #2 (“*Improve public access to existing coastal recreation facilities and alleviate auto traffic and parking problems through improvements in public transportation and trail links (land- or water-based) to other nearby facilities... Ensure that adverse impacts of developments proposed near existing public access and recreation sites are minimized*”). Somerville stands in a better position to assess the Project’s impacts on Somerville than does CZM.

⁵ For instance, the Application introduces a March 5, 2015 report by Novus Environmental entitled “Pedestrian Wind Assessment, Wynn Everett Resort & Casino.” The Novus report acknowledges that “there are some limitations with this modeling technique, specifically in the ability to simulate the turbulence, or gustiness, of the wind.” Yet it provides virtually no discussion of these limitations beyond this initial admission.

glare, and other conditions not limited to wind and shadow impacts on nearby pedestrian walkways and open space. For instance, more than one marina exists in the vicinity, yet there is no assessment of the impacts on boating, whether by sail or motorized. Pursuant to 310 CMR 9.35, no licensed project can “significantly interfere with public rights of navigation which exist in all waterways.” Such interference includes projects that “generate water-borne traffic that would substantially interfere with other water-borne traffic in the area at present, or the future...” or “impair in any other substantial manner the ability of the public to pass freely upon the waterways....” The applicant failed to demonstrate that this burden was satisfied and, therefore, the Written Determination is invalid because it fails to ensure that navigation is not negatively impacted.

B. Chapter 91 and the Public Benefit Determination

1. Pursuant to G.L. c. 91, §18B, the Secretary must complete “a public benefit review for any proposed project that is: (i) subject to the licensing provisions of section 13 or 18; or (ii) is geographically located on landlocked tidelands, and in either case is required to file hereafter an environmental impact report pursuant to chapter 30.” See also 301 CMR 13.02. Following this review, the Secretary must “make a public benefit determination, the goal of which shall be to publish on the public record a written public benefit determination of the project.” G.L. c. 91, § 18B.

2. The criteria that the Secretary must consider in making a public benefit determination include the following:

- (a) the “purpose and effect of the development”;
- (b) the “impact on abutters and the surrounding community”;
- (c) “enhancement to the property”;
- (d) “benefits to the public trust rights in tidelands or other associated rights, including, but not limited to, benefits provided through previously obtained municipal permits”;
- (e) “community activities on the development site”;
- (f) “environmental protection and preservation”; and
- (g) the “public health and safety” and “the general welfare”.

See G.L. c. 91, § 18B and 301 CMR 13.04. Where a project undergoes mandatory public benefit review, the “proponent shall include in ... the environmental impact report (at the proponent’s election) detailed information describing the nature of the tidelands affected by the project and the public benefit of the project,” with specific reference to and evaluation of the criteria described above. See 301 CMR 13.03(a). The applicable regulations require that “[t]he public shall have the opportunity during the MEPA public comment period(s) to comment on whether the project provides a public benefit, and the proponent shall have the opportunity to submit additional information during the MEPA process.” See 301 CMR 13.03(b). For projects requiring a Chapter 91 license, the Secretary must make a public benefit determination within 30 days after issuing a certificate concluding the MEPA process. See 301 CMR 13.03(d).

3. On September 25, 2015, the Secretary issued the Public Benefit Determination for the Casino. In the Public Benefit Determination, the Secretary concludes, “I hereby determine that the above-referenced [Wynn Everett] project will have a public benefit,” and, “I hereby determine that the project will have a positive public benefit to public trust rights in tidelands.” He also directs Wynn to file a copy of the Public Benefit Determination with DEP and states that DEP “will then have the authority to enforce the conditions outlined herein and in the Public Benefit Determination pursuant to the statute.”

4. On October 23, 2015, Somerville commenced a civil action appealing the Public Benefit Determination (the “Public Benefit Determination Appeal”). The Public Benefit Determination Appeal, which is docketed as Civil Action No. 2015-03218-BLS2, is still pending.

5. A valid Public Benefit Determination is a legal prerequisite to issuance of a Chapter 91 license.

6. The Public Benefit Determination does not adequately assess the criteria required by Chapter 91, §18B, and the Secretary’s regulations at 301 CMR 13.04. Particularly lacking are evaluations of the purpose and effect of the Project, its impact on surrounding communities such as Somerville, and the effect on environmental protection and preservation, public health and safety, and the general welfare. Most of the determination focuses on the cleanup of contamination, which is required by law regardless of whether the Casino is built, and on facilities to enhance public access to the waterfront, which are required by G.L. c. 91 and the Department’s waterways regulations and do not rise to a level warranting the proposed 85-year license term. The Public Benefit Determination wholly fails to weigh the detriments against the benefits or to consider the extraordinary private benefit that would be conferred upon Wynn by issuance of a Chapter 91 license.

7. A substantial portion of the proposed use of tidelands is as a driveway, garage and hotel that will draw thousands of vehicles directly into the waterfront. The impact of these uses on surrounding communities is demonstrated by the extensive commentary and traffic engineering peer review submitted by Somerville, Boston, the Attorney General, and others throughout the MEPA process. The Public Benefit Determination does not account for these impacts.

8. The Public Benefit Determination asserts, without support, “The project has been designed to avoid, minimize, and mitigate potential environmental impacts including traffic generation, wastewater, water use, GHG emission, air pollution, and impacts associated with climate change.” This assertion is not supported by the MEPA record on which the Public Benefit Determination is based. That record fails to address key impacts, such as traffic impacts in Sullivan Square, which serves as a gateway to Somerville, and on several intersections within Somerville.

9. The Public Benefit Determination is not sufficient for purposes of being incorporated into DEP’s record or for purposes of empowering DEP to “enforce the conditions outlined herein and in the Public Benefit Determination pursuant to the statute,” as proclaimed in the Public Benefit Determination itself. Those “conditions” are not clearly identified and are so

ambiguous as to be unenforceable. The Written Determination violates the regulations by failing to impose clear and enforceable conditions to realize and preserve the alleged public benefits of this project and mitigate the public detriment.

10. The validity of the Public Benefit Determination, which by statute is required to be filed with the Division of Administrative Law Appeals in the event of an appeal under Chapter 91, is subject to de novo review in the Adjudicatory Appeal.

C. The MHP

1. The Project does not comply with the standard height limits imposed by the waterways regulations and, but for the provisions of a valid municipal harbor plan, could not be approved under Chapter 91. Accordingly, a valid municipal harbor plan is a legal prerequisite to issuance of the Written Determination.

2. As noted, the Secretary approved the MHP by letter dated February 10, 2014. Prior to that approval, Somerville commented on the MHP at CZM's November 4, 2013 public hearing and by letter dated November 20, 2013. Following the Secretary's approval, Somerville petitioned for reconsideration of the approval. On March 24, 2014, the Secretary denied Somerville's petition for reconsideration. On July 28, 2014, Somerville appealed the Secretary's approval of the MHP (the "MHP Appeal"). The MHP Appeal is docketed as Middlesex Superior Court Action 2014-04839.

3. On September 19, 2014, the Attorney General's Office moved to dismiss the MHP Appeal, stating:

While the MHP itself is not reviewable at this tentative planning stage, and while the MHP's substitute provisions are indeed binding on the Department during the Chapter 91 licensing process, any impacts associated with a particular project are subject to MEPA review, and the substitute provisions themselves would be subject to challenge (by an individual or entity with standing at the time) as part of the Chapter 91 Regulations during any Superior Court appeal of a Chapter 91 licensing decision for this project, just as the legality of any governing statute or regulation can be challenged in such an appeal (again, by a plaintiff with standing).

4. On August 24, 2015, the Superior Court dismissed the MHP Appeal on grounds that Somerville lacked standing to challenge the MHP. Somerville has since appealed that decision to the Appeals Court.

5. The Written Determination fails to address the pending MHP Appeal. In the event that the Secretary's approval of the MHP is vacated, remanded, and/or made subject to conditions, the Written Determination is unlawful. The Written Determination contains no provision or limitation in the event the MHP is invalidated.

6. As set forth in Somerville's MHP appeal, the delegation of authority to the Secretary to regulate tidelands and the public's rights in the tidelands pursuant to the municipal harbor plan regulations at 301 CMR 23.00 is unlawful. Accordingly, DEP is not required to, and cannot, subjugate its review of the Chapter 91 Application to the provisions of the MHP. To the extent the waterways regulations require DEP to subjugate its authority under Chapter 91 to the MHP, they are unlawful.

7. The validity of the MHP is subject to review in the Adjudicatory Appeal. Alternatively, insofar as the validity of the MHP is not subject to review in the Adjudicatory Appeal, the Adjudicatory Appeal should be stayed pending a decision by the Appeals Court on the reviewability of the MHP in Somerville's MHP Appeal.

D. MEPA

1. During the License Proceedings, Wynn submitted filings under MEPA and the MEPA regulations. On May 31, 2013, Wynn submitted an Expanded Environmental Notification Form (the "Expanded ENF") to EOEEA, which the Secretary determined complied with MEPA and the MEPA regulations by certificate dated July 26, 2013 (the "Expanded ENF Certificate").

2. On or about December 16, 2013, Wynn submitted a Draft Environmental Impact Report ("DEIR") to EOEEA, which the Secretary determined complied with MEPA and the MEPA regulations by certificate dated February 21, 2014 (the "DEIR Certificate").

3. On or about June 30, 2014, Wynn submitted a Final Environmental Impact Report to EOEEA (the "Initial FEIR"), which the Secretary determined did not comply with MEPA and the MEPA regulations by certificate dated August 15, 2014 (the "Initial FEIR Certificate").

4. After the Initial FEIR Certificate determined that Wynn had not complied with MEPA, the Gaming Commission: (a) voted on September 16, 2014 preliminarily to grant Wynn the Gaming License; (b) entered into a Gaming License agreement with Wynn on September 17, 2014; (c) voted on November 6, 2014 formally to award the Gaming License to Wynn; and (d) issued the a written decision for the Gaming License on or about November 20, 2014.

5. On February 17, 2015, Wynn submitted a Supplemental Final Environmental Impact Report ("SFEIR") to EOEEA, which the Secretary determined did not comply with MEPA by certificate dated April 3, 2015 (the "SFEIR Certificate").

6. On July 15, 2015, Wynn submitted the SSFEIR to EOEEA, which the Secretary determined complied with MEPA on August 28, 2015 via the SSFEIR Certificate. The Expanded ENF Certificate, DEIR Certificate, Initial FEIR Certificate, SFEIR Certificate, and SSFEIR Certificate are referred to here as the "Secretary's Certificates."

7. At each step of the MEPA process, Somerville provided comments to EOEEA. These comments include: (a) a letter dated July 12, 2013, commenting on the Expanded ENF; (b) a letter dated February 11, 2014, commenting on the DEIR; (c) a letter dated August 8, 2014, commenting on the Initial FEIR; (d) a letter dated March 26, 2015, commenting on the SFEIR; and (e) a letter dated August 21, 2015, commenting on the SSFEIR.

8. On September 25, 2015, Somerville commenced a civil action appealing the Secretary's determination, through the Secretary's Certificates, that Wynn had complied with MEPA and the MEPA regulations (the "MEPA Appeal"). The MEPA Appeal, which is docketed as Civil Action 2015-2911-BLS2, is still pending.

9. The Written Decision was issued prematurely and unlawfully prior to the resolution of the MEPA Appeal.

V. SOMERVILLE'S STATUS AS AFFECTED MUNICIPALITY AND AGGRIEVED PERSON

1. Pursuant to the waterways regulations at 310 CMR 9.17(1), any person aggrieved by DEP's decision to grant a license who has submitted written comments within the public comment period, and the "municipal official in the affected municipality(s) who has submitted written comments within the public comment period," both have a right to an adjudicatory hearing on a written determination. See 310 CMR 9.17(1)(b) and (d).

2. Joseph A. Curtatone, as Mayor of Somerville, submitted comments within the public comment period, and Somerville is both an affected municipality and an aggrieved person. Mayor Curtatone is Somerville's chief executive officer.

3. The Casino will substantially impact municipal services and require substantial additional expenditures by Somerville in order to provide such services. In particular, Wynn intends to implement a water transportation program to service the Casino. As Wynn has acknowledged, this will require that Somerville make certain improvements to facilitate water transportation and fund staffing and other public safety initiatives related to increased use of water transportation. Somerville exercises police functions over the Mystic River and has an agreement to dock boats at a slip in the Winter Hill marina and has opened a new police substation at Assembly Square near the marina. Somerville's police and fire departments will be tasked with addressing the public safety concerns attributable to the increased water, pedestrian, and car traffic.⁶ The police department has stated that it will need to staff a marine unit, which presently it does not have, and has undertaken steps to develop this unit, which will require at least 3-4 additional officers. The marine unit will require training by the Commonwealth of Massachusetts Harbormasters and Maritime Professionals, the Massachusetts Maritime Academy, and/or similar organizations. The City will have to invest in two or more marine vessels.

4. The increased demand for Somerville's public safety services includes, but is not limited to, the following:

(a) The increased boat traffic that will result directly or indirectly from the Casino will require more frequent operation of the locks at the Amelia Earhart dam, which are located in Somerville;

⁶ Last year a car drove off of the Amelia Earhart dam and into the Mystic River.

(b) Both above and below the locks, marinas and boathouses on the Mystic River in Somerville – which include the Winter Hill Marina and Blessing of the Bay boathouse – will be faced with increased watercraft traffic. Smaller watercrafts, such as kayaks, sculls and canoes, will have to deal with the effects of this traffic, which include wake issues caused by more frequent, larger watercraft activity.

(c) The Mystic River waterway is subject to fire and police mutual aid between municipalities, as are the surrounding roadways (Sullivan Square, Cambridge Street, Route 923 and Route 28) and the Casino Site itself.

(d) Outside activities at the casino, such as public performances and fireworks, will bring pedestrian and vehicular traffic to the Somerville side of the river, particular at Assembly Square. Community paths are planned (1) along the Mystic River through Somerville under the commuter rail track to Boston, and (2) for the Everett side from Medford, with consideration for crossing the river over the dam. The proposed footbridge, in particular, would impact the Somerville side of the river, as well as the river itself, due to construction, usage, and public safety measures.

5. The wind study accompanying the Chapter 91 Application shows pronounced wind effects on the Somerville side of the Mystic River. Any glare from the building will likewise affect Somerville. Glare and wind have the potential to affect Draw 7 Park, one of the few public parks in the area that has been available to Somerville’s residents and visitors. Somerville’s Transportation and Infrastructure Division has invested staff time and public funds in proposing improvements to Draw 7 Park.

6. The Chapter 91 Application lacks clarity and precision as to where dredging and dewatering will take place in relation to Somerville’s municipal boundary in the river. These activities will affect Somerville directly or indirectly. Adjacent to the Casino Site, the Mystic River is not wide; equipment used for dredging and barges used for dewatering and dredge removal will have to use the Somerville side of the river for their operations. The Written Determination lacks measures to address the impact that the dredge and fill operations will have on the Somerville side of the river, and navigability in general.

7. Somerville’s status as an affected municipality was recognized during the proceedings on Wynn’s application for the Gaming License via the City’s designation as a “surrounding community” as defined in the Gaming Act. A “surrounding community” is a municipality that will experience or is likely to experience “impacts from the development or operation of a gaming establishment, including municipalities from which the transportation infrastructure provides ready access to an existing or proposed gaming establishment.” G.L. c. 23K, § 2.

8. Despite Somerville’s close proximity to the Casino Site, Wynn initially did not recognize Somerville as a “surrounding community.” Somerville thus petitioned the Gaming Commission for “surrounding community” status, at which point Wynn conceded and recognized Somerville as a surrounding community. As a result, Wynn was required to enter into a “surrounding community agreement” with Somerville setting forth the “conditions to have a gaming establishment located in proximity to the surrounding communities ... provided

however that the agreement shall include a community impact fee for each surrounding community and all stipulations of responsibilities between each surrounding community and the applicant, including stipulations of known impacts from the development and operation of a gaming establishment.” G.L. c. 23K, § 15(9).

9. Wynn and Somerville did not agree on a surrounding community agreement. They proceeded to arbitration in accordance with the Gaming Commission’s regulations at 205 CMR 125.01(6) and its guidelines for arbitration of surrounding community agreements. This arbitration was so-called “baseball style” arbitration in which each party submits a best and final offer (“BAFO”) and a panel of three arbitrators chooses between the two BAFOs without modifying either. On May 9, 2014, the panel of arbitrators issued its Report and Arbitral Award. The panel voted two in favor, one against, adopting Wynn’s BAFO. The Report and Arbitral Award included a lengthy dissent by former Secretary of Commonwealth Development, Douglas I. Foy.

10. On June 12, 2014, Wynn and Somerville entered into an agreement entitled, “Surrounding Community Agreement By and Between the City of Somerville, Massachusetts and Wynn MA, LLC” (the “Surrounding Community Agreement”). The Surrounding Community Agreement reflected Wynn’s BAFO in the arbitration. The Surrounding Community Agreement includes stipulations of known impacts acknowledging that, among other things, (a) “the proximity of the Project to the Assembly Row and Assembly Square developments may result in additional pedestrian and vehicular traffic in Somerville,” and (b) the “project may have an impact on municipal services and require additional expenditures by Somerville in order to provide such services.” The Surrounding Community Agreement also acknowledges that “Wynn intends to implement a water transportation program to service the Project” and requires Wynn to make a payment “to enable Somerville to make certain improvements to facilitate water transportation and to fund staffing and other public safety initiatives related to increased use of water transportation.”

VI. RELIEF SOUGHT

Somerville respectfully requests that the Written Determination be vacated and remanded to DEP’s Waterways Program for consideration of the issues raised in this Notice of Claim and/or in the Adjudicatory Proceeding. Should the Written Determination be reissued after such consideration, it should contain specific changes to address, among other things, a reduction of the license term, an increase in public amenities, and public safety concerns with respect to the increased water transportation and other impacts on Somerville resulting from the Casino.

VII. PETITIONER AND PETITIONER'S COUNSEL INFORMATION

Petitioner: Mayor Joseph A. Curtatone
City of Somerville
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93 Highland Avenue
Somerville, MA 02143
Phone: (617) 625-6600
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jcurtatone@somervilledma.gov

Petitioner's Counsel: Gareth I. Orsmond
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Francis X. Wright, Jr., City Solicitor
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Jason Grossfield, Assistant City Solicitor
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City Hall, Law Department
93 Highland Avenue
Somerville, MA 02143
(617) 625-6600, ext. 4400
Facsimile: (617) 776-8847

VIII. STATEMENT OF SERVICE OF NOTICE OF CLAIM

A copy of this Notice of Claim has been sent by certified mail on this date to the following:

- 1) Wynn MA, LLC
Attention: Robert DeSalvio
3131 Las Vegas Boulevard South
Las Vegas, NV 89109
Phone: (702) 770-7000
Facsimile: (702) 770-1518
Robert.Desalvio@wynnresorts.com

Courtesy Copy (via regular mail):

Tony Starr, Esq.
Mintz Levin Cohn Ferris Glovsky and Popeo PC
1 Financial Center
Boston, MA 02111
Phone: (617) 348-4467
Facsimile: (617) 542-2241
tstarr@mintz.com

- 2) Fort Point Associates, Inc.
Attention: Jamie Fay, President
31 State Street, 3rd Floor
Boston, MA 02109
Phone: (617) 357-7044
Facsimile: (617) 357-9135
jfay@fpa-inc.com

- 3) Mayor Carlo DeMaria
Mayor's Office
Everett City Hall
484 Broadway
Everett, MA 02149
Phone: (617) 394-2270
Facsimile: (617) 381-1150
mayorcarlo.demaria@ci.everett.ma.us

IX. CONCLUSION

For the foregoing reasons, Somerville asserts that the Written Determination was based on an inadequate record and on inadequate findings, does not properly justify the proposed extended license term, does not protect the public's interest and rights in tidelands, and does not does not comply with Chapter 91 and the waterways regulations at 310 CMR 9.00.

Respectfully submitted,

Mayor Joseph A. Curtatone,
As Mayor of, and on behalf of, the CITY OF SOMERVILLE,
By its attorneys,



Gareth I. Orsmond
gorsmond@pierceatwood.com
Donald R. Pinto, Jr.
dpinto@pierceatwood.com
PIERCE ATWOOD LLP
100 High Street, Suite 2250
Boston, MA 02110
(603) 373-2014



Francis X. Wright, Jr., City Solicitor
fwright@somervillema.gov
Jason Grossfield, Assistant City Solicitor
jgrossfield@somervillema.gov
City Hall, Law Department
93 Highland Avenue
Somerville, MA 02143
(617) 625-6600, ext. 4400

Dated: February 11, 2016

GARETH I. ORSMOND

100 Summer Street
Boston, MA 02110

603-373-2014 voice
603-433-6372 fax
gorsmond@pierceatwood.com
www.pierceatwood.com

Admitted in: MA and NH

February 11, 2016

BY FIRST CLASS MAIL

Department of Environmental Protection
P.O. Box 4062
Boston, MA 02211

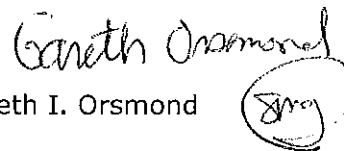
RE: Matter of Wynn MA, LLC

Dear Sir or Madam:

Enclosed please find an Adjudicatory Fee Transmittal Form. Please note that this is sent on behalf of Joseph A. Curtatone, as Mayor of, and on behalf of, the City of Somerville, and therefore no fee is required to be paid. Nonetheless, the form is enclosed for your records.

If you have any questions, please call me at (603) 373-2014.

Very truly yours,


Gareth I. Orsmond

GIO/smg
Enclosure



Massachusetts Department of Environmental Protection
Adjudicatory Hearing Fee Transmittal Form

IMPORTANT! This form is intended for fee transmittal only. The contents of a request for an adjudicatory appeal (Notice of Claim) are established at 310 CMR 1.01(6) and the substantive statutes and regulations governing the Department's action.

A. Person/Party Making Request

Important: When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



1. Name and address of person or party making request:

Mayor Joseph A. Curtatone, as Mayor of, and on behalf of, the City of Somerville, Massachusetts
 Name - If appropriate, name group representative
Somerville City Hall, 93 Highland Avenue
 Street Address
Somerville MA 02143
 City State Zip Code

2. Project Information:

One Horizon Way
 Street Address
Everett MA 02149
 City State Zip Code
W15-4480-N \$ None - Exempt Municipality
 DEP File or ID Number Amount of filing fee attached
robert.desalvio@wynnresorts.com
 Email Address

B. Applicant (if applicable)

1. Name and address of applicant:

Wynn MA, LLC; Robert DeSalvio, contact person
 Name - If appropriate, name group representative
3131 Las Vegas Boulevard South
 Street Address
Las Vegas NV 89109
 City State Zip Code
robert.desalvio@wynnresorts.com
 Email Address

C. Instructions

1. Send this form and check or money order of \$100.00 payable to the Commonwealth of Massachusetts to the MassDEP Lockbox at:

Department of Environmental Protection
 P.O. Box 4062
 Boston, MA 02211

2. Send a **copy** of this form and a **copy** of the check or money order with the Request for Adjudicatory Appeal (Notice of Claim) to:

Case Administrator
 Office of Appeals and Dispute Resolution
 One Winter Street
 Boston, MA 02108

RECEIVED
RECEIVED
FEB 11 2016
FEB 11 2016
MassDEP
MassDEP


PIERCE ATWOOD 
100 Summer Street / #2250 / Boston, MA 02110

MassDEP
Case Administrator
One Winter Street, 2nd Floor
Boston, MA 02108

RECEIVED
FEB 11 2016
MassDEP



February 15, 2016

Stephen P. Crosby, Chairman
Gayle Cameron, Commissioner
Lloyd Macdonald, Commissioner
Bruce Stebbins, Commissioner
Enrique Zuniga, Commissioner

Massachusetts Gaming Commission
101 Federal Street
Boston, MA 02110

RE: SUITABILITY INVESTIGATION OF ADVANCED GAMING ASSOCIATES, LLC, APPLICANT FOR LICENSURE AS A GAMING VENDOR - PRIMARY

Dear Chairman Crosby and Commissioners:

Advanced Gaming Associates, LLC (“AGA”) has applied to the Massachusetts Gaming Commission for licensure as a Gaming Vendor – Primary. The Investigations and Enforcement Bureau (“IEB”) has conducted a suitability background investigation of AGA in accordance with G.L. c. 23K, §§ 12, 16, 31, and 205 CMR 134.10. We evaluated AGA and Mr. Tomasello based upon the standards set forth in the M.G.L. c. 23K, §§ 12, 16, and 31, and 205 CMR 134.10, which includes an evaluation of the Applicant’s overall reputation, including without limitation the following criteria:

- Integrity, honesty, good character and reputation;
- Financial stability, integrity and background;
- History of compliance with gaming licensing requirements in other jurisdictions;
- Whether the Applicant is a defendant in litigation at the time of application;
- Applicant’s criminal history, if any;
- Whether the applicant submitted an application that intentionally contains false or misleading information;
- Whether the applicant committed prior acts that have not been prosecuted but form a pattern of misconduct;
- Whether and to what extent the Applicant has associations with members of organized crime or other persons of disreputable character;
- The Applicant’s cooperation with the IEB in connection with the background investigation; and
- Integrity, honesty, and good character of any subcontractor.¹

¹ AGA has not utilized subcontractor services in Massachusetts.



Massachusetts Gaming Commission

Under Massachusetts law, an applicant for a Gaming Vendor – Primary license is required to establish its qualifications for licensure by clear and convincing evidence, including the statutory criteria of integrity, honesty, good character and reputation, and financial stability, integrity and background. Taking into consideration the entirety of the IEB’s investigation, we recommend that the Commission approve AGA for licensure. This letter summarizes the key aspects of the IEB’s investigation.

Advanced Gaming Associates, LLC is a New Jersey-based company that provides turnkey professional technical services including slot technicians, project managers and coordinators, and AutoCAD services for slot machine location and layout planning. AGA also provides for hardware installation, upgrades, and service and preventative maintenance for multiple monitoring systems. Mr. Anthony Tomasello is the sole individual qualifier for AGA. He is its founder and 100 percent owner of AGA. He also serves as its President and CEO.

To date, AGA has conducted business in Massachusetts pursuant to a temporary license that initially issued on April 16, 2015 pursuant to 205 CMR 134.12.

As part of our investigation, the IEB, among other things, reviewed the materials submitted as part of AGA’s application; requested and reviewed supplemental information as deemed necessary; gathered information from a variety of governmental and non-governmental sources and databases; conducted criminal records checks, verified the accuracy of information provided as part of AGA’s application; communicated by telephone throughout the course of the investigation with Mr. Tomasello, Office Manager Karen Tomasello, Attorney Lloyd Levenson from Cooper Levenson in Atlantic City, N.J. (AGA’s attorney), and with AGA’s Certified Public Accountant. The Investigators also conducted a site visit to AGA’s facility and conducted an in-person interview of Mr. Tomasello. The Applicant was fully cooperative and forthcoming in all respects.

AGA is currently licensed or has license renewal applications pending in over 20 separate jurisdictions. All of its licenses are in good standing.

AGA has no criminal record. The investigation discovered no civil litigation relative to AGA. Research of available online and print media surfaced substantial media coverage of AGA, but no derogatory or negative information was identified.

The IEB evaluated AGA for financial suitability, integrity and background by performing financial analysis and verification of AGA’s financial information. To further assess financial stability, we performed several ratio analyses of AGA’s operating results for a number of years. These ratio analyses consisted of an evaluation of AGA’s liquidity, solvency, and profitability for the years under review. Our financial evaluation did not uncover any derogatory information that indicates that AGA does not possess the requisite financial stability, integrity and background to be licensed as a Gaming Vendor – Primary.

The IEB also performed the requisite background suitability investigation of Mr. Tomasello, who is a qualifier for AGA by virtue of his 100 percent ownership interests in AGA, his positions as President and CEO of AGA, and his direct sales and oversight roles in AGA's project with the Plainridge Park Casino, the category 2 licensee. See 205 CMR 134.04(4)(a), 134.04(5)(b). After performing all of the requisite inquiries and database checks on Mr. Tomasello, no facts were discovered that would disqualify him from qualification. Nor did the investigation reveal any information that would preclude a finding that he possesses the requisite integrity, honesty and good character to be deemed suitable under Massachusetts law.

One matter, disclosed by the Applicant and discussed below, warrants special note.

Prior to founding AGA in 2006, Mr. Tomasello owned and operated a company called Par-4, Inc.² In 1996, Par-4, Inc. was indicted and subsequently convicted in federal court for two felony counts of Illegal Shipping of Slot Machine Parts and Peripherals. The charges were based on conduct that occurred in 1992. In summary, the facts leading to Par-4, Inc.'s convictions indicate that Mr. Tomasello, through Par-4, Inc., entered into an agreement to ship slot machines and parts to Minnesota for eventual delivery to Michigan. At that time (1992), the equipment was being staged in Minnesota in anticipation of an imminent tribal compact being signed in Michigan. Also at that time, gambling was not yet legal in Michigan and shipping slot machines or parts into Michigan in advance of the effective date of the compact was contrary to law. Nonetheless, Par-4 shipped slot machines and parts intended for Minnesota directly to Michigan. Ultimately, Par-4, Inc. pleaded guilty in 1996 and was given a one year probation sentence and fined a total \$5,400.00. Mr. Tomasello was not charged personally. During his interview with the IEB Investigators, Mr. Tomasello explained that in some instances, Par-4 personnel were unaware of the illegality, and in other instances, equipment shipped from Par-4 and destined for Minnesota was diverted to Michigan by another company.

In 2009, 13 years after the guilty pleas, AGA and Mr. Tomasello were seeking licensure by the Indiana Gaming Commission. The Indiana Gaming Commission apparently was inclined to impute Par-4's convictions to AGA and Mr. Tomasello. Anticipating denials of the applications, AGA and Mr. Tomasello instead requested and were allowed to withdraw their applications in Indiana.

The Investigators have thoroughly reviewed the history of Par-4, Inc.'s criminal convictions and the licensing matter in Indiana. We note that our investigation has revealed no information showing that any jurisdiction has denied, suspended or revoked any gaming-related application or license of AGA or Mr. Tomasello. In fact, subsequent to Par-4's 1996 convictions, AGA has been licensed by gaming regulators in 10 U.S. states, 10 tribal jurisdictions, and the Bahamas.

² Mr. Tomasello informed Investigators that Par-4, Inc. ceased operations in December 2012 and was completely dissolved as of December 31, 2015.

In conclusion, taking into consideration the entirety of the investigation, the IEB recommends that the Commission approve the application of Advanced Gaming Associates, LLC for licensure as a Gaming Vendor – Primary.

Respectfully submitted,



Karen Wells
Director – IEB



Loretta M. Lillios
Chief Enforcement Counsel/Deputy Director, IEB

Cc: Mr. Anthony Tomasello
Attorney Lloyd Levenson
Mass. State. Police Det. Lt. Brian Connors
Monica Chang, Financial Investigator

Skill based gaming regulations
205 CMR 143.01 (GLI-11)

The principles behind the amendments (same/similar to those used in Nevada):

- Do not create a superficial barrier to entry
- Keep the regs as general as possible (don't be too prescriptive)
 - address only the primary, identifiable concerns and allow the industry to innovate
 - future proof to allow for innovation
- Preserve the integrity of gaming
 - Make sure every person has the same chance
 - Let skill be the only differentiating factor (don't allow the game to adapt/adjust)
- Ensure transparency- if the game play or pay will change mid-game, notify player and provide the option to stop play

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 102.00: CONSTRUCTION AND APPLICATION

102.02: Definitions

Game is defined in M.G.L. c. 23K, § 2.

Game of chance means a game in which randomness determines all outcomes of the game as determined over a period of continuous play.

Game of skill means a game in which the skill of the player, rather than chance, is the dominant factor in affecting the outcome of the game as determined over a period of continuous play.

Host Community is defined in M.G.L. c.23K, § 2.

Hybrid game means a game in which a combination of the skill of the player and chance affects the outcome of the game as determined over a period of continuous play.

Identifier means any specific and verifiable fact concerning a player or group of players which is based upon objective criteria relating to the player or group of players, including, without limitation:

- (1) The frequency, value or extent of predefined commercial activity;
- (2) The subscription to or enrollment in particular services;
- (3) The use of a particular technology concurrent with the play of a gaming device;
- (4) The skill of the player;
- (5) The skill of the player relative to the skill of any other player participating in the same game;
- (6) The degree of skill required by the game; or
- (7) Any combination of (1) to (7), inclusive.

Impacted Live Entertainment Venue is defined in M.G.L. c. 23K, § 2.

In-Session feature means an option presented to the player prior to the initiation of a game or within a gaming session that allows a player to select an artistic attribute such as graphics or sound to provide entertainment value to the game for which consideration is paid. An in-session feature does not include options that influence the game outcome.

Person is defined in M.G.L. c. 23K, § 2.

Player interaction technology means equipment that facilitates a player's physical interaction with a gaming device, allowing the player to direct commands, perform physical actions, or simulate physical activity. Examples include, without limitation, touch screens, keypads, joy sticks, motion sensors, image sensors, image displays, infrared emitters and detectors, and accelerometers.

Rake means the entry fee or percentage of a pot taken by a gaming licensee as compensation for hosting a table game or allowing play on an electronic gaming device.

Record means a book, paper, map, photograph, recorded tape, financial statement, statistical, tabulation, or any other documentary material or data, regardless of physical form or characteristics.

Security Protocols means the system for securing and preserving the confidentiality of records in accordance with 205 CMR 103.14: *Security Protocols; Restricted Access*.

Skill means the knowledge, dexterity or any other ability or expertise of a player of an electronic gaming device.

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 143.00: GAMING DEVICES AND ELECTRONIC GAMING EQUIPMENT

143.01: Standards for Gaming Devices

143.01: Standards for Gaming Devices

(1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference *Gaming Laboratories International, LLC Standard GLI-11: Gaming Devices in Casinos*, version 2.1, released August 25, 2011, subject to the following amendments:

- (a) Delete section 1.1.1.
- (b) Delete section 1.1.2.
- (c) Delete section 1.2.
- (d) Delete section 1.4.
- (e) Delete section 1.5.1 and replace with “All gaming devices must determine game outcome solely by the application of: (1) chance; (2) the skill of the player, or (3) a combination of chance and the skill of the player. A gaming device that includes any element of chance shall, for that element of the game, at a minimum, utilize randomness in determination of prizes, contain some form of activation to initiate the selection process, and make use of a methodology for delivery of the determined outcome. Any gaming device may be separated in parts, where some may be within or outside the gaming device (e.g., gaming devices that function with a system).”
- (f) Add in 3.2.1 the following paragraph i) after paragraph h):
The rules of play for a game of skill or hybrid game must describe or display information adequate for a reasonable person to understand the method of game play prior to the player committing a wager.
 - (a) The content of the rules of play necessary to comply with 205 CMR 143.01(1)(f) will be determined based on an evaluation of the following factors:
 - (1) The theme or concept of the game;
 - (2) Knowledge of the game among the general public based on the history and prevalence of the game or readily identifiable variations of the game;
 - (3) The extent to which the format of the game differs from that of a substantially comparable game known in contexts outside the casino gaming environment; and
 - (4) The physical attributes of the game, including whether the game is based on:
 - (a) Inherent skill based on physical dexterity, endurance and strategy, such as in an athletic activity;
 - (b) Skill based on expertise, education or experience, such as a word or trivia contest; and
 - (c) Dynamic skill based on variations in the difficulty or complexity of a skill activity that change in response to the player’s decisions, acuity, agility, dexterity, game duration or an inherent game feature, such as a military combat game.

- (b) The rules of play may be communicated to the player singularly or through a combination of:
 - (1) The rules or descriptions displayed by the gaming device in accordance with GLI-11 section 3.2.1;
 - ~~(2) The pay table; or~~
 - (3) A game tutorial or demonstration displayed by the gaming device or at a prominently disclosed location within the gaming establishment.
- (c) Gaming devices must display any rake-off percentage or any fee charged to play the game or series of games in a gaming session.

- (g) Replace in section 3.4.1 “seventy-five percent (75%)” with “eighty percent (80%)”.
- (h) Add the following after the first paragraph of section 3.4.1: The calculation of minimum payout percentage excludes the cash equivalent value of any merchandise or other thing of value that cannot be converted into cash by the gaming establishment but may include the acquisition cost to the gaming licensee of the merchandise or other thing of value.
- (i) Replace in section 3.4.1(b) “75%” with “80%”.
- (j) **Add in 3.4.1 paragraph (d): See 205 CMR 143.01(6)(g) for percentage payout requirements for games of skill and the skill portion of hybrid games that do not include a rake or a fee for play. Games that include a rake or fee for play are subject to 205 CMR 143.01(1)(g).**
- (k) Replace in section 3.10.1(f) “seventy-five percent (75%)” with “eighty percent (80%)”

(2) For purposes of M.G.L. c. 23K and 205 CMR the term slot machine as defined by M.G.L. c. 23K, § 2 shall not include automatic amusement devices as defined by M.G.L. c 140, § 177A(2).

(3) For purposes of M.G.L. c. 23K and 205 CMR a slot machine that has multiple gaming positions, as defined by M.G.L. c. 23K, § 2, shall be considered a single slot machine. Provided, however, a Category 2 licensee shall not have more than 1,500 gaming positions available for play at any one time.

(4) If required by the commission, a gaming device shall be capable of providing the commission with a near real-time stream of data, other than personally identifiable information, in the communication format specified by the commission in 205 CMR 143.16 directly from each slot machine. Such data shall be provided for purposes of computing and reconciling daily tax obligations as provided in 205 CMR, for purposes of investigating patron disputes filed in accordance with 205 CMR 134.19: *Disciplinary Action*, and for purposes of maintaining general oversight of a gaming establishment. The commission is not obligated to monitor or review the data on an ongoing basis. If communications between the slot machine and the commission's central control system (if required by the commission) fails, the slot machine shall not continue to operate unless it records all required critical data since losing the connection, up to seven days, and send the data directly to the commission as soon as the connection is reestablished. If the connection is not reestablished within 24 hours due to a problem stemming from the gaming establishment's systems, then any slot machine affected shall cease operation until the connection is reestablished.

(5) In addition to GLI-11, section 3.2.1(d), except as otherwise disclosed to the player, once a game containing a skill based feature is initiated, no aspect or function of the gaming device may be altered during the play of the game based on the skill of the patron to make an event more or less likely to occur. See also 205 CMR 143.01(6)(c).

(6) Games of skill and hybrid games. The provisions of 205 CMR 143.01(6) shall apply to games of skill and hybrid games in addition to those provisions otherwise applicable in accordance with 205 CMR 143.01.

- (a) All possible game outcomes must be available upon the initiation of each play of a game upon which a player commits a wager on a gaming device.
- (b) Gaming devices that offer games of skill or hybrid games must indicate prominently on the gaming device that the outcome of the game is affected by player skill.
- (c) Gaming devices must not alter any function of the device based on the actual hold percentage.
- (d) Identifiers
 - (1) Gaming devices may use an identifier to determine which games are presented to or available for selection by a player.
 - (2) An electronic gaming device that assigns or tracks the use of identifiers must log the following information on the system component each time an identifier is assigned:
 - (a) A transaction identification number unique to the assignment;
 - (b) The transaction date and time;
 - (c) An identification number unique to the patron, if known;
 - (d) The category or name of the identifier assigned;
 - (e) The basis for the assignment of the identifier; and
 - (f) Any other information necessary to reconcile the assignment of an identifier to a patron.
 - (3) The logged information required by 205 CMR 143.01(6)(d)(2) must:
 - (a) Be retained for a minimum of 30 days;
 - (b) Be viewable on the system portion of the gaming device;
 - (c) Be exportable into a comma separated values text file; and
 - (d) Be rendered unalterable using a method approved by the gaming laboratory.
 - (4) An electronic gaming device that uses identifiers must log the following information each time an identifier is used:
 - (a) A transaction identification number unique to the assignment or the transaction identification number assigned by the system component or associated equipment;
 - (b) The transaction date and time;
 - (c) The category or name of the identifier assigned; and
 - (d) The basis for the assignment of the identifier, if assigned by the conventional gaming device or client of a system supported gaming device.

- (5) The information required by 205 CMR 143.01(6)(d)(4) must be maintained for at least the most recent ten identifiers assigned and must be displayable on the conventional gaming device or client of a system supported gaming device.
- (6) As used in 205 CMR 143.01(6)(d), the basis for the assignment of an identifier shall include, without limitation, one or more of the following:
 - (a) The frequency, value or extent of predefined commercial activity such as the patron's frequency of visitation or wagering activity at a gaming establishment(s)/casino(s); activity on social media; or accumulation of rank, points, or standing in either gaming or non-gaming activity;
 - (b) The subscription to or enrollment in particular services such as membership in a gaming licensee's customer loyalty program;
 - (c) The use of a particular technology concurrent with the play of a game;
 - (d) The level of skill of a patron as identified or maintained by the gaming system or self-identified by the patron;
 - (e) The level of skill of a patron relative to the skill of other patrons participating in the same game; or
 - (f) The degree of skill required by the game.
- (e) Operation, calibration, and variances. A gaming device that incorporates skill and makes use of player interaction technology must:
 - (1) Monitor the player interaction technology for proper operation before the initiation of each game. Upon detection of improper operation, the gaming device must enter into a tilt condition;
 - (2) Provide a mechanism to calibrate the technology;
 - (3) Prevent unintended perturbations, such as physical, radio-frequency, or optical from impacting the proper operation of the game;
 - (4) Upon initialization, must automatically verify that it meets the minimum hardware requirements necessary to properly conduct the game. The gaming device must prevent initialization if the hardware is found to be insufficient; and
 - (5) Ensure that variances in hardware that meet the minimum hardware requirements, such as processing power, amount of memory, or data bandwidth available:
 - (1) do not impact the proper operation of the game; or
 - (2) do not provide an advantage or disadvantage to a player.
- (f) Hardware necessary to implement a game must be equivalent on each gaming device. Hardware variances must not:
 - (1) Impact the proper operation of the game; or
 - (2) Provide an advantage or disadvantage to a player.
- (g) Calculation of Payouts.
 - (1) The payout for games of skill or hybrid games shall be governed by GLI-11, section 3.4.1. In addition to section 3.4.1, for each enabled payable, the gaming device must calculate the actual payback percentage every N games, where N is the number of games necessary to determine the theoretical payback percentage with a 95% confidence interval within a range of +/- 5%. Additionally, the device shall:

- (a) Determine the absolute value of the difference between the actual payback percentage and the theoretical payback percentage;
- (b) Maintain a record of the most recent 50 calculations for each payable to include the date, time, payable ID, the calculated actual payback percentage and the absolute value of the difference between the actual payback percentage and the theoretical payback percentage; and
- (c) Upon detection of three consecutive calculations, for a payable, in which the absolute value of the difference between the actual and theoretical payback percentages is greater than 4%, enter into a tilt condition.

(h) Internet accessibility

- (1) An electronic gaming device may not directly access or be directly accessed via the internet.
- (2) An electronic gaming device may indirectly access the internet or be accessed indirectly via the internet using a method that securely isolates and segregates the gaming device from the internet as approved by the commission.
- (3) Communication between a gaming device and any device external or internal to the gaming device conducted using wireless transmission technologies such as Near Field Communications, Bluetooth, or WiFi must:
 - (a) Be secured to prevent the ability of unintended recipients to read the data;
 - (b) Employ a method to detect data corruption. Upon detection of corrupt data, correct or terminate the communication; and
 - (c) Employ a method to prevent modification of the data.

(i) In-Session Feature Out.

- (1) A gaming device that makes use of an in-session feature must have a meter specifically labeled "In-Session Feature Out" that accumulates all credits deducted from the credit meter paid as consideration for an in-session feature. Such credits shall not be included when calculating the payouts in accordance with 205 CMR 143.01(6)(g), but shall be considered *drop* in accordance with 205 CMR 140.02(3)(a) for purposes of calculating gross gaming revenue.
- (2) A gaming device that allows for additions to or deductions from the credit meter that would not otherwise be metered under the requirements GLI-11, section 3.9.7 must maintain meters sufficient to properly reconcile all additions to or deductions from the credit meter. Examples include, without limitation, fees paid to enter a contest or tournament; awards from a contest or tournament; and the use of wagering credits on wagering opportunities that would not otherwise be considered coin in for the gaming device.

143.09: Electronic Table Game Systems

- (1) A gaming licensee and gaming device vendor shall comply with and the commission adopts and incorporates by reference Gaming Laboratories International, LLC Standard GLI-24:

Electronic Table Game Systems, version 1.3, released September 6, 2011, subject to the following amendments:

- (a) Delete section 1.1.
- (b) Delete section 1.3.
- (c) Replace in section 2.14.1 “seventy-five percent (75%)” with “eighty percent (80%)”.

(2) An electronic table game shall be considered a slot machine in accordance with M.G.L. c. 23K, § 2 unless the simulation requires the intervention of a gaming employee prior to the final determination of winnings.

(3) The gaming licensee shall develop and submit to the IEB and the commission’s gaming lab for approval a preventive maintenance program for the care and upkeep of any physical moving parts and/or any physical parts that may affect the outcome of any electronic table game used in the gaming establishment to ensure the integrity of the outcomes.

DRAFT



NanoTech Gaming

December 8, 2015

Via Electronic Mail

Bruce Band – Assistant Director of Investigations and Enforcement Bureau
Massachusetts Gaming Commission
101 Federal Street, 12th Floor
Boston, Massachusetts 02110
bruce.band@state.ma.us

Re: A Request for Public Comment: Skill Based Gaming

Dear Director Brand,

As Creative Director for NanoTech Gaming, I have ensured that my company has been at the forefront of recent changes to Nevada Gaming Regulations. We have always made our expertise in skill-based games available for furthering the discussion.

With regards to Massachusetts adopting regulations regarding skill-based gaming, we are also willing to participate in your process, and honored to be included in the request for comment.

To the specific points of your email request:

- Areas where GLI-11 as it presently exists (or other applicable GLI standards) are insufficient to provide for the regulation of skill based gaming devices;
 - In 3.4.1a, Optimum Play Used for Skill Games we read: *Gaming devices that may be affected by player skill shall meet the requirement of this section when using a method of play that will provide the greatest return to the player over a period of continuous play.*

At NanoTech Gaming, we have experimented with what we call the ‘effect of skill’ on the observed payback percentage. The subsection above indicates that an ‘optimum play’ method should be the standard by which this requirement is met. However, we believe that the 75% minimum payback should be a standard for all new skill-based games. A clear example of how only looking at ‘optimum play’ could damage player perception of skill-based games is found in the example of Video Poker.



In a Jacks-or-Better Video Poker game, skilled players will use the ‘optimum play’ method, and, with little to no mistakes, earn a payback that is well above the 75% minimum. In contrast, a player who is *unskilled* at Video Poker and not knowledgeable of the game rules could play the game by drawing 5 additional cards each game. A player who demonstrates this *lack* of skill would earn a payback far below the 75% minimum – at worst case a Wizard of Odds study put the payback somewhere around 3%.

Because my company is focused on bringing skill-based games to casinos where physical dexterity is the means by which the player is judged, we are convinced that penalizing the player in the same way Video Poker does for *lack* of skill would result in an extremely dissatisfying experience for new players.

- In 3.17.2, Last Play Information Required we read: *Last play information shall provide all information required to fully reconstruct the last ten (10) games. All values shall be displayed; including the initial credits or ending credits, credits bet, and credits won, payline symbol combinations and credits paid whether the outcome resulted in a win or loss. This information can be represented in graphical or text format. If a progressive was awarded, it is sufficient to indicate the progressive was awarded and not display the value. This information should include the final game outcome, including all player choices and bonus features. In addition, include the results of double-up or gamble (if applicable).*

The Nevada Gaming Control Board recently amended their technical standards to address this section under **STANDARD 1 INTEGRITY OF DEVICES**, under section **1.080 Control program requirements**:

*7. All gaming devices must have the capacity to display a **complete play history** for the most recent game played and nine games prior to the most recent game. Retention of play history for additional prior games is encouraged. The display must indicate the **game outcome** (or a representative equivalent), **intermediate play steps** (such as a hold and draw sequence or a double-down sequence), credits available, bets placed, credits or coins paid, and credits cashed out. Gaming devices offering games with a variable number of intermediate play steps per game may satisfy this requirement by providing the capability to display the **last 50 play steps**.*

We drafted a letter to Technology Division Chief Jim Barbee pointing out that even this new standard may not be sufficient in the face of highly complex, physics-intensive, and chaotic skill-based games (a copy of our letter is attached). Even though Chief Barbee noted our comment, he believed that the language drafted above would be sufficient for the time being.



- Whether the Commission should set a maximum tolerance for skill based games
 - It's unclear what your definition of 'tolerance' is here; whether it pertains to the tolerance of the maximum degree to which skill is allowed to affect the outcome, or the tolerance of the maximum payback which may be achieved based on skill

If 'tolerance' refers to the maximum degree to which skill is allowed to affect the outcome, to our previous point regarding 75% minimum payback, we have developed a patent-pending system – the *NanoTech Advantage* – which allows the player to adjust this skill effect from 0% to about 25%. In this case, the 'maximum tolerance' for skill to affect the outcome is about 25%. Percentages higher than this maximum would reduce the payback for unskilled players, and is a dissatisfying experience in our observed tests.

If 'tolerance' refers to the maximum payback which may be achieved based on skill, this refers to GLI-11 section 3.4.1a on 'optimum play'. Using our *NanoTech Advantage* system, a range of possible payback percentages is displayed to the player before starting a game. This range is based on the history of previous player scores and bets, and the player's chosen bet amount, goal win amount, and the effect to which skill will influence the outcome.

Using Nevada state minimum payback of 75%, in an example where the casino wants a Return to Player of 99%, the 'maximum tolerance' for an instance of a wager is 123%; the sum total of all wagers made on the machine will never return more than 99% to the players in this example.

- Unique issues involving skill based gaming devices that require clarification from the Commission.

We exhibited our games and gambling technology at the Global Gaming Expo in October of 2015. We also saw a number of other gaming companies exhibiting their 'skill-based' game machines. However, none of the manufacturers could succinctly explain how a very skilled player could see a benefit for demonstrating their skill. Many of the games featured math models which were based on existing slot machine models, where the payback for very skilled players is still well under 100%, and players who *lack* skill will be penalized.

We believe that games like this that operate on deception, or 'illusion of skill', or utilize slot-machine-style 'redemption wins' (which are actually net losses) are designed to perpetuate the status-quo of slot machine manufacturers.

At NanoTech Gaming, we are offering the first opportunity for players to gain value for demonstrating their physical skill at playing videogames, combined with casino math, which also guarantees that there is no exposure to the operator due to pricing errors, or extremely-skilled players, or those who exploit the game to earn high scores.



We appreciate this opportunity to share knowledge, and look forward to your response.

Sincerely,



Stephen Riesenberger





NanoTech Gaming

October 30, 2015

Via Electronic Mail

Jim Barbee – Technology Division Chief
NEVADA GAMING CONTROL BOARD
555 E. Washington Avenue, Suite 2600
Las Vegas, NV 89101
jbarbee@gcb.nv.gov

Re: Request for Industry Comment for Proposed Changes to Technical Standards for Skill and Hybrid Gaming Devices

Dear Chief Barbee,

NanoTech Gaming is focused on bringing skill-based games to casinos, and committed to ensuring that gaming regulations and technical standards are created not only to protect the players and the operators, but to increase gaming revenue for the state of Nevada and the casino industry worldwide.

Reading through the current and proposed language of the technical requirements, we have concern over the requirements set forth in the first four sentences of **STANDARD 1 INTEGRITY OF DEVICES**, under section **1.080 Control program requirements**:

7. All gaming devices must have the capacity to display a **complete play history** for the most recent game played and nine games prior to the most recent game. Retention of play history for additional prior games is encouraged. The display must indicate the **game outcome** (or a representative equivalent), **intermediate play steps** (such as a hold and draw sequence or a double-down sequence), credits available, bets placed, credits or coins paid, and credits cashed out. Gaming devices offering games with a variable number of intermediate play steps per game may satisfy this requirement by providing the capability to display the **last 50 play steps**.



NanoTech Gaming's first two casino games, "Vegas2047" and "CasinoKat" were created with the full capability of complying with this standard.

The technology that makes this possible is not new, and has gained popularity through recording and playback of performances in traditional videogame platforms like the Multiple Arcade Machine Emulator (MAME) and the MAME Action Replay Page (MARP). The technology records every player input with timestamped data which can be replayed to produce a **complete play history**, showing the **game outcome** and all **intermediate play steps**, not just the **last 50 play steps**. We believe that the current technical standard is insufficient to provide fair and robust review of a game's play history.

With the intent of skill-based gaming to provide a more interactive experience for the player, and to protect them as well as the operators from exploits of bugs or loopholes in the game's code, we believe it is necessary that all skill-based games adhere to a standard which requires the **full and complete play history**, showing **all intermediate play steps**, that is logically viewed as a **game replay**; simply displaying a list of player inputs and timestamps for a traditional videogame is nearly impossible to make sense of.

"Vegas2047" and "CasinoKat" have the capacity to recall and playback the full and complete play history in a game replay for the most recent game played, the nine games prior to the most recent game, and all games for several years' worth of continuous operation, only limited to the internal storage capacity of the hard disk drives in the machines.

We believe that adopting the **language highlighted in green** above will protect both players and operators, will quickly uncover flaws in the game code or unintended play behaviors which could result in exposure to the operator or game malfunction.

NanoTech Gaming applauds your work with skill-based gaming. Please consider our company as a resource for any further information in this regard.

Sincerely,



Stephen Riesenberger





Association of Gaming Equipment Manufacturers

December 16, 2015

Mr. Stephen Crosby
Chairman
Massachusetts Gaming Commission
101 Federal St., 12th Floor
Boston, MA 02110

Via email: mgccomments@state.ma.us

Re: Support for Skill-Based Gaming / Variable-Payback Slots

Dear Chairman Crosby:

I am the Executive Director of the Association of Gaming Equipment Manufacturers (AGEM) and thank you for the opportunity to comment on the future of gaming in Massachusetts.

AGEM is a non-profit international trade association representing manufacturers and suppliers of electronic gaming devices, systems, lotteries, table games, and components for the gaming industry. AGEM works to further the interest of gaming equipment suppliers throughout the world through political action, trade show partnerships, educational alliances, information dissemination and good corporate citizenship. The 147 members of AGEM include the world's largest manufacturers of slot machines, such as Aristocrat Technologies, Scientific Games / Bally / WMS, International Game Technology, Konami Gaming and Everi, many of which are already licensed by the Massachusetts Gaming Commission.

One of AGEM's missions is to work with state legislators and agencies to ensure that the regulatory systems governing the manufacture and distribution of gaming devices protect the valuable reputation of the gaming industry while fostering an environment for technological innovation. With that in mind, please consider our support for Massachusetts approving slot machines with variable-payback percentages allowing for the incorporation of skill-based and arcade-style elements on the casino floor.

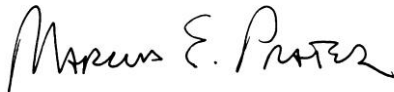
There are four core reasons why variable-payback slots are needed: Increased competition in the industry; the decline in slot machine revenue production; a generational shift in casino customers; and, the importance of technology and social media among that demographic. Focusing on the last reason, technology is pervasive in our lives, including most forms of entertainment and leisure activity. The young adult casino visitor is also a major consumer of this technology, whether it be mobile devices, social media or non-wagering video gaming. These casino customers expect electronic gaming products to evolve with the other technology they use and enjoy, incorporating the generational interest in social gaming – the Xbox phenomena – and in social networking – the Facebook transformation. These are the same reasons that led to the State of Nevada enacting a law (SB9) in May of this year that allowing for skill-based and arcade-style elements on the casino floor. Multiple states are now considering following the Nevada model and Massachusetts can join other markets in driving this exciting new technology forward and remaining a leader in the casino industry.

Importantly, AGEM believes that the new types of gaming devices that will come under this revised and expanded administrative landscape must and will be accretive to the products on casino floors today as those products also evolve. The goal is to provide a different product that will attract new, otherwise disengaged, customers to electronic gaming machines, and not cannibalize existing casino customer groups.

With respect to your request for feedback on specific topics related to GLI-11, maximum tolerance and unique issues, AGEM encourages a thorough review of Nevada Regulation 14 and the accompanying technical standards as a starting point. The wording now approved by the Nevada Gaming Control Board and the Nevada Gaming Commission came after remarkable collaboration between regulators and suppliers and provides a roadmap that helps navigate this new and advanced world of gaming. AGEM respects GLI and is confident its existing partnership with the Control Board in Nevada will allow for best practices to be implemented in other states. As for maximum tolerance, AGEM again urges adoption of the Nevada model that ensures players receive a blended minimum payback of 75 percent, with the ability for skill-based games to pay back more than 100 percent to particularly skilled players to offset poor play at the opposite end. As for unique issues, AGEM requests a review of the Nevada language that clarifies how different “identifiers” may enhance the player experience and give operators greater flexibility to manage their casino and entertainment offerings.

AGEM is proud to have initiated the variable-payback process in Nevada and stands ready to assist Massachusetts as the Commonwealth considers this exciting new concept for its gaming operations.

Very truly yours,

A handwritten signature in black ink that reads "Marcus E. Prater". The signature is written in a cursive, flowing style.

Marcus E. Prater
Executive Director
Association of Gaming Equipment Manufacturers

cc: John R. Glennon, Chief Information Officer
Bruce Band, Assistant Director and Gaming Agents Division Chief

Thursday, December 10, 2015

Via: e-mail

Bruce E Band
Assistant Director of Investigations and Enforcement Bureau
Gaming Agents Division Chief
Massachusetts Gaming Commission
101 Federal Street, 12th Floor
Boston, Massachusetts 02110

Re: Request for Input – Skill Games

Dear Assistant Director Band:

My name is Eric Meyerhofer and I am the CEO of Gamblit Gaming, LLC. Gamblit Gaming, LLC (“Gamblit”) is a manufacturer and distributor of gaming equipment and software based in Glendale, California. Gamblit holds multiple licenses from the Nevada Gaming Commission and other regulatory bodies. We respectfully submit the following comments in response to the recent invitation to provide input with regards to skill and hybrid game regulations being contemplated by the Commission. We have included portions of the request for comments in bold typeface in line with our comments.

For the purposes of this discussion, the following terms are used:

Hybrid Game – a game which employs a blend of skill and chance. Hybrid games are the class of games which will most likely experience participation by a wide range of players.

Banked Game – a game where a player or players’ returns are funded by the gaming operator.

Rake Game – a game where two or more players contribute the prize, and the winner receives the jointly contributed prize minus a fee taken by the operator (the “rake”).

ISSUE 1: Areas where GLI-11 as it presently exists (or other applicable GLI standards) are insufficient to provide for the regulation of skill based gaming devices

For the purposes of addressing this question, the applicable section of GLI-11, which address games incorporating skill, is provided here:

3.4.1 Software Requirements for Percentage Payout. Each game shall theoretically payout a minimum of seventy-five percent (75%) during the expected lifetime of the game (i.e. progressives, bonus systems,

merchandise, etc. shall not be included in the percentage payout if they are external to the game).

a) Optimum Play Used for Skill Games. Gaming devices that may be affected by player skill shall meet the requirement of this section when using a method of play that will provide the greatest return to the player over a period of continuous play.

b) Minimum Percentage Requirement Met at All Times. The minimum percentage requirement of 75% shall be met at all times. The minimum percentage requirement shall be met when playing at the lowest end of a non-linear payable (i.e., if a game is continuously played at a minimum bet level for the cycle of the game and the theoretical RTP is lower than the minimum percentage, then the payable is not permissible).

In regards to this issue, we note that there are two primary types of games involving skill: rake games that involve players competing against each other and banked games that involve players competing against a house. Our comments here are related solely to banked games as GLI-11 is adequate and appropriate for rake games. Under GLI-11, a minimum payback standard is easy to declare and standardize in rake games since the theoretical payout is simply 100% less the rake percentage.

We believe that Section 3.4.1 of GLI-11 is appropriate in its current form so long as the concept of “optimum play” is correctly applied. Optimum play means that the theoretical RTP or payout is calculated assuming utilization of the best possible strategy. In video poker, the theoretical payout is calculated with the assumption that the player will make the right choices. The same process should be applied to modern games involving skill. The theoretical payout should be calculated (at or above seventy-five percent) for the expected lifetime of the game based on optimum play being exercised; **however, the actual payout percentage or demonstrable payout percentage should be allowed to fall anywhere once the game goes live on a casino floor.** As discussed below, with games of skill it is nearly impossible to predict the actual RTP of a game once it becomes available on a casino floor. The following example demonstrates this:

- A game requires that a player tap two buttons at specific times to win.
- The game involves skill and it is submitted for testing with a stated theoretical payout percentage of 90% under optimum play.
- When the game is tested, optimum play conditions are applied. This means that the game is tested in a state where the two buttons are always pressed at the proper time.
- As a result, the game should be certified with a theoretical payout percentage under optimum play at 90%.

- Once the game is on the casino floor, many players end up not being very good at the game for any number of reasons and the actual or demonstrable payout percentage ends up being 73%

In this example, the theoretical payback percentage was certified at 90%, but the actual payout percentage on the casino floor over the life of the game ended up at 73%. This should be an entirely acceptable scenario under optimum play testing. The theoretical payout percentage was established under optimum play as above the minimum theoretical payout percentage of 75%. As discussed below, if a game is too difficult for its audience or if it doesn't pay back enough money, players will not enjoy the game, and they will ultimately stop playing.

We believe that Section 3.4.1 (a) of GLI-11 provides the right approach to an evaluation standard for skill and hybrid games. It provides sufficient coverage to allow for a wide range of skill and hybrid games, provided the Commission is amenable to the types of games brought forward under the standard. At Gamblit, we believe that the most commercially useful games incorporating skill will resemble something akin to an arcade or casual mobile entertainment game, directed at adults, which has been blended with some form of a wagering component. As an example, think: Space Invaders, Pacman, Candy Crush, or Angry Birds with a wagering proposition added. The reason is that these are the types and styles of interactive games which are familiar to casino visitors, and ones with which they have already engaged and like. It's a crucial point when evaluating standards and regulations that one considers that such games will not resemble traditional slot games which have predominated the industry, regulations, and standards for years. Instead these games will be of a continuous nature with challenges, levels, and potentially multiple wagering propositions that constitute a gaming session. These types of games are not slot machine style chance (reel) games lasting perhaps 5 seconds, followed by a skill affected bonus round.

For these kinds of games, reaching and maintaining a demonstrable minimum payback standard is theoretically impossible because there are so many unpredictable factors. Standards which require a high degree of confidence in the minimum payback percentage are also problematic because they require that one quantify skills such as visual acuity, dexterity or both. Game companies that have mastered video/skill games art consider this an impossible feat except for in the most simplistic of games.

Any standard which seeks a high level of confidence in demonstrating a predicted payback percentage from complex skill and hybrid games will require hundreds of thousands (or perhaps millions) of plays across a broad range of players slowing product introduction to a trickle. And even with such data, a fundamental problem is built into this line of thinking.

Consider the sample scatter diagrams in Figure A & B which illustrate just one problem predicting payback which relies on skill. Figure A simulates what the actual payback percentages would be for a game across a range of legal wagering age players. One axis represents the age range of people who frequent a casino, and the other axis represents the range of skill utilized to play the games.

In Figure B, the red box encapsulates the population of players that actually play the game because they like it, and they are good at it. When considering the whole population of eligible players, we get very different payback percentages that are very likely to differ greatly.

The prediction method can be further confounded when considering special events and conventions will also bring concentrations of players at one end of the spectrum or the other.

In short, the Commission must avoid technologically stifling requirements if it intends to embrace the future of gaming. This includes, but is not limited to, avoiding things such as requiring skill and hybrid games placed on the casino floor to have automated decision making to enter exception states, error conditions or tilt if the theoretical return does not match the projected theoretical payback percentage.

Figure A

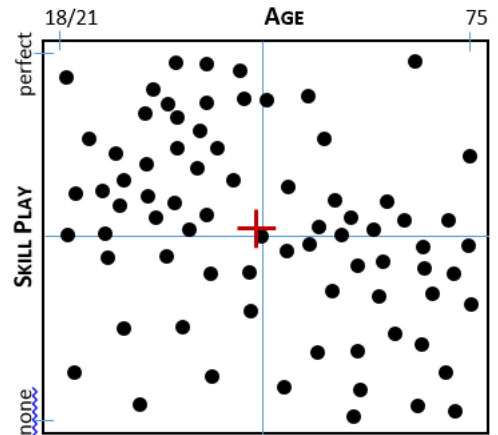
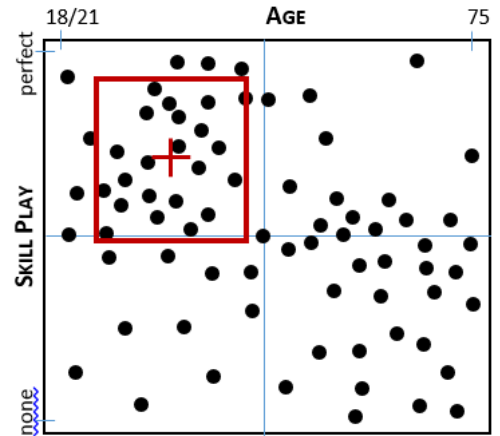


Figure B



ISSUE 2: Whether the Commission should set a maximum tolerance for skill based games

We believe that setting a maximum tolerance for skill based games is not advisable based on the arguments presented above. We also believe that the only necessary metric is the theoretical payback percentage for the game under optimum play. This establishes a clear definition of what can be expected if the player’s continuously demonstrate optimum play. To compliment the optimum play percentage, it would be useful for the manufacturer to provide testing data to indicate the range the game will likely perform within, provided such data is not seen as a guarantee of that performance.

The market will sort out whether a skill game is “too loose” or “too tight”. If a game is too tight, players will reject it just as games in traditional arcades were rejected when

they were too difficult or hard to understand. A player might try the game for a few plays and move on if achieving a win seems too difficult or uncertain. If the game is too loose, operators will reject it financial performance versus other games. Mastering the balance is the job of the manufacturers. Commercial success will provide all the necessary incentive. It can be expected that operators will insist that manufacturers present some kind of play data in order to put the game on the floor in the first place. This could take the form of sample play data along the lines of the scatter diagrams shown above or other forms. Such data would serve to guide the operator on determining if the game is a reasonable proposition that their players will like and the range of economics. This coupled with the other requirements of GLI-11 and the theoretical payback percentage under optimum play insures that the house knows the game is economically safe. From there, the real world will be the final judge.

ISSUE 3: Unique issues involving skill based gaming devices that require clarification from the Commission

A Streamlined Game Update Method

The fully mature casual mobile games industry (iTunes and Google Play game apps)—who we must view as practiced masters of the skill/challenge game art, the direction to which the casino industry will evolve—they themselves have evolved to manage the difficult skill and engagement problem by use of frequent in-life or live game updates during the early stages of a game’s life. Updates are guided by monitoring game play metrics and analyzing what players respond to, what they play, what they like, and what they don’t like in a game, helping to ensure commercial success. In short, the update process allows game makers to tune games based on actual play when the *rubber really meets the road (i.e. game meets real players in the real world)*. Given that that many regulated casino skill and hybrid games will more closely resemble contemporary game content, we can expect that a similar content management plan is needed to succeed. Therefore, we recommend that **the Commission ensure that a streamlined process is maintained for updates to games which are already approved, provided these updates do not alter the required 75% minimum payback under optimum play, and are a close derivative of the originally approved game.** Prior to making such updates, the manufacturer should be required to clearly declare the scope of the changes and what the impacts to the game are based on testing or other data provided by the manufacturer. In quantitative terms, approvals of such updates should be completed in less than 30 days.

Game Metric Access

For games incorporating skill, one can expect that game updates described above would be guided by the study of actual field play metrics by game manufacturers. To facilitate this, **it must be allowable to frequently harvest game play metrics directly from the games.** Such metrics will guide game developers on how to improve the play experience. The most efficient and timely way for this to occur would be through a **secure portal making the game play data available to the manufacturer.**

Metering of Skill

While we believe that **additional metering requirements are unnecessary,** if the Commission insists on adopting additional metering or reporting related skill standards, those standards must ensure that all metering and reporting **can be accomplished using available meters reported over legacy slot accounting system interfaces, such as SAS.** Requiring reports and meters that do not fit within current slot accounting systems will be very difficult, for operators to practically implement new gaming forms and to provide required audit reporting, which will in turn greatly slow down commercial adoption of such.

Alternative In-Game Revenue Sources

The casual mobile games industry, which guides Gamblit's thinking on what attractive products will look like, has moved to a "freemium model." This model entails providing the game for free, after which players are invited at various points in the game to make elective in-app purchases ("IAPs"). IAPs involve players **buying items that allow them to perform better in the game.** For example, a game might allow players to buy a magical hammer which grants the player additional powers. We believe that it is important to mirror this now established paradigm in order to provide familiar game monetization mechanics to a younger demographic of casino players. Commercially, IAPs have been successful for game companies because they let players price the game out based on their own economics and desires, rather than a one price fits all method which must cap itself at some kind of median price threshold. Therefore, we believe that any new regulations/standards should **allow for the acquisition of in-game objects and features, namely In-Game Purchases ("IGPs").** The desirability of IGPs lies in the fact that players already understand and like this mechanic, they are player elective and optional, and they can represent a significant financial improvement to the gross gaming revenue of a game (because the hold on an IGP is 100%). Consider the following example: A game with an IGP option holds 5% without any such purchase, and a player elects to buy an IGP every 20 plays of the same cost in credits as a wager, the resulting hold is improved to 10%, fully at the election of the player who likes the IGP because it makes the game more enjoyable and likes the potential of an improved winning opportunity.

IGPs would be funded from the money available on a game's available credit meter.

Social Media Access

Social media plays an important part in people's lives today, and it is very common and almost fundamental to video games that players can share scores and achievements with their friends and other players. The ability to access social media directly from games in casinos will be an important part of driving game marketing and retention. This should be an allowable capability, provided property firewall safeguards are in place and any such activity cannot affect the game itself.

Singular Devices That Support Multiple Players

Finally, it is imperative that the Commission recognize and embrace the concept of a single device supporting multiple players at one time. These devices, which offer either competitive or banked cooperative games, should be allowed. These games and devices achieve a social and engaging experience that's fun to play for a range of players, and most effectively suits the elusive 40 and under demographic of casino visitors. Gamblit Gaming has two examples of such games, Grab Poker and Grab Bounty which it would be happy to demonstrate to the commission. These games have proven to be crowd attractors which drive fun, engagement and repeat play.

* * * * *

We thank you for the opportunity to submit our comments and concerns, and we look forward to further discussions. If a presentation and discussion of these thoughts would be useful from the Commission's perspective, we would happily avail ourselves to opportunity.

Sincerely,

Eric Meyerhofer, Gamblit Gaming

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 102.00: CONSTRUCTION AND APPLICATION

102.02: Definitions

Chair is defined in M.G.L. c.23K, §2.

Change of control means a transfer of interest which directly or indirectly results in a person obtaining greater than fifty percent ownership interest in a gaming licensee or which results in, or is likely to result in, significant change to the management or operation of a gaming licensee.

Cheat is defined in M.G.L. c.23K, §2.

DRAFT

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 116.00: PERSONS REQUIRED TO BE LICENSED OR QUALIFIED

116.08: Notice.

- (1) No person shall transfer, or enter into an agreement to transfer, a gaming license, a direct or indirect interest in the gaming license, or a gaming establishment including the structure, real property, premises, facility, personal interest or pecuniary interest under a gaming license or enter into an option contract, management contract or other agreement or contract providing for such transfer in the present or future, or enter into an agreement granting the retention of a security interest in property delivered to the gaming licensee without prior notification to the bureau.
- (2) Notwithstanding 205 CMR 116.08(1), the following transfers do not require prior notification to the bureau:
 - (a) The open market transfer of a publicly traded interest in a gaming licensee, or holding, parent or intermediary company of a gaming licensee where such transfer results in the transferee holding less than a 5% interest in the holding, parent or intermediary company.
 - (b) The granting of a security interest in return for financing to a bona fide banking institution, as defined in M.G.L. c. 167A, §1, or a commercial financial institution as defined in M.G.L. c.63, §1, so long as the bona fide banking institution or the commercial financial institution does not, by virtue of its security interest, possess the ability or intention to influence or affect the affairs or operations of a gaming licensee or applicant or qualifier for a gaming license. The gaming licensee, applicant, or qualifier shall at a minimum, however, provide notice of the transaction promptly to the bureau upon its consummation.

116.09: Approval.

- (1) Any transfer for which notice is required under 205 CMR 116.08 that results in a new qualifier being designated in accordance with 205 CMR 116.02 must be approved by the commission in accordance with 205 CMR 115.00 which approval shall be subject to the satisfaction of 205 CMR 129.01. Notwithstanding the provisions of M.G.L. c.23K, §21(b)(ii), the commission shall not assess a payment representing the Commonwealth's share of the increased value for the transferred licenses, property or interest, but a transferor or transferee shall be responsible for the payment of all investigatory and other fees provided for in 205 CMR 114.00: *Fees*.
- (2) The commission may reject any transfer requiring approval pursuant to 205 CMR 116.09(1) that it finds would be disadvantageous to the interests of the Commonwealth of Massachusetts. A transfer may be considered disadvantageous to the interests of the

Commonwealth if the commission determines that the proposed transferee does not satisfy the applicable considerations set forth in M.G.L. c.23K, §§12, 15, 16, and/or 18, as applicable, 205 CMR 115.00, or any other applicable provisions of M.G.L. c.23K or 205 CMR, and/or the transferee does not satisfy the provisions of 205 CMR 129.01.

- (3) Pursuant to M.G.L. c. 23K, §20(e), the commission shall not approve the transfer of the category 2 gaming license for 5 years after the initial issuance of the license unless one of the following has occurred:
 - (a) the parent, holding company, or intermediary company of the gaming licensee experiences a change in ownership resulting in a change of control;
 - (b) the gaming licensee fails to maintain suitability; or
 - (c) the commission determines that other circumstances exist which affect the gaming licensee's ability to operate the gaming establishment successfully.
- (4) The commission shall not approve of any transfer that would result in the transferee having a financial interest in more than one gaming license issued by the commission.

116.10: Interim Authorization.

- (1) Contractual Transfers. Whenever any person contracts to transfer a gaming license or a security ownership interest in a gaming licensee or its parent, holding or intermediary company, or any real property relating to a gaming establishment, under circumstances which require that the transferee obtain licensure or be found qualified pursuant to 205 CMR 116.02 and/or M.G.L. c.23K, the contract shall not specify a closing or settlement date which is earlier than 121 days after the submission of a completed RFA-1 application as described in 205 CMR 111.00: *Phase 1 Application Requirements*. Such RFA-1 application shall be accompanied by a fully executed trust agreement in accordance with 205 CMR 116.10(6) which shall be subject to commission approval. Any contract provision which specifies a closing or settlement date sooner than 121 days after submission of the RFA-1 application shall be void for all purposes.
- (2) Transfers of publicly traded securities. Whenever any person, as a result of a transfer of publicly traded securities of a gaming licensee or its parent, holding or intermediary company, is required to be qualified under 205 CMR 116.02 and/or M.G.L. c.23K, the person including all related qualifiers shall, within 30 days after a Schedule 13D or 13G is filed with the U.S. Securities and Exchange Commission, or after the bureau notifies the person that qualification is required, or within such additional time as the bureau may for good cause allow, file a completed RFA-1 application for such licensure or qualification as described in 205 CMR 111.00: *Phase 1 Application Requirements*. Such RFA-1 application shall be accompanied by a fully executed trust agreement in accordance with 205 CMR 116.10(6) which shall be subject to commission approval. No extension of the time for filing a completed RFA-1 application shall be granted unless the person submits a written acknowledgement recognizing the jurisdiction of the commission and the obligations imposed by M.G.L. c. 23K and 205 CMR. If a proposed

transferee, including all related qualifiers, fails to timely file a complete RFA-1 application, such failure shall constitute a *per se* negative finding of suitability to continue to act as a security holder, and the commission shall take appropriate action including requiring divestiture by the transferee or redemption of the securities by the transferor.

(3) If a prospective transferee files a complete RFA-1 application in a timely manner the commission shall hold a hearing in accordance with 205 CMR 115.04 and render a decision on the interim authorization of the proposed transferee within 120 days after such filing or, if it is a contractual transfer, prior to the proposed closing or settlement date. If interim authorization is approved for a transfer governed by 205 CMR 116.10(1) then the closing or settlement may occur, and the prospective transferee may hold the securities or interests subject to the provisions of 205 CMR 116.10(4) until a final determination of suitability is made by the commission. If interim authorization is approved for a transfer governed by 205 CMR 116.10(2) then the prospective transferee may continue to hold the securities or interests subject to the provisions of 205 CMR 116.10(4) until a final determination of suitability is made by the commission.

(4) If, after a hearing, the commission denies interim authorization, there shall be no closing or settlement of a contract to transfer an interest governed by 205 CMR 116.10(1) until the commission makes a final determination on the suitability of the transferee in accordance with 205 CMR 115.00. If the commission denies interim authorization for a proposed transfer subject to 205 CMR 116.10(2), all securities and interests subject to the transfer shall be promptly transferred into the trust. If the commission grants interim authorization for any transfer, it may at any time thereafter order all securities and interests subject to the transfer transferred into the trust if it finds reasonable cause to believe that the proposed transferee may be found unsuitable. If a prospective transferee fails or refuses to timely transfer securities and interests into the trust upon direction from the commission said transferee shall be issued a negative determination of suitability.

(5) After determining that a person is required to be qualified in accordance with 205 CMR 116.02, the bureau shall commence an investigation into the suitability of the transferee in accordance with 205 CMR 115.00. The bureau shall produce and forward to the commission an interim authorization report no later than 90 days after the date that a completed RFA-1 application is submitted by the proposed transferee that indicates whether after initial inquiry into the transferee's suitability any apparent disqualifiers have been revealed or there is any other known reason why a positive determination of suitability may not ultimately be achieved. The commission may approve interim authorization if it finds that:

- (a) The transferee has submitted all RFA-1 applications as required by 205 CMR 115.01(3);
- (b) The transferee has submitted a fully executed trust agreement in accordance with 205 CMR 116.10(6);
- (c) The trustee or trustees required under section 205 CMR 116.10(6) have satisfied the qualification criteria applicable to a Key gaming employee-executive in accordance with 205 CMR 134.00;
- (d) There is no preliminary evidence of anything that would serve to disqualify the transferee from licensure in accordance with M.G.L. c. 23K, §§12 and 16 nor is there

any other reason known at the time why a positive determination of suitability may not ultimately be achieved;

- (e) The transfer would not violate 205 CMR 116.09(3) or (4);
- (f) The transferee has certified that they are unaware of any reason why the transferee would not be found qualified pursuant to M.G.L. c. 23K, §§12 and 16. (If the transferee is other than an individual, the certification shall be made by the chief executive officer or like individual);
- (g) It is in the best interests of the Commonwealth for the gaming establishment to continue to operate pursuant to interim authorization; and
- (h) If the transfer will result in a change of control, the transferee has agreed in writing in accordance with 205 CMR 129.01 to comply with all of the transferor's existing license obligations or has otherwise petitioned the commission for modification or elimination of one or more of those obligations.

If the Commission approves interim authorization, during the period of interim authorization, the bureau shall continue its suitability investigation as may be necessary for a determination of the suitability of the person granted interim authorization. Within nine months after the interim authorization decision, which period may be extended by the commission for one three-month period, the commission shall hold a hearing and render a determination on the suitability of the applicant in accordance with 205 CMR 115.04.

- (6) Trust Agreements A trust agreement required to be submitted with an RFA-1 application in accordance with 205 CMR 116.10(1) and (2) shall be fully executed upon submission and contain, at a minimum, the following:
 - (a) A provision for the transfer and conveyance to the trustee of all of the transferee's proposed present and future right, title and interest in the gaming licensee, or its parent, holding or intermediary company, including all voting rights in securities upon the occurrence of an event described in 205 CMR 116.10(4) or if otherwise directed to do so by the bureau in its discretion, pending a final suitability determination by the commission.
 - (b) A provision consistent with the provisions of 205 CMR 116.10 for the distribution of any trust res upon a positive determination of suitability, negative determination of suitability, or at the direction of the commission in accordance with 205 CMR 116.10(8).
 - (c) A provision identifying the trustee(s) and requiring the trustee to timely submit an application for qualification as a Key Gaming Employee-Executive and be found qualified by the commission in accordance with M.G.L. c 23K, §30 and 205 CMR 134.
 - (d) A provision identifying the compensation for the service, costs and expenses of the trustee(s), which shall be made subject to the approval of the commission.
 - (e) Any additional provisions the commission deems necessary and desirable.
- (7) The trustee of the trust shall exercise all rights incident to the ownership of the property subject to the trust, and shall be vested with all powers, authority and duties

necessary to the unencumbered exercise of such right, and the transferee shall have no right to participate in the earnings of the gaming licensee or receive any return on its investment or debt security holdings during the time the securities or interest are in the trust. Earnings may, however, accrue to or into the trust.

- (8) The trust agreement shall remain operative until the commission issues the transferee a positive determination of suitability (and in the event the interest has been placed into the trust, the trustee distributes the trust res) or the commission issues the transferee a negative finding of suitability and the trust res is disposed of in accordance with 205 CMR 116.10(9). The trust shall otherwise only be revocable prior to a determination of suitability being issued upon commission approval at the request of the settlor. In the event of such a request the commission may direct the trustee to dispose of the trust res in accordance with 205 CMR 116.10(9).
- (9) If the commission issues a negative determination of suitability in accordance with 205 CMR 115.05, a contract for the transfer of interests shall thereby be terminated for all purposes without liability on the part of the transferor. In the event of such negative determination, where the subject interests have been transferred into a trust in accordance with 205 CMR 116.10(4), the trustee shall endeavor and be authorized to attempt to sell, assign, convey or otherwise dispose of all trust res in accordance with the means approved in accordance with 205 CMR 116.11 or as otherwise directed by the commission. Any subsequent transferee must be appropriately licensed or qualified in accordance with 205 CMR 116.00. The disposition of trust res by the trustee shall be completed within 120 days of the denial of qualification, or within such additional time as the commission may for good cause allow. The proceeds of such disposition shall be distributed to the unsuitable transferee only in an amount not to exceed the lower of the actual cost of the assets to such unsuitable transferee, or the value of such assets calculated as if the investment had been made on the date the assets were transferred into the trust, and any excess remaining proceeds shall be paid to the Massachusetts Gaming Control Fund in accordance with M.G.L. c.23K, §57.

116.11: Unsuitable qualifiers

An unsuitable qualifier may not hold an interest in a gaming license. A gaming licensee's articles of organization or other document governing the sale or transfer of securities or other interests shall contain provisions in a form approved by the commission stating that the sale, assignment, transfer, pledge or other disposition of any security issued by it is conditional and shall be ineffective if disapproved by the commission. Further, a gaming licensee shall have a mechanism approved by the commission in place by which it may effectuate divestiture or redemption of securities, or a like process, in the event of a negative determination of suitability being issued to a person required to be qualified.

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 129.00: REVIEW OF A PROPOSED TRANSFER OF INTERESTS

Section

129.01: Review of a proposed transfer of interests

129.01: Review of a proposed transfer of interests

(1) If a proposed transfer of interests subject to 205 CMR 116.08 through 116.10 will result in a change of control, the proposed transferee shall, as a condition of the transfer, unless otherwise allowed by the commission in accordance with 205 CMR 129.01(2), provide the commission with a written agreement to assume all obligations of the gaming licensee including, but not limited to, commitments made in the RFA-2 application, all terms and conditions contained in the gaming license, operation certificate, host community agreement, surrounding community agreements, impacted live entertainment venue agreements, and any other associated agreements, and all permits, licenses, and other approvals issued by any federal, state, and local governmental agencies concerning the construction and operation of the gaming establishment.

(2) Prior to submitting the written agreement referenced in 205 CMR 129.01(1), a proposed transferee may petition the commission to allow for the modification of any terms, conditions, or agreements applicable to the gaming license held by the transferor, provided that the modifications are not inconsistent with the provisions of 205 CMR 127.00: *Reopening Mitigation Agreements* or any other applicable provisions of M.G.L. c.23K and 205 CMR.

(3) Notwithstanding 205 CMR 129.01(1), the commission may in its discretion require submission of any RFA-2 material as described in 205 CMR 119.00 to assist in its determination as to whether to allow a modification in accordance with 205 CMR 129.01(2) and/or approve a transfer of interests in accordance with 205 CMR 116.09.

REGULATORY AUTHORITY

205 CMR 129: M.G.L. c. 23K, §§ 2, 4(37), and 5.

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February 11, 2016

VIA E-MAIL: mgccomments@state.ma.us

Mr. Stephen Crosby, Chairman
Massachusetts Gaming Commission
101 Federal Street, 23rd Floor
Boston, MA 02110

Re: Proposed Regulations 205 CMR 116.00 and 129.00

Chairman Crosby:

I serve as outside gaming counsel to the City of Springfield, Massachusetts (the "City"). In such capacity I have reviewed proposed regulations 205 CMR 116.00: Persons Required to be Licensed or Qualified and 205 CMR 129.00: Review of a Proposed Transfer of Interests (individually, a "Proposed Regulation" and collectively, the "Proposed Regulations") posted to the Commission's website. As a host community to the MGM Springfield resort casino project, the City has a vested interest in the persons whom the Massachusetts Gaming Commission (the "Commission") allows to hold a gaming license. The City appreciates the thoroughness of the Proposed Regulations and has the following comments:

1. The City and Blue Tarp ReDevelopment, LLC ("Blue Tarp") are parties to a Host Community Agreement, as amended (the "HCA"), a copy of which was submitted by Blue Tarp to the Commission in connection with its license application. The HCA requires that any "Transfer", as that term is defined in the HCA, of either the resort casino project or the HCA, be approved by the City subject to certain exceptions (Section 8 of the HCA). The reasons behind this requirement are obvious in that the City conducted a lengthy selection process before choosing Blue Tarp as the company it wished to have develop the resort casino in the City. The City believes that any decision by the Commission to allow a transfer to a gaming license should be made in concert with the City. To do otherwise could result in a situation in which the Commission, following the lengthy approval process set forth in the Proposed Regulations, approves a transfer only to find that the City, in the exercise of its rights under the HCA, does not approve of the transfer.

In addition, the City believes that before any transfer is approved, Blue Tarp must first demonstrate that it is not in default under the HCA and there are no unsatisfied obligations due the City that if not timely satisfied could give rise to an event of default. Without such a condition, the Commission could approve a transfer only to have the HCA go into default shortly thereafter.

Accordingly, on behalf of the City, I am requesting that Proposed Regulation 116.09 be modified to provide that the Commission shall not approve of any transfer : (i) that the host community has a right to approve under its host community agreement, unless the host community has approved such transfer and (ii) unless the transferor demonstrates to the satisfaction of the Commission that there is no current event of default under the host community agreement and no circumstance, with the passage of time, notice or otherwise, that would give rise to an event of default under the host community agreement.

2. Proposed Regulation 129.01 (2) allows a proposed transferee to petition the Commission to reopen a host community agreement, provided that the modifications are not inconsistent with regulation 205 CMR 127.00: Reopening Mitigation Agreements. In reviewing 205 CMR 127.00, it would appear that the only time a petition to reopen a host community agreement is permitted is under the limited circumstances of 205 CMR 127.03 (2). The reason for such process of petitioning to reopen a host community agreement is to cover the specific situation in which a government approval necessitates that the host community agreement be amended and the parties to the host community agreement cannot agree to the terms of the amendment or are not permitted to amend the agreement. My concern is that read literally, Proposed Regulation 129.01 (2) could be interpreted to allow a proposed transferee to petition the Commission to amend any provision of a host community agreement. To make sure that the intent of Proposed Regulation 129.01 (2) is clear, I am requesting that Proposed Regulation 129.01 (2) provide that a proposed transferee may petition the Commission to modify a host community agreement only under the specific circumstance of regulation 205 CMR 127.03 (2).

Very truly yours,

TAFT STETTINIUS & HOLLISTER LLP


Michael J. Schaller

MJS/dja/15369352.1
Enclosure

cc: Kevin Kennedy
Ed Pikula, Esq.



Legal Division

Amended Small Business Impact Statement

The Massachusetts Gaming Commission (“Commission”) hereby files this amended small business impact statement in accordance with G.L. c.30A, §5 relative to the proposed amendments in 205 CMR 102.00: Construction and Application; 205 CMR 116.00: Persons Required to be Licensed or Qualified; and new regulation 205 CMR 129.00: Review of a Proposed Transfer of Interests, for which a public hearing was held on February 11, 2016. These amendments and new regulation were developed as part of the process of promulgating regulations governing the operation of gaming establishments in the Commonwealth. These amendments and new regulation govern the requirements and procedures for transferring any interest held in a gaming license or gaming establishment. These regulations are largely governed by G.L. c.23K, §§ 2, 4(37), 5, 12, 14, and 16.

These amendments and new regulation apply directly to the gaming licensees and/or any prospective transferees and accordingly are unlikely to have an impact on small businesses. In accordance with G.L. c.30A, §5, the Commission offers the following responses on whether any of the following methods of reducing the impact of the proposed regulation on small businesses would hinder achievement of the purpose of the proposed regulation:

1. Establishing less stringent compliance or reporting requirements for small businesses:

As a general matter, no small businesses will be impacted by these regulations. Accordingly, there are no less stringent compliance or reporting requirements for small businesses.

2. Establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses:

There are no schedules or deadlines for compliance or reporting requirements for small businesses created by these regulations.

3. Consolidating or simplifying compliance or reporting requirements for small businesses:

There are no compliance or reporting requirements for small businesses.



Massachusetts Gaming Commission

4. Establishing performance standards for small businesses to replace design or operational standards required in the proposed legislation:

There are no performance standards for small businesses to replace design or operational standards required in the proposed regulations.

5. An analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the Commonwealth:

These regulations merely construct an infrastructure by which the Commission may evaluate proposed transfers of interest. In comparison to other gaming jurisdictions, these provisions are more likely to encourage new business in the Commonwealth.

6. Minimizing adverse impact on small businesses by using alternative regulatory methods:

These regulations do not create any adverse impact on small businesses.

Massachusetts Gaming Commission
By:

Cecelia M. Porché
Paralegal
Legal Division

Dated: _____



Massachusetts Gaming Commission

205 CMR: MASSACHUSETTS GAMING COMMISSION

205 CMR 134.00: LICENSING AND REGISTRATION OF EMPLOYEES, VENDORS, JUNKET ENTERPRISES AND REPRESENTATIVES, AND LABOR ORGANIZATIONS

134.12: Temporary Licenses

(1) Temporary Licenses for Employees

(a) Upon petition to the Commission by a gaming licensee, the Commission may issue a temporary license to an applicant for a key gaming employee license ~~or; a gaming employee license, or a gaming vendor license~~ if:

1. the applicant for a key gaming employee license; ~~or a gaming employee license, or a gaming vendor license~~ has filed a completed application with the commission **and has submitted all of the required disclosure forms; and**

2. there is no preliminary evidence of anything that would serve to disqualify the applicant from licensure nor is there any other reason known at the time why a positive determination of suitability may not ultimately be achieved, in accordance with the criteria listed in G.L. c. 23K, §§ 12 and 16, and/or 205 CMR 134.10;

3. a preliminary review of the applicant does not reveal information that may require further investigation; and

4. the gaming licensee certifies, and the Commission finds, that the issuance of a temporary license is necessary for the operation of the gaming establishment and is not designed to circumvent the normal licensing procedures.

(b) Unless otherwise stated by the Commission, a temporary license issued in accordance with 205 CMR 134.12 shall expire six months from the date of its issuance and may be renewed, at the discretion of the Commission, for an additional six-month period.

~~(2) Standard of Review. A Temporary license may be issued upon a finding that the license is reasonably likely to be issued upon completion of the investigation.~~

(2) Temporary Licenses for Gaming Vendors

(a) Upon petition to the commission by a gaming licensee, the commission may issue a temporary license to an applicant for a gaming vendor license if:

1. the applicant for a gaming vendor license has filed a completed application with the commission and has submitted all of the required disclosure forms;

2. there is no preliminary evidence of anything that would serve to disqualify the applicant from licensure nor is there any other reason known at the time why a positive determination of suitability may not ultimately be achieved, in accordance with the criteria listed in G.L. c. 23K, §§ 12 and 16, and/or 205 CMR 134.10; and

3. a preliminary review of the applicant does not reveal information that may require further investigation.

(b) Unless otherwise stated by the commission, a temporary gaming vendor license issued under this section shall expire upon issuance of the full license or upon suspension or revocation of the temporary license, and in any event no later than the term of the license as set forth in 205 CMR 134.16(1).

REGULATORY AUTHORITY

205 CMR 134: M.G.L. c. 23K, §§ 3, 12, 16, 30 and 31



Legal Division

Amended Small Business Impact Statement

The Massachusetts Gaming Commission (“Commission”) hereby files this amended small business impact statement in accordance with G.L. c.30A, §5 relative to the proposed amendment in 205 CMR 134.00: Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations; for which a public hearing was held on February 11, 2016. These amendments were developed as part of the process of promulgating regulations governing the operation of gaming establishments in the Commonwealth. The amendments to 205 CMR 134.12 allows the Commission to issue temporary licenses for gaming employees and gaming vendors upon submission of required documents, preliminary review to determine whether there are any disqualifiers or know reasons why suitability may not be found, and provided that no further information requiring further investigation is found. This amendment also removes the existing 12 month expiration date for temporary vendor licenses. These regulations are largely governed by G.L. c.23K, §§ 3, 12, 16, 30 and 31.

These amendments apply directly to the gaming employees and gaming vendors. These amendments were designed to streamline the licensing process to get individuals to work and allow gaming licensees to do business with vendors quickly without compromising licensing standards at the temporary licensing stage. To the extent that a gaming vendor is a small business, small businesses may be impacted with submission of required documents and information. In accordance with G.L. c.30A, §5, the Commission offers the following responses on whether any of the following methods of reducing the impact of the proposed regulation on small businesses would hinder achievement of the purpose of the proposed regulation:

1. Establishing less stringent compliance or reporting requirements for small businesses:

There are no compliance or reporting requirements for small businesses created by this regulation unless they elect to pursue a temporary license as a gaming vendor. In that event, this amendment was designed to streamline the licensing process to get individuals to work and allow gaming licensees to do business with vendors quickly without compromising licensing standards at the temporary licensing stage. Accordingly, there would be minimal impact to compliance and reporting requirements.

2. Establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses:



Massachusetts Gaming Commission

There are no schedules or deadlines for compliance or reporting requirements for small businesses created by this regulation unless they elect to pursue a temporary license as a gaming vendor. In that event, this amendment was designed to streamline the licensing process to get individuals to work and allow gaming licensees to do business with vendors quickly without compromising licensing standards at the temporary licensing stage. Accordingly, there would be minimal impact to schedules or deadlines for compliance or reporting requirements.

3. Consolidating or simplifying compliance or reporting requirements for small businesses:

There are no compliance or reporting requirements for small businesses created by this regulation unless they elect to pursue a temporary license as a gaming vendor. In that event, this amendment was designed to streamline the licensing process to get individuals to work and allow gaming licensees to do business with vendors quickly without compromising licensing standards at the temporary licensing stage. Accordingly, there would be minimal impact to compliance and reporting requirements.

4. Establishing performance standards for small businesses to replace design or operational standards required in the proposed legislation:

There are no performance standards for small businesses to replace design or operational standards required in the proposed regulations. As a general matter, the procedures for granting a temporary license must be prescriptive in nature in order to ensure uniform process.

5. An analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the Commonwealth:

M.G.L. c.23K was enacted to create a new industry in the Commonwealth and to promote and grow local small businesses and the tourism industry, including the development of new small businesses. The proposed regulations, as part of the overall process, are designed to effectuate those intentions and growth.

6. Minimizing adverse impact on small businesses by using alternative regulatory methods:

There are no alternative regulatory methods to minimize adverse impacts on small businesses.



Massachusetts Gaming Commission

Massachusetts Gaming Commission
By:

Cecelia M. Porché
Paralegal
Legal Division

Dated: _____



Massachusetts Gaming Commission

205 CMR: MASSACHUSETTS GAMING COMMISSION

205 CMR 134.00: LICENSING AND REGISTRATION OF EMPLOYEES, VENDORS, JUNKET ENTERPRISES AND REPRESENTATIVES, AND LABOR ORGANIZATIONS

134.16: Term of Licenses

(1) Licenses and registrations issued in accordance with 205 CMR 134.00 shall be valid for the following terms:

(a) Key Gaming Employees. Key Gaming employee licenses shall be for an initial term of ~~three~~ **five** years. The initial term of a key gaming employee license shall expire and be renewable on the last day of the month on the ~~third~~ **fifth** anniversary of the issuance date. Key gaming employee license renewals shall be for a term of three years.

(b) Gaming Employees. Gaming employee licenses shall be for an initial term of ~~three~~ **five** years. The initial term of a gaming employee license shall expire and be renewable on the last day of the month on the ~~third~~ **fifth** anniversary of the issuance date. Gaming employee license renewals shall be for a term of three years.

(c) Gaming Service Employees. Gaming service employee registrations shall be for an initial term of five years. The initial term of a Gaming service employee registration shall expire and be renewable on the last day of the month on the fifth anniversary of the issuance date. Gaming service employee registration renewals shall be for a term of five years.

(d) Gaming Vendors and Gaming Vendor Qualifiers. Gaming vendor licenses and gaming vendor qualifier licenses shall be for an initial term of three years. The initial term of a Gaming vendor license and gaming vendor qualifier license shall expire and be renewable on the last day of the month on the third anniversary of the issuance date. Gaming vendor license and gaming vendor qualifier license renewals shall be for a term of three years.

(e) Non-gaming Vendors. Non-gaming vendor registration shall be for an initial term of five years. The initial term of a Non-gaming vendor license shall expire and be renewable on the last day of the month on the fifth anniversary of the issuance date. Non-gaming vendor registration renewals shall be for a term of five years.

(f) Labor Organizations. Labor organization registrations shall be for an initial term of one year. The initial term of a Labor organization registration shall expire and be renewable on the last day of the month on the first anniversary of the issuance date.

(2) Notwithstanding 205 CMR 134.16(1), licenses and registrations issued in accordance with 205 CMR 134.00 may be issued with a conditional expiration date to coincide with any employment authorization issued by the United States which is less than the term of the license or registration. A license or registration that is issued with such a conditional expiration date may be extended upon the presentation of proof of United States citizenship or authorization to work in the United States beyond the previous expiration date. Provided, however, no expiration date shall be extended beyond the term for which such a license would have been issued in accordance with 205 CMR 134.16(1).

(3) If a licensee or registrant has, in accordance with 205 CMR 134.17, made timely and sufficient application for a renewal, their license or registration shall not expire and the applicant shall remain in good standing until the Bureau has issued a decision on the application. If a renewal application is received after the renewal date and the license expires before the Commission issues a new license, the person shall not be employable nor conduct business with the gaming establishment until a new license is issued.

(4) A license for a person for whom a positive determination of suitability was issued in accordance with 205 CMR 115.05(3) as part of the RFA-1 process and who filed an application in accordance with 205 CMR 134.08(23) in ~~lieu~~ lieu of the complete application for the position for which they seek licensure shall be issued nunc pro tunc to the date of the suitability finding.

(5) All licenses and registrations issued in accordance with 205 CMR 134.00 shall be valid for employment with any Massachusetts gaming licensee.

REGULATORY AUTHORITY

205 CMR 134: M.G.L. c. 23K, §§ 3, 12, 16, 30 and 31



Legal Division

Amended Small Business Impact Statement

The Massachusetts Gaming Commission (“Commission”) hereby files this amended small business impact statement in accordance with G.L. c.30A, §5 relative to the proposed amendments in 205 CMR 134.00: Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations; for which a public hearing was held on February 11, 2016. These amendments were developed as part of the process of promulgating regulations governing the operation of gaming establishments in the Commonwealth. The amendment to 205 CMR 134.16 will increase the initial term of licenses from three years to five years for key gaming employees and gaming employees. These amendments will allow the Commission to efficiently process new license applications for two projected casino openings in 2018 and avoid conflict with current casino license renewals at the same projected period. These regulations are largely governed by G.L. c.23K, §§ 3, 12, 16, 30 and 31.

These amendments apply directly to gaming employees and accordingly are unlikely to have an impact on small businesses. In accordance with G.L. c.30A, §5, the Commission offers the following responses on whether any of the following methods of reducing the impact of the proposed regulation on small businesses would hinder achievement of the purpose of the proposed regulation:

1. Establishing less stringent compliance or reporting requirements for small businesses:

As a general matter, no small businesses will be impacted by these regulations as they apply solely to employees of the gaming establishment. Accordingly, there are no less stringent compliance or reporting requirements for small businesses.

2. Establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses:

There are no schedules or deadlines for compliance or reporting requirements for small businesses created by these regulations.

3. Consolidating or simplifying compliance or reporting requirements for small businesses:

There are no compliance or reporting requirements for small businesses.



Massachusetts Gaming Commission

4. Establishing performance standards for small businesses to replace design or operational standards required in the proposed legislation:

There are no performance standards for small businesses to replace design or operational standards required in the proposed regulations.

5. An analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the Commonwealth:

These regulations apply solely to employees of the gaming establishment and therefore are not likely to deter or encourage the formation of new businesses in the Commonwealth.

6. Minimizing adverse impact on small businesses by using alternative regulatory methods:

There are no alternative regulatory methods to minimize adverse impacts on small businesses.

Massachusetts Gaming Commission

By:

Cecelia M. Porché
Paralegal
Legal Division

Dated: _____



Massachusetts Gaming Commission

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 143.00: GAMING DEVICES AND ELECTRONIC GAMING EQUIPMENT

Section

143.01: Standards for Gaming Devices

(4) ~~If required by the commission, a gaming device~~ **All slot machines and other electronic gaming devices** shall be capable of providing the commission with a near real-time stream of data, other than personally identifiable information, in the communication format specified by the commission in 205 CMR 143.16(1) directly from each slot machine **or electronic gaming device**. Such data shall be provided for purposes of computing and reconciling daily tax obligations as provided in 205 CMR, for purposes of investigating patron disputes filed in accordance with 205 CMR 134.19: Disciplinary Action, and for purposes of maintaining general oversight of a gaming establishment. The commission is not obligated to monitor or review the data on an ongoing basis. If communications between the slot machine and the commission's central ~~control~~ **monitoring** system ~~(if required by the commission)~~ fails, the slot machine shall not continue to operate unless it records all required ~~critical~~ **data from the applicable communication protocol** since losing the connection, up to seven days, and send the data directly to the commission as soon as the connection is reestablished. If the connection is not reestablished within 24 hours due to a problem stemming from the gaming establishment's systems, then any slot machine affected shall cease operation until the connection is reestablished.

143.16: Communications Protocols

(1) **A slot machine or other electronic gaming device in operation in a gaming establishment may operate any industry standard open communication protocol including a Game to System (“G2S”) or Slot Accounting System (“SAS”) protocol provided that the system is fully compatible with the commission’s central monitoring system and all required gaming devices, and is capable of providing all data required by the commission.** A gaming licensee shall not operate any slot machine **or other electronic gaming device** in a gaming establishment unless the slot machine:

- a) is able to bi-directionally communicate with the commission's central ~~control~~ **monitoring** system ~~(if required by the commission)~~;
- b) transmits, on a per bet basis, data relative to amounts wagered, amounts won, cash in, cash out, and similar financial information necessary for tax collection and auditing;
- c) allows remote verification of gaming device software using a SHA-1 or similar hashing system;
- d) allows remotely activating and disabling slot machines; and

- e) transmits data relative to any restarts, shutdowns, resets, game changes, door open, and other maintenance events.

~~(2) A gaming licensee shall not operate any slot machine in a gaming establishment after January 1, 2017 unless that slot machine is able to directly communicate with the commission's central control system (if required by the commission) using the Gaming Standards Association's G2S Message Protocol and Point to point Transport Specification. Provided, however, any slot machine that is registered and operating in a gaming establishment prior to January 1, 2017 may use protocol convertor board, or other similar devices, to communicate with the commission's central control system.~~

~~(3) The required versions of the Gaming Standards Association's G2S Message Protocol and Point to point Transport Specification referenced in 205 CMR 143.16(2), as well as the required protocol options, commands, meters, and events, shall be specified by the commission and posted on the commission's website.~~



Legal Division

SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this small business impact statement in accordance with G.L. c.30A, §2 relative to the proposed amendments in 205 CMR 143.00: Gaming Devices and Electronic Gaming Equipment; notice of which was filed this day with the Secretary of the Commonwealth. These amendments were developed as part of the process of promulgating regulations governing the operation of gaming establishments in the Commonwealth. The amendment to this regulation provides that slot machines and other electronic gaming devices may operate any industry standard open communication protocol provided that the system is fully compatible with the Commission’s central monitoring system and capable of providing all data required by the Commission. The amendment also removes the existing slot machine communication protocol restriction. These regulations are largely governed by G.L. c.23K, §§ 4(28) and 5.

To the extent that a gaming device vendor is a small business, small businesses may be impacted. In accordance with G.L. c.30A, §2, the Commission offers the following responses:

1. Estimate of the number of small businesses subject to the proposed regulation:

There could be approximately 50 licensed gaming device vendors, but a very small percentage, if any, would be classified as a small business. This regulation uniformly applies to all gaming device vendors, regardless if they are a small business.

2. State the projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation:

There are no projected additional reporting, recordkeeping or administrative costs created by these regulations that would affect small businesses as the proposed change expands the universe of allowable communication protocols.

3. State the appropriateness of performance standards versus design standards:

The proposed language is essentially a performance standard in that the rule essentially allows use of any accepted communication protocol.

4. Identify regulations of the promulgating agency, or of another agency or department of the commonwealth, which may duplicate or conflict with the proposed regulation:



Massachusetts Gaming Commission

There are no conflicting regulations in 205 CMR, and the Commission is unaware of any conflicting or duplicating regulations of any other agency or department of the Commonwealth.

5. State whether the proposed regulation is likely to deter or encourage the formation of new businesses in the commonwealth:

G.L. c.23K was enacted to create a new industry in the Commonwealth and to promote and grow local small businesses. The proposed regulations, as part of the overall process, are designed to effectuate those intentions and growth. Though it's unlikely that small businesses will be impacted, this regulation is designed to encourage business activity in the area.

Massachusetts Gaming Commission
By:

Cecelia M. Porché
Paralegal
Legal Division

Dated: _____



Massachusetts Gaming Commission

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 152.00: INDIVIDUALS EXCLUDED FROM A GAMING ESTABLISHMENT

152.04: ~~Duties of the IEB~~ Investigation and Initial Placement of Names on the List

- (1) The IEB shall, ~~on its own initiative, or upon referral by the commission or a gaming licensee,~~ investigate any individual who may meet one or more criterion for inclusion on the list in accordance with 205 CMR 152.03 **upon referral by the commission or a gaming licensee. The IEB may investigate any individual on its own initiative.**
- (2) If, upon completion of an investigation, the IEB determines that an individual meets one or more criterion contained in 205 CMR 152.03 and should be placed on the exclusion list, the IEB shall ~~refer the matter to the commission by way of a report~~ **prepare a preliminary order** that identifies the individual and sets forth a factual basis as to why the IEB believes the individual meets one or more criterion for inclusion on the list in accordance with 205 CMR 152.03.
- (3) **The IEB shall serve the preliminary order prepared in accordance with 205 CMR 152.04(2) upon the named individual advising them that it intends to place the individual's name on the exclusion list. The preliminary order shall serve to notify the individual that placement of their name on the exclusion list will result in their prohibition from being present in a gaming establishment and shall offer them an opportunity to request a hearing before a hearing officer to determine whether the individual meets one or more criterion for inclusion on the list in accordance with 205 CMR 152.03. The preliminary order shall be sent by either first class mail to the individual's last ascertainable address, email, publication in a daily newspaper of general circulation for one week, or via any means reasonably calculated to provide the individual with actual notice. The individual shall have 30 days from the date of the notice to request a hearing, except for notice provided by publication in a newspaper in which case the individual shall have 60 days from the last publication. Alternatively, the IEB may provide an individual with in hand service of the preliminary order in which case the individual shall have 10 days from the date of service to request a hearing.**
- (4) **If a request for a hearing is received from the individual, a hearing shall be scheduled before a hearing officer and notice of such, including the date, time, and issue to be presented, shall be sent to the individual. The hearing shall be conducted in accordance with 205 CMR 101.03. If the hearing officer finds that the individual meets one or more criterion for inclusion on the list in accordance with 205 CMR 152.03 the individual's name shall be placed on the exclusion list. If the hearing officer finds that the individual does not meet any criterion for inclusion on the list, the individual's name shall not be placed on the list and the matter closed.**
- (5) **If no request for a hearing is received within the applicable timeline provided in 205 CMR 152.04(3), the individual's name shall be placed on the exclusion list.**

152.05: Procedure for Entry of Names **Notice and Proceedings Before the Commission**

- (1) ~~The commission shall consider all reports received from the IEB in accordance with 205 CMR 152.04(2) at a public meeting. After review, the commission may place an individual on the exclusion list upon a finding of good cause shown that the individual meets one or more criterion contained in 205 CMR 152.03 and should be excluded from gaming establishments. Prior to placing a name on the list, the commission may, in its discretion, schedule a hearing on the matter and provide the individual notice in accordance with 205 CMR 152.05(2).~~
- (2) Whenever ~~the commission places~~ an individual's name is placed on the list of excluded persons in accordance with 205 CMR 152.05(1)~~04~~, the ~~commission~~ IEB shall promptly serve written notice upon that individual by personal service, registered or certified mail return receipt requested to the last ascertainable address or by publication in a daily newspaper of general circulation for one week. The notice shall contain a description of the cause for the exclusion, notice that the individual is prohibited from being present at and gambling in a gaming establishment, and an explanation of the hearing process and manner in which the individual may request a hearing in accordance with 205 CMR 152.05(3).
- (3) (a) Within 30 days of receipt of service of notice by mail or 60 days after the last publication under 205 CMR 152.05(2), an individual placed on the list of excluded persons may request an adjudicatory hearing before the commission under M.G.L. c. 30A and show cause as to why the individual should be removed from the list of excluded persons. Such request shall be made by the individual in writing. Failure to demand a hearing within the time allotted in 205 CMR 152.05(3)(a) shall preclude the individual from having an administrative hearing, but shall not affect the individual's right to petition for judicial review.
(b) Upon receipt of a demand for hearing, the commission shall set a time and place for the hearing. This hearing shall be held not later than 30 days after receipt of the demand for the hearing, unless the time of the hearing is changed by agreement of the commission and the individual demanding the hearing. The hearing shall be conducted in accordance with 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings*. **Where applicable, the administrative record of the hearing conducted in accordance with 205 CMR 152.04(4) shall be made part of the hearing record.**
(c) If upon completion of the hearing the commission determines that the individual was wrongfully placed on the list of excluded persons, the commission shall remove the individual's name from the list of excluded persons and notify all gaming licensees.
(d) A person aggrieved by a final decision of the commission in an adjudicatory proceeding under 205 CMR 152.05 may petition for judicial review under M.G.L. c. 30A, § 14.
- (4) Upon receipt of notice from a district court that an individual has been prohibited from gaming in gaming establishments in accordance with M.G.L. c. 23K, § 45(i) the commission shall place the name of an individual on the excluded list.

152.07: Duty of Gaming Licensee

- (1) Upon identification, a gaming licensee shall exclude or eject from its gaming establishment any individual who has been placed on the list in accordance with 205 CMR 152.00.
- (2) If an excluded individual enters, attempts to enter, or is in a gaming establishment and is recognized by the gaming licensee, the gaming licensee shall immediately notify the IEB.
- (3) It shall be the continuing duty of a gaming licensee to inform the commission in writing of the names of individuals it believes are appropriate for placement on the exclusion list.
- (4) ~~A gaming licensee shall not market to an individual who has been placed on the list and shall ensure that such individuals are denied access to complimentaries, check cashing privileges, club programs and other similar benefits.~~

A gaming licensee shall submit a written policy for compliance with the exclusion list program for approval by the executive director. The executive director shall review the plan for compliance with 205 CMR 152.00. If approved, notice shall be provided to the commission and the plan shall be implemented and followed by the gaming licensee. The plan for compliance with the exclusion list program shall include at a minimum procedures to:

- (a) Prevent an individual on the exclusion list from entering the gaming establishment;
 - (b) Identify and eject individuals on the list from the gaming establishment if they are able to enter;
 - (c) Remove individuals on the exclusion list from marketing lists and refrain from sending or transmitting to them any advertisement, promotion, or other direct marketing mailing from the gaming establishment more than 30 days after receiving notice from commission that the individual has been placed on the exclusion list;
 - (d) Prevent an individual on the exclusion list from having access to credit, cashless wagering program access, or from receiving complimentary services, check-cashing services, junket participation and other benefits from the gaming establishment;
 - (e) Train employees relative to the exclusion list and the licensee's program.
- (5) The commission may revoke, limit, condition, suspend or fine a gaming licensee if it knowingly or recklessly fails to exclude or eject from its gaming establishment any individual placed by the commission on the list of excluded persons.



205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 133.00: VOLUNTARY SELF-EXCLUSION

133.06: Responsibilities of the Gaming Licensees

A gaming licensee shall have the following responsibilities relative to the administration of the voluntary self-exclusion list:

~~(7) A gaming licensee shall not pay any winnings derived from gaming to an individual who is prohibited from gaming in a gaming establishment under 205 CMR 133.00. Where reasonably possible, the gaming licensee shall confiscate from the individual in a lawful manner, notify a commission agent who shall confiscate, or refuse to pay any such **winnings including jackpot winnings, chips, tokens, machine credits, ticket vouchers, or any other form of winnings whether in the individual's possession or control while on the premises of a gaming establishment or presented for payment.** The monetary value of the confiscated winnings shall be paid to the commission for deposit into the Gaming Revenue Fund within 45 days;~~

A gaming licensee shall not pay any winnings derived from gaming to an individual who is prohibited from gaming in a gaming establishment by virtue of having placed their name on the voluntary self-exclusion list in accordance with 205 CMR 133.00. Winnings derived from gaming shall include, but not be limited to, such things as proceeds derived from play on a slot machine/electronic gaming device and a wager, or series of wagers, placed at a table game.

Where reasonably possible, the gaming licensee shall confiscate from the individual in a lawful manner, or shall notify a commission agent who shall confiscate, or shall refuse to pay any such winnings derived from gaming or any money or thing of value that the individual has converted or attempted to convert into a wagering instrument whether actually wagered or not. A wagering instrument shall include, but not be limited to, chips, tokens, prizes, non-complimentary pay vouchers, electronic credits on a slot machine/electronic gaming device, and vouchers representing electronic credits/TITO slips. The monetary value of the confiscated winnings and/or wagering instrument shall be paid to the commission for deposit into the Gaming Revenue Fund within 45 days;



Massachusetts Gaming Commission



TO: Stephen Crosby, Chairman
Gayle Cameron, Commissioner
Lloyd Macdonald, Commissioner
Bruce Stebbins, Commissioner
Enrique Zuniga, Commissioner

FROM: Alexandra Lightbown, Director of Racing

CC: Edward Bedrosian, Executive Director
Catherine Blue, General Counsel
Doug O'Donnell, Senior Financial Analyst

DATE: February 16, 2016

RE: Sterling Suffolk Racecourse Unclaimed Ticket
("Outs") Payments for 2014

Dear Commissioners:

Massachusetts Gaming Commission Senior Financial Analyst Doug O'Donnell has reviewed the Sterling Suffolk Racecourse request for ticket payments from 2014 with James Alcott, Director of Pari-Mutuel Operations for Sterling Suffolk Racecourse. Mr. O'Donnell has validated the tickets for a total payment of \$1,148.55

Recommendation: That the Commission approve the request of Sterling Suffolk Racecourse for ticket payments from 2014 for a total of \$1,148.55.



Massachusetts Gaming Commission

101 Federal Street, 23rd Floor, Boston, Massachusetts 02110 | TEL 617.979.8400 | FAX 617.725.0258 | www.massgaming.com



TO: Dr. Alex Lightbown, Director of Racing

FROM: Doug O'Donnell, Senior Financial Analyst

CC:

DATE: 01/12/2016

RE: Review of Suffolk Downs payments from 2014 Outs Book

Alex:

I met with James Alcott, Director of Pari-Mutuel Operations at Suffolk Downs on 01/08/2016 to review the request for ticket payments from the 2014 Outs Book. After review of the records I believe that these ticket requests are valid.

The total amount of the request is \$1,148.55.

If you have any questions regarding this matter please let me know.

Thank you,

A handwritten signature in black ink, appearing to read "Doug O'Donnell", written over a white background.

Doug O'Donnell



Massachusetts Gaming Commission



TO: Stephen Crosby, Chairman
Gayle Cameron, Commissioner
Lloyd Macdonald, Commissioner
Bruce Stebbins, Commissioner
Enrique Zuniga, Commissioner

FROM: Alexandra Lightbown, Director of Racing

CC: Edward Bedrosian, Executive Director
Catherine Blue, General Counsel
Douglas O'Donnell, Senior Financial Analyst

DATE: February 16, 2016

RE: Recovery of 2014 Unclaimed Winnings from
Sterling Suffolk Racecourse

Dear Commissioners:

In accordance with Massachusetts General Law Chapter 128A Section 5, Senior Financial Analyst Doug O'Donnell has reviewed the unclaimed winnings from calendar year 2014 at Sterling Suffolk Racecourse and determined that \$267,353.48 (\$268,502.03 total out-\$1,148.55 approved ticket payments) is payable to the Commonwealth of Massachusetts.

Recommendation: That the Commission approve the payment of \$267,353.48 from Sterling Suffolk Racecourse to the Commonwealth of Massachusetts for 2014 unclaimed winnings ("Outs").



Massachusetts Gaming Commission

101 Federal Street, 23rd Floor, Boston, Massachusetts 02110 | TEL 617.979.8400 | FAX 617.725.0258 | www.massgaming.com



Division of Racing

February 18, 2016

Mr. David Lanzilli
Sterling Suffolk Racecourse, LLC
111 Waldemar Avenue
East Boston, Massachusetts 02128

RE: Recovery of Unclaimed Winnings (2014 OUT's)
\$267,353.48

Dear Mr. Lanzilli:

In accordance with General Laws of Massachusetts, Chapter 128A, Section 5A, (Recovery of winnings upon wagers; actions; unclaimed winnings; disposition; notice of limitation) unclaimed winnings on wagers are payable to the Commonwealth within ninety days after December 31 of the year following the year in which the wager was made. We have reviewed Sterling Suffolk Racecourse's outstanding ticket accounts for calendar year 2014 and determined \$267,353.48 (\$268,502.03 Total Out's - \$1,148.55 approved ticket payments) is payable before April 1, 2016. Please make payment to the Commonwealth of Massachusetts.

Under Chapter 139, Section 10 (live) and Section 20 (simulcasts), "subject to rules and regulations established by the commission, the commission shall deposit unclaimed wagers into the purse accounts of the racing meeting licensee that generated those unclaimed tickets". Accordingly, this money will be returned to you and must be applied to purses Sterling Suffolk Racecourse.

Sincerely,

Douglas A. O'Donnell
Senior Financial Analyst

Cc: Commissioners



Massachusetts Gaming Commission



TO: Stephen Crosby, Chairman
Gayle Cameron, Commissioner
Lloyd Macdonald, Commissioner
Bruce Stebbins, Commissioner
Enrique Zuniga, Commissioner

FROM: Alexandra Lightbown, Director of Racing

CC: Edward Bedrosian, Executive Director
Catherine Blue, General Counsel
Douglas O'Donnell, Senior Financial Analyst

DATE: February 16, 2016

RE: Recovery of 2014 Unclaimed Winnings from
Wonderland Greyhound Park

Dear Commissioners:

In accordance with Massachusetts General Law Chapter 128A Section 5, Senior Financial Analyst Doug O'Donnell has reviewed the unclaimed winnings from calendar year 2014 for Wonderland Greyhound Park and determined that \$21,651.19 is payable to the Commonwealth of Massachusetts.

Recommendation: That the Commission approve the payment of \$21,651.19 from Wonderland Greyhound Park to the Commonwealth of Massachusetts for 2014 unclaimed winnings ("Outs").



Massachusetts Gaming Commission

101 Federal Street, 23rd Floor, Boston, Massachusetts 02110 | TEL 617.979.8400 | FAX 617.725.0258 | www.massgaming.com



Division of Racing

February 18, 2016

Mr. David Lanzilli
Wonderland Greyhound Park
111 Waldemar Avenue
East Boston, Massachusetts 02128

RE: Recovery of Unclaimed Winnings (2014 OUT's)
\$21,651.19

Dear Mr. Lanzilli:

In accordance with General Laws of Massachusetts, Chapter 128A, Section 5A, (Recovery of winnings upon wagers; actions; unclaimed winnings; disposition; notice of limitation) unclaimed winnings on wagers are payable to the Commonwealth within ninety days after December 31 of the year following the year in which the wager was made. We have reviewed Wonderland Greyhound Park's outstanding ticket accounts for calendar year 2014 and determined \$21,651.19 is payable before April 1, 2016. Please make payment to the Commonwealth of Massachusetts.

Sincerely,

A handwritten signature in black ink, appearing to read "D. A. O'Donnell", written over a white background.

Douglas A. O'Donnell
Senior Financial Analyst

Cc: Commissioners



Massachusetts Gaming Commission

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TO: Stephen Crosby, Chairman
Gayle Cameron, Commissioner
Lloyd Macdonald, Commissioner
Bruce Stebbins, Commissioner
Enrique Zuniga, Commissioner

FROM: Alexandra Lightbown, Director of Racing

CC: Edward Bedrosian, Executive Director
Catherine Blue, General Counsel
Douglas O'Donnell, Senior Financial Analyst

DATE: February 16, 2016

RE: Recovery of 2014 Unclaimed Winnings from
Plainridge Racecourse

Dear Commissioners:

In accordance with Massachusetts General Law Chapter 128A Section 5, Senior Financial Analyst Doug O'Donnell has reviewed the unclaimed winnings from calendar year 2014 at Plainridge Racecourse and determined that \$136,716.99 is payable to the Commonwealth of Massachusetts.

Recommendation: That the Commission approve the payment of \$136,716.99 from Plainridge Racecourse to the Commonwealth of Massachusetts for 2014 unclaimed winnings ("Outs").



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Division of Racing

February 18, 2016

Mr. Stephen O'Toole
General Manager
Plainville Racecourse
301 Washington Street
Plainville, Massachusetts 02762

RE: Recovery of Unclaimed Winnings (2014 OUT's)
\$136,716.99

Dear Mr. O'Toole:

In accordance with General Laws of Massachusetts, Chapter 128A, Section 5A, (Recovery of winnings upon wagers; actions; unclaimed winnings; disposition; notice of limitation) unclaimed winnings on wagers are payable to the Commonwealth within ninety days after December 31 of the year following the year in which the wager was made. We have reviewed Plainville Racecourse's outstanding ticket accounts for calendar 2014 and determined \$136,716.99 is payable before April 1, 2016. Please make payment to the Commonwealth of Massachusetts.

Under Chapter 139, Section 10 (live) and Section 20 (simulcasts), "subject to rules and regulations established by the commission, the commission shall deposit unclaimed wagers into the purse accounts of the racing meeting licensee that generated those unclaimed tickets". Accordingly, this money will be returned to you and must be applied to purses at Plainville Racecourse.

Sincerely,

Douglas A. O'Donnell
Senior Financial Analyst

Cc: Commissioners



Massachusetts Gaming Commission

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TO: Stephen Crosby, Chairman
Gayle Cameron, Commissioner
Lloyd Macdonald, Commissioner
Bruce Stebbins, Commissioner
Enrique Zuniga, Commissioner

FROM: Alexandra Lightbown, Director of Racing

CC: Edward Bedrosian, Executive Director
Catherine Blue, General Counsel
Douglas O'Donnell, Senior Financial Analyst

DATE: February 16, 2016

RE: Recovery of 2014 Unclaimed Winnings from
Raynham/Taunton/Massasoit Greyhound
Associations

Dear Commissioners:

In accordance with Massachusetts General Law Chapter 128A Section 5, Senior Financial Analyst Doug O'Donnell has reviewed the unclaimed winnings from calendar year 2014 at Raynham/Taunton/Massasoit Greyhound Associations and determined that \$156,505.69 is payable to the Commonwealth of Massachusetts.

Recommendation: That the Commission approve the payment of \$156,505.69 from Raynham/Taunton/Massasoit Greyhound Associations to the Commonwealth of Massachusetts for 2014 unclaimed winnings ("Outs").



Massachusetts Gaming Commission

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Division of Racing

February 18, 2016

Mr. George Carney
Taunton Dog Track / Massasoit Greyhound Association
P. O. Box 172
Raynham, Massachusetts 02767

RE: Recovery of Unclaimed Winnings (2014 OUT's)
\$156,505.69

Dear Mr. Carney:

In accordance with General Laws of Massachusetts, Chapter 128A, Section 5A, (Recovery of winnings upon wagers; actions; unclaimed winnings; disposition; notice of limitation) unclaimed winnings on wagers are payable to the Commonwealth within ninety days after December 31 of the year following the year in which the wager was made. We have reviewed Taunton Dog Track / Massasoit Greyhound Association's outstanding ticket accounts for calendar year 2014 and determined \$156,505.69 is payable before April 1, 2016. Please make payment to the Commonwealth of Massachusetts.

Sincerely,

A handwritten signature in black ink, appearing to read "D. A. O'Donnell", written over a horizontal line.

Douglas A. O'Donnell
Senior Financial Analyst

Cc: Commissioners



Massachusetts Gaming Commission



Legal Division

SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this small business impact statement in accordance with G.L. c.30A, §2 relative to the proposed amendments in 205 CMR 3.00: Harness Horse Racing; notice of which was filed this day with the Secretary of the Commonwealth. These amendments were developed as part of the process of promulgating regulations governing horse racing in the Commonwealth. The amendments to this regulation update the helmet requirements, eliminate Stanazolol, and change the thresholds for Nandrolone and Ketoprofen to comply with the Racing Commissioners International (“RCI”) regulations. These regulations are largely governed by G.L. c. 128A § 9.

The Commission has identified the following groups that may be impacted by these amendments: licensed racehorse trainers, jockeys, drivers, and Veterinarians. In accordance with G.L. c.30A, §2, the Commission offers the following responses:

1. Estimate of the number of small businesses subject to the proposed regulation:

There are approximately 300 licenses issued annually for the identified groups above, however, a very small percentage would be classified as a small business.

2. State the projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation:

There are no projected reporting, recordkeeping or administrative costs created by these regulations that would affect small businesses.

3. State the appropriateness of performance standards versus design standards:

The amendments implicate a performance and design standard. To bring the regulations into conformance with national standards, the Commission is adopting the RCI standards.

4. Identify regulations of the promulgating agency, or of another agency or department of the commonwealth, which may duplicate or conflict with the proposed regulation:

There are no conflicting regulations in 205 CMR, and the Commission is unaware of any conflicting or duplicating regulations of any other agency or department of the Commonwealth.



Massachusetts Gaming Commission

5. State whether the proposed regulation is likely to deter or encourage the formation of new businesses in the commonwealth:

G.L. c. 128A § 9 was enacted to promote the horse racing industry in the Commonwealth. The proposed regulations, as part of the overall process, are likely to encourage new business.

Massachusetts Gaming Commission
By:

Cecelia M. Porché
Paralegal
Legal Division

Dated: _____



Massachusetts Gaming Commission



Legal Division

SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this small business impact statement in accordance with G.L. c.30A, §2 relative to the proposed amendments in 205 CMR 4.00: Rules of Horse Racing; notice of which was filed this day with the Secretary of the Commonwealth. These amendments were developed as part of the process of promulgating regulations governing horse racing in the Commonwealth. The amendments to this regulation update the helmet requirements, eliminate Stanazolol, and change the thresholds for Nandrolone and Ketoprofen to comply with the Racing Commissioners International (“RCI”) regulations. These regulations are largely governed by G.L. c. 128A § 9.

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The amendments implicate a performance and design standard. To bring the regulations into conformance with national standards, the Commission is adopting the RCI standards.

4. Identify regulations of the promulgating agency, or of another agency or department of the commonwealth, which may duplicate or conflict with the proposed regulation:

There are no conflicting regulations in 205 CMR, and the Commission is unaware of any conflicting or duplicating regulations of any other agency or department of the Commonwealth.



Massachusetts Gaming Commission

5. State whether the proposed regulation is likely to deter or encourage the formation of new businesses in the commonwealth:

G.L. c. 128A § 9 was enacted to promote the horse racing industry in the Commonwealth. The proposed regulations, as part of the overall process, are likely to encourage new business.

Massachusetts Gaming Commission
By:

Cecelia M. Porché
Paralegal
Legal Division

Dated: _____



Massachusetts Gaming Commission