



MASSACHUSETTS GAMING COMMISSION MEETING

May 1, 2014
10:30 a.m.

Boston Convention and Exhibition Center
415 Summer Street, Room 102-A
Boston, MA



Massachusetts Gaming Commission



UPDATED

NOTICE OF MEETING and AGENDA

May 1, 2014

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, May 1, 2014
 10:30 a.m. – 5:00 p.m.
 Boston Convention and Exhibition Center
 415 Summer Street, Room 102A
 Boston, MA

PUBLIC MEETING - #118

1. Call to order
2. Determine the premises of the gaming establishment for which Mohegan Sun Massachusetts, LLC seeks approval in its RFA-2 application.
3. Determine the premises of the gaming establishment for which Wynn MA, LLC seeks approval in its RFA-2 application.
 - In anticipation of the May 1, 2014 discussion by the Commission, public comment is hereby requested essentially in the form of legal briefs or memoranda relative to agenda items 2 and 3.
 - The briefs should be prepared so as to assist the Commission in its discussion of agenda items 2 and 3 referenced above. Any individual or group may submit a brief relative to one or both of the aforementioned agenda items. The briefs should state the reasons for the position(s) taken, identify supporting legal authorities, and include any sworn affidavits, authenticated documents, and other relevant evidence not otherwise included in an RFA-2 application. Briefs shall be limited to 15 pages exclusive of attachments.
 - Initial briefs are due by **April 17, 2014 at 5 p.m.** All briefs, including any affidavits and other documents submitted with the briefs, will be posted on www.massgaming.com the day after the due date.
 - Any individual or group may submit a reply brief by **April 24, 2014 at 5 p.m.** An individual or group need not have submitted an initial brief to submit a reply brief. A reply brief, however, may only address specific issues that were addressed in a brief submitted by another individual or group. Reply briefs shall be limited to 10 pages exclusive of attachments. All reply briefs, including any affidavits and other documents submitted with the reply briefs, will be posted on www.massgaming.com the day after the due date.
 - A brief or reply brief may be submitted by way of mail or hand delivery to the Commission's office or via email at catherine.blue@state.ma.us and todd.grossman@state.ma.us. No briefs or reply briefs will be accepted or considered if received by the Commission after the submission deadline.
 - At any time before conclusion of the May 1, 2014 meeting the Commission may request the City of Boston or the applicants or any other individual or group to provide the Commission with documents or other information the Commission believes would be helpful in determining the location of the proposed gaming establishments.



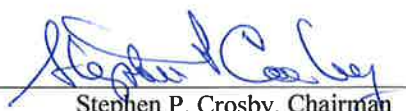
Massachusetts Gaming Commission

- The City of Boston and the Region A applicants for a gaming license will be invited to offer an oral presentation to the Commission at the public meeting on May 1, 2014 if they have submitted a brief or reply brief. The Commission may invite any other individual or group that has filed a brief or reply brief to make an oral presentation at the public meeting. No person or group will be permitted to address the Commission relative to agenda items 2 and 3 unless they have submitted a brief. Oral presentations should be confined to the subject areas contained in the brief and/or reply brief submitted by the individual or group.
 - Speakers representing a municipality or applicant will be allotted 30 minutes for oral presentation. All other speakers will be allotted 15 minutes. The Commission may allow a speaker more time if helpful to clarify an issue. A group may split its allotted speaking time amongst multiple speakers.
 - In reviewing the issues before it, the Commission may ask any question(s) of any individual and review and consider any document or other source of information. For purposes of the record of the meeting, the Commission will take notice of the contents of the RFA-2 applications submitted by Mohegan Sun Massachusetts, LLC and Wynn MA, LLC.
 - After discussion by the Commission, the Commission will announce its determination as to whether the City of Boston is a host community for each of the two proposals. After the conclusion of the hearing, the Commission will issue written findings that describe the respective gaming establishments for the projects the applicants have proposed.
4. Approval of Minutes
 - a. March 6, 2014
 - b. April 17, 2014
 5. Administration – Rick Day, Executive Director
 - a. General Update
 - b. High Performance Project Scope Consideration – Commissioner Cameron
 - c. Potential Changes to 23K and Legislation – Chairman Crosby
 - d. Request for Comment on Design Excellence
 6. Legal Report – Todd Grossman, Deputy General Counsel
 - a. New Qualifiers Regulations – Rick Day, Executive Director
 7. Information Technology Division – John Glennon, CIO
 - a. Slots Standards and Approval Process Regulations
 8. Other business – reserved for matters the Chair did not reasonably anticipate at the time of posting.

Any matters on the agenda for May 1, 2014 that the Commission does not address at the May 1st meeting will be addressed at the May 2, 2014 meeting scheduled for 10:30 a.m. at the Boston Convention and Exhibition Center, 415 Summer Street, Room 102A, Boston, MA.

I certify that on this date, this Notice was posted as “Gaming Commission Meeting” at www.massgaming.com and emailed to: regs@sec.state.ma.us, melissa.andrade@state.ma.us.

4/28/14
(date)


Stephen P. Crosby, Chairman

Date Posted to Website: April 28, 2014 at 10:30 a.m.



Massachusetts Gaming Commission

THE COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS GAMING COMMISSION

Re: Consolidated Proceedings:)
City of Boston’s “Declarations” for)
Host Community Status Regarding)
Gaming Establishments Proposed)
by Mohegan Sun Massachusetts, LLC)
and Wynn MA, LLC)
_____)

**WYNN MA, LLC’S PRE-HEARING MEMORANDUM ON
THE PREMISES OF THE GAMING ESTABLISHMENT FOR WHICH
WYNN MA, LLC SEEKS APPROVAL IN ITS RFA-2 APPLICATION**

Wynn MA, LLC (“Wynn”) respectfully submits this pre-hearing memorandum to the Massachusetts Gaming Commission (the “Commission”) in support of its position on the following agenda item for determination by the Commission on May 1, 2014: “Determine the premises of the gaming establishment for which Wynn MA, LLC seeks approval in its December 31, 2013 RFA-2 application.”

I. PROCEDURAL HISTORY

At its September 4, 2013 public meeting, the Commission heard presentations from the City of Boston (“Boston”) and Wynn MA, LLC (“Wynn”) on the issue of whether Boston should be determined to be a host community to the Wynn applicant. *See* Exhibit 1: Transcript of September 4, 2013 Massachusetts Gaming Commission Public Meeting #76.^{1/} At that public meeting, the Commission stated – and Boston agreed – that the key to determining host community status is the applicant’s site plan.^{2/}

^{1/} Exhibits cited in this Memorandum are attached to the Affidavit of Jennifer Mather McCarthy.
^{2/} *See* Exhibit 1, p. 29: 2-7.

At that public meeting, Wynn provided a detailed site plan which demonstrated that the entire gaming establishment proposed by Wynn is located in Everett. Wynn pledged that no structures or amenities, gaming or nongaming are planned for Boston.^{3/}

In light of the site plan and the pledge by Wynn, the Commission asked the parties to meet and come to a resolution quickly on the issue of whether or not Boston is a host community.^{4/} The Commission stated that if a resolution wasn't possible by the end of the week, the Commission would resolve the issue by an adjudicatory process.^{5/}

Two days after the public meeting, on September 6, 2013, the City of Boston and Wynn issued the following Joint Statement:

“Based on new information provided at Wednesday’s public meeting, the parties have agreed to begin discussions about Boston’s status as a Surrounding Community to address impacts that Wynn’s proposed Gaming Establishment would have on Boston generally and on the Charlestown community specifically, and therefore no adjudicatory hearing of the Massachusetts Gaming Commission is necessary on the question of whether Boston is a Host Community.”

See Exhibit 2: Joint Statement between the City of Boston and Wynn.^{6/}

On December 31, 2013, Wynn submitted its RFA-2 Application for a Category 1 License. Wynn acknowledged Boston as a surrounding community in its RFA-2 Application, and confirmed this directly to Boston in its January 8, 2013 letter. See Wynn’s RFA-2 Application, filed on December 31, 2013, p. 196 and 5-15-01 and Exhibit 3: January 8, 2014 Letter.^{7/} Thereafter, on January 13, 2014, Boston filed a petition with the Gaming Commission which, among other things, sought designation as a surrounding community.

See Exhibit 4: January 13 Boston Petition. By letter dated January 16, 2014, Wynn assented

^{3/} See Exhibit 1, p. 68: 4-17.

^{4/} See Exhibit 1, pp. 80-81.

^{5/} See Exhibit 1, p. 82: 6-16.

^{6/} A copy of this document is also attached to the Affidavit of Jacqui Krum (“Krum Affidavit”) at Exhibit B.

^{7/} A copy of this document is also attached to the Krum Affidavit at Exhibit C.

to Boston's petition insofar as it sought designation as a surrounding community. *See* Exhibit 5: Letter from Jacqui Krum to Elizabeth Della Russo, dated January 16, 2014.^{8/}

On March 19, 2014, Boston submitted a Declaration of the City of Boston of Status as a Host Community within Region A Pursuant to M.G.L. 23K, §2, Regarding the Wynn MA, LLC Casino Applicant (the "Declaration"). *See* Exhibit 6: Boston Declaration. There is no provision in the Gaming Act for a community to declare itself a host community. Under the Gaming Act, host community status is determined by the applicant: the host community is the municipality where the applicant proposes to locate its gaming establishment. *See* M.G.L. c. 23K, §2.

On April 3, 2014, in response to that Declaration, the Commission published a hearing format and process to resolve Boston's declared host community status. Specifically, the Commission scheduled a public meeting on May 1, 2014 at which the Commission would determine "the premises of the *gaming establishment* for which Wynn MA, LLC seeks approval in its RFA-2 application." In advance of the Commission's May 1, 2014 public meeting, the Commission requested public comment relative to the agenda item.

Since the September 4 Hearing and the September 6 Joint Statement, there has been no change in the facts relevant to the location of Wynn's gaming establishment. The gaming establishment proposed by Wynn is still and always has been located entirely within the City of Everett. As such, Boston's assertion that it is a host community should be rejected and Boston's status as a surrounding community should be again confirmed.

II. THE PREMISES OF WYNN'S GAMING ESTABLISHMENT FOR WHICH IT SEEKS APPROVAL IN ITS RFA-2 APPLICATION IS LOCATED ENTIRELY IN EVERETT.

The Massachusetts Gaming Act, M.G.L. c. 23K, provides the following definitions:^{9/}

^{8/} A copy of this document is also attached to the Krum Affidavit at Exhibit D.

^{9/} "When a statute's language is plain and unambiguous, we afford it its ordinary meaning." *Commonwealth v. Keefner*, 461 Mass. 507, 511 (2012). "In addition, a statute must be construed so that effect is given to all its

“Host community”, a municipality in which a gaming establishment is located or in which an applicant has proposed locating a gaming establishment.

“Gaming establishment”, the premises approved under a gaming license which includes a gaming area and any other nongaming structure related to the gaming area and may include, but shall not be limited to, hotels, restaurants or other amenities.

“Surrounding communities”, municipalities in proximity to a host community which the commission determines experience or are likely to experience impacts from the development or operation of a gaming establishment, including municipalities from which the transportation infrastructure provides ready access to an existing or proposed gaming establishment.

M.G.L. c. 23K, §2.

Under the Gaming Act, a “host community” is defined as “a municipality in which a gaming establishment *is located* or in which an applicant has *proposed locating* a gaming establishment.” The Legislature made clear that the operative fact to determine host community status is the location of the gaming establishment proposed by the applicant. *See* M.G.L. c. 23K, §2. As stated above, Commissioner McHugh confirmed this at the public meeting held on September 4, 2013, when he stated that the applicant’s site plan is key to the determination of host community status:

COMMISSIONER MCHUGH: It would be helpful perhaps in some ways, but the site plan, it seems to me, for determining whether [Boston is] a host community or not is the key, is it not? Can we all agree on that?

COUNSEL FOR BOSTON: Yes.

See Exhibit 1, p. 29: 2-7.

Wynn has proposed locating its gaming establishment in Everett and solely in Everett.^{10/}

Question 4-79 of the RFA-2 Application specifically asks about the applicant’s site plan:

provisions, so that no part will be inoperative or superfluous,” *id.*, and so that the statute is read as a “harmonious whole.” *Connors v. Annino*, 460 Mass. 790, 796 (2011).

^{10/} *See* Wynn’s RFA-2 Application, filed on December 31, 2013, p. 110 and 4-04-01, 4-04-02, 4-05-01, 4-05-02, 4-05-03, 4-05-04, 4-06-01, 4-79-01.

“Provide documentation showing the location of the proposed gaming establishment, including amenities and significant structures, which shall include the address, maps, book and page numbers from the appropriate registry of deeds, assessed value of the land at the time of application and ownership interests over the past 20 years, including all interests, options, agreements in property and demographic, geographic and environmental information.”

See Exhibit 7: Question 4-79 of Wynn’s RFA-2 Application at p. 182. Wynn’s response to Question 4-79 is stated below:

The Wynn Resort in Everett is located on an approximately 33.9 acre site (the “Project Site”) located on Horizon Way off Lower Broadway (Route 99) in Everett, Massachusetts. Please see Attachments 4-79-02 USGS Locus and 4-79-03 Registry of Deeds for a legal description of the Project Site. The Project Site is comprised of approximately 25.6 acres of upland and 8.3 acres below mean high water on the Mystic River that was previously part of the Monsanto chemical manufacturing facility. The Project Site is currently undeveloped and is utilized in part as a materials storage yard. Please see Attachment 4-79-04 Locus Aerial.

As demonstrated from Wynn’s site plan presented in its answer to Question 4-79 and the accompanying attachments, Wynn’s entire gaming establishment is located in Everett.^{11/}

Under the Gaming Act, “gaming establishment” is defined as “the premises approved under a gaming license which includes a gaming area and any other nongaming structure related to the gaming area and may include, but shall not be limited to, hotels, restaurants or other amenities.” M.G.L. c. 23K, §2.

The word “premises” is not defined in the Gaming Act. “In the absence of a statutory definition . . . we first look to [the word’s] usual and accepted meaning . . . We derive such meaning ‘from sources presumably known to the statute’s enactors, such as their use in other legal contexts and dictionary definitions.’” *Commonwealth v. O’Keefe*, 48 Mass. App. Ct. 566, 567 (2000) (citations omitted); see also *Commonwealth v. Meuse*, 10 Mass. L. Rep. 661,*4-5

^{11/} See Wynn’s RFA-2 Application, filed on December 31, 2013, p. 182 and 4-79-01, 4-79-02, 4-79-03, 4-79-04, 4-05-01, attached hereto as Exhibits 8, 9, 10, 11, and 12.

(1999) (van Gestel, J.) (turning to dictionary definition where relevant statute, General Laws and published cases did not contain a definition of the word “tattoo”).

There are a few possible definitions of the word “premises.” Merriam-Webster’s Collegiate Dictionary defines “premises” as “a building and the land it is on.”^{12/} In normal real estate parlance, the word “premises” or “leased premises” is used to describe the actual space within a building leased to a tenant whereas “mortgaged premises” is used to describe the real property pledged to secure an obligation. Looking to the plain and unambiguous language of the statute, Wynn asserts that “the premises of the gaming establishment” is meant to describe the *gaming area* and all other *non-gaming structures* related to the gaming area. See M.G.L. c. 23K, §2. In Wynn’s case, this includes the gaming area, hotel, amphitheater, pavilion, restaurants, bars and lounges, nightclubs, spas, meeting and convention spaces and retail spaces.

This interpretation is supported by the Commission’s use of a different term, “gaming establishment site,” to describe an area greater than the “gaming establishment” in the RFA-2 Application.^{13/} For example, Question 4-4 of the RFA-2 Application asks: “Provide a color rendering of the gaming establishment and all structures located on the *gaming establishment site*.” See Exhibit 13: Question 4-4 of Wynn’s RFA-2 Application at p. 110. Question 4-11 of the RFA-2 Application asks, “Describe the restaurants, retail spaces, bars, lounges and other non-gaming amenities located within the boundaries of the *gaming establishment site*, along with the names of their proposed operators.” See Exhibit 14: Question 4-11 of Wynn’s RFA-2 Application at p. 115. The Commission’s use of the term “gaming establishment site” in the RFA-2 Application evidences the Commission’s intent to distinguish between the broader term “gaming establishment site,” which includes the land owned by the Applicant upon which it

^{12/} See Merriam-Webster’s Collegiate Dictionary, 11th Edition (2009).

^{13/} The term “gaming establishment site” does not appear in the Gaming Act or Regulations.

proposes to build its gaming establishment, and the more narrow term “gaming establishment,” which includes the gaming area and other non-gaming *structures* related to the gaming area.

However, the difference in these definitions is of no import in this situation. Wynn asserts that the “premises of the gaming establishment” is meant to include the gaming area and other non-gaming structures related to the gaming area. *See* M.G.L. c. 23K, §2. A broader interpretation of the word “premises” would also include other non-structure “amenities” such as the harbor walk, docks and internal roadways on the land. An even broader definition of premises would include the buildings and other non-structure “amenities” described above *and* the land identified in Wynn’s Answer 4-79-01 on which the buildings and other non-structure “amenities” are located. Even if the Commission uses the most expansive definition of “premises” to include not only the gaming area and all other non-gaming structures related to the gaming area as specified by the Gaming Act, but also all of the land owned by the Applicant – which Wynn contends is not the definition intended by the Legislature – all of this land is in Everett; none is in Boston.

Because Everett is the “municipality in which [Wynn] has proposed locating its gaming establishment,” Everett is the host community.

III. WYNN’S RESPONSE TO ARGUMENTS ADVANCED BY THE CITY OF BOSTON.

Based on statements made in Boston’s Declaration and at the March 20, 2014 public meeting, Wynn understands that Boston makes three arguments to support its position that it is a host community to the gaming establishment proposed by Wynn. First, Boston makes a general, non-specific argument that it is a host community because Boston is a “crucial component” and a “key selling point” to Wynn’s project.^{14/} Second, Boston argues that it is a host community

^{14/} *See* Exhibit 6.

because Wynn's agreements with TD Garden and the Boston Symphony Orchestra constitute providing "amenities" of the gaming establishment in Boston. Third, Boston argues that it is a host community because the Wynn development accesses the project through the City of Boston.^{15/} All of these arguments fail. Wynn will address each of these anticipated arguments separately.

A. THE GAMING ESTABLISHMENT'S PROXIMITY TO BOSTON DOES NOT MAKE THE CITY OF BOSTON PART OF THE GAMING ESTABLISHMENT.

In its Declaration, Boston contends that it is a host community because the City of Boston is the "crucial component" and "a key selling point" of Wynn's proposed gaming establishment.^{16/} Boston further argues that it is a host community because "Wynn is dependent on Boston's airport, bus and rail service, harbor tunnels, roadways and other means of transportation."^{17/} Under the Gaming Act, a "host community" is "a municipality in which a gaming establishment is located or in which an applicant has proposed locating a gaming establishment." The fact that Boston is a "key selling point" has no bearing on whether or not Boston is a host community. Boston does not and cannot argue that Wynn has *proposed locating* a gaming establishment in Boston, which is the only fact relevant to host community status. If the Legislature had intended for Boston to be a host community to all or certain proposed gaming establishments because it is the capital city of Massachusetts and includes an airport and other important cultural institutions and attractions, the Gaming Act would reflect that. Here, the plain and unambiguous language of the statute makes clear that the host community is defined by the proposed location of the gaming establishment, which is entirely in Everett.

^{15/} See Exhibit 6.

^{16/} See Exhibit 6.

^{17/} See Exhibit 6.

On the other hand, a “surrounding community” is defined as a “municipalit[y] *in proximity to a host community* which the commission determines experience or are likely to experience impacts from the development or operation of a gaming establishment, including municipalities from which the transportation infrastructure provides *ready access* to an existing or proposed gaming establishment.” M.G.L. c. 23K, §2. Because Boston is in proximity to Wynn’s proposed gaming site, Boston’s transportation infrastructure provides ready access to Wynn’s proposed gaming site, and Boston will likely be impacted by Wynn’s gaming establishment, Boston is by definition a surrounding community.

Further, Boston’s status as a surrounding community has been established many times. As stated above, after appearing before the Commission on this issue in September, Boston conceded its host community claims and agreed to pursue surrounding community negotiations with Wynn. Accordingly, Wynn acknowledged Boston as a surrounding community in its RFA-2 Application, and confirmed this directly to Boston in its January 8, 2013 letter. Thereafter, on January 13, 2014, Boston filed a petition with the Gaming Commission which, among other things, sought designation as a surrounding community. By letter dated January 16, 2014, Wynn assented to Boston’s petition insofar as it sought designation as a surrounding community.

B. WYNN’S CROSS-MARKETING AGREEMENTS WITH TD GARDEN AND THE BOSTON SYMPHONY ORCHESTRA DO NOT MAKE THE CITY OF BOSTON PART OF THE PREMISES OF THE GAMING ESTABLISHMENT.

At the Commission’s public meeting held on March 20, 2014, Boston made the over-reaching argument that Wynn’s agreements with TD Garden and the Boston Symphony Orchestra (“BSO”) constitute providing “amenities” of the gaming establishment in Boston. This argument is baseless. The Gaming Act addresses this issue, defining “gaming establishment” to include “a gaming area and any other *nongaming structures* related to the

gaming area and may include, but shall not be limited to, hotels, restaurants or other amenities.” M.G.L. c. 23K, §2. Cross-marketing agreements are addressed elsewhere in the statute and have no relevance to determining the location of a proposed gaming establishment.

In an effort to follow the requirements of the Gaming Act that applicants must specifically promote local businesses and cultural and social facilities, Wynn has entered into cross-marketing and promotional sponsorship agreements with the BSO and TD Garden. See Exhibit 15: Boston Symphony Orchestra Agreement and Exhibit 16: Letter from Delaware North Companies, Inc. – Boston.^{18/} Even under the most expansive definition of “amenities,” Boston’s argument fails. Here, neither the BSO nor TD Garden is a “nongaming *structure* related to the gaming area.” The BSO and TD Garden are not hotels or restaurants, and they are not “amenities” related to the gaming area, such as a spa, pavilion or amphitheater. Further, Wynn does not own the BSO or TD Garden; Wynn has no control over these entities.

Question 4-11 of the RFA-2 Application asks about non-gaming amenities, “Describe the restaurants, retail spaces, bars, lounges and other non-gaming amenities located within the boundaries of the gaming establishment site, along with the names of their proposed operators.” See Question 4-11 of Wynn’s RFA-2 Application at p. 115, attached hereto as Exhibit 14. In its response to Question 4-11, Wynn described the various nongaming amenities located within the boundaries of the gaming establishment site, including restaurants, bars and lounges, Wynn Spas, Wynn nightclubs, and meeting and convention spaces.

Moreover, Boston’s argument conflicts with both the general business development purpose of the Gaming Act, including specifically promoting local businesses and cultural and social facilities, and the evaluation criteria set forth in §18 of the Act. See M.G.L. c. 23K, §§1(6)

^{18/} Copies of these documents are also attached to the Krum Affidavit at Exhibits E and F.

and 18. Specifically, §18 of the Act states that the applicant will be judged on how its application proposes to advance:

- (2) promoting local businesses in host and surrounding communities, including developing cross-marketing strategies with local restaurants, small businesses, hotels, retail outlets and impacted live entertainment venues; and
- (5) building a gaming establishment of high caliber with a variety of quality amenities to be included as part of the gaming establishment and operated in partnership with local hotels and dining, retail, and entertainment facilities so that patrons experience the diversified regional tourism industry.

M.G.L. c. 23K, §18.

Here, the plain and unambiguous language of the statute makes clear that the Legislature did not want the casinos to compete with and stifle local business but rather cooperate and partner with those businesses to expand economic development. The Legislature intended cross-marketing partnership agreements with local businesses. Wynn's "agreements" with the BSO and TD Garden are examples of exactly what the Legislature intended and desired, and in fact are a criterion upon which Wynn's application will be evaluated by the Commission. Boston's argument that cross-marketing partnership agreements confer host community status on the city or town where an applicant's cross-marketing business partner happens to be located is totally without merit.

C. ACCESS TO THE GAMING ESTABLISHMENT SITE VIA HORIZON WAY DOES NOT MAKE THE CITY OF BOSTON PART OF THE GAMING ESTABLISHMENT.

As an initial matter, Wynn's December 31, 2013, RFA-2 application showed access to Wynn's proposed gaming establishment site in Everett. See Exhibit 12: Conceptual Site Plan.^{19/} Wynn assumes, therefore, that Boston's argument is based on Wynn's alternate access plan,

^{19/} A copy of this document is also attached to the Krum Affidavit at Exhibit A.

which was submitted as part of its RFA-2 application in its Draft Environmental Impact Report (“DEIR”) at Figure 4-45. See Exhibit 17: Figure 4-45, Alternate Access Plan. Under that alternate access plan, access to the proposed gaming establishment site would be via Horizon Way.^{20/}

Citing *Beale v. Planning Board of Rockland*, 423 Mass. 690 (1996), Boston argues that the access road to Wynn’s “development” takes on the casino use, and as a result, the access road is part of the gaming establishment.^{21/} The *Beale* case holds that use of land in one zoning district to create a new access road to another zoning district is prohibited where the road would provide access to uses that would themselves be barred if they had been located in the first zoning district. In such a situation, the access is considered to be in the same use as the parcel to which access leads. Boston’s argument fails for three reasons. First, the *Beale* case is a zoning case and has no bearing on the determination of the location of the premises of Wynn’s proposed gaming establishment as defined in M.G.L. 23K, §2. Second, the Legislature is presumed to be aware of the prior state of the law and therefore the Gaming Act trumps the *Beale* case. See *Commonwealth v. Vega*, 449 Mass. 227, 231 (2007). Third, if Boston’s argument is for zoning approval, it is irrelevant to its status under the Gaming Act and it conflicts directly with the Gaming Act which establishes a specific statutory scheme to allow gaming use in the Commonwealth, which requires zoning compliance in the host community only.

^{20/} Horizon Way (formerly Chemical Lane) is an existing private way, approximately 400 feet long and 50 feet wide, which begins at Route 99 at the Everett/Boston line and runs in an easterly direction to a dead end in Everett abutting the gaming establishment site. Route 99 is called Broadway in Everett and Alford Street in Boston. For the first approximately 150 feet from the Route 99 intersection, the Everett/Boston boundary essentially bisects the way. The way then continues into Everett for an additional approximately 250 feet terminating between the proposed gaming establishment site and the MBTA Everett Shops property. In 1985, the Massachusetts Department of Public Works on behalf of the City of Boston took as a city highway a portion of the way around the intersection at Route 99 within the Boston municipal boundary. The City of Boston Street Book contains no reference to Horizon Way or Chemical Lane. See Affidavit of Daniel Gaquin, attached hereto as Exhibit 18.

^{21/} In its Declaration, Boston states, “The Wynn development accesses the project through the City of Boston, including the only access being a private way off of the City of Boston roadway.” See Exhibit 6.

1. *Beale* is a Zoning Case and has no Bearing on the Location of the Premises of Wynn’s Proposed Gaming Establishment.

The *Beale* case does not and cannot alter the boundaries of Wynn’s project site or change the location of the gaming establishment, which is the only fact relevant to host community status. *See* M.G.L. 23K, §2. Wynn’s proposed gaming establishment site is currently accessed via Horizon Way, which is an existing private way. A small portion of Horizon Way is located in Boston, and a smaller segment within the portion in Boston at the intersection of Route 99 is a public way. Horizon Way is not part of Wynn’s gaming establishment or the gaming establishment site.

If Horizon Way is used for access to the gaming establishment site, this does not make Boston part of the premises of the gaming establishment. To the contrary, this fact puts Boston squarely within the definition of a surrounding community. As stated above, under the Gaming Act, a “surrounding community” is defined as a “municipalit[y] in proximity to a host community which the commission determines experience or are likely to experience impacts from the development or operation of a gaming establishment, including municipalities from which the transportation infrastructure provides *ready access* to an existing or proposed gaming establishment.” M.G.L. c. 23K, §2. Horizon Way, a road that starts in Everett and Boston and then continues into Everett “provides ready access” to Wynn’s gaming establishment site located in Everett.

In *Beale*, the developer required planning board approval under MA Subdivision Control Law (SCL) in Rockland because it was creating a new private road and under the SCL planning boards have general authority to ensure consistency with zoning. Here, unlike *Beale*, Horizon Way is an existing road and the only approval required from Boston to expand the way, if any, is approval from the Public Improvements Commission, which does not have general zoning

authority. Further, the fact that the state has accepted a significant portion of the area of Horizon Way within Boston as a public way means it approves general access for all uses, and the “road taking on the use” argument should not apply.

Moreover, even if *Beale* requires zoning approval from Boston – and Wynn contends it does not – this would not make Boston part of the gaming establishment and it would not make Boston a host community. It simply means the project would need another approval. The Wynn project will require many permits and approvals for off-site improvements in other municipalities, and that does not make those municipalities host communities.

2. The Legislature is Presumed to Be Aware of *Beale*.

“The Legislature is presumed to be aware of the prior state of the law as explicated by the decisions of [the] court.” *See Commonwealth v. Vega*, 449 Mass. 227, 231 (2007). In *Vega*, the court interpreted G.L. c. 112, §172 – which marks as confidential communications to an “allied mental health . . . professional” – as creating an evidentiary privilege for such communications. *Id.* at 227. Among other things, the court reasoned that, when enacting the statute, “the Legislature was aware that similar language in a cognate statute had been interpreted as creating a privilege.” *Id.* at 231 (referencing *Commonwealth v. Collett*, 387 Mass. 424 (1982) (interpreting G.L. c. 112, §135 as creating an evidentiary privilege for communications with social workers). *Cf. Commonwealth v. Colutri*, 448 Mass. 809 (2007) (“We also presume that when the Legislature amends a statute it is “aware of the prior state of the law as explicated by the decisions of this court. . .” (citation omitted)). Under *Vega*, the Legislature is presumed to be aware of *Beale* when it enacted the Gaming Act. Therefore, the Gaming Act, supersedes the *Beale* case, and the determination of gaming establishment and host community status will be defined by the plain, unambiguous language of the statute, not the holding of a prior zoning case.

3. Boston's Argument for Zoning Approval Conflicts Directly with the Gaming Act.

Finally, if Boston's argument is for zoning approval, it is irrelevant to its status under the Gaming Act and conflicts directly with the Gaming Act which establishes a specific statutory scheme to allow gaming use in the Commonwealth and that scheme only requires zoning compliance in the host community. Where a specific statute conflicts with a more general statute, the specific statute should prevail. *See Alliance to Protect Nantucket Sound, Inc. v. Dep't of Pub. Utils.*, 461 Mass. 166, 184 (2011); *see also Jaworski v. Earth Removal Board of Millville*, 35 Mass. App. Ct. 795 (1994). This is particularly true if the specific statute was enacted after the more general statute. *See Nantucket Sound*, 461 Mass. at 184. Here, the Gaming Act's specific statutory scheme to allow gaming in the Commonwealth should supersede general municipal zoning laws.


IV. CONCLUSION

For the foregoing reasons, Wynn respectfully requests that the Commission confirm that Wynn's gaming establishment is entirely in Everett and reject Boston's assertion that it is a host community, thereby confirming Boston's status as a surrounding community.

Respectfully submitted,

WYNN MA, LLC

By its Attorneys,


 Samuel M. Starr, Esq. BBO #477353
 Jennifer M. McCarthy, Esq. BBO #673185
 Mintz, Levin, Cohen, Ferris,
 Glovsky and Popeo, P.C.
 One Financial Center
 Boston, MA 02111
 Tel. 617-348-4467

Dated: April 17, 2014

THE COMMONWEALTH OF MASSACHUSETTS

MASSACHUSETTS GAMING COMMISSION

Re: Consolidated Proceedings:)
 City of Boston’s “Declarations” for)
 Host Community Status Regarding)
 Gaming Establishments Proposed)
 by Mohegan Sun Massachusetts, LLC)
 and Wynn MA, LLC)
)
)
)

AFFIDAVIT OF DANIEL GAQUIN

I, Daniel Gaquin, hereby declare, based on personal knowledge, as follows:

1. I am a member at the law firm Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., and am counsel of record for the Wynn MA, LLC (“Wynn”) in the above captioned action.

2. I submit this affidavit in support of Wynn’s position on the agenda item for determination by the Commission on May 1, 2014: “Determine the premises of the gaming establishment for which Wynn MA, LLC seeks approval in its December 31, 2013 RFA-2 application.”

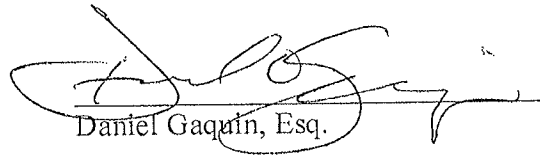
3. The description of Horizon Way contained in Footnote #20 is based on a land survey plan entitled “Compiled Plan of Land Horizon/Broadway, Everett/Boston, MA,” prepared by Feldman Professional Land Surveyors, dated March 11, 2013.

4. The taking referenced in footnote #20 is evidenced by Massachusetts Department of Public Works Layout No. 6609 and Order of Taking, dated January 16, 1985, recorded with the Suffolk County Registry of Deeds in Book 11394, Page 325, and shown on Sheet 5 of that certain plan recorded therewith entitled “The Commonwealth of Massachusetts Plan of Road in

the City of Boston, Suffolk County, Altered and Laid Out as a City Highway by the Department of Public Works, Scale: 20 Feet to the Inch.”

5. The City of Boston Street Book can be found at <http://cityofboston.gov/publicworks/streetbook>.

Signed under the penalties of perjury, this 16th day of April, 2014.



Daniel Gaquin, Esq.

THE COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS GAMING COMMISSION

_____)
Re: Consolidated Proceedings:)
City of Boston’s “Declarations” for)
Host Community Status Regarding)
Gaming Establishments Proposed)
by Mohegan Sun Massachusetts, LLC)
and Wynn MA, LLC)
_____)

AFFIDAVIT OF JACQUI KRUM

I, Jacqui Krum, hereby declare, based on personal knowledge, as follows:

1. I am Senior Vice President and General Counsel for Wynn Resorts Development, LLC.
2. I submit this affidavit in support of Wynn MA, LLC’s (“Wynn’s”) position on the agenda item for determination by the Commission on May 1, 2014: “Determine the premises of the gaming establishment for which Wynn MA, LLC seeks approval in its December 31, 2013 RFA-2 application.”
3. Exhibit A to this affidavit is a true and accurate copy of Wynn’s conceptual site plan, which was submitted as part of its RFA-2 application.
4. Wynn’s entire proposed gaming establishment is located in Everett, Massachusetts; no part is located in Boston.
5. At the September 4, 2013 Massachusetts Gaming Commission public meeting, Wynn stated that no structures or amenities, gaming or non-gaming are planned for Boston.
6. Two days after the September 4, 2013 public meeting, on September 6, 2013, the City of Boston and Wynn issued a Joint Statement, stating that “[T]he parties have agreed to

begin discussions about Boston's status as a surrounding community...and therefore no adjudicatory hearing of the Massachusetts Gaming Commission is necessary on the question of whether Boston is a Host Community." A copy of the Joint Statement is attached hereto as Exhibit B.

7. Wynn acknowledged Boston as a surrounding community in its RFA-2 application, and confirmed this directly to Boston in a letter dated January 8, 2013. A true and accurate copy of the letter is attached hereto as Exhibit C.

8. In addition, by letter dated January 16, 2013, Wynn assented to Boston's petition seeking designation as a surrounding community. A true and accurate copy of the letter is attached hereto as Exhibit D.

9. The gaming establishment proposed by Wynn is still and always has been located entirely within the City of Everett.

10. All of the land to be owned by the Wynn applicant is in the City of Everett.

11. In an effort to follow the requirements of Gaming Act that applicants must specifically promote local businesses and cultural and social facilities, Wynn has entered into cross-marketing and promotional sponsorship agreements with the Boston Symphony Orchestra ("BSO") and TD Garden/Delaware North Companies, Inc. – Boston ("TD Garden").

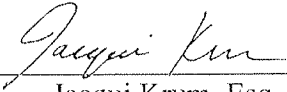
12. Wynn does not own the BSO or TD Garden.

13. Wynn does not control the BSO or TD Garden.

14. Exhibit E to this affidavit is a true and accurate copy of the agreement between Wynn and the BSO, dated December 4, 2013.

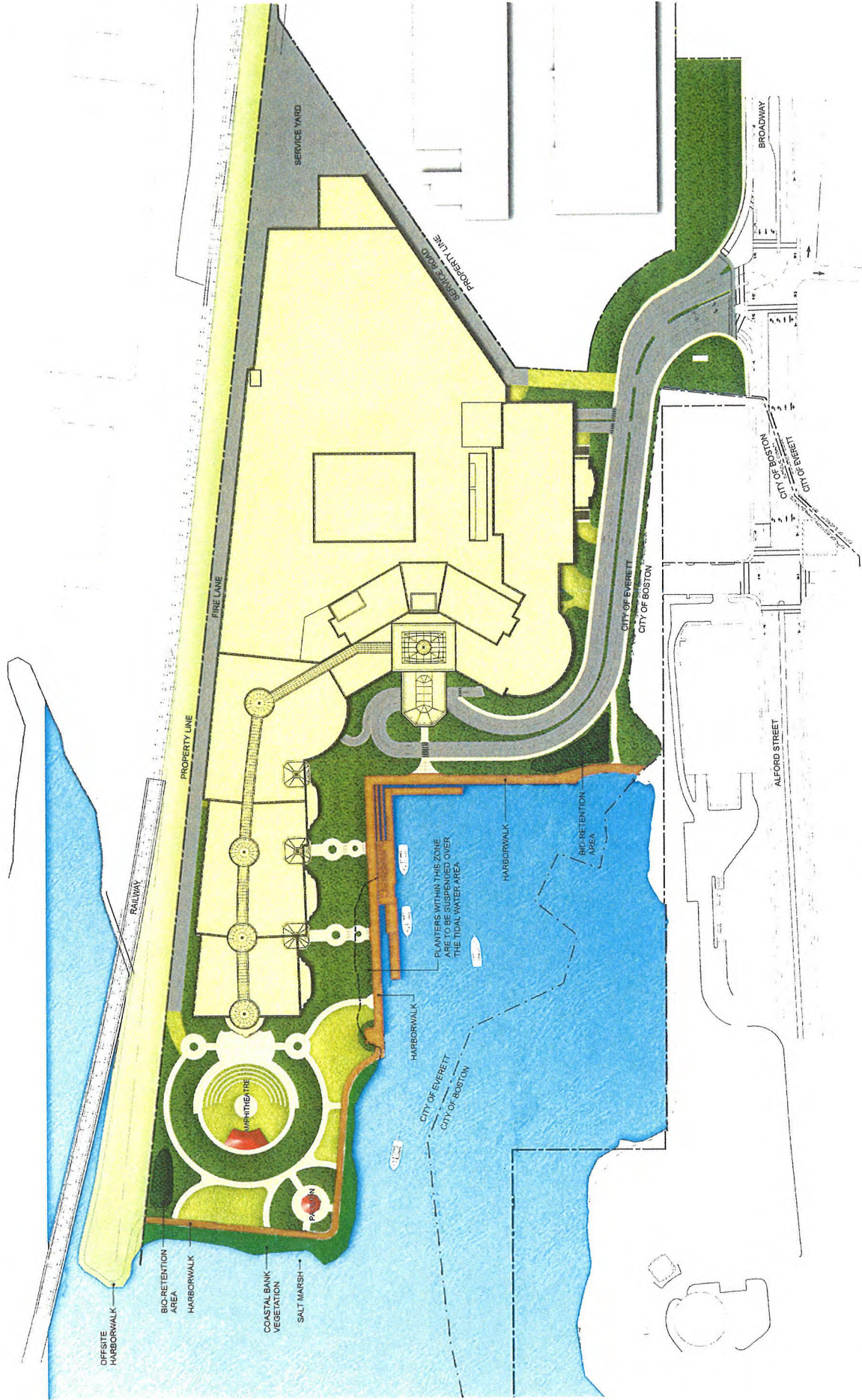
15. Exhibit F to this affidavit is a true and accurate copy of the letter from Delaware North Companies, Inc. – Boston to Catherine Blue regarding the cross-marketing agreement between Wynn and Delaware North Companies, Inc. – Boston, dated April 17, 2014.

Signed under the penalties of perjury, this 17th day of April, 2014.



Jacqui Krum, Esq.

EXHIBIT A



Wynn Everett
Everett, Massachusetts

Conceptual Site Plan
Source: Wynn Design & Development, 2013

EXHIBIT B

1 you've got something for us?

2 MR. ZIEMBA: Yes, Mr. Chairman, I'm
3 very pleased to provide a report that has been
4 provided, a joint statement between both the
5 Wynn Development team and the city of Boston.

6 CHAIRMAN CROSBY: Thank you. The
7 Ombudsman just gave me this. This, as he said,
8 is a joint statement from both Boston and the
9 Wynn team.

10 Based on the new information
11 provided at Wednesday's public meeting, the
12 parties have agreed to begin discussions about
13 Boston's status as a surrounding community to
14 address the impacts that Wynn's proposed gaming
15 establishment would have on Boston generally
16 and on the Charlestown community specifically.
17 And therefore no adjudicatory hearing of the
18 Massachusetts Gaming Commission is necessary on
19 the question of whether Boston is a community.

20 That's great. I am delighted. I am
21 pleased that they were able to get together and
22 agree to this. As far as I'm concerned, we
23 move onto other topics.

24 COMMISSIONER MCHUGH: Yes. It's an

EXHIBIT C



January 8, 2014

Mayor Martin Walsh
One City Hall Square
Boston, MA 02201

Dear Mayor Walsh:

Pursuant to 205 CMR 125.01(1)(a)1. of M.G.L. c. 23K, Wynn MA, LLC designated the City of Boston a "surrounding community" in its response to the Massachusetts Gaming Commission's RFA-2 Application for a Category 1 Gaming License, a copy of which was delivered to your office on December 31, 2013.

To obtain a final surrounding community designation, the City of Boston must assent to this designation in writing within ten (10) days of its receipt of the application. Upon receipt of the written assent, the Gaming Commission shall issue a written notice designating the City as a surrounding community to the Wynn Resort in Everett. To confirm the City of Boston's acceptance of this designation, please countersign this letter and return a copy to me and the Massachusetts Gaming Commission on or before January 10, 2014.

If you have any questions, please do not hesitate to contact me at (702) 770-7558 or via e-mail at jacqui.krum@wynnresorts.com.

Very Truly Yours,

A handwritten signature in cursive script that reads "Jacquie Krum".

Jacqui Krum
Senior Vice President and General Counsel

cc: john.s.ziemba@state.ma.us
Elizabeth.DelloRusso@cityofboston.gov

Received, Acknowledged and Confirmed

City of Boston, Mayor Martin Walsh

EXHIBIT D



January 16, 2014

Elizabeth Dello Russo,
Senior Assistant Corporation Counsel
City of Boston
Boston City Hall, Room 620
Boston, MA 02201

Re: Boston's Petition Regarding Surrounding
Community Designation By Wynn MA, LLC ("Wynn")

Dear Ms. Dello Russo:

The purpose of this letter is first to acknowledge the City of Boston's petition to the Massachusetts Gaming Commission ("MGC") dated January 13, 2014 which, in part, requests designation as a "surrounding community" to the proposed Wynn Resort in Everett. Wynn is pleased to assent to the petition insofar as it requests designation as a surrounding community.

I am also writing to clarify and correct some of the misstatements and misunderstandings reflected in the City of Boston's recent petitions to the MGC regarding Wynn's designation of Boston as a surrounding community.

First, Wynn had already designated Boston as a surrounding community. Wynn's intention to designate Boston was clearly identified in its RFA-2 application and the actual designation was confirmed by written notice to Mayor Martin Walsh dated January 8, 2014. You were in receipt of that notice by e-mail before the first of the City's petitions was sent to the Commission on January 9, 2014. There is no flaw in Wynn's RFA-2 in this regard and no corrective amendment to Wynn's application is required. The RFA-2 question to which you refer in the City's petitions asked Wynn to identify all municipalities that "the applicant wishes to designate as a surrounding community ... with which no surrounding community agreement has been executed as of the time filing of [the] application." Wynn correctly identified Boston as a municipality meeting these criteria.

Second, Everett is the sole host community to the Wynn project. The host community is the municipality in which an applicant proposes to locate a gaming establishment. Wynn proposes to locate a gaming establishment solely in Everett. Nothing has changed in this regard since our hearing with the MGC last summer, after which Boston dropped its host community claims and agreed to engage in surrounding community discussions. While we appreciate the RFA-2 application is voluminous, the information relevant to the location of Wynn's proposed gaming establishment, the site plan, is a one-page document and is dispositive of Everett being the sole host community for the Wynn project.



Please note that this is same site plan our consultants discussed in the Mayor's office on January 7, 2014, when, at your suggestion, our consultants specifically identified the Boston/Everett municipal boundary relative to the location of Wynn's proposed gaming establishment premises (again, located entirely in Everett) for the Mayor and his new team. A copy of the site plan is also enclosed herewith.

Third, we disagree with the assertion that Wynn has failed to provide adequate information regarding the Wynn project or that it needs to be compelled to cooperate with the City of Boston. There have been many productive and informative meetings between our respective teams and consultants, including the recent meeting with Mayor Walsh and his team on January 7th. Additionally, as noted in your petitions, Wynn has in fact recently delivered volumes of information to the City of Boston in the form of the DEIR and RFA-2 application. Wynn will continue to cooperate with and inform the City of Boston about its project.

As you know from the January 7th meeting, Wynn is eager to commence substantive surrounding community negotiations with Mayor Walsh's new team and we are confident we can reach a mutually acceptable and beneficial surrounding community agreement.

Sincerely,

A handwritten signature in cursive script that reads "Jacquie Krum".

Jacqui Krum
Senior Vice President and General Counsel
Wynn Resorts Development, LLC

cc. John S. Ziemba, Ombudsman (john.s.ziemba@state.ma.us)
Stephen Tocco

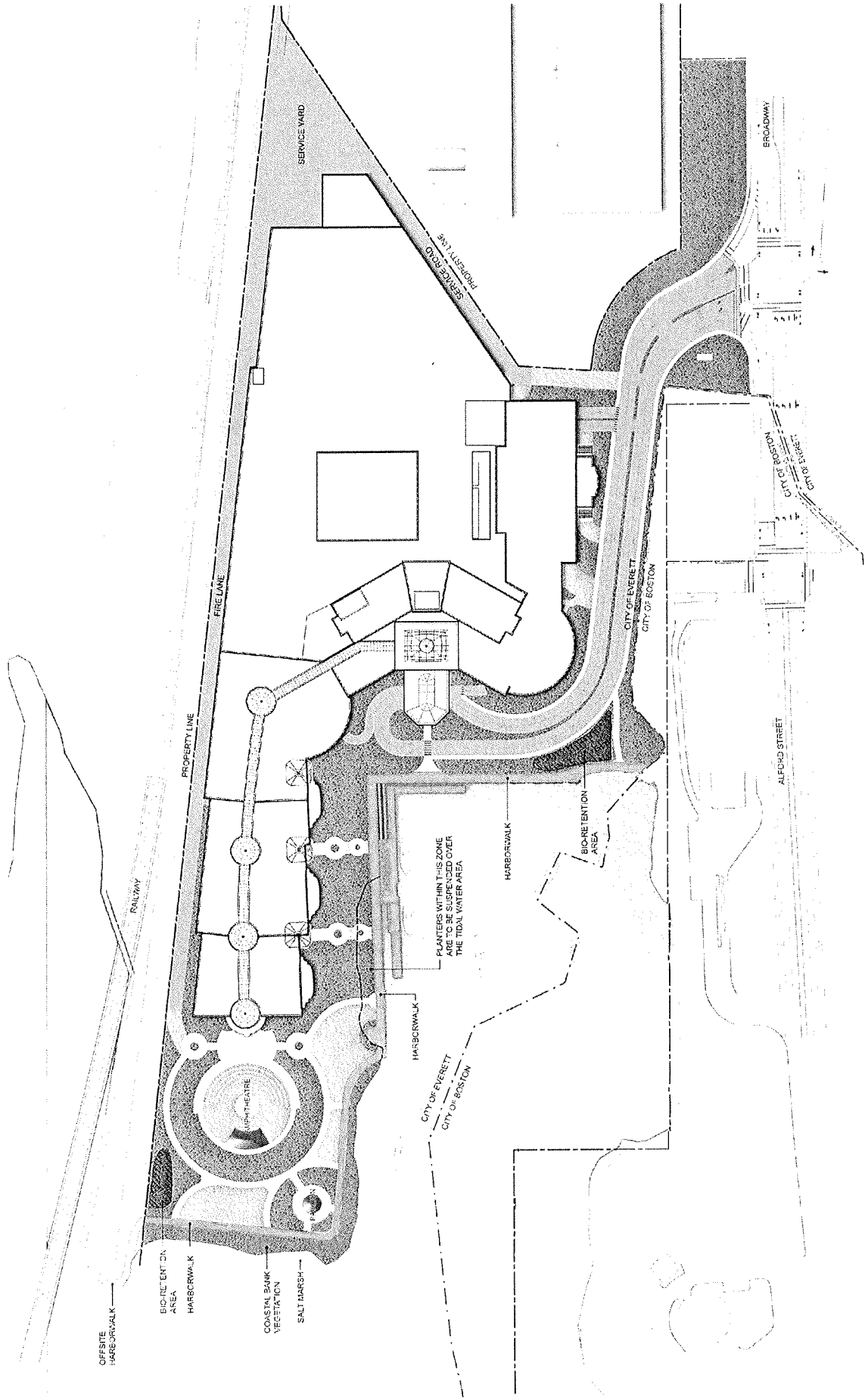


EXHIBIT E

LETTER OF INTENT

This Letter of Intent (this "LOI") is entered into as of December 4, 2013 (the "Effective Date") between Wynn MA, LLC, with an address of 3131 Las Vegas Blvd. South, Las Vegas, NV 89109 ("Wynn"), and the Boston Symphony Orchestra, Inc. with an address of Symphony Hall, 301 Massachusetts Avenue, Boston, MA 02115 ("BSO"). Wynn and BSO may be referred to herein singularly as a "Party" and collectively, as the "Parties".

RECITALS

A. Wynn is in the process of preparing and submitting a response(s) to a Request for Proposal and/or any variations thereof (collectively, the "Proposal Process") issued by the Massachusetts Gaming Commission in connection with Wynn's proposed integrated gaming facility to be located in the City of Everett, Massachusetts (the "Project").

B. The Parties have initiated and wish to further discuss a co-promotional relationship with BSO in connection with the Project.

AGREEMENT

NOW THEREFORE in consideration of the recitals, covenants and other provisions set forth in this LOI, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged the parties agree as follows:

1. **Purpose.** The Parties agree to exercise good faith efforts to discuss a contractual relationship ("Relationship") for co-promotional activities including, without limitation, the following: (i) Wynn will be a "Chairman's Circle Sponsor" for the December 12, 2013, A Company Christmas at Pops; (ii) Wynn will host a reception for BSO artists and other participants following the performance by Keith Lockhart and the Boston Pops Esplanade Orchestra at The Smith Center in Las Vegas on November 17, 2013; (iii) subject to obtaining a license to develop the Project, Wynn will sponsor the 2014 A Christmas at Pops at a mutually agreed upon sponsorship level; (iv) subject to obtaining a license to develop the Project, Wynn will sponsor the 2015 A Christmas at Pops at a mutually agreed upon sponsorship level; and (v) following the opening of the Project to the public, the Parties would enter into an agreement for further sponsorships and/or group ticket purchases.

2. **Other Agreements.** Notwithstanding the foregoing, the Parties acknowledge and agree that this LOI does not confer any obligation on either Party to enter into further agreements with the other with respect to the Project. No binding agreements shall exist between the Parties for any purpose until a final, definitive, fully negotiated agreement for a Relationship has been executed and delivered by both Parties. No Party shall have any legal rights or claims against the other Party by reason of any action taken, statements made, writings delivered or other matters undertaken by a Party in reliance upon this LOI, including, without limitation, any expenditure of funds, partial performance of transactions contemplated herein, or any other actions of a Party. The Parties acknowledge that this LOI does not address all essential business terms of the proposed transaction contemplated herein and that such terms will be subject to further negotiation.

3. **Term.** The "Term" of this LOI shall begin on the Effective Date and, unless otherwise extended by mutual agreement of the Parties, shall continue until the earlier of (i) the date on which Wynn is eliminated as a potential developer for the Project; (ii) the date on which a more definitive agreement is entered into by the Parties; or (iii) the date on which this LOI is terminated by mutual agreement of the Parties; or (iv) the termination of this LOI in accordance with its terms.

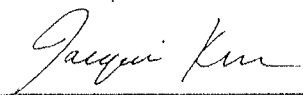
4. **Termination by Wynn.** Wynn may immediately terminate this LOI upon written notice to BSO, without penalty or prejudice and without further liability to BSO (i) on the date on which Wynn decides to abandon or withdraw its efforts with respect to the Project; or (ii) if any member of the Wynn Group: (a) is directed to cease doing business with BSO by any governmental authorities; or (b) determines, in its sole and exclusive judgment, that BSO, its affiliates or any of its or their directors, officers, employees, agents or other representatives is, might be or is about to be engaged in or involved in any activity or relationship that could or does jeopardize any of the businesses or licenses of any of the Wynn Group (including, without limitation, any denial, suspension or revocation (or the threat thereof)). "Wynn Group" shall mean Wynn Resorts, Limited, a Nevada corporation, and its subsidiaries, partnerships, joint ventures and other affiliates.

5. **Confidentiality.** Each of the Parties acknowledges that in the course of their discussions under this LOI, each of the Parties may exchange certain confidential and proprietary information, including but not limited to, data and materials (whether written, oral, or electronic) concerning a Party's business and affairs or in the case of Wynn, strategy and information related to the Proposal Process and the Project. Each Party agrees not to publish or disclose the other Party's confidential information to any other person, except to its directors, officers, principals, shareholders, members, partners, managers, employees, agents, representatives, associates, attorneys, accountants, lenders or advisors, as applicable (collectively, "Recipient Representatives") who: (i) have a need to know such confidential information, and (ii) are bound by professional duties of confidentiality or by a written agreement containing substantially similar obligations of confidentiality. Each Party agrees that it shall be responsible for any breach of this provision by any of its Recipient Representatives. The foregoing confidentiality obligations shall not apply to the extent that: (i) the receiving Party knows such confidential information at the time of disclosure, free of any obligation to keep it confidential; (ii) such confidential information is or becomes generally known in the relevant industry without fault of the receiving Party or its Recipient Representatives; (iii) the receiving Party or any of its Recipient Representative independently develops such information without access to or use of the confidential information; or (iv) the receiving Party or any of its Recipient Representative rightfully obtains such information from a third party who has the right to disclose it without violation of any confidentiality obligations. In the event a receiving Party or any of its Recipient Representative is required by law, regulation, government, or court order to disclose any portion of the disclosing Party's confidential information, the receiving Party will, to the extent legally permitted to do so, promptly notify the disclosing Party in writing prior to making any such disclosure to allow the disclosing Party to seek a protective order or other appropriate remedy from the proper authority. The receiving Party and Recipient Representatives will reasonably cooperate with the disclosing Party in seeking such order or other remedy or in defining the scope of any required disclosure. Upon termination of this LOI, (i) the receiving Party and Recipient Representatives shall immediately discontinue any use of the disclosing Party's confidential information for any purpose and (ii) all confidential information will be returned or destroyed at the disclosing Party's request; provided, however, nothing herein shall require the receiving Party to delete or purge any records in backup or archival systems kept in the normal course of business. Each Party acknowledges the competitive value and/or confidential nature of the other Party's confidential information and that breach of this provision would cause irreparable harm to the disclosing Party and that monetary damages would be inadequate compensation for such breach or threatened breach. Accordingly, each Party agrees that the disclosing Party shall be entitled to injunctive or other equitable relief against any breach or threatened breach, without the necessity of proving actual damages or the requirement of posting a bond or other security. Such remedies shall not be exclusive but shall be in addition to all other rights and remedies available to such Party at law or in equity. The provisions of this provision shall survive termination of this LOI. Notwithstanding anything herein to the contrary, BSO acknowledges that the executed LOI may become part of Wynn's state and local gaming applications and may be referenced in public discussion, plans and advertising, and otherwise be used by Wynn in the Proposal Process.

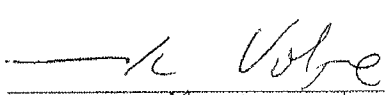
IN WITNESS WHEREOF the Parties have executed this LOI the day and year first written above.

WYNN MA, LLC

BOSTON SYMPHONY ORCHESTRA, INC.



 NAME: Jacqui Krum
 ITS: Authorized Signer
 DATED: 12/19/13



 NAME: Mark Volpe
 ITS: Managing Director
 DATED: 12/19/13

EXHIBIT F



April 17, 2014

Catherine Blue, General Counsel
MASSACHUSETTS GAMING COMMISSION
84 State Street, 10th Floor
Boston, MA 02109
catherine.blue@state.ma.us

Re: Sponsorship Agreement

Dear Ms. Blue:

Please be advised that in December 2013 Delaware North Companies, Inc. – Boston (“DNCB”) entered into a sponsorship agreement with Wynn MA, LLC (“Wynn”), pursuant to which Wynn sponsored the 2013 Boston Bruins Holiday Toy Drive. DNCB and Wynn are independent contractors, and neither party has any ownership interest in or control over the other party.

Because the sponsorship agreement includes confidential financial and pricing information, DNCB respectfully declines Wynn’s request to disclose the agreement to the Massachusetts Gaming Commission absent the Commission’s confidential treatment and protection of such information.

Please contact me if I can provide further information or be of further assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Johnson', written over the printed name.

Christopher J. Johnson

Vice President of Corporate Partnerships

Delaware North Companies Boston – TD Garden and Boston Bruins



THE COMMONWEALTH OF MASSACHUSETTS

MASSACHUSETTS GAMING COMMISSION

Re: Consolidated Proceedings:)
 City of Boston’s “Affidavits” for)
 Host Community Status Regarding)
 Gaming Establishments Proposed)
 by Mohegan Sun Massachusetts, LLC)
 and Wynn MA, LLC)
)
)
)

AFFIDAVIT OF JENNIFER MATHER MCCARTHY

I, Jennifer Mather McCarthy, hereby declare, based on personal knowledge, as follows:

1. I am an associate at the law firm Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., and am counsel of record for the Wynn MA, LLC (“Wynn”) in the above captioned action.

2. I submit this affidavit in support of Wynn’s position on the agenda item for determination by the Commission on May 1, 2014: “Determine the premises of the gaming establishment for which Wynn MA, LLC seeks approval in its December 31, 2013 RFA-2 application.”

3. Exhibit 1 to this affidavit is a true and accurate copy of the transcript of the relevant pages of the September 4, 2013 Massachusetts Gaming Commission Public Meeting #76.

4. Exhibit 2 to this affidavit is a true and accurate copy of the Joint Statement between the City of Boston and Wynn that was read for the record by the Massachusetts Gaming Commission at its September 6, 2013 Public Meeting.

5. Exhibit 3 to this affidavit is a true and accurate copy of the letter from Jacqui Krum to Mayor Martin Walsh, dated January 8, 2014.

6. Exhibit 4 to this affidavit is a true and accurate copy of the January 13, 2014 Petition filed by City of Boston seeking designation as a surrounding community.

7. Exhibit 5 to this affidavit is a true and accurate copy of the letter from Jacqui Krum to Elizabeth Dello Russo, dated January 16, 2014.

8. Exhibit 6 to this affidavit is a true and accurate copy of the Declaration of the City of Boston of Status as a Host Community within Region A Pursuant to M.G.L. 23K, § 2, Regarding the Wynn MA, LLC Casino Applicant.

9. Exhibit 7 to this affidavit is a true and accurate copy of Question 4-79 of Wynn's RFA-2 Application, filed on December 31, 2013, at p. 182.

10. Exhibit 8 to this affidavit is a true and accurate copy of Attachment 4-79-01 (Answer) to Question 4-79 of Wynn's RFA-2 Application, filed on December 31, 2013, p. 182.

11. Exhibit 9 to this affidavit is a true and accurate copy of Attachment 4-79-02 (USGS Locus) to Question 4-79 of Wynn's RFA-2 Application, filed on December 31, 2013, p. 182.

12. Exhibit 10 to this affidavit is a true and accurate copy of Attachment 4-79-03 (Registry of Deeds) to Question 4-79 of Wynn's RFA-2 Application, filed on December 31, 2013, p. 182.

13. Exhibit 11 to this affidavit is a true and accurate copy of Attachment 4-79-04 (Locus Aerial) to Question 4-79 of Wynn's RFA-2 Application, filed on December 31, 2013, p. 182.

14. Exhibit 12 to this affidavit is a true and accurate copy of Attachment 4-05-01 (Conceptual Site Plan) to Question 4-79 of Wynn's RFA-2 Application, filed on December 31, 2013, p. 182.

15. Exhibit 13 to this affidavit is a true and accurate copy of Question 4-4 of Wynn's RFA-2 Application at p. 110.

16. Exhibit 14 to this affidavit is a true and accurate copy of Question 4-11 of Wynn's RFA-2 Application at p. 115.

17. Exhibit 15 to this affidavit is a true and accurate copy of the Letter of Intent between Wynn and the Boston Symphony Orchestra, dated December 4, 2013.

18. Exhibit 16 to this affidavit is a true and accurate copy of the Letter from Delaware North Companies, Inc. – Boston regarding the cross-marketing agreement between Wynn and Delaware North Companies, Inc. – Boston, dated April 17, 2014.

19. Exhibit 17 to this affidavit is a true and accurate copy of Wynn's alternate access plan, which was submitted as part of its RFA-2 application in its Draft Environmental Impact Report, Figure 4-45.

20. Exhibit 18 to this affidavit is a true and accurate copy of the Affidavit of Daniel Gaquin, signed on April 16, 2014.

SIGNED UNDER THE PENALITIES OF PERJURY THIS 17th DAY OF APRIL 2014.


Jennifer Mather McCarthy

Dated: April 17, 2014

EXHIBIT 1

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THE COMMONWEALTH OF MASSACHUSETTS

MASSACHUSETTS GAMING COMMISSION

PUBLIC MEETING #76

(VOLUME 1 of 2)

CHAIRMAN

Stephen P. Crosby

COMMISSIONERS

Gayle Cameron (not present)

James F. McHugh

Bruce W. Stebbins

Enrique Zuniga

September 4, 2013, 9:30 a.m.

BOSTON CONVENTION AND EXHIBITION CENTER

415 Summer Street, Room 151-B

Boston, Massachusetts

1 P R O C E E D I N G S :

2

3 CHAIRMAN CROSBY: I am pleased to
4 call to order public meeting number 76 of the
5 Massachusetts Gaming Commission. This one held
6 at the Boston Convention Center September 4,
7 2013.

8 At the outset of these meetings, we
9 typically take an opportunity to recognize and
10 welcome elected officials who are attending. I
11 believe Mayor DeMaria from Everett is here.
12 Thank you. It's nice to have you here. And an
13 elected official at one time, former Governor
14 Weld, I think you count. Welcome, nice to have
15 you here. I hope didn't miss any other --

16 COMMISSIONER ZUNIGA: Town Manager
17 Joe Fernandes?

18 CHAIRMAN CROSBY: Town Manager Joe
19 Fernandes isn't really an elected official.

20 One other introductory matter,
21 Commissioner Gayle Cameron would ordinarily be
22 here. As some of you know, she had knee
23 replacement surgery. She's doing fine, but it
24 was just a week or 10 days ago. She wasn't

1 able to attend this. So, she will not be
2 taking part in today's meeting, but she will be
3 back soon.

4 Lastly, we may need to take a
5 temporary adjournment while we get more space.
6 There are apparently more people coming. So,
7 we are going to go along for a little while.
8 And if it turns out we need more room and open
9 the doors, we'll do that. But we'll go-ahead.

10 Okay. The first item is the
11 approval of minutes, Commissioner McHugh.

12 COMMISSIONER MCHUGH: The minutes,
13 Mr. Chairman and colleagues, are in the book.
14 There are a couple of typos, which we will
15 correct in the ordinary course. And I think as
16 Commissioner Zuniga and I talked a minute ago,
17 the entry for 10:30 a.m. needs a little
18 fleshing out to put context there.

19 The context of that discussion was
20 that we had at our disposal at least three
21 maybe a combination of ways of resolving policy
22 questions that were raised by members of the
23 public. And I think the context would be
24 helpful to have those ways, the ones that are

1 listed here. But context was that discussion
2 about how we could resolve policy questions if
3 they arose.

4 So, I propose we add another
5 sentence simply to make sure that that context
6 is there. Otherwise, I would move that the
7 minutes in the form contained in the book, with
8 the typos corrected and with that addition be
9 approved.

10 CHAIRMAN CROSBY: Second?

11 COMMISSIONER STEBBINS: Second.

12 CHAIRMAN CROSBY: All in favor, aye.

13 COMMISSIONER STEBBINS: Aye.

14 COMMISSIONER ZUNIGA: Aye.

15 COMMISSIONER MCHUGH: Aye.

16 CHAIRMAN CROSBY: Opposed? The ayes
17 have it unanimously. First item on our agenda
18 is the Ombudsman report, which will include the
19 two big public interest topics.

20 First of all, before I turn it over
21 to our Ombudsman and our General Counsel, a
22 couple of people have come in asking where the
23 sign-up sheet was for speaking. This is not
24 going to be a public hearing where we will have

1 an open mic. and invite people to speak.

2 There are several parties that have
3 been specifically asked to come and make
4 presentations. There are any number of
5 opportunities for people to register their
6 comments with us. As you know, we have a
7 website, mgc.comments. In fact, some of the
8 letters that came on that website are in our
9 briefing book today. That's always reviewed.

10 There will be public hearings about
11 these proposals as they go forward further in
12 the licensing process. And today we are for
13 one topic just going to be trying to establish
14 some facts. And the second topic trying to
15 just understand what the issues really are
16 before us.

17 It may turn out after we see the
18 facts clarified and after we understand exactly
19 what the issues are that we will consider
20 offering an opportunity for other people to
21 speak. But that is not our intention today,
22 just so everybody has a heads-up on that.

23 With that, I will turn it over to
24 Ombudsman John Ziemia and General Counsel

1 Catherine Blue.

2 MR. ZIEMBA: Thank you, Mr.
3 Chairman, members of the Commission. As you
4 are aware, we have a full plate today. The
5 first matter up for consideration is discussion
6 of the questions related to whether the city of
7 Boston should be determined to be a host
8 community to the Wynn Mass, LLC applicant.

9 At the last Commission meeting,
10 there was a discussion of the matter. And the
11 Commission asked me to invite both parties to
12 the Commission meeting to brief the Commission
13 about the issues before us today.

14 By way of further background, for
15 quite some time, Commission staff have been
16 communicating with both parties in an effort to
17 determine how they can come to a better
18 understanding of the issues. As reported to
19 the Commission at the last Commission meeting,
20 despite efforts by the parties and efforts by
21 the Commission staff, there still remain
22 questions that remain unresolved.

23 I am pleased to report that both
24 parties have accepted the Commission's

1 invitation. We have informed both parties that
2 they should limit their presentations to
3 approximately one half-hour. They have been
4 informed that the Commission would like to hear
5 from them about the nature of the issues, about
6 outstanding questions, and about how the
7 parties may be able to reach an understanding,
8 and how the Commission may play a role in
9 helping the parties reach such an
10 understanding.

11 We have told both parties that the
12 issue is how the definition of host community
13 applies to the situation. However, we
14 understand that the procedures and rights that
15 impact host and surrounding communities are
16 linked. Therefore, we understand that the
17 conversation is not strictly limited to the
18 definition of host community, although both
19 parties have been asked to try to talk about
20 that first and foremost.

21 Given that context, I would like to
22 turn to General Counsel Blue to outline the
23 statutory construct of the host and surrounding
24 community definitions. After Counsel Blue's

1 remarks, I will ask the city of Boston to brief
2 the Commission. The city's remarks will be
3 followed by Wynn Mass, LLC's remarks.

4 After the remarks, there will be an
5 opportunity for the Commission to discuss what
6 they've heard. Both parties understand that
7 the Commission will also raise questions during
8 their presentations. With that I turn to
9 Counsel Blue.

10 CHAIRMAN CROSBY: Just before you
11 start, I just want to just put my two cents
12 worth in on sort of what I think we're trying
13 to accomplish here.

14 First and foremost what we'd like to
15 do is facilitate a resolution of this issue
16 between the parties. That is the way it ought
17 to get resolved. It ought to be done and it
18 ought to be done quickly. If this process can
19 facilitate that that's by far the best way to
20 go.

21 Failing that this process is to give
22 us the underpinnings of the information that we
23 will need to decide it ourselves, which we will
24 do quickly if necessary.

1 But it's a two-step process. And
2 step one is to facilitate a resolution between
3 the parties which is far and away the preferred
4 way for this to go.

5 MS. BLUE: Good morning. We thought
6 it would be helpful to start with the
7 definitions in the statute and particularly the
8 definitions that apply to this particular
9 issue. We have up on the screen and
10 Commissioners, it's in your materials, the key
11 definitions.

12 CHAIRMAN CROSBY: Can everybody hear
13 in the back?

14 MS. BLUE: The first definition is
15 host community. This comes directly from the
16 statute. A host community is defined as a
17 municipality in which a gaming establishment is
18 located or in which an applicant has proposed
19 locating a gaming establishment.

20 The sub-definition that plays into
21 that is the definition of a gaming
22 establishment. And a gaming establishment is
23 the premises approved under a gaming license,
24 which includes a gaming area and any other

1 nongaming structure related to the gaming area
2 and may include but shall not be limited to,
3 hotels, restaurants or other amenities.

4 The next definition that is
5 important is the definition of surrounding
6 communities. That definition reads
7 municipalities in proximity to a host
8 community, which the Commission determines
9 experience or are likely to experience impacts
10 from the development or operation of a gaming
11 establishment, including municipalities from
12 which the transportation infrastructure
13 provides ready access to an existing or
14 proposed gaming establishment.

15 There are some key differences
16 between host community and the surrounding
17 community's definitions. A host community has
18 the ability to hold a referendum in the
19 community to determine whether the community
20 will accept that gaming establishment.

21 And they enter into a host community
22 agreement which is a broad -- an agreement that
23 covers a broad number of topics that include
24 mitigation in the community but then also

1 include other issues. Host community
2 regulations are found in 205 CMR 123.

3 A surrounding community is slightly
4 different. The surrounding communities do not
5 vote on the application for a casino.
6 Surrounding communities are determined in a
7 number of ways. They key ways which are they
8 are designated by the applicant and by the
9 surrounding community or by the Commission.
10 And you can see the process that in the
11 regulations at 205 CMR 125.

12 Surrounding communities enter into
13 surrounding community agreements that address
14 the impacts or potential impacts from the
15 gaming establishment. And if the surrounding
16 community does not enter into an agreement with
17 an applicant prior to the filing of the RFA-2
18 application, there is a process by which the
19 community and the applicant can go through
20 binding arbitration. So, they have different
21 obligations and slightly different processes.

22 The other definition that we think
23 is important to consider here is the definition
24 or the language found in Chapter 23K section

1 15.13, and this talks about the election.
2 Section 15.13 pertains only to the question of
3 how elections are held in host communities.

4 And if you look at the bottom of
5 that, what the language provides is if for the
6 purposes of this clause, which is for the
7 purposes of the election only, unless a city
8 opts out of this provision by a vote of the
9 local governing body, if the gaming
10 establishment is proposed to be located in a
11 city with a population of at least 125,000 if
12 by the most recently in the way of federal
13 census, the host community shall mean the ward
14 in which the gaming establishment is to be
15 located.

16 We just want to emphasize that this
17 definition applies to the election language and
18 does not supersede the host community
19 definition that is found earlier in this
20 section.

21 CHAIRMAN CROSBY: This is relevant
22 because there's been commentary in the media
23 that has -- I was asked the question is
24 Charlestown a host community or not. That

1 would be a misunderstanding. The question is
2 whether Boston is a host community or not. If
3 it were, where the election would be held would
4 be in the appropriate ward.

5 But that's why we want to clarify
6 that point, because there's been discussion in
7 the media that seems to misunderstand what a
8 host community might be.

9 MS. BLUE: So, those are the key
10 definitions that impact the discussion we are
11 going to have today. We were hoping that the
12 applicant will discuss this as will the other
13 presenter.

14 MR. ZIEMBA: Thank you, Counsel
15 Blue. With that I'd like to invite Elizabeth
16 Dello Russo. She's the executive director of
17 the Boston host community advisory committee.
18 And Abim Thomas, outside counsel for the city
19 of Boston to give their remarks.

20 MS. DELLO RUSSO: Thank you,
21 Ombudsman Ziemba. Elizabeth Dello Russo for
22 the city of Boston. And I'm joined by Counsel
23 Larry Kaplan and Abim Thomas from Goodwin
24 Procter.

1 I want to thank the Commission for
2 inviting us here today, Chairman Crosby,
3 members of the Commission and Commission staff.
4 We are hopeful for a productive and open
5 conversation.

6 I also want to acknowledge our
7 elected officials as well Mayor Carlo DeMaria,
8 former Governor Bill Weld, representatives and
9 members from the Charlestown neighborhood and
10 other Boston residents who are here today.

11 We are here for three important
12 reasons. The first of which is to help to
13 clear up confusion on the part of the
14 Charlestown neighborhood, which the city
15 represents.

16 We also want to understand the
17 effects of this proposed development on in
18 particular that Charlestown neighborhood, which
19 we feel will have a disparate impact.

20 We also are here to further our
21 request for information, which has kind of been
22 a long, ongoing process.

23 First to begin with, on behalf of
24 the Charlestown residents and businesses, there

1 is Chairman Crosby mentioned a petition that
2 has circulated amongst Charlestown. At this
3 point nearly 500 residents have signed this
4 petition. There is, I think, a point of
5 confusion in the petition regarding Charlestown
6 being its own host.

7 But the spirit of that petition is
8 that we are hearing clearly from many residents
9 that they are confused about the status. Some
10 are not confused. Some are adamant about the
11 status of Boston. On behalf of Boston, I would
12 say that the city itself is confused about the
13 status here. And part of that confusion is
14 because we're looking for some additional
15 information, which we have not yet obtained.

16 The confusion I think comes from the
17 developer itself. There have been images that
18 have been made public, which have led to the
19 city and the residents questioning where this
20 development lies, and whether or not it crosses
21 municipal boundaries. And we have some images
22 that we would like to show which illustrate
23 this confusion what appears to be a shifting
24 landscape of boundaries.

1 I'm sure that we are going to be
2 shown more maps today. And I'm hopeful that we
3 will be. Although long delayed in showing them
4 to the public, to Boston and the residents, we
5 welcome any clarity that maps or images or
6 explanations that this will bring to the
7 public.

8 I also want to talk about the
9 umbrella issue over things like images and
10 maps, which is the impacts on Charlestown and
11 on Boston, which is really where Boston has
12 spearheaded this entire conversation.

13 What we are looking for and what
14 we're trying to understand are the impacts.
15 And we believe that that comes directly out of
16 the Act itself, the Gaming Act. So, really
17 what we would like to see is some information
18 so that we can review it as we've done with
19 other applicants and we can let our
20 neighborhood of Charlestown know that we are
21 actively seeking to understand the impacts of
22 which we feel may be significant.

23 COMMISSIONER MCHUGH: Whether Boston
24 is a host community or a surrounding community

1 that is going to be part of the process --

2 MS. DELLO RUSSO: Yes.

3 COMMISSIONER MCHUGH: -- that has to
4 be undertaken for the application. So, in that
5 sense that's a given. Some form of review and
6 opportunity to focus on mitigating efforts is
7 going to be part of whatever package is
8 ultimately presented to the Commission.

9 MS. DELLO RUSSO: Thank you,
10 Commissioner. We agree that this kind of the
11 umbrella issue, the status of host versus
12 surrounding.

13 COMMISSIONER MCHUGH: I understand
14 that. But it's not an all or nothing
15 proposition. In other words, it's not if
16 you're a host community, you get a chance to
17 talk about mitigating impacts, if you're a
18 surrounding community, you don't. You get a
19 chance to talk about mitigating impacts in both
20 cases.

21 MS. DELLO RUSSO: Correct.

22 COMMISSIONER MCHUGH: Everybody
23 ought to understand that.

24 MS. DELLO RUSSO: Thank you.

1 CHAIRMAN CROSBY: While you were
2 talking, you said the second umbrella issue was
3 the impacts and you said that comes right out
4 of the Gaming legislation itself. Where are
5 you referring to that that comes out of the
6 legislation itself?

7 MS. DELLO RUSSO: I think that the
8 legislation speaks to, regardless of status of
9 host or surrounding community that if there are
10 impacts, they should be mitigated.

11 So, I think the city of Boston views
12 this as we are seeking information to
13 understand those impacts. That's really the
14 largest issue before the city of Boston. We
15 are confused about the status.

16 CHAIRMAN CROSBY: Understanding the
17 impacts doesn't speak to the issue of host
18 community versus surrounding community, which I
19 guess was Commissioner McHugh's point.
20 Understanding the impacts is very important and
21 will be something that has to happen whether or
22 not Boston is a host community.

23 MS. DELLO RUSSO: Correct.

24 CHAIRMAN CROSBY: I don't want to

1 conflate these two issues. Understanding the
2 impacts is a relevant topic to either issue, to
3 either designation. And we are here to figure
4 out what is the designation, not what are the
5 impacts.

6 MS. DELLO RUSSO: Let me clarify the
7 rub of this, Boston has sent multiple letters
8 seeking information to understand impacts. And
9 what we received in response is that once
10 Boston says it is a surrounding community,
11 information will be shared with us.

12 In part, we are looking for
13 information that clarifies our status. So, if
14 a developer will only share information upon
15 our saying we are a surrounding community, when
16 we are confused on that point I think that is
17 contrary to the spirit of the gaming law. And
18 I think that is where we are not being able to
19 obtain information. And that's why I say the
20 umbrella issue is the impacts.

21 COMMISSIONER MCHUGH: But there are
22 two ways to solve that at least, are there not?
23 One is to decide whether Boston is a
24 surrounding community or a host community. And

1 then the developers pledge to take action in
2 response to that, will have a platform to do
3 it.

4 And the second way is to have a
5 voluntary exchange of information, which as
6 Chairman Crosby said earlier would be the
7 preferred route. But in either event, that
8 issue ought to be resolved promptly, because
9 it's going to need -- the impact issue is going
10 to need some careful consideration before the
11 applications are filed, right?

12 MS. DELLO RUSSO: Yes.

13 CHAIRMAN CROSBY: I think we're on
14 the same page on this. But understanding the
15 impacts will not necessarily clarify the issue
16 if whether you are a host or a surrounding
17 community. If there has been a failure to give
18 you information to make a reasonable
19 determination whether you're a host community
20 or not that's something we are here to try to
21 facilitate. That is definitely on the table.
22 But I think we know what the distinctions are
23 here.

24 MS. DELLA RUSSO: I would hope,

1 Commissioner, that if there's a failure to give
2 information so Boston can understand impacts
3 that is something that the Commission would
4 hear us on. I think that time is of the
5 essence. So, for the city of Boston, for our
6 residents, we really do need to have some
7 information so that we can do some analysis.

8 In other applicants within the city
9 of Boston, we did years of analysis. So, I
10 understand that that is not possible in this
11 instance. This site was selected quite a bit
12 after. Suffolk Downs has been an ongoing site
13 for seven or eight years. So, there are some
14 distinctions there. But Boston is ready and
15 able to have experts do some analysis so we can
16 understand impacts and reach the appropriate
17 agreement.

18 I think I would like to turn it over
19 to Abim Thomas to explain why Boston has been
20 confused on the issue.

21 MS. THOMAS: Again, thank you
22 Chairman Crosby, thank you Commissioners for
23 having us here today. We really appreciate
24 this opportunity and we'll really rely on the

1 Commission to help get to the bottom of this
2 issue and to really help clarify this.

3 Liz hinted just briefly at what the
4 communications have been to date with the
5 developer here. That they unfortunately have
6 not been very forthcoming with information.
7 She discussed how at times when the city has
8 sought information, they have stated that they
9 would provide it but only on the condition that
10 the city of Boston state affirmatively that it
11 is only a surrounding community and not a host
12 community. And in our opinion that's just not
13 the way to have an effective conversation about
14 this topic.

15 So, I will talk just briefly about -
16 - I will quote just briefly really from letters
17 that Wynn has provided to the city. For
18 example, in their letters, the language states:
19 Prior to scheduling a meeting, we want to
20 clarify that Boston is no longer seeking host
21 community status. Following your
22 acknowledgment that Boston is not a host
23 community, we would be prepared to discuss with
24 you Boston's status as a surrounding community.

1 Again, that's just even to having a
2 meeting. With respect to gaining information,
3 Wynn has refused to share information except on
4 the condition that Boston declare that it is
5 not a host community. Wynn has stated in its
6 letters to the city, we will share impact
7 studies and traffic reports with you only in
8 the context of surrounding community
9 negotiations.

10 So, I think Wynn is really putting
11 the cart before the horse here in calling for
12 the city to declare that it is not a host
13 community for this proposed project. It would
14 be irresponsible for Boston to determine that
15 it is not a host community without additional
16 information.

17 Liz didn't mention this, but Boston
18 actually went so far as to submit a public
19 records request to the city of Everett in order
20 to get information because the city was having
21 such a hard time getting at this information,
22 and paid close to \$850 to obtain that
23 information. So, we couldn't be happier to be
24 here today to really rely on the Commission to

1 gain us the information we seek. We hope it
2 will be a much cheaper approach to getting this
3 information.

4 So, I'll just asked Larry Kaplan who
5 is also here on the city's behalf just to talk
6 through some of the information that the city
7 has sought to date.

8 MR. KAPLAN: Thank you, Mr.
9 Chairman, members of the Commission. Larry
10 Kaplan, I'm from Goodwin Procter. Very
11 briefly, we do want to be on board as to
12 whether we are host or surrounding community.

13 One of the things we are looking for
14 is a current site plan of the project that will
15 clearly define where the gaming establishment
16 is and all of the amenities. I think Abim will
17 show later, there have been several
18 inconsistent images that have been presented by
19 the Wynn representatives, several of which show
20 the project as being in the city of Boston,
21 which is one of the reasons that there's been
22 confusion as to whether the city is a host
23 community or not. And these are their own
24 images. They are not images that we have

1 produced.

2 COMMISSIONER MCHUGH: This is a
3 specific request that the city has made to Wynn
4 for a site plan showing the establishment and
5 the amenities? That has been part of a letter
6 that was sent, was it?

7 MR. KAPLAN: Yes.

8 CHAIRMAN CROSBY: And you have not
9 received that, the site plan and the amenities?
10 You have not received that?

11 MR. KAPLAN: No, we have not.

12 COMMISSIONER MCHUGH: Okay.

13 MR. KAPLAN: We are interested in
14 the municipal harbor plan that's underway.
15 We'd like to see the extent of that. We'd like
16 to see where exactly that plan is. Where any
17 boardwalks and harbor walks are going to be and
18 whether they are just going to be located in
19 Everett or whether they're going to be located
20 in the city of Boston.

21 COMMISSIONER MCHUGH: Wouldn't that
22 be part of the site plan? I don't want to
23 cross examine you. I'm just trying to figure
24 out.

1 MR. KAPLAN: I appreciate that. I
2 think it is, but I am just trying to be a
3 little more specific on some of the things
4 we're looking for, Commissioner.

5 And I know we're not here to talk
6 necessarily about impacts, because impacts we
7 agree, are whether you're a host or
8 surrounding. But since a great deal of our
9 representation of the Charlestown residents is
10 going to center on traffic impacts and so much
11 of the traffic is going to come over Boston
12 roadways, we would like to see current traffic
13 studies. Because we don't think they're taking
14 into consideration some of the traffic
15 downsizing, if I could say, or road narrowing
16 that the city is going to be undertaken, and
17 that's very important. Because we want to be
18 prepared to at least address these impacts,
19 whether or not we are a host community or a
20 surrounding community.

21 I know we are not here to talk about
22 impacts, but that's very important to the
23 Charlestown residents. So, I think that's kind
24 of it in a nutshell as to what we would like.

1 As Liz has mentioned, it has been difficult to
2 get and we're hoping that the Commission can
3 assist us on that.

4 COMMISSIONER MCHUGH: So, if I
5 understand you, what you are looking for is a
6 site plan?

7 MR. KAPLAN: We would like to --
8 Yes.

9 COMMISSIONER MCHUGH: Putting to one
10 side the traffic, which we all agree is
11 important, but that is important whether you're
12 a host community or a surrounding community.
13 What you are looking for is a site plan that
14 shows, precisely defines --

15 MR. KAPLAN: -- all buildings and
16 all amenities, Commissioner, correct.

17 COMMISSIONER MCHUGH: Including the
18 boardwalk, the whole shooting match, in precise
19 terms.

20 MR. KAPLAN: The whole shooting
21 match.

22 MS. THOMAS: Yes, in very precise
23 terms. And I'll just cite section 9 of Chapter
24 23K. It speaks to the location of the proposed

1 gaming establishment and what the applicant has
2 to provide to the Commission in its
3 application. And we know the application isn't
4 due until the end of the year. But we assume
5 that this is information that the applicant
6 already has.

7 In the statute it says: In
8 providing the location of the gaming
9 establishment, the applicant is required to
10 include "the address, maps, book and page
11 numbers from the appropriate registry of deeds,
12 assessed value of the land at the time of
13 application, and ownership interests over the
14 past 20 years including all interests, options,
15 agreements and property, and demographic,
16 geographic and environmental information and
17 any other information requested by the
18 Commission."

19 So again, it's early. I understand
20 they have not submitted their final application
21 yet. But as they are preparing that final
22 application and clearly putting that
23 information together, that would also be
24 information that would be helpful for us to

1 have.

2 COMMISSIONER MCHUGH: It would be
3 helpful perhaps in some ways, but the site
4 plan, it seems to me, for determining whether
5 they are a host community or not is the key, is
6 it not? Can we agree on that?

7 MS. THOMAS: Yes.

8 COMMISSIONER MCHUGH: Okay.

9 MS. THOMAS: I'll just go back.
10 We're just going to show some of the graphics
11 just to explain some of the confusion that
12 there has been to date with respect to the
13 project site.

14 And I'll start just by showing a
15 completely different site. This is the Suffolk
16 Downs proposal. And I show it just as an
17 example to clear up any additional confusion
18 about whether or not there can even be two host
19 communities.

20 This is the Suffolk Downs proposal.
21 And the line you see that bisects this proposal
22 shows the border between Boston and Revere.
23 So, this is an example of a proposal that's
24 located in two cities. You will see from this

1 image that Suffolk Downs retained a portion of
2 the track and some of its parking and offsite
3 facilities in Revere. And Suffolk Downs has
4 treated Revere as a host community for that
5 project and negotiated a host community
6 agreement with Revere, even though the planned
7 casino itself is located on the Boston city
8 side of the line.

9 CHAIRMAN CROSBY: I would say for
10 the record that I think that was an appropriate
11 decision.

12 MS. THOMAS: The next slide I want
13 to show here is an aerial view of the Monsanto
14 Chemical site. The Monsanto Chemical site is
15 relevant because this is how this site is
16 commonly referred to. You will see the portion
17 outlined in red here. That's the portion of
18 this aerial view here that is actually located
19 in Boston. And outlined in blue there you'll
20 see is actually the portion that is on land
21 within the city of Boston.

22 COMMISSIONER MCHUGH: I don't
23 understand that. Could you help me with that?
24 The part in the previous slide, the part that's

1 in red within the blue circle is what?

2 MS. THOMAS: Boston.

3 COMMISSIONER MCHUGH: What is the
4 rest of the blue circle that is outside?

5 MS. THOMAS: It is just to call
6 attention to the red sliver.

7 COMMISSIONER MCHUGH: So, that's
8 just an attention getter?

9 MS. THOMAS: Just an attention
10 getter, yes.

11 CHAIRMAN CROSBY: To the left of the
12 red line that's in blue is Everett. And to the
13 right of the red line, of the other red line is
14 in Boston?

15 MS. THOMAS: That is correct.

16 CHAIRMAN CROSBY: The straight line,
17 the red line that goes down and dog legs to the
18 left and down again that defines the Monsanto
19 site, so-called?

20 MS. THOMAS: It's also part of the
21 Monsanto site, but that too is in Boston. So,
22 what extends into the Mystic River there is
23 also Boston.

24 COMMISSIONER ZUNIGA: What is to the

1 right?

2 MS. THOMAS: Still Boston. I have a
3 pointer here, which I will try to use. This is
4 the site right here. And we'll get into more
5 detail about the site, but this is the site
6 here. One could argue this is the full site.
7 We've seen different images. We'll see more
8 images about the complete site. But this is
9 just an aerial view to help understand the
10 site.

11 To your question, all of this
12 located to the left here, this is all Everett,
13 everything located to the right here, this is
14 Boston including everything in red. But the
15 red outline defines the parcel of the Monsanto
16 Chemical site.

17 COMMISSIONER ZUNIGA: What is
18 southeast of the red outline?

19 MS. THOMAS: Southeast?

20 COMMISSIONER ZUNIGA: Everything
21 southeast?

22 MS. THOMAS: More of Boston.

23 COMMISSIONER ZUNIGA: I'm just
24 speaking of Route 99, all of that.

1 MS. THOMAS: Boston.

2 MS. DELLO RUSSO: In the extreme
3 lower right-hand corner, that is not Boston.
4 Route 99, the roadway you see there, the
5 property immediately to the right of the red
6 that is Boston.

7 COMMISSIONER ZUNIGA: Once you cross
8 99 into the site of the energy plant, the power
9 plant that's Everett; is that correct?

10 CHAIRMAN CROSBY: Use the pointer
11 because I am not sure what you are talking
12 about.

13 MS. THOMAS: Sorry. Commissioner
14 Zuniga, when you say when you cross 99 to enter
15 into the site are you referring to any
16 particular location?

17 COMMISSIONER ZUNIGA: Southeast,
18 yes. There's a power plant here, all of this
19 is Everett; is that correct?

20 MS. DELLO RUSSO: Correct.

21 COMMISSIONER ZUNIGA: And this is
22 Route 99.

23 MS. THOMAS: Boston.

24 COMMISSIONER ZUNIGA: This is

1 Boston?

2 MS. DELLO RUSSO: Yes.

3 MS. THOMAS: Sorry to compete with
4 pointers as well, here also more of Boston.

5 CHAIRMAN CROSBY: So, there's a
6 little skinny piece of Boston that comes up
7 with Everett on both sides?

8 MS. DELLO RUSSO: Correct, yes. And
9 this is part of the confusion here. Route 99
10 does become Everett, it becomes under Everett
11 jurisdiction just around, past the red marker.

12 CHAIRMAN CROSBY: Say it again.

13 MS. DELLO RUSSO: Would you like me
14 to stand up?

15 CHAIRMAN CROSBY: Yes.

16 MS. DELLO RUSSO: I will do my best
17 here. Here is Route 99. This is Boston
18 jurisdiction. This is Boston, Boston. The red
19 outline is Boston. Route 99 is Boston. Below
20 99 is not Boston. That is Everett. Then up
21 around here, Route 99 comes under Everett
22 jurisdiction and past the red, it is Everett
23 jurisdiction.

24 CHAIRMAN CROSBY: And past the red

1 on the right, is Everett also?

2 MS. DELLO RUSSO: Past the line here
3 is Boston.

4 CHAIRMAN CROSBY: From the top up on
5 the right is Everett?

6 MS. DELLO RUSSO: Yes.

7 CHAIRMAN CROSBY: I'd like to hear
8 the history of that little piece, James Michael
9 Curley had a hand in that one.

10 MS. THOMAS: And that is just really
11 as the first image, but I hope this helps to
12 clarify why there's been so much confusion
13 about this site. Again, this is just to
14 provide the backdrop of the Monsanto Chemical
15 site, which is how this site is often referred
16 to.

17 COMMISSIONER STEBBINS: Excuse me.
18 Is the piece outlined in red one parcel or
19 several parcels?

20 MS. DELLO RUSSO: The piece outlined
21 in red is a parcel that pays taxes within the
22 city of Boston. It is part of -- It is owned
23 by a company named, as a matter of public
24 record, FBT Everett Realty.

1 That company, we believe, owns the
2 Monsanto site. So, it also owns land in
3 Everett, the remainder of that big parcel
4 there. And it is our understanding and some of
5 what we are seeking clarity on that FBT Everett
6 Realty has a lease agreement with the Wynn
7 development. And we're trying to understand
8 does that lease include this red parcel, in
9 which case the lease itself would include
10 Boston land.

11 MS. THOMAS: So, this next slide is
12 an image that has been provided by the Mayor of
13 Everett's office, again, showing the same
14 parcel outlined in blue. And again, the circle
15 is just very broadly drawn to show this portion
16 of the site that's located within the city of
17 Boston. This image was taken and made
18 available back in March but my understanding is
19 that it even predates March 27. But this is an
20 image that was provided to describe the site
21 yet again.

22 This image is an image that is
23 provided in the Wynn Everett brochure that
24 shows the hotel and casino development along

1 with its amenities. And as Larry mentioned,
2 this harbor walk that it also shows, my
3 understanding is that the portion in the right-
4 hand corner there really is representing that
5 piece of land we showed earlier that's located
6 within the city of Boston.

7 You see the harbor walk that goes
8 along the edge of the river here, it comes
9 along. You see a lot of these amenities the
10 same on the left-hand side of the bank here
11 with the rocks and the landscaping. It's the
12 same along the right-hand side of the bank
13 here. All of this within the city of Boston.

14 COMMISSIONER ZUNIGA: Although it
15 should be noted that this is a rendering that
16 can be put together in many, many ways and
17 should not be construed as a site plan by
18 anyone.

19 MS. THOMAS: Absolutely. Just to be
20 clear, all of the images we are showing now are
21 just images to explain to the Commissioners and
22 to the public why there has been so much
23 confusion around this site and why the city has
24 been seeking more information to understand

1 exactly what Wynn's plans are for this site.

2 This image is taken from the Wynn
3 Everett host community agreement. This is an
4 attachment to the host community agreement that
5 is referred to as Exhibit A and referred to as
6 the project site plan. I'll also note that in
7 the Wynn Everett host community agreement, this
8 is also referred to again as the Monsanto
9 Chemical site.

10 Again, this image is very grainy and
11 probably hard to make out. And you see the
12 border between Everett and the city of Boston.
13 You see that border drawn. And you see it
14 again. There's that sliver. There's that
15 portion that is located in the city of Boston.

16 But again to be clear, this entire
17 image was the image that was provided to the
18 voters of Everett when the host community
19 agreement was entered into as the project site
20 for the Wynn proposed development.

21 Here is another image. This is an
22 image that was provided in a Wynn Everett
23 community meeting presentation. Again, this
24 presentation was provided on May 21. Going

1 back to the earlier slide, as I mentioned, this
2 is the Wynn community host community agreement.
3 This was entered into on April 19.

4 So, here you have the Wynn proposed
5 site from a presentation virtually one month
6 after the host community agreement was entered
7 into. Again, we see the outline of the site.
8 Again, we see this portion right here of the
9 site that is located within the city of Boston.

10 Part of that same presentation
11 included the same rendering we saw earlier with
12 the city of Boston off there in the lower
13 right-hand corner. And the same presentation
14 also included this image, which is a current
15 view of the Monsanto site today. Again, with
16 that lower right portion, the water as well as
17 the bank located in the city of Boston.

18 Here's just another rendering that
19 was provided, this one on June 13. This is a
20 3-D model of the Wynn proposal, again, with
21 that right bank all located within the city of
22 Boston.

23 So again, these are just images.

24 CHAIRMAN CROSBY: I just want to

1 clarify one thing. Back one slide, I guess the
2 property line runs --

3 MS. THOMAS: Again, I didn't draw
4 the property line here. We can provide you
5 with the exact property line. But I'll use my
6 pointer really quickly to try and draw it as
7 best I can. The property line would come --
8 And my pointer may no longer be working. I
9 apologize. -- it juts out into the bank.

10 CHAIRMAN CROSBY: Is it basically
11 parallel with the side of the water?

12 MS. THOMAS: No. It's actually
13 probably easiest to show -- It's hard to show
14 on this slide. It's probably easiest to get
15 the line really from here.

16 CHAIRMAN CROSBY: From the original.

17 MS. THOMAS: You'll see how it juts
18 out. It's really a very, very narrow opening
19 that provides entry really into that area if
20 you are to carve out the Boston portion. Does
21 that answer your question?

22 CHAIRMAN CROSBY: Yes.

23 MS. THOMAS: I share these images
24 really only to provide context for why we are

1 even here today and why the city of Boston has
2 sought more information from Wynn to try to
3 understand more about their development.

4 We are really here today before the
5 Commission to rely on the Commission's mission,
6 which is really to a fair, transparent and
7 participatory process as well as a speedy
8 process. So, we're really asking for the
9 Commission's help in obtaining the information
10 that we have been seeking because the
11 Commission is the body with the authority to
12 get this information.

13 Under its regulations, the
14 Commission has the authority to request this
15 information from Wynn. I'll cite to 205 CMR
16 112.01 subsection 1, which says the Commission
17 may request additional information and
18 documents from the applicant throughout the
19 application review process.

20 And Wynn would be required to comply
21 with this information under the same regulation
22 which states that "all applicants shall comply
23 with all requests of the Commission for
24 information and documents."

1 We know the Commission is eager to
2 move forward with this matter as is Boston.
3 And that's why we hope that the Commission will
4 not just request this information but also
5 expedite the process for getting it by relying
6 on its regulations, which impose a 10-day
7 deadline for providing this information.

8 Under 205 CMR 112.02 sub 1 it says:
9 "Applicant shall respond within 10 days or
10 within the time specified in an information
11 request by the Commission" -- under the same
12 cite I just cited above.

13 The Commission has not just the
14 authority to request this information but also
15 the ability to eliminate an applicant from the
16 process if the applicant fails to comply with
17 these information requests.

18 So, pursuant to 205 CMR 112.02
19 subsection 3, it says: "If the Commission
20 determines that an applicant has knowingly
21 failed to provide information or documents
22 requested by the Commission, the Commission may
23 with respect to such person find the person
24 ineligible to hold the license."

1 And finally, in our opinion, there
2 is really no better way for us to acquire this
3 information than really through the Commission
4 because we can be assured that the information
5 that will be provided will be accurate and
6 truthful information, or again the applicant
7 will risk its eligibility from a license.

8 Under 205 CMR 112.03 subsection 3 it
9 says: "No applicant shall knowingly provide
10 materially false or misleading information to
11 the Commission. If the Commission determines
12 that an applicant has knowingly provided
13 materially false or misleading information to
14 the Commission, the Commission shall find that
15 person ineligible to hold the license."

16 So, therefore we are really grateful
17 to the Commission for offering to help expedite
18 this process. And we ask the Commission for
19 their help in obtaining this information that
20 we have been seeking. With that I'd like to
21 turn it back to Liz.

22 MS. DELLO RUSSO: Thank you, Abim.
23 I hope that in going through these images and
24 having this open discussion that all parties

1 can leave here with some clarity, in particular
2 any residents that are here from Boston, from
3 Charlestown.

4 My hope is you understand why Boston
5 has posed the question. And I think it would
6 be irresponsible of Boston to not have asked
7 the question of what's going on in this parcel
8 and what's going on at this site and asked for
9 information, as I said, to understand the
10 impacts. That is incredibly important to
11 Boston knowing the limited amount of time but
12 also to understand status.

13 I very much look forward to what the
14 developer will share with us today and we're
15 hopeful for an open discussion here. Thank
16 you.

17 COMMISSIONER ZUNIGA: Can I ask a
18 question? Maybe Catherine you could help me
19 just put in context some of the regulations
20 that Ms. Thomas was referring to are
21 specifically with the 10-day limit, are
22 specifically for a time after the application
23 has been submitted. Is that not correct?

24 MS. BLUE: That is correct.

1 COMMISSIONER ZUNIGA: Thank you.

2 Your point is well taken.

3 MS. THOMAS: I'll refer Catherine to
4 the section of the provision that says that the
5 Commission can ask for information at any time
6 throughout the application process and that
7 includes both Phase 1 and Phase 2.

8 COMMISSIONER ZUNIGA: Understood.

9 CHAIRMAN CROSBY: Anybody else? To
10 reinforce the point that Commissioner McHugh
11 and I were making before, this is a very
12 legitimate conversation. This is genuinely
13 confusing. And this is the sine qua non of the
14 topic.

15 When you insist on bringing in the
16 impacts issue you muddy the water. I am now
17 beginning to see what's going on here and
18 people who aren't very aligned talking
19 routinely with one another you are starting to
20 stand on these points of principle that really
21 are getting in the way.

22 I perfectly appreciate that this is
23 confusing. And I hope we will get this
24 clarified, but to continue to insist on the

1 impacts conversation is a distraction. And I
2 can understand how when there are tensions, it
3 makes communications difficult. Okay.

4 MS. THOMAS: Thank you.

5 COMMISSIONER ZUNIGA: Thank you.

6 MR. ZIEMBA: Mr. Chairman, now we
7 invite members from the Wynn development team
8 to come brief the Commission. I invite Kim
9 Sinatra. She is the senior vice president and
10 general counsel of Wynn Resorts. And she will
11 introduce the rest of the Wynn team.

12 MS. SINATRA: Good morning, Chairman
13 Crosby and members of the Commission. My name
14 is Kim Sinatra and I am the general counsel at
15 Wynn Resorts. I am very happy to be here
16 today. This is our first sort of
17 formal/informal appearance before the
18 Commission. And we hope that we have many
19 fruitful discussions as we move forward.

20 The issue before us is frankly not
21 one that I thought that I would be here about.
22 For us, we are not confused at all but we're
23 hoping that we can dispel any confusion that
24 other parties may have with respect to this

1 issue. I appreciate the Commission's knowledge
2 and study as well as staff with respect to the
3 issues and the definitions.

4 We approach this project as we do
5 all projects with a great degree of intention
6 and deliberation. So, we're hoping that we
7 without any big red circles can sort out the
8 cut and dry definitions as well as the
9 configuration of the real estate upon which we
10 propose to invest over a billion dollars in the
11 Commonwealth of Massachusetts.

12 So, I am accompanied by my
13 magnificent team from Mintz Levin today as well
14 as Mayor DeMaria. First we have a person who
15 probably doesn't need much introduction here
16 which is Mr. Weld. He is accompanied by his
17 partner at Mintz Levin, Peter Biagetti, and Dan
18 Gaquin who is a real estate partner at Mintz
19 Levin.

20 And I think after an introduction by
21 Mr. Weld, we'll provide you with some maps and
22 a site plan that hopefully dispel the confusion
23 that we have reigning today. With that I am
24 going to turn it over to the team.

1 MR. WELD: Thank you very much, Mr.
2 Chairman and Commissioners. My name is William
3 Weld. I am a member of the law firm Mintz
4 Levin and the Mass. Bar. My Bar registration
5 number is 522280.

6 I'm very happy to be here, happy to
7 further, as the Chairman indicated part of the
8 purpose here is to assist the parties in
9 reaching an understanding. That's what I do,
10 as they say. And I'm hopeful that we can see a
11 path today whereby the parties can advance an
12 understanding.

13 The applicant, Wynn Mass, LLC, has
14 proposed, as you know, a \$1.2 billion
15 development located in the city of Everett.
16 It's registered land. It's on the Mystic
17 River. You can look it up in the Middlesex
18 County Registry of the land court. It is
19 parcel B on land court plan 18691A filed with
20 the Middlesex South Registry district of the
21 land court in plan book 485 page 177. The
22 parcel does not contain any land or structure
23 in Boston or in Suffolk County.

24 There was a referendum on the Wynn

1 proposal which received an 86 percent
2 affirmative vote on June 22, 2013. There is no
3 other city that is going to be proposed as a
4 host for the Wynn proposal, I can you assure
5 you of that. All of the land is located within
6 Everett as appears from the official filings.

7 COMMISSIONER MCHUGH: Is all of the
8 land, Mr. Weld, part of that registered land
9 that you just referred to?

10 MR. WELD: The land I am referring
11 to -- The parcel I referred to in the Middlesex
12 South Registry, that is going to be the parcel
13 that will be the subject of the application
14 filed on December 31. And it doesn't contain
15 anything in Boston or Suffolk County.

16 COMMISSIONER MCHUGH: So, that all
17 of the gaming establishment it's your position
18 is on that piece of registered land?

19 MR. WELD: That's right.

20 MR. GAQUIN: Just to clarify, there
21 is a small piece of recorded land in the middle
22 of that parcel. But primarily the parcel is a
23 registered parcel.

24 MR. WELD: That's why we have real

1 estate lawyers to clean up after us.

2 So, under the definition of host
3 community, which you have before you anyway,
4 but it's up on that chart, it's the
5 municipality in which a gaming establishment is
6 located. Well, there's no establishment there
7 yet. So, the operative part is in which an
8 applicant has proposed locating a gaming
9 establishment. That's going to be Everett.

10 It is true that the city of Boston
11 is in close proximity to the site, in fact an
12 abutter. And it's also true that there are
13 going to be impacts particularly on
14 Charlestown, which is part of the city of
15 Boston. And there are going to be traffic
16 impacts. And I've walked the site and I've
17 driven around the site. There is a good bit of
18 work that could be done in renovations to
19 Sullivan Square, maybe the Alford Street
20 bridge. And that's going to be in the city of
21 Boston.

22 So, the implication of this is that
23 Boston is likely or very likely a surrounding
24 community within the meaning of the statutory

1 definition, which again just very briefly,
2 surrounding communities are municipalities in
3 proximity to a host community, which the
4 Commission finds are likely to experience
5 impacts from the development or operation of
6 the gaming establishment including, and this
7 applies to Boston, including municipalities
8 from which the transportation infrastructure
9 provides ready access to an existing or
10 proposed gaming establishment.

11 That's a perfect definition of the
12 city of Boston as it applies to the Everett
13 proposed project.

14 As Counsel Blue indicated,
15 surrounding communities don't vote on these
16 projects. And that was raised when the
17 Legislature was considering this statute. And
18 they very expressly made a determination not to
19 give surrounding communities a voice or a vote
20 as to whether the thing goes forward. I
21 remember Senator Stephen Brewer said no, no,
22 no. We can't have that. That will be a poison
23 pill. Nothing would ever get built.

24 So, the Legislature defines

1 surrounding community and gave it the rights
2 that it has very expressly. So, there's a big
3 distinction, obviously, from being a host
4 community and a surrounding community.

5 Mr. Chairman, members, the feelings
6 that you referred to Mr. Chairman, there is
7 nothing personal here. We love Tom Menino. We
8 love the city of Boston. We want the city of
9 Boston, which is right there, right next door
10 to receive fair compensation for any and all
11 impacts on the city of Boston including, I
12 would think most particularly, on the
13 Charlestown part of Boston including traffic.

14 We are not here to ask for any
15 variance or special treatment or favor. We
16 just want to make sure that the Commission and
17 the selection process follows the law in a
18 matter where the law is pretty clear, in fact
19 it is completely clear. So, that's all we're
20 really looking at.

21 Finally, and I'll yield to my
22 betters here, a word as to the practical impact
23 of a decision here on this host community
24 point. If anybody, the Commission or anyone

1 else went through a process and decided that
2 although the site and the registered land and
3 the recorded land is 100 percent within the
4 city of Everett, nonetheless the proposal is
5 "located" within the city of Boston because
6 Boston is just so close it might as well be
7 there, might as well be considered a host, the
8 practical impact of that would be to
9 effectively eliminate one of the major
10 competitors for the Eastern Mass. license
11 because that would give Boston the vote.

12 And that is the power it's really up
13 or down pwer because the city would have the
14 power to delay engaging on a host community
15 agreement. So, it effectively could kill the
16 project by not exercising and not having a
17 referendum. And it would be an unlawful
18 granting of that power to the city of Boston
19 but nonetheless it would mean that there
20 wouldn't be much point in the Wynn Company's
21 continuing to spend money in pursuit of this
22 goal here.

23 The second thing I would suggest
24 this is more political than something I can

1 prove, but you might well end up with no
2 Eastern Mass. casino. And the reason I say
3 that is that although Wynn has had the
4 referendum, the Suffolk Downs proposal still
5 faces two referendums.

6 And I am sure that the proposal put
7 forward by my good friend Joe O'Donnell who is
8 the principle behind Suffolk Downs, and he is
9 my good friend, has many, many meritorious
10 features, but we are into election season.

11 There is going to be an election for
12 a new mayor on November 5, new mayor of the
13 city of Boston. I read in the papers today
14 that the Revere City Council just approved
15 their agreement last night. So, the 60- to 90-
16 day period starts running today, which means
17 the earliest that Revere could have its
18 referendum would be November 4, which is the
19 day before the vote for mayor in the city of
20 Boston.

21 And the Suffolk Downs proposal in
22 fairness has become at least a minor issue in
23 the Boston mayoral campaign already and could
24 become a major issue if it's being decided on

1 the same day. All I am saying is no outcomes
2 are certain in a hotly contested election
3 season.

4 COMMISSIONER MCHUGH: That may
5 increase and probably focus on the consequences
6 of the decision. But as one Commissioner, I
7 think it is terribly important to me to make it
8 clear that the decision that the Commission is
9 making today is a decision based on the
10 application of law to fact. That's what we are
11 doing. And that's all we're doing.

12 We are trying to look at the
13 statute. We are trying to figure out what the
14 facts are and apply the law to the fact. And
15 the consequences are what the consequences are.
16 And as one Commissioner, I want that clearly
17 understood notwithstanding the consequences
18 that may flow from that exercise.

19 CHAIRMAN CROSBY: It has been a
20 suggestion that there was something other than
21 what Commissioner McHugh said that's been
22 troubling to us and part of the reason we are
23 here today.

24 MR. WELD: That's right. And I

1 think Counsel Blue laid it out pretty crisply
2 the applicable law. So, if there was no
3 Eastern Mass. casino, and I realize this is not
4 at the heart of the matter but that obviously
5 would have some fiscal impact since my
6 understanding is that money has been pretty
7 well spent.

8 CHAIRMAN CROSBY: There is another
9 proposal by the way. There is a third proposal,
10 by the way, in Eastern Mass.

11 MR. WELD: Yes, that for another
12 day. That's really all I've got, Mr. Chairman.
13 I will yield to Mr. Biagetti for perhaps a
14 slight further mention on the law. And then
15 Dan Gaquin, our real estate man here has the
16 site plan and can answer technical real estate
17 questions.

18 MR. BIAGETTI: Thank you, Mr. Weld.
19 Peter Biagetti, as my colleagues have said, I
20 am here to help to the extent the Commission
21 needs it on questions, as Commissioner McHugh
22 just said, the application of law to the facts
23 here.

24 But I think in the spirit,

1 Commissioner Crosby, that you mentioned at the
2 outset of trying to facilitate resolution here
3 that what I heard in the city's presentation at
4 least on the law was quite heartening. We have
5 consensus, I think, on the two key questions or
6 applications of law here.

7 Counsel Blue, of course, is exactly
8 right that there are key differences between
9 the definition of host community and the
10 definition of surrounding community, which in
11 turn implicate differences in the roles that
12 the Legislature intended that this Commission
13 would play with regard to each. And let me
14 explain on each of those.

15 Counsel for the city mentioned we
16 are not here to talk about impacts. We
17 completely agree. Impacts are relevant per the
18 definition of surrounding communities only to a
19 determination, the statute's words, by the
20 Commission of whether or not such impacts or
21 likely impacts are enough to constitute
22 surrounding community status.

23 And the Commission quite properly
24 has regulations which talk about what those

1 sorts of impacts are to be on the environment,
2 on traffic, on businesses. But we're not here
3 to talk about those impacts today because this
4 is not a determination today of that
5 surrounding community status.

6 Those impacts are relevant only to
7 that issue. And Wynn Resorts stands ready to
8 answer any question the Commission has or the
9 city has with regard to those impacts, which
10 are relevant to that determination of
11 surrounding community status and only
12 surrounding community status.

13 That brings us to the second point
14 of what I heard as consensus. Commissioner
15 McHugh, when you asked whether host community
16 status would be determined only by the site
17 plan and its boundaries, Counsel for the city
18 quite properly agreed.

19 Nowhere in the definition of host
20 community is there any mention of impacts, and
21 for good reason. The Legislature did not
22 intend for this Commission to have to weigh
23 impacts in its decision or in its approval of a
24 license from an applicant with regard to the

1 premises that will constitute the location then
2 of the host community.

3 The question of host community
4 status is driven by, per the definition of
5 gaming establishment, the premises in the
6 application. That's a question of pure
7 geography. It begins and ends with
8 Commissioner McHugh what you rightly call the
9 boundaries of the site plan. And that's what
10 we are here to discuss today.

11 And I am going to yield to my
12 partner, Mr. Gaquin, because he's going to show
13 you the documented site plan, not a brochure,
14 not a photo, which begins and ends the inquiry
15 into host community status.

16 MR. GAQUIN: Thank you, Peter. Good
17 morning, Mr. Commissioner and members of the
18 Commission. My name is Dan Gaquin. I too am a
19 partner at Mintz Levin. And I am here on
20 behalf of Wynn Resorts and the project
21 applicant, Wynn Mass, LLC. I am a real estate
22 lawyer. And I've been working on this project
23 really since Wynn has been involved. I'm very
24 familiar with the project site.

1 What I'd like to do is walk you
2 through some land surveys and project plans to
3 provide you with the facts relevant to the
4 question of host community status. That is
5 specifically the location of Wynn's proposed
6 gaming establishment.

7 The plan to the right here is a land
8 survey that shows the principle project site.
9 It is an approximately 30-acre parcel located
10 off of Horizon Way in Everett. It is
11 controlled by the proposed applicant under an
12 option agreement. The parcel consists of the
13 project with 22 acres of upland and eight acres
14 of submerged land or land under water.

15 As you can see this subtlety
16 boundary and I have outlined this in blue, is
17 also the Everett/Boston property boundary as
18 well as the boundary of Suffolk and Middlesex
19 County.

20 CHAIRMAN CROSBY: I'm sorry. I'm
21 not getting this. Is it that?

22 MR. GAQUIN: I am referring to the
23 plan to my right.

24 CHAIRMAN CROSBY: Where is the site?

1 I don't see the site.

2 MR. GAQUIN: It should be --

3 CHAIRMAN CROSBY: This doesn't look
4 at all like the site to me. Where's 99, for
5 example?

6 MR. GAQUIN: It should be the second
7 plan in your package. The first plan, the
8 first sheet is the definitions.

9 CHAIRMAN CROSBY: So, Alford Street
10 is 99?

11 MR. GAQUIN: Alford Street is Route
12 99. Horizon Way comes off of Alford Street and
13 leads to the project site, the gaming
14 establishment premises.

15 CHAIRMAN CROSBY: so, this is
16 analogous to this.

17 MS. SINATRA: Chairman Crosby, would
18 it be acceptable if Dan stood up there and --

19 CHAIRMAN CROSBY: Sure, not only
20 acceptable, it would be appreciated.

21 MR. GAQUIN: This is Alford Street
22 coming in from Boston to Everett. This is the
23 line, the Boston/Everett line and also the
24 Middlesex/Suffolk County line. Horizon Way is

1 the current access to the site. Again, this is
2 the parcel.

3 CHAIRMAN CROSBY: Usually, north is
4 at the top. That threw me for starters. Okay.

5 MR. GAQUIN: Put in the context of
6 the Gaming Act definitions, this is the
7 premises where Wynn proposes to establish the
8 gaming establishment. That is the gaming area
9 and the nongaming structures related to the
10 gaming are. This is where they would be
11 located.

12 CHAIRMAN CROSBY: The line which is
13 red and blue, is the border of Boston and
14 Everett?

15 MR. GAQUIN: Correct.

16 CHAIRMAN CROSBY: But the parcel of
17 land -- This is not the Monsanto plant.

18 MR. GAQUIN: It's a part of the
19 Monsanto. And I am going to get to the Boston
20 parcel.

21 CHAIRMAN CROSBY: It's only the
22 portion that you're using supposedly for the
23 facility for the gaming establishment.

24 MR. GAQUIN: That's right.

1 CHAIRMAN CROSBY: This is not the
2 Monsanto parcel. This is the parcel east of
3 that, which is being used for the facility.

4 MR. GAQUIN: Yes, that is correct.
5 The second plan to the left is a roof plan or a
6 site plan, which shows the structures
7 comprising the gaming establishment premises
8 and the roadway access as proposed by Wynn.
9 Again, the boundary of Everett and Boston is
10 outlined in red. And as you can see, the
11 project lies entirely within the city of
12 Everett.

13 Let me dwell on access to the -- the
14 current access to the premises for a moment,
15 because I think that appears to be a source of
16 at least some of the confusion regarding
17 Boston's status. The site is currently
18 accessed via Horizon Way, which is a private
19 way. The private way provides access via
20 easement rights.

21 CHAIRMAN CROSBY: Horizon Way is
22 where?

23 MR. GAQUIN: Horizon Way is here.

24 COMMISSIONER ZUNIGA: It's not

1 within the site plan, in other words.

2 MR. GAQUIN: Right. This is access.
3 It's a private way that provides access to the
4 site. It is not part of the site. This is
5 Horizon Way, not Alford. This is the proposed
6 access. This is right here. Our proposed
7 access is over here.

8 CHAIRMAN CROSBY: Horizon Way is --

9 COMMISSIONER ZUNIGA: Horizon Way is
10 further to the left. It's to the left, isn't
11 it?

12 MR. GAQUIN: No, it's right here.

13 CHAIRMAN CROSBY: So, the site runs
14 right through Horizon Way?

15 MR. GAQUIN: The access uses a
16 portion of Horizon Way. And then we come down
17 here. We've got the rights over this parcel
18 here that extends out.

19 CHAIRMAN CROSBY: The vertical site
20 line there runs through Horizon Way.

21 MR. GAQUIN: So, it ends here and
22 Horizon Way comes down.

23 COMMISSIONER MCHUGH: Your access is
24 to the east of Horizon Way.

1 MR. GAQUIN: Proposed access is all
2 in Everett. So, regarding the current access
3 to the site, again it's a private way. It
4 provides access via easement rights inherent to
5 all of the abutters to the Way.

6 A small portion of Horizon Way at
7 the intersection of 99 is located in Boston.
8 So, what does this mean to Boston in relation
9 to the Wynn project? As noted earlier by my
10 colleague Mr. Weld, it means that Boston fits
11 squarely within the definition of a surrounding
12 community. I'll repeat. That is a
13 municipality in proximity to the proposed
14 gaming establishment whose transportation
15 infrastructure provides ready access the
16 proposed gaming establishment.

17 CHAIRMAN CROSBY: I've just got to
18 clarify this. The gaming establishment site
19 terminates here?

20 MR. GAQUIN: Correct.

21 CHAIRMAN CROSBY: And Horizon Way is
22 precisely where?

23 MR. GAQUIN: Runs here.

24 CHAIRMAN CROSBY: If it's here, some

1 of Horizon Way is in Boston. Some of Horizon
2 Way is in Everett?

3 MR. GAQUIN: That's right.

4 CHAIRMAN CROSBY: The portion of it
5 which is in Boston is not included in any way
6 in the gaming establishment premises?

7 MR. GAQUIN: That's correct. These
8 are the gaming establishment premises.

9 CHAIRMAN CROSBY: Okay.

10 COMMISSIONER MCHUGH: Before you put
11 that one away, where is the north-south line
12 from that diagram on this diagram?

13 MR. GAQUIN: The north-south line is
14 here.

15 COMMISSIONER ZUNIGA: It's the same
16 orientation.

17 COMMISSIONER MCHUGH: So, a part of
18 this diagram showing the buildings is to the
19 east of that north-south line?

20 MR. GAQUIN: Yes, this portion right
21 here. We are in discussions with the abutter
22 regarding that land.

23 COMMISSIONER MCHUGH: But that is
24 all in Everett anyway?

1 MR. GAQUIN: It may or may not be
2 included in the project, but it's all in
3 Everett, yes.

4 COMMISSIONER MCHUGH: Thank you.

5 MR. GAQUIN: This plan shows the
6 project site, the site being the gaming
7 establishment is parcel C, which was referred
8 to in the Boston presentation. It was also
9 alluded to in Mr. Weld's remarks. Parcel C is
10 a separate registered parcel of land and has
11 been since at least 1942.

12 That land, as you can see from the
13 pictures, mostly land under water in a mud flat
14 and a small sliver that extends out to Horizon
15 Way. The land is currently owned by the owner
16 of the red parcel, which is the owner of the
17 30-acre proposed gaming establishment site.

18 COMMISSIONER MCHUGH: That's FBT?

19 MR. GAQUIN: FBT, and it is under
20 option to a Wynn affiliate that is not the
21 proposed applicant, but anticipating that this
22 may be a source of confusion, we will discuss
23 it today. Some important points about this
24 parcel. One, as I mentioned, this is a

1 separate parcel of registered land, has been
2 since at least 1942. Mr. Weld had a plan up
3 before, which showed that land court plan.

4 The option is not held, as I
5 mentioned, by the proposed applicant. And the
6 land, if acquired, will not be part of the
7 gaming establishment premises. No structures
8 or amenities, gaming or nongaming are planned
9 for that area.

10 CHAIRMAN CROSBY: Will not and never
11 will be?

12 MR. GAQUIN: Will not and never will
13 be.

14 CHAIRMAN CROSBY: And is that
15 something to which you are prepared to
16 stipulate enforceable?

17 MR. GAQUIN: Yes.

18 CHAIRMAN CROSBY: Okay.

19 MR. GAQUIN: The land is
20 specifically excluded from the option agreement
21 that is held by the proposed applicant.
22 Because the land is owned by the owner and
23 seller of the Everett parcel, it gave Wynn the
24 opportunity to control this adjacent site. And

1 we believe it is prudent to do so to protect
2 against conflicting or adverse uses and
3 possibly used for landscaping or to enhance the
4 view from the site. And we think that would be
5 an appropriate topic for the surrounding
6 community discussions.

7 The site is controlled through a
8 separate entity in order to maintain control of
9 the land but also and importantly to ensure
10 that the land is kept separate distinct from
11 the gaming establishment premises and to ensure
12 that Everest is the sole host community.

13 There have been some earlier concept
14 plans, renderings like the ones that were shown
15 in the Boston presentation that show that area
16 with landscaping, dotted with landscaping or
17 shaded in green. These were conceptual plans,
18 very preliminary sketches and renderings and
19 should not be taken for anything more than
20 that.

21 Under no circumstances will this
22 area be part of the Wynn gaming establishment
23 or project premises. The land is not used by
24 or needed for Wynn for the project in any way,

1 not for zoning or other regulatory compliance.
2 And it is not intended for any particular use.
3 Wynn has no current plans for the land.

4 As I mentioned, we think it would be
5 appropriate to have that landscaped. It would
6 be to Wynn's benefit to have it landscaped.
7 And there could be other uses for that land,
8 but we think that's an appropriate topic for
9 the surrounding community discussions with
10 Boston.

11 One final point on that land, for
12 environmental remediation purposes, lot C is a
13 part of the defined disposal site which is a
14 defined term under the Massachusetts
15 contingency plan, but this has no bearing on
16 its status as a separate parcel or relevance to
17 the Wynn project.

18 If Wynn elects to acquire lot C, it
19 may assume those remediation obligations, but
20 that has yet to be determined. If it does not
21 acquire lot C, those obligations will remain
22 with the existing owner. To conclude on that
23 it is not controlled by the proposed license
24 application. It may never be acquired.

1 CHAIRMAN CROSBY: It's not
2 controlled by?

3 MR. GAQUIN: It's not controlled by
4 the applicant. It's controlled by an
5 affiliate, a different affiliate of Wynn. Wynn
6 Mass, LLC is the --

7 CHAIRMAN CROSBY: That's a
8 technicality, but okay.

9 MR. GAQUIN: It's not part of the
10 gaming establishment premise or the project
11 site. And as I said, under no circumstances
12 will it be included in the application by Wynn
13 as part of the gaming establishment premises.

14 That's all I have. I think these
15 surveys bear out quite clearly that the gaming
16 establishment premises as proposed by Wynn is
17 located entirely within the city of Everett.
18 And I'll be glad to answer any questions you
19 have.

20 CHAIRMAN CROSBY: Has the city been
21 given these plans?

22 MR. GAQUIN: The city has -- I think
23 the bottom plan is part of the -- What the city
24 has been given is the publicly available

1 documentation, the expanded environmental
2 notification form.

3 CHAIRMAN CROSBY: Has the city given
4 these plans?

5 MR. GAQUIN: Not these plants.

6 CHAIRMAN CROSBY: Why?

7 MR. GAQUIN: This is a discussion
8 about parcel C and the Boston land, which is
9 not a part of the applicant's -- Wynn Mass, LLC
10 is not proposing to make that part of the
11 gaming establishment.

12 CHAIRMAN CROSBY: This package,
13 you're saying that these are the sine qua non
14 documents that demonstrate that in your view
15 Boston is not a host community. That seems to
16 me a pretty reasonable set of documents that
17 you would give to the city. And I'm asking if
18 you have given them to the city. And why have
19 you not?

20 MS. SINATRA: Chairman Crosby, I
21 think everything is publicly available with the
22 exception of this site plan at the bottom. I
23 think actually that although it is sitting at
24 the bottom of that easel, it is probably the

1 most relevant document because it actually
2 shows the building and the proposed gaming
3 establishment.

4 We are happy to share that
5 information with the city. Notwithstanding the
6 implication of our being a bit obstreperous, I
7 am going to have to confess that several
8 meetings have been had between our advisors and
9 Ms. Dello Russo. We have exchanged
10 correspondence, and we are happy to be as open,
11 transparent and fair as is possible.

12 So, we are happy to share the
13 information. We actually even had a public
14 traffic meeting in Charlestown to try to get
15 this moving. So, we're hoping that we are not
16 before you on a repeated basis on issues like
17 this. We are happy to take your guidance. But
18 we would like to put this issue of host versus
19 not host behind us.

20 COMMISSIONER MCHUGH: To the
21 Chairman's point, just to follow up on that,
22 Ms. Sinatra, is a relevant one. This makes the
23 discussion -- These documents make the
24 discussion possible. These are not renderings.

1 These are metes and bounds descriptions.

2 We didn't get, Counsel, to the last
3 two, which look like they are the actual plot
4 plans for the registered land that divide the
5 parcels, show that there are three parcels. I
6 take it each of which is registered land A, B
7 and C separately registered.

8 MR. GAQUIN: I didn't go into those
9 again because they had already been discussed,
10 but yes.

11 COMMISSIONER MCHUGH: This, it seems
12 to me is a starting point for an informed
13 discussion.

14 So, it seems to me that open sharing
15 of this kind of information earlier might have
16 gone a long way toward resolving the problem at
17 hand.

18 MS. SINATRA: To be clear though,
19 the only slide that the city did not have
20 access to was this one that has the building on
21 it.

22 MR. WELD: I've handed copies of the
23 packet to counsel, Mr. Chairman and Judge
24 McHugh. And the packet was assembled for

1 today's hearing. So, we beat it out of
2 everybody to get prepared for this hearing.
3 So, I think the Commission has done both sides
4 a service by bringing us together here.

5 CHAIRMAN CROSBY: On the Horizon
6 Way, I assume although it's not very clear you
7 can figure out one way or another to make sure
8 that the site plan does not include any of
9 Horizon Way. I can't exactly see it because
10 you don't have Horizon Way on a lot of these
11 plots. But I assume you can figure that out.

12 You've apposited an alternative
13 access point, which is this rounded road coming
14 in from Broadway, I guess. That is in Everett,
15 which is good. But who owns that or is that
16 under the
17 control --

18 MR. GAQUIN: Yes. This is a 2.4
19 acre parcel of land that falls under the option
20 that this parcel right here. So, the access
21 would swing down through here.

22 CHAIRMAN CROSBY: So, that access
23 road is one that you do control the ability to
24 institute?

1 MR. GAQUIN: Yes or will control.

2 CHAIRMAN CROSBY: Will control,
3 okay.

4 MS. SINATRA: And Chairman Crosby
5 and members of the Commission, access is
6 something that we continue to work on. Traffic
7 is probably our biggest impact. So, we are
8 working assiduously with our traffic advisors
9 and our architects and planners to make sure
10 that we get the access to be as good as
11 possible.

12 So, the geometry of that access
13 continues to be a point of discussion. As
14 someone raised earlier, of course, our
15 application is due at the end of the year. And
16 we continue to work and refine the traffic
17 analysis and the geometry of the access. One
18 of the things that we keep top of mind however
19 is that that will be in Everett.

20 CHAIRMAN CROSBY: There was a
21 question or the attorneys for the city said
22 something about the municipal harbor plan. And
23 Commissioner McHugh suggested that was in
24 effect a subset of the site plan.

1 MS. SINATRA: Remember that the
2 municipal harbor plan is a plan of the city of
3 Everett and is not anything that we control.
4 Although we've been in discussions with the
5 city of Everett because it will affect our
6 project, it is not a Wynn document. It is not
7 a Wynn product.

8 MR. TOCCO: The municipal harbor
9 plan is a process driven by the city.

10 CHAIRMAN CROSBY: By which city?

11 MR. TOCCO: By the city of Everett.
12 And the city of Boston has a representative
13 that sits on that committee and is involved in
14 that process. It was our assumption that they
15 would be reporting back to the city of what was
16 going on since they were a city appointee. But
17 that's a process that is not finished yet. The
18 traffic is not complete yet.

19 It is ongoing studies. In the
20 environmental process, they've asked us to look
21 at 20 more intersections. So, it isn't like we
22 have a set of complete documents that we could
23 then turn over to someone. These are all work
24 in process. They will be completed by the time

1 we get our application. Certainly, we'll be
2 willing to share with them. I've had two
3 meetings and phone calls with the Boston
4 officials. We actually again carried in the
5 environmental impact report so they could have
6 it. We didn't wait to mail it to them. And we
7 suggested we should meet on traffic issues.

8 And then this issue of host
9 community reared its head. And quite frankly,
10 everybody went into their foxholes. But there
11 were meetings and ongoing discussions to share
12 information until that specific issue reared
13 its head.

14 CHAIRMAN CROSBY: Okay. Anything
15 Ombudsmen Ziemba?

16 MR. ZIEMBA: I just had a specific
17 question. When it comes to the access road,
18 you mentioned that the access road you have
19 control of that site or soon will have control
20 of that site?

21 MR. GAQUIN: Right. As Ms. Sinatra
22 pointed out, the geometry is not yet exact
23 perhaps because it may move up or down. And
24 either we'll use a portion of Horizon Way,

1 which we have a right to use as an abutter or
2 we'll use the land that we acquire.

3 MR. ZIEMBA: And you are in
4 conversations for the acquisition of that
5 additional land?

6 MR. GAQUIN: That's correct.

7 CHAIRMAN CROSBY: But if that didn't
8 happen, you would use Horizon Way?

9 MR. GAQUIN: It would just shift the
10 access further down.

11 CHAIRMAN CROSBY: It would shift it
12 to Horizon Way?

13 MR. GAQUIN: A portion of it, but we
14 have rights to use Horizon Way as an abutter.

15 CHAIRMAN CROSBY: I understand that.
16 If Horizon Way were the access point to the
17 property, to the site, I guess we're saying, to
18 the gaming establishment site, does that alter
19 in any way this conversation about host
20 community or otherwise?

21 MR. GAQUIN: No, Mr. Chairman. It
22 would mean all the more that Boston has claim
23 to surrounding community status because the
24 definition of surrounding community means a

1 community in proximity whose transportation
2 infrastructure provides ready access to the
3 premises. And that hits that nail on the head.

4 CHAIRMAN CROSBY: Okay. Anybody
5 else? Our objective here was to try to
6 facilitate a conversation. It's very easy to
7 understand here what went off track. Mr. Weld
8 you articulated the right approach. I don't
9 think everybody has been going by the right
10 approach. We don't really need to have this
11 meeting. But it looks to me like the facts are
12 pretty clear.

13 And I would hope that everybody
14 could sit down around the table and come to a
15 conclusion and quickly. If that can't happen
16 -- And by quickly, I mean like within hours,
17 days, the time really is short. If Boston were
18 a host community, there would be a host of
19 problems -- yes, if Boston were a host
20 community. If it isn't and it's a surrounding
21 community it is nevertheless going to be a
22 complicated process. So, time is really of the
23 essence never mind the confusion problem.

24 So, I would like to suggest if the

1 Commissioners are okay with it that we urge you
2 - We've all been there. We understand that
3 things happens but it is time to get this one
4 solved. I would like to urge you to get
5 together and fix it before the week is out.

6 I'd like to ask Ombudsmen Ziemba to
7 work with you and let us know on a daily basis
8 is this going to happen or do we need to do
9 this? If we do, we will immediately act to do
10 it. But we shouldn't have to. If you could
11 advise us that this is going to get done before
12 the week is out, then I think all to the good
13 and we're off to the races, so to speak. Is
14 that acceptable to you folks?

15 COMMISSIONER MCHUGH: I would just
16 like to sharpen that a little bit and perhaps
17 the sharpening is unnecessary. But we now have
18 a plot plan. We now have metes and bounds. We
19 now have a pledge that on parcel C there will
20 be no construction.

21 So, it seems to me that going
22 forward with Mr. Ziemba's good offices, the
23 focus can be on if all of this is so, what are
24 the precise questions about surrounding

1 community, host community that are left, if
2 any? That it seems to me not only would
3 facilitate the discussion but also would
4 sharpen the issues in the event that we are
5 called upon to solve them.

6 The other thing that I would like to
7 know if a resolution isn't possible by say the
8 end of the week on this issue, whether either
9 side has an objection to us resolving this by
10 an adjudicatory process in which we create a
11 record that actually incorporates a lot of what
12 we heard today. And makes a legal judgment
13 based on the law and our exercise of discretion
14 and puts an end to it. And if there is an
15 objection to us doing that what is the basis
16 for the objection?

17 So, it seems to me that those three
18 ingredients of that discussion would be helpful
19 both to the Commission and I hope to the
20 parties.

21 MR. WELD: Sounds just right to us,
22 Your Honor.

23 CHAIRMAN CROSBY: Those objections,
24 if any, would be to us by the end of the week

1 also if it turns out that the thing doesn't
2 resolve by the end of the week.

3 COMMISSIONER MCHUGH: Right.

4 COMMISSIONER ZUNIGA: Very good.

5 CHAIRMAN CROSBY: Counsel for the
6 city, are you all okay with this way to
7 proceed?

8 MS. DELLO RUSSO: We are. Thank you
9 for the opportunity.

10 CHAIRMAN CROSBY: Thank you
11 everybody. I appreciate everybody's coming in.
12 I'm going to suggest that we take about a 10-
13 minute break.

14

15 (A recess was taken)

16

17 CHAIRMAN CROSBY: It is 11:15 and
18 we'll reconvene Mass, Gaming Commission public
19 meeting number 76. We will return to Ombudsman
20 Ziemba and General Counsel Blue.

21 MR. ZIEMBA: Thank you, Mr.
22 Chairman, and members of the Commission, the
23 second item we are here to discuss today is a
24 transaction involving the Plainridge Racing

EXHIBIT 2

1 you've got something for us?

2 MR. ZIEMBA: Yes, Mr. Chairman, I'm
3 very pleased to provide a report that has been
4 provided, a joint statement between both the
5 Wynn Development team and the city of Boston.

6 CHAIRMAN CROSBY: Thank you. The
7 Ombudsman just gave me this. This, as he said,
8 is a joint statement from both Boston and the
9 Wynn team.

10 Based on the new information
11 provided at Wednesday's public meeting, the
12 parties have agreed to begin discussions about
13 Boston's status as a surrounding community to
14 address the impacts that Wynn's proposed gaming
15 establishment would have on Boston generally
16 and on the Charlestown community specifically.
17 And therefore no adjudicatory hearing of the
18 Massachusetts Gaming Commission is necessary on
19 the question of whether Boston is a community.

20 That's great. I am delighted. I am
21 pleased that they were able to get together and
22 agree to this. As far as I'm concerned, we
23 move onto other topics.

24 COMMISSIONER MCHUGH: Yes. It's an

EXHIBIT 3



January 8, 2014

Mayor Martin Walsh
One City Hall Square
Boston, MA 02201

Dear Mayor Walsh:

Pursuant to 205 CMR 125.01(1)(a)1. of M.G.L. c. 23K, Wynn MA, LLC designated the City of Boston a "surrounding community" in its response to the Massachusetts Gaming Commission's RFA-2 Application for a Category 1 Gaming License, a copy of which was delivered to your office on December 31, 2013.

To obtain a final surrounding community designation, the City of Boston must assent to this designation in writing within ten (10) days of its receipt of the application. Upon receipt of the written assent, the Gaming Commission shall issue a written notice designating the City as a surrounding community to the Wynn Resort in Everett. To confirm the City of Boston's acceptance of this designation, please countersign this letter and return a copy to me and the Massachusetts Gaming Commission on or before January 10, 2014.

If you have any questions, please do not hesitate to contact me at (702) 770-7558 or via e-mail at jacqui.krum@wynnresorts.com.

Very Truly Yours,

A handwritten signature in black ink that reads "Jacquie Krum".

Jacqui Krum
Senior Vice President and General Counsel

cc: john.s.ziemba@state.ma.us
Elizabeth.DelloRusso@cityofboston.gov

Received, Acknowledged and Confirmed

City of Boston, Mayor Martin Walsh

EXHIBIT 4

Before the
MASSACHUSETTS GAMING COMMISSION

Petition of the City of Boston in Accordance With the Requirements of 205 CMR 125.01 and With Respect to Other Matters With Respect to RFA-2 Application filed by Wynn, MA, LLC Seeking a Category 1 License

I. INTRODUCTION AND BACKGROUND

On December 31, 2013, Wynn MA, LLC (“Wynn” or the “Applicant”) filed a RFA-2 Application seeking a Category 1 License to authorize the development of a resort destination casino at the former Monsanto site with the Massachusetts Gaming Commission (the “Commission”), and provided the City of Boston (the “City”) with an electronic file containing sections of such filing. The Commission, on its own account or by request of another municipality not the City of Boston, extended the deadline for the filing of surrounding community petitions and designation assent letters as specified in 205 CMR 125.01 from January 10, 2014 until January 13th, 2014. On January 9, 2013, the City of Boston (the “City”) filed a request with the Commission asking for a further extension of time until February 10th, 2014 for the reasons set for the City’s letter request. See Attachment 1: City’s Request for an Extension.

On January 10, 2014, the Commission denied the City’s request, stating that the Commission’s schedule did not allow for it to consider the City’s request and recommended that the City assent to the designation as a surrounding community but reserve its right to claim host status. See Attachment 2: Commission Denial. Specifically, the Commission recommended “that the City consider assenting to the designation of surrounding community status but reserving a right to claim host community status should the City deem it advisable to do so.” See Attachment 2: Commission Denial. In its letter, the Commission further states, “if the City determines that it qualifies for host community status ... the City could notify the Commission.” See Attachment 2: Commission Denial.