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THE COMMONWEALTH OF MASSACHUSETTS  
MASSACHUSETTS GAMING COMMISSION

PUBLIC MEETING #45

CHAIRMAN

Stephen P. Crosby

COMMISSIONERS

Gayle Cameron

James F. McHugh

Bruce W. Stebbins

Enrique Zuniga

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January 10, 2013, 1:00 p.m.

OFFICE OF THE DIVISION OF INSURANCE

First Floor, Hearing Room E

1000 Washington Street

Boston, Massachusetts

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

CHAIRMAN CROSBY: I am pleased to call to order the 45th public meeting of the Massachusetts Gaming Commission on Thursday, January 10, 2013.

First of all, is the approval of minutes from our last meeting. Commissioner McHugh?

COMMISSIONER MCHUGH: Minutes were distributed yesterday afternoon and welcome any substantive corrections. Otherwise, I move that they be adopted as distributed.

COMMISSIONER CAMERON: Second.

CHAIRMAN CROSBY: Any discussions, any issues? All in favor, aye.

COMMISSIONER STEBBINS: Aye.

COMMISSIONER ZUNIGA: Aye.

COMMISSIONER CAMERON: Aye.

COMMISSIONER MCHUGH: Aye.

CHAIRMAN CROSBY: Opposed? The ayes have it.

Okay. We're going to change our order here a little bit as is on the agenda. We are going

1 to ask Ombudsman Ziemba to join us, if he's here  
2 along with his troops.

3 Do you want to go straight to the  
4 permitting process? Are Maeve --

5 MR. ZIEMBA: Maeve and Dave should be  
6 here very shortly. So, why don't I give my  
7 ombudsman update and then they will join me.

8 If I can, Mr. Chairman, in regard to my  
9 update, I continue to have meetings and  
10 conversations with applicants and communities.  
11 Notably, I am visiting an applicant tomorrow in  
12 Springfield and the City of Springfield.

13 I spent a good amount of time  
14 discussing the draft permitting documents and  
15 asking for comments over this last week. In the  
16 course of these conversations, I field a lot of  
17 questions regarding the timing of our RFA-1  
18 licensing reviews and the timetable for  
19 referendums, referendum scheduling. I recommend  
20 that we discuss that timing further after we receive  
21 the RFA-1 applications next week. And maybe we can  
22 provide a little more guidance to communities.

23 CHAIRMAN CROSBY: Are there issues,  
24 substantive issues or are people just want

1 clarification?

2 MR. ZIEMBA: I think people want  
3 clarification on how the 60 to 90 days works with  
4 our RFA-1 deadlines. And I think we probably have  
5 more information next week for them.

6 CHAIRMAN CROSBY: Right. Okay.

7 MR. ZIEMBA: I've received some  
8 questions regarding what the Commission's policies  
9 are regarding the design of gaming facilities. We  
10 had a policy discussion regarding how complete  
11 design must be prior to submission. But as a  
12 follow-up to our design forum that we held last year,  
13 there are people that are asking questions about  
14 what criteria that we would utilize for design.

15 We just recently had a conversation  
16 this week where we followed up on that design forum  
17 to find out when the whitepaper -- there was a  
18 promised whitepaper that was going to be submitted  
19 to us. And what I'd suggest is that potentially the  
20 Commission should discuss the policy of what design  
21 criteria we would utilize after receipt of that  
22 white paper. It's my understanding that the  
23 whitepaper would be available by the end of this  
24 month.

1 CHAIRMAN CROSBY: Right.

2 Commissioner Stebbins, that's right?

3 COMMISSIONER STEBBINS: Yes.

4 CHAIRMAN CROSBY: Yes, that's  
5 important, I think.

6 MR. ZIEMBA: That's a good one. We've  
7 also fielded some questions regarding the process  
8 for community disbursements and the grant agreement  
9 that we have discussed in the last couple of weeks.  
10 Mr. Grossman will join us a little bit later and we  
11 will give an update about the grant agreement, which  
12 has been drafted and should be available for the  
13 Commission I believe next week.

14 I continue to work with regional  
15 planning agencies to fine-tune the process for  
16 helping host and surrounding communities.  
17 Primarily, the nearby impacted communities,  
18 evaluate the impacts of potential gaming  
19 facilities.

20 I'm expecting a detailed summary from  
21 the RPAs as early as today and if not tomorrow. And  
22 this draft will give us of an update on process and  
23 resources that would be necessary to help host and  
24 surrounding communities prior to the application

1 that is submitted to the Commission.

2 And over this last week, we've been  
3 working a lot with other agencies to develop our  
4 system to help communities and applicants work  
5 through the state permitting process and to finalize  
6 plans for infrastructure improvements. This  
7 builds upon the recommendation that was submitted  
8 to the Commission last week on the permitting  
9 question.

10 I think probably what I should do is  
11 just go into a little bit of the further discussion  
12 on permitting while we're joined by Maeve and Dave.  
13 I think that'll work out.

14 CHAIRMAN CROSBY: Can I just ask you,  
15 we have community disbursement down here as a  
16 separate item.

17 MR. ZIEMBA: Yes. That's a separate  
18 item. We can discuss that where it is on the agenda.

19 So, at issue before the Commission last  
20 week and again this week is a question regarding the  
21 level of state and local permitting that would be  
22 required by applicants prior to the submission of  
23 the RFA-2 application.

24 I thank the Chairman for explaining in

1 my absence the memo on this issue that was submitted.  
2 I think the conversation was rather comprehensive,  
3 so I don't think I'll try to replicate it.

4 But I would like to focus on just one  
5 aspect of the memo. Notably, it's assistance that  
6 we will be receiving from other agencies including  
7 Mass. DOT, Mass. Department of Transportation,  
8 Mass. DOT and the Executive Office of Energy and  
9 Environmental Affairs. And hopefully they'll be  
10 joining me here shortly.

11 But in summary what the recommendation  
12 that was included in that paper provided was that  
13 the agencies would help us in three different stages  
14 of our review of applications. Notably, post-award  
15 and a recommended conditional licenses be granted.

16 Post-award of conditional licenses,  
17 because as was stated in the recommendation, it is  
18 probably impossible for all of the applicants to  
19 fully go through the state and local permitting  
20 processes. It was recommended that we establish an  
21 interagency team to find ways to expedite permitting  
22 for applicants after the granting of a conditional  
23 license. Hi, Maeve.

24 MS. VALLELY-BARTLETT: Your

1 interagency team is here, John.

2 MR. ZIEMBA: I knew you would be.

3 MS. VALLELY-BARTLETT: We arrived as  
4 soon as you said the word.

5 MR. MOHLER: We came together.

6 CHAIRMAN CROSBY: Just drop your coats  
7 and come right on up, folks.

8 MR. ZIEMBA: So, I am joined by Dave  
9 Mohler, who is the Executive Director of the Office  
10 of Transportation Planning for the Mass. Department  
11 of Transportation.

12 And we welcome back Maeve  
13 Vallely-Bartlett who is the state MEPA Director.

14 So, as I was beginning, what I'd like  
15 to focus on the multi-stage process where other  
16 agencies are going to help us in our review of  
17 applications. Post-award of the conditional  
18 licenses, what we are recommending jointly is that  
19 over the next series of weeks and months that we  
20 develop a process to expedite permitting after the  
21 granting of conditional licenses.

22 We don't have any firm recommendations  
23 for you today about what those -- how we will go about  
24 expediting those permits, but primarily I think that



1 there is a recognition all the way from the  
2 Governor's office to the Legislature to the  
3 Commission that this is an extremely important group  
4 of applicants to the economic development goals of  
5 the Commonwealth. And that each of the respective  
6 secretariats has noted that it will dedicate very  
7 significant resources to make sure that these  
8 applications proceed through the permitting process  
9 as quickly as possible.

10 I note that Chairman Crosby and I  
11 attended a meeting recently in the Governor's office  
12 that was attended by the respective cabinet  
13 secretaries in the Governor's office where we  
14 discussed how important it is try to move all of  
15 these applications through the permitting process  
16 as quickly as possible.

17 However, I do note based on the  
18 discussion from last week's conversation that since  
19 applicants will not have proceeded -- some  
20 applicants will not have proceeded all of the way  
21 through the permitting process prior to the time of  
22 the application that there may be some significant  
23 time that is associated with applicants proceeding  
24 through the permitting process. And we just want

1 to make sure that people realize that ahead of time.

2 What we did do in our recommendation is  
3 that we recommended that readiness to proceed would  
4 be one of the criteria by which we would evaluate  
5 all applicants.

6 So, it is a recommendation that  
7 entities that are applying to the Commission that  
8 they proceed as far as they can through the state  
9 and local processes but we recognize that that  
10 involves a number of different resource questions.  
11 Resource questions by the applicants and also  
12 resource questions by the state.

13 We'll have numerous, numerous  
14 applicants. And if we ever were to require a full  
15 baked review of all of those prior to our  
16 application, if indeed that were possible, that  
17 would involve a very significant outlay of resources  
18 that would detract from all the of the other  
19 Commonwealth's needs.

20 So, what we have agreed is that post the  
21 award of the conditional licenses, we will work on  
22 the recommendations that we formulate over the next  
23 couple of months on trying to expedite permitting  
24 as much as possible.

1 Maeve will discuss the MEPA process and  
2 how the MEPA process is a very quick process from  
3 the time that they receive applications or filings  
4 until the time that they make their certificates.  
5 A lot of it is dependent upon the applicant. So,  
6 she'll discuss that a little bit in her remarks.

7 So, that is the -- I started with the  
8 third stage first. The second stage is that the  
9 agencies have agreed to provide us with evaluations  
10 during our review process. They will help us take  
11 a look at the applications. They will help us  
12 evaluate the completeness of the applications,  
13 whether or not particular aspects of the  
14 applications are possible. If they haven't been  
15 fully vetted, what it would take to fully vet them.  
16 What are the risks associated with each of those  
17 aspects of the applications. And notable,  
18 infrastructure improvements will be a big part of  
19 the review. And obviously, the Mass. DOT agencies  
20 have very significant expertise and resources to  
21 help us evaluate applicants and what they are  
22 submitting.

23 CHAIRMAN CROSBY: This fits together  
24 with the project that Commissioner Zuniga has, which

1 is assembling -- we're going to have to assemble a  
2 team to help us review all of the applications. And  
3 knowing what the resources are at the state and  
4 really understand what we are going to be able to  
5 get from them.

6 They were very generous to say that  
7 they were happy to help. But I think we need to be  
8 clear with them and they with us so we know what the  
9 expectations are.

10 COMMISSIONER ZUNIGA: Yes.

11 MR. ZIEMBA: So, we've had some  
12 preliminary discussions about timetable, when that  
13 would occur. But I think over the next couple weeks  
14 and months we will finalize with the Commissioner  
15 exactly what would be necessary, what resources  
16 would be necessary and what procedures need to be  
17 developed.

18 Specifically, there are other  
19 statutory processes that all of these applicants go  
20 through. And they would still be required to follow  
21 all of those statutory processes and that what we  
22 would do here does not impact that.

23 So, the final stage that I'll discuss,  
24 which is the first stage is agency technical advice

1 prior to the application. The Commission has  
2 previously discussed and for very valid reasons has  
3 decided that it will not be involved in formulating  
4 for communities what should be in their host  
5 community agreements.

6 Communities and applicants, many of  
7 them are in the depth of many conversations about  
8 what should be included in those community  
9 agreements.

10 The one item that bears a little bit  
11 more of a discussion is those community agreements  
12 may be based on ideas of infrastructure primarily  
13 that will be included in those host community  
14 agreements. And because the infrastructure, which  
15 is included in those agreements, may not be fully  
16 vetted yet, there will be a lot more review through  
17 the processes I just identified, there is a danger  
18 that they could potentially not reflect the current  
19 reality of what we think is a potentially best course  
20 for that infrastructure, for example.

21 So, what we hope to do is we hope to  
22 provide a method to properly inform communities  
23 prior to the time that they ink their host community  
24 agreements what the current thinking is of the

1 agencies that will be involved in the permitting  
2 processes and the infrastructure improvement  
3 processes at a later date.

4 So, what we are recommending is that  
5 this interagency group will communicate with host  
6 communities and surrounding communities that are  
7 involved in a surrounding community agreement. And  
8 we will give them the latest information that is  
9 available on the infrastructure that is planned for  
10 each of the developments. So that the communities  
11 will know about any obstacles that may be faced as  
12 it proceeds through the permitting process.

13 Now we have to stress that this  
14 information that will be provided is only as good  
15 as the information that is provided to us. So, if  
16 a plan is a lot more fully baked, we'll be able to  
17 provide a little bit more information to the  
18 communities about how realistic a plan that is. If  
19 a plan is still in the development stages, we'll take  
20 that information and we will give our best advice  
21 based on that information.

22 Included within this recommendation is  
23 the recommendation that applicants shall file an  
24 environmental notification form prior to the

1 application that they submit to the Commission.

2 So, if indeed an applicant files an ENF  
3 before a host community agreement is executed, the  
4 agencies can take the review that they did for the  
5 ENF and use that as a way to inform communities. But  
6 because not all applicants may be able to proceed  
7 to ENF prior to the execution of a host community  
8 agreement, what we will then ask for is we will ask,  
9 after numerous conversations with the communities,  
10 give us the best available information that the  
11 applicant has about the status of their plans and  
12 we will work from that in giving you this initial  
13 advice.

14 CHAIRMAN CROSBY: I think you made  
15 this very clear, but this is a service that you are  
16 going to offer to the communities -- we are going  
17 to offer to the communities.

18 MR. ZIEMBA: That is right.

19 CHAIRMAN CROSBY: It's not a  
20 precondition of anything. It's not giving them  
21 obligatory parameters or anything like that. It's  
22 resources that we will make available as they wish  
23 to make use of them.

24 MR. ZIEMBA: Exactly.

1                   CHAIRMAN CROSBY: I hope everybody  
2 will, but I just want to reinforce that this is  
3 voluntary.

4                   MR. ZIEMBA: That's exactly right.  
5 So, we jointly are working on all stages of this  
6 multistage review. I want to thank Maeve and Dave  
7 for all of their efforts to make this process as  
8 smooth as possible. And I want to thank them for  
9 all of their valuable advice.

10                   I had numerous conversations with them  
11 prior to making the recommendation to the  
12 Commission. I think there probably is a general  
13 feeling that hey, if everyone were able to fully go  
14 through the permitting process prior to the time of  
15 the application that would provide the most  
16 up-to-date information and that would be the easiest  
17 possible.

18                   But however, I think that there is a  
19 reality that there are very significant economic  
20 returns that the Commonwealth wants to get. And we  
21 may need to obviously ask for applications prior to  
22 the completion of these processes. So, I thank  
23 them again for their help in that regard.

24                   So, let me first ask Maeve to explain



1     how her agencies will be a participant in this  
2     process. Obviously, she previously gave you the  
3     benefit of how the MEPA process will factor into the  
4     evaluation of gaming applicants but I'd like her to  
5     a little bit further expound on this.

6             Then I'll ask Dave to give us the  
7     benefit of what his agencies think they can bring  
8     to the table. And specifically I think he is  
9     planning on talking about how the current process  
10    works with the public/private development unit over  
11    at the Executive Office of Transportation in tandem  
12    with Dave's office of Transportation Planning on  
13    evaluating projects of this size, maybe not this  
14    size, but close to this size every day. So, there's  
15    very significant expertise and experience that they  
16    will bring to the table. And I'll ask Dave to give  
17    a little more update on that.

18             Thank you, Maeve.

19             MS. VALLELY-BARTLETT: Thank you,  
20     John. Hi everyone, nice to see you again.  
21     Basically, as I discussed previously, the MEPA  
22     process is an informal administrative process where  
23     state agencies who are envisioned to be given a  
24     permit for a project will comment through the MEPA

1 process before the applicant then goes to get their  
2 permit. So, it's actually perfectly suited for the  
3 type of coordination that I believe you're looking  
4 for in terms of these projects.

5 So, if a project were to come into us  
6 that a general decision was this needs that type of  
7 help in terms of expedition, we could gather  
8 together the agencies who will be involved.  
9 Typically, from a MEPA standpoint that would be DOT.  
10 That would be DEP, Natural Heritage and Fish and  
11 Game.

12 Those people, we would identify  
13 individuals who would work with the MEPA office and  
14 be involved every step of the way. So that those  
15 agencies who are going to deliver -- who are going  
16 to look at a permit at the end of the MEPA process  
17 would already be very well aware of what the project  
18 is and what the impacts are.

19 MEPA is designed to look at the impacts  
20 of various alternatives and the impacts that will  
21 be looked at in permitting. So, it's actually, as  
22 I said, it's quite an effective vehicle, I think,  
23 to assist these applicants with moving forward  
24 through permitting.

1           Now that is environmental permitting  
2           and to the extent that we're looking at traffic, it's  
3           DOT. It's not the whole range of any permit that  
4           someone may need. It's a lot of important things  
5           but it's not the entire universe.

6           And I did want to stress something that  
7           John stressed a number of times, which is we scope  
8           the project. They come in with an environmental  
9           notification form, which is not wildly extensive.  
10          It's a form that people fill out to give the broad  
11          parameters of what the impacts are.

12          The Secretary then looks at that  
13          information and says -- gives them the certificate  
14          on the scope of issues that he wants analyzed. So,  
15          he would say you need to look at wetlands. You need  
16          to talk to DOT. You need tell us what the impacts  
17          are in this range.

18          To the extent that a proponent can get  
19          that information quickly and satisfactorily give us  
20          a robust discussion of those issues, they come back  
21          into MEPA with that. And as John said, then we turn  
22          it around really quickly.

23          So, we say that MEPA is proponent  
24          driven because our timelines on review and public

1 process are quite succinct. Its' the work that goes  
2 on in between the various elements of MEPA, between  
3 the ENF, between the DEIR certificate until the  
4 final certificate comes in.

5 So, we call them motivated proponents  
6 will do a robust analysis, answer everything that  
7 we've asked for in our scopes and then we move  
8 quickly on it. But again, MEPA does bring in all  
9 of the state agencies who are giving environmental  
10 permits. And we can use that vehicle to assist with  
11 expediting these projects.

12 MR. ZIEMBA: Thank you, Maeve.

13 MR. MOHLER: Do you want me to talk  
14 now?

15 MR. ZIEMBA: That'd be great. Thank  
16 you, Dave.

17 MR. MOHLER: So, for DOT's purposes,  
18 we are involved in this process from beginning to  
19 end. At the beginning, generally how this works is  
20 an ENF is filed. DOT reviews the ENF, has meetings  
21 with the proponent as need be, issues a letter under  
22 my signature that suggests to the secretary of EOEEA  
23 what we believe should be scoped for the DEIR.

24 The DEIR gets scoped. We meet with the

1 applicant as they are drafting the DEIR to talk about  
2 our issues. Typically, our issues are limited to  
3 state highway system, public transit system,  
4 bicycle/ped. amenities and local roadway system.

5 So, we go through a negotiated process.  
6 We talk to them. We meet with them as often as need  
7 be. They then file their DEIR. We review the DEIR.  
8 We issue a --

9 CHAIRMAN CROSBY: What is the D for?

10 MR. MOHLER: Draft. So, there is an  
11 environmental notification form, which basically  
12 lays out the grand parameters. Then you get a scope  
13 that says this is what you need to look at after we  
14 have submitted our letters of comment to the  
15 secretary of EOEEA.

16 They go off and do a draft  
17 environmental impact report. Then we review the  
18 draft. We make comments on the draft to proceed to  
19 final. They address those comments in final.  
20 Assuming they've done a good job, the Secretary  
21 issues them a certificate. And then for my  
22 purposes, the last thing they need a permit from the  
23 DOT.

24 So, our permit relates to access to the

1 state highway system. So, it will have  
2 requirements in it about all of the mitigation we  
3 need in order for us to allow access to the state  
4 highway system.

5 While we comment on local roadways, we  
6 will not require any specific mitigation on local  
7 roadway. Our permit will say we suggest -- this  
8 intersection is going to be impacted. We suggest  
9 you work with this town on that intersection. And  
10 that is how the process generally works.

11 Now for casino specific, we have a  
12 protocol. So, applicants who have not yet paid  
13 their \$400,000 application fee are allowed one  
14 meeting with all state agencies. There was only I  
15 believe one applicant who took advantage of that so  
16 far. That was Ameristar. It has since, I believe,  
17 dropped out. The only agency they wanted to meet  
18 with the DOT. We met with them.

19 After you've filed your \$400,000, you  
20 get as many meetings with the agencies as you need.  
21 So, we have met with MGM once. We've met with  
22 Suffolk probably somewhere -- Caesars Suffolk  
23 somewhere between half dozen and a dozen times.  
24 That is an ongoing process as they are preparing

1 their ENF.

2 CHAIRMAN CROSBY: They're preparing  
3 their ENF?

4 MR. MOHLER: They're preparing their  
5 ENF for I believe filing sometime at the end of this  
6 month.

7 COMMISSIONER ZUNIGA: And in other  
8 memoranda and conversations that we've had, I  
9 believe, John, your recommendation was that the  
10 requirement for applications for Phase II was the  
11 ENF filed or at least drafted and submitted.

12 However, significant work goes  
13 afterwards in order to submit the DEIR. Could  
14 either of you speak a little bit as to design  
15 changes? How much design changes are then, as a  
16 result of what gets studied and that jive with the  
17 Commission's -- and the host community agreement,  
18 which would be predicated on some design  
19 assumptions?

20 MS. VALLELY-BARTLETT: I'll just talk  
21 about what happens generally with some of the more  
22 large projects that come in and often large public  
23 works projects that come in, which is that they will  
24 file an ENF on a project and we'll scope that.

1           And what MEPA needs is to see  
2 alternatives. One of the basic premises of MEPA is  
3 that you need to seek the least damaging project.

4           So, proponents will come in, and I'm  
5 just making this up, with three alternatives. And  
6 they will be, depending on the project, wildly  
7 different or not quite so different. And then the  
8 idea is that in coming in with the draft, they will  
9 show all those alternatives that they have examined  
10 and the various impacts with them. And they will  
11 choose their preferred alternative.

12           The Secretary -- Should the Secretary  
13 say yes, you've done all of the appropriate things.  
14 That in fact does look like the appropriate  
15 preferred alternative, certainly, you could proceed  
16 to your final environmental impact report. And at  
17 that point, the proponent is only looking at that  
18 project that has that alternative.

19           Now from a MEPA perspective when you  
20 talk about design, we are still talking about broad  
21 parameters, even when we are talking about  
22 greenhouse gas emissions and efficient buildings,  
23 we are still looking all of the lopes as opposed to  
24 what it may actually look like. And with that I will



1 turn to --

2 MR. MOHLER: For my purposes, I'll  
3 just talk about casinos. Some of the casinos have  
4 gone out publicly and talked about infrastructure  
5 improvements. Many of those infrastructure  
6 improvements are on the state highway system.

7 So, my expectation is that the ENF will  
8 be filed with a specific alternative. We will then  
9 comment on that alternative and probably request  
10 additional alternatives.

11 We may also expand the scope of the  
12 traffic study. So for example, I know the  
13 Wampanoags are sort of not in the process, but they  
14 did file an ENF. And we did comment on their ENF.  
15 And we expanded their traffic study and they are out  
16 preparing their DEIR.

17 As part of that, they will bring in  
18 additional alternatives that we will then talk  
19 about. We will also talk about the timing of their  
20 project.

21 So, many of the casinos I think want to  
22 open in phases. So, they will propose here's my  
23 total infrastructure package. Here's what I think  
24 I need in order to open my first phase. We'll have

1 all sorts of discussions about whether the total  
2 package is the correct package and whether the phase  
3 is enough for the first phase as defined.

4 COMMISSIONER ZUNIGA: What if  
5 somebody follows one alternatives and studies  
6 three, but the preferred from a technical standpoint  
7 there is one alternative that's preferred. And  
8 let's just assume that that's part of a host  
9 community agreement.

10 But further along the way, additional  
11 studies, an additional intersection that was  
12 studied because you thought needed additional  
13 scope, results in alternative B being more  
14 beneficial or more economical or more feasible. I  
15 guess this is a question for us, not necessarily you.  
16 What happens then?

17 MR. ZIEMBA: Let me tell you what may  
18 happen and what potentially the Commission could  
19 consider. So, what may happen with some of these  
20 applicants in their host community agreements may  
21 include a provision that would essentially act as  
22 a reopener.

23 So, the provision would state if indeed  
24 the infrastructure or whatever it is included in the

1 host community agreement is amended from time to  
2 time after this agreement, then the parties shall  
3 get back and have provisions on how that would be  
4 indeed amended or dealt with pursuant to the host  
5 community agreement. So, that may happen with  
6 certain host community agreements.

7 What the Commission could potentially  
8 do is because all of these agreements are subject  
9 to review the Commission, the Commission could  
10 retain its ability to condition a license upon a  
11 revision of a host community agreement.

12 So, if indeed the host community  
13 agreement does not reflect reality in the  
14 conditional bake, post-licensure, potentially the  
15 Commission could retain its ability to then award  
16 as a condition of the applicant that they revise the  
17 host community agreement to reflect current  
18 conditions as they are known since the permitting  
19 process has been expanded.

20 CHAIRMAN CROSBY: I had a take I think  
21 at on the same question that's certainly been  
22 troubling me. We've been on the one hand clear that  
23 we're not going to require full permitting. And we  
24 tried to be respectful of the fact that there will

1 be many applicants, a lot of money will need to be  
2 spent for the permitting, a lot of time on the state  
3 side and so forth. So, we've been clear that we are  
4 not going to make that mandatory.

5 On the other hand, there is as you've  
6 been discussing the host community agreement and  
7 that will have been approved by a referendum, which  
8 will refer to the terms of that host community  
9 agreement. And for people who are not very far down  
10 the line, only have submitted their ENF, we will be  
11 submitting conditional permits.

12 Is there a meaningful place in the  
13 process, in the permitting process that you could  
14 articulate that would mean if a bidder gets there  
15 that the chances of deal breakers are really de  
16 minimis? So, as a practical matter you are pretty  
17 sure that the big deal breakers, the ones that might  
18 for example turn an HCA upside down, or might change  
19 the Commission's view about the viability or appeal  
20 of a proposal.

21 Is there someplace where you can reduce  
22 -- Could we advise the bidders to say we have  
23 required an ENF but you are well advised to get to  
24 point X because we will all know by that point you're

1 pretty likely to be clean? Is that an  
2 understandable question?

3 MS. VALLELY-BARTLETT: I think it's an  
4 understandable question. And the MEPA regs.  
5 clearly envision that people will get -- people can  
6 get conditional permits and conditional licenses as  
7 long as those conditional licenses make it clear  
8 that those are only -- those permits or licenses  
9 would only be effective having complied with MEPA.

10 I don't see how, given the MEPA  
11 regulatory structure, we would ever be able to say  
12 just surrounding -- I just don't think we'd ever be  
13 able to say that. The permitting process is the  
14 permitting process. And unless that is changed to  
15 allow that type of green light, for lack of a better  
16 word, I don't see that I would be able to say we will  
17 ever be able to give you that type of indication.

18 The process is the process. You need  
19 to do these things. And we need to say -- because  
20 you don't know. It could turn out that you run into  
21 -- This isn't likely. -- a sole source aquifer that  
22 you didn't know was there or an Indian burial ground.  
23 I don't believe that it is possible, certainly from  
24 a MEPA standpoint for us to say, to bless one

1 proponent over another when it comes to the process  
2 that has been laid out.

3 MR. MOHLER: I 100 percent agree. But  
4 it's also true that if we conduct the MEPA process  
5 in the public and we are very frank and forthright  
6 as an agency about our opinion of infrastructure  
7 that people file. So, to the extent if someone  
8 files an infrastructure as part of their MEPA filing  
9 that we believe is a nonstarter, whether it's in the  
10 host agreement or not in the host agreement, it's  
11 fairly easy to tell from what we say.

12 So, we are never going to file a letter  
13 that says what are you crazy, you can't build this.  
14 But if people pay attention and people keep in tuned  
15 to the MEPA process, there are ways that people can  
16 know in advance that well, you know what, they told  
17 us they were going to build, it doesn't look like  
18 they can build. Then the host community  
19 theoretically would very quickly get back in touch  
20 with the applicant and say it doesn't look like  
21 you're going to be able to build this. What's  
22 happening in your MEPA process?

23 MR. ZIEMBA: And part of this process  
24 is designed, host community X meets with us. We

1 give them the benefit of this frank discussion  
2 regardless of where they are in the MEPA process.

3 So at that point, based on the  
4 conversations on whatever information that we have  
5 available, communities would be well advised to  
6 listen to the advice that they are receiving. And  
7 if there are very, very specific questions about  
8 particular pieces of infrastructure, they would be  
9 well advised to listen to what the agencies have to  
10 say.

11 Again, at their own risk, if indeed  
12 they do not listen and they proceed with the host  
13 community with some of these unanswered questions,  
14 there is the risk that after the process fully  
15 informs itself, then potentially a host community  
16 agreement could be then asked to be revised.

17 Once again, some applicants certainly  
18 understand -- I would assume actually most  
19 applicants understand how the MEPA process works and  
20 how interactions with DOT work. So, I think that  
21 there is a full realization that things will change  
22 through the process.

23 So, I hope that this is not as much of  
24 an issue as I think that it is today. But we're

1 doing everything that we can within the construct  
2 that we think is possible to alleviate some of those  
3 potential issues or to reduce the potential of those  
4 issues happening.

5 But again, that's a very realistic  
6 possibility that things may have to change in the  
7 future.

8 COMMISSIONER MCHUGH: But the bottom  
9 line as I understand it, is that it is A - unlikely  
10 that the MEPA process can be completed by the time  
11 we're considering the Phase II applications, number  
12 one.

13 MR. ZIEMBA: Yes.

14 COMMISSIONER MCHUGH: And number two,  
15 even if it were completed, that's not a green light,  
16 a guarantee or anything more than a thoughtful  
17 assessment at the moment of the likelihood that the  
18 plan that's submitted to us is capable of execution.

19 And that determination, whether the  
20 plan is in fact capable of execution, may take some  
21 years or some significant period of time -- Let's  
22 not put years on it. -- some significant period of  
23 time after we award the license. Is that a fair  
24 summary?



1 MR. ZIEMBA: I'll let Maeve say that.  
2 But obviously after the MEPA process, there is the  
3 permitting process within each of the agencies, and  
4 that can take time. And there could be other things  
5 that are identified besides the MEPA criteria.

6 COMMISSIONER MCHUGH: Right. And  
7 that's why I put in that last qualifying clause.

8 MR. ZIEMBA: Right, exactly.

9 COMMISSIONER MCHUGH: You have the  
10 MEPA process. The MEPA process is a thoughtful  
11 analysis but not a guarantee. And then there is the  
12 permitting process that has to follow the MEPA  
13 process.

14 And then there is the on the ground  
15 execution which may yield things that nobody saw  
16 before. That's always a possibility. But insofar  
17 as the upfront permitting is concerned, those are  
18 the three stages that we face. And we're going to  
19 be likely faced with the decision as to whether to  
20 issue a license before the MEPA process is finished.

21 MR. ZIEMBA: That's fair.

22 MS. VALLELY-BARTLETT: A conditional  
23 license.

24 COMMISSIONER MCHUGH: A conditional

1 license, yes, yes.

2 MS. VALLELY-BARTLETT: Yes, that's  
3 fair. I will say at the very beginning MEPA does  
4 bring everyone together and bring those agencies  
5 together.

6 So, it's not as if an agency will  
7 receive an application from one of these resorts and  
8 say I've never seen this before. And that is where  
9 we can be helpful in terms of -- but from a regulatory  
10 standpoint, you're absolutely correct.

11 COMMISSIONER MCHUGH: And there is a  
12 focus on shovels in the ground. And the shovels in  
13 the ground comes after the license and it comes after  
14 the permits.

15 MS. VALLELY-BARTLETT: Yes.

16 COMMISSIONER MCHUGH: And that's  
17 something everybody needs to be aware of, us  
18 included.

19 MR. MOHLER: Now for our purposes, we  
20 strongly encourage applicants to the last step in  
21 the MEPA process for our purposes should be a letter  
22 of commitment. We've gone through the whole MEPA  
23 process. They're getting ready to file their final  
24 EIR. We've agreed about what the infrastructure

1 should be. We like the final EIR to be filed with  
2 a commitment letter that says yes, in consideration  
3 of you giving me this permit, Mass. DOT, this is what  
4 I will build.

5 And then if that's actually taking  
6 place, our issuing of a permit is relatively quick.  
7 MEPA's done, but they've publicly committed to what  
8 they're going to do. We have a permit that reflects  
9 the public commitment and then we're done, subject  
10 to them not finding something in the ground when they  
11 go to build.

12 COMMISSIONER MCHUGH: Right, right,  
13 right.

14 COMMISSIONER STEBBINS: I think it  
15 goes without saying because of the sheer size of  
16 these facilities is that everybody's going to go to  
17 an EIR.

18 MS. VALLELY-BARTLETT: It's hard to  
19 imagine that they wouldn't.

20 COMMISSIONER STEBBINS: The traffic  
21 volume or utility usage or resource usage or just  
22 sheer size.

23 MR. MOHLER: Yes.

24 MS. VALLELY-BARTLETT: Yes.

1           COMMISSIONER STEBBINS: Obviously, I  
2 think the message we need to convey also to potential  
3 applicants is, as John, I think you pointed in your  
4 memo, as much information as can go into the draft  
5 ENF, expanded ENF I think is the appropriate title,  
6 helps keep moving the process along.

7           So, don't skimp on the information  
8 that's going in the ENF, full well knowing well, I've  
9 got to do a full EIR at some point. So, I'll just  
10 get through what I need to get through.

11           Because you may come back with the ENF  
12 certificate, which depending on how much  
13 information you got from an applicant, is either  
14 going to be really detailed on what the next steps  
15 are or is going to be a telephone book of what is  
16 going to be needed in the next step.

17           And I think that is something for us to  
18 consider in terms of ENF certificate essentially  
19 gives us a good idea of what really is going to be  
20 incumbent upon the developer and the municipality  
21 and the state to get this through to fruition.

22           So, just be mindful of us just having  
23 the ENF certificate in hand really shouldn't only  
24 be it. It's actually what the content of that ENF

1 certificate is.

2 MR. ZIEMBA: Right.

3 CHAIRMAN CROSBY: Is there a  
4 definition of expanded ENF that was in your memo?

5 MR. ZIEMBA: Can I just explain that?

6 CHAIRMAN CROSBY: Yes.

7 MR. ZIEMBA: What we are asking is the  
8 filing of an ENF. But we are asking for the robust  
9 filing of an ENF with information that could be  
10 similar to the type of information that would be  
11 provided under the expanded ENF definition under  
12 MEPA.

13 But because we don't believe that many  
14 of these applicants will be able to achieve a single  
15 EIR at the end of the information that they've  
16 provided in the ENF, we don't believe it is  
17 appropriate to say that we're requiring the expanded  
18 ENF filing pursuant to the regulations. But why  
19 don't I let Maeve --

20 MS. VALLELY-BARTLETT: When John  
21 mentioned to me -- Certainly, an expanded ENF is  
22 going to be more robust than your standard ENF  
23 filing.

24 Under MEPA because it is proponent

1 driven, we give proponents the option of filing what  
2 is called an expanded environmental notification  
3 form. That is often if not always done for specific  
4 reasons under our regs.

5 One of which is that they want a phase-1  
6 waiver. So, they want to proceed with a certain  
7 portion of their project before the completion of  
8 the entire MEPA process, before the completion of  
9 the draft environmental impact report or the final  
10 environmental impact report.

11 There are requirements on us if you can  
12 get a waiver. One of which is that all of your  
13 infrastructure has to be there.

14 COMMISSIONER MCHUGH: Excuse me. By  
15 be there you mean it has to be --

16 MS. VALLELY-BARTLETT: It has to  
17 exist, the phase-1 itself.

18 COMMISSIONER MCHUGH: Physically  
19 exist.

20 MS. VALLELY-BARTLETT: Right, because  
21 the idea of a phase-1 waiver is that this would be  
22 a terrible hardship to make your wait to look at the  
23 entire thing when you have say a building or one  
24 portion of the project that could proceed without

1 any major infrastructure work.

2 The other reason the proponents decide  
3 to file an expanded notification form is when they  
4 are seeking a single environmental impact report,  
5 which the Secretary has the ability to grant.

6 The way we look at that is that the  
7 expanded -- in order for the single environmental  
8 impact report to be granted, the ability to file  
9 that, the expanded notification has to stand in the  
10 way of a draft environmental impact report.

11 So, that requires discussion.  
12 Again, a lot of this discussion that goes on before  
13 filing. Because if you haven't been scoped for your  
14 draft environmental impact report, you're making  
15 assumptions on filing your expanded environmental  
16 notification form that it would stand in the place  
17 of a draft environmental impact report. And I know  
18 that sounds so bureaucratic, but that's what the  
19 regs. are.

20 COMMISSIONER ZUNIGA: Can I ask a  
21 question on a comment from MAPC that we received just  
22 on that point, because they state that MAPC agrees  
23 or suggests that filing an expanded ENF for a single  
24 DEIR should not be required.

1 MS. VALLELY-BARTLETT: I don't  
2 believe that you can require it.

3 COMMISSIONER ZUNIGA: It's your  
4 process essentially?

5 MS. VALLELY-BARTLETT: Right. And we  
6 never require that someone do that. That is the  
7 determination of the proponent for whatever reason  
8 that they would like.

9 Again, as John has said it's a risk on  
10 the proponent that they're going to give us the  
11 appropriate information. And the Secretary would  
12 either grant the phase-1 or the ability to do a  
13 single. And many times -- not many, but we have said  
14 no to getting a phase-1 waiver. And we have said  
15 no to people who have requested single.

16 MR. MOHLER: Just be blunt, it's  
17 highly unlikely that any of the casinos that are  
18 proposed today would get a phase-1 waiver or a single  
19 EIR even if they filed an expanded notification  
20 form.

21 So, I think what we are sort of dancing  
22 around is they should file as much information as  
23 they possibly can. They shouldn't bother calling  
24 it an expanded notification form because they



1 really, at the end of the day, not going to get a  
2 phase-1 waiver and they're not going to get a single  
3 EIR.

4 COMMISSIONER ZUNIGA: But you make  
5 that determination ultimately or the Secretary.

6 MS. VALLELY-BARTLETT: The Secretary  
7 makes that determination.

8 COMMISSIONER ZUNIGA: Thank you.

9 COMMISSIONER STEBBINS: The message  
10 is pretty clear. Providing more and more under the  
11 ENF helps both of us, both the developer and us as  
12 a Commission in partnership with the state  
13 permitting agencies to hopefully move this process  
14 along faster and have the mitigation impacts more  
15 evident to all of us.

16 MR. MOHLER: Assuming it's good  
17 information and the type of information we actually  
18 want. The fact that you provide a lot of  
19 information, if it's -- I can't think of a word that  
20 I'd like to use. So, I'll just say crap, it doesn't  
21 do you any good.

22 You need to file good information.  
23 And if you can file good information, you should file  
24 as much as you can. But if you're filing a bad

1 traffic study with bad trip generation numbers, it  
2 doesn't matter that you spent a lot of money and a  
3 lot of time doing it. I -- not me, the DOT is going  
4 to ask the EOEa to make you redo it.

5 CHAIRMAN CROSBY: Is there anything  
6 that we can do to clarify what good information  
7 means? Is that something that is common knowledge?  
8 Or is there anything that we can be proactive in  
9 saying here is the kind of information that is really  
10 constructive and useful?

11 MR. MOHLER: I think there's two  
12 things. First, for developments of this size,  
13 99.9% of them are using consultants who know what  
14 good information is.

15 Number two is under the protocol, we're  
16 ready, willing, happy and able to meet with people  
17 to talk about that before they file their ENF. So,  
18 people should be taking advantage of the procedures  
19 you guys developed with the secretaries. They  
20 should be coming in and meeting with us. We should  
21 be discussing things. None of us want to delay this  
22 process.

23 MR. ZIEMBA: And part of the message  
24 that I take to applicants is that they should avail

1 themselves of these resources now as soon as  
2 possible, especially after the 15th.

3 CHAIRMAN CROSBY: As soon as we know on  
4 the 15th who is definitely in, it seems like a very  
5 aggressive outreach on your part saying you've got  
6 to get in there ASAP. That's in everybody's  
7 interest.

8 MR. ZIEMBA: That's right.

9 COMMISSIONER STEBBINS: I'm somewhat  
10 surprised, I guess, by the fact that we have had so  
11 few applicants actually --

12 CHAIRMAN CROSBY: Only those two?

13 MR. MOHLER: Outside of this process,  
14 we've met with the Wampanoags. And I forgot, we met  
15 with Plainridge. So, we met with Plainridge. We  
16 met with them once. We met with Ameristar once.  
17 They weren't an applicant. They were under the  
18 protocol.

19 We've met with MGM once so far, more  
20 meetings to follow. And we met with Suffolk six to  
21 a dozen times and are probably getting close to being  
22 where we will start setting a regular standing  
23 meeting with them, I think.

24 CHAIRMAN CROSBY: John, when we had

1 the meeting with the secretaries, we were talking  
2 about, and this was kind of pursuant to our original  
3 conversation, post-licensing, was there anything we  
4 can do to work together to have an expedited  
5 permitting process.

6 There was some talk and then Secretary  
7 Bialecki said something like if you're not going to  
8 have a completed MEPA process, there won't be an  
9 expedited process. Do you remember that?

10 MR. ZIEMBA: Yes.

11 CHAIRMAN CROSBY: It sounded like  
12 there was a mirror of that. If you do have a  
13 completed MEPA process, there is some kind of  
14 expedited process that could be executed. Is that  
15 a particular thing, process? Is that something  
16 that we should know we've got teed up as soon as MEPA  
17 is done? Or is it something we need to broadcast  
18 to people?

19 MR. ZIEMBA: I think what the  
20 Secretary was saying was that he was using  
21 shorthand. Expedited was shorthand for quick.

22 So, if indeed you haven't progressed  
23 through MEPA, you probably shouldn't expect that  
24 your permitting is going to be done in a month. But

1 if you have progressed through MEPA, that's what he  
2 means by expedited.

3 I think we're using expedited process  
4 in a different form as in our expedited process is  
5 that we are going to make the time that it takes  
6 shorter. And so we are going to expedite it, rather  
7 than when he says it's not expedited, he just means  
8 that it's not likely to be 10 days.

9 CHAIRMAN CROSBY: It wasn't like a  
10 formal process?

11 MR. ZIEMBA: No.

12 CHAIRMAN CROSBY: Like it sits under  
13 Chapter X-Y-Z that says under certain circumstance  
14 you can bypass?

15 MR. ZIEMBA: No, I think he was just a  
16 trying to make -- And everybody should know that that  
17 they have to be realistic. Because we are not  
18 requiring substantial improvement through MEPA and  
19 the permitting process that permitting will take  
20 time afterwards. And we are going to do everything  
21 that we can to make it go shorter, but it just takes  
22 time. And I hope people know that.

23 CHAIRMAN CROSBY: Excuse me,  
24 Commissioner. This is one thing I do want to make

1 sure that we really are aggressive on. That's why  
2 we are having this conversation because many of the  
3 applicants are in the room. But we want people to  
4 realize yes, we respect that you don't want to spend  
5 all of your money upfront because you don't know if  
6 you're getting the license. We appreciate that.

7 But the price that you will pay is on  
8 the other end when the construction trades will be  
9 talking to you, not us anymore about getting going.  
10 So, I just think we need to be really clear and make  
11 sure we really set expectations not only to the  
12 bidders but to the public too, and the local  
13 communities and everybody else that if a bidder  
14 chooses to save their money, which is fine, there's  
15 a price to be paid on the other end.

16 COMMISSIONER STEBBINS: Just quick  
17 question, Maeve. You mentioned, I think you  
18 mentioned having a pretty good turnaround time for  
19 getting an ENF certificate out.

20 MS. VALLELY-BARTLETT: It's very  
21 good.

22 COMMISSIONER STEBBINS: I have no  
23 doubt. Are there any other timelines confined in  
24 your process?

1 MS. VALLELY-BARTLETT: We have  
2 timelines in every part of the MEPA process.

3 So, the ENF comes in. Every document  
4 comes into us. Its public comment period clock  
5 starts running when it's noticed in the  
6 Environmental Monitor. There we take public on the  
7 ENF. And the Secretary has seven to 10 days to make  
8 his determination and write his scope.

9 And under the regs. he either writes  
10 his scope or he says you're fine, you've given us  
11 enough. That is not going to be these projects.  
12 So, Secretary writes his scope. And again, then the  
13 proponents go out and do all of their work.

14 They file the draft environmental  
15 impact report with us. That also then gets noticed  
16 in the Environmental Monitor. That gets a 30-day  
17 comment period. And the Secretary has seven days  
18 to write his certificate. We always take all seven  
19 days. And then the same happens with the final.

20 COMMISSIONER STEBBINS: For the ENF  
21 phase, I give you my ENF today, average turnaround?

22 MS. VALLELY-BARTLETT: It's 30 to 40  
23 days. Sometimes extensions will be granted. The  
24 Secretary cannot just make an extension. The

1 proponent has to ask for an extension to the public  
2 comment period, which we grant generally, unless  
3 they're asking for a huge extension. Then we say,  
4 why don't you just take your ENF away and come back.

5 MR. MOHLER: Sometimes they ask for  
6 extensions because the reviewing agencies ask them  
7 to. They give us a ton of information. It takes  
8 us a long time. We work with them and say could you  
9 ask for a week extension because it's going to take  
10 us an extra week to get our comments together.  
11 Generally speaking, most of them are compliant when  
12 we ask. But we can't ask. They have to ask on our  
13 behalf, because it's their process not ours.

14 MR. ZIEMBA: Mr. Chairman, could I go  
15 through some of the comments that we received today?  
16 And I'll include some of the comments that we  
17 received previously and then over this last week.

18 Comments we received prior to this  
19 document being out for public review. Shoefsky  
20 from Springfield said that applicants should not be  
21 required to obtain or have progressed substantially  
22 towards, state, federal and local permitting. They  
23 should be able to provide reasonable assurances to  
24 the MGC through due diligence regarding issues of



1       permitting.

2                   The MAPC recommended previously that  
3       the requirement that we should have is the ENF  
4       certification standard.

5                   MGM noted that it is typical in RFPs  
6       that no substantial permitting is initiated prior  
7       to the time of a conditional award. The investment  
8       is significant. It recommends asking applicants to  
9       explain what is necessary and the timeline for  
10      permitting. They also recommend that substantial  
11      conversations with agencies should occur prior to  
12      the time of award.

13                  Martha Robinson suggested all such  
14      permitting should be completed prior to the RFA-2.

15                  DLA Piper on behalf of Suffolk, these  
16      are new comments that we've received in the last  
17      week. They support the recommendation that was  
18      proposed last week. A higher level of detail in  
19      such documents, the documents we are talking about  
20      the ENF documents, gives valuable information for  
21      the Commission, state agencies and communities to  
22      review.

23                  MAPC, they reiterated their prior  
24      recommendation regarding the ENF certificate. And

1 they agreed the expanded ENF is not an appropriate  
2 requirement. They state that the MGC should have  
3 a condition in its licenses that the MGC and other  
4 state agencies have the ability to reopen  
5 negotiations between host and surrounding community  
6 agreements in order to include mitigation of any  
7 impacts identified in the MEPA process and in the  
8 RFA-2 application.

9 The MMA say they support the  
10 recommendation that we not set specific  
11 requirements on local licensing. However, they  
12 disagree with the requirement that applicants  
13 demonstrate consistency with local zoning. They  
14 state that a one-size-fits-all requirement may have  
15 an unnecessary adverse impact on developments that  
16 are proceeding on an appropriate timeline.

17 CHAIRMAN CROSBY: I didn't get that.  
18 What was that? Your suggestion was that we do have  
19 to have some indication of zoning approval because  
20 zoning requires oftentimes more than a referendum.

21 MR. ZIEMBA: Yes.

22 CHAIRMAN CROSBY: What was the  
23 suggestion in the report?

24 MR. ZIEMBA: So, they that a

1 one-size-fits-all requirement may have an  
2 unnecessary adverse impact on developments that are  
3 proceeding on an appropriate timeline.

4 I think this supports their consistent  
5 support of the home rule in support of local  
6 communities having the flexibility to do what they  
7 need to in their own environments.

8 CHAIRMAN CROSBY: Who was that who  
9 submitted that?

10 MR. ZIEMBA: That was the Mass.  
11 Municipal Association.

12 COMMISSIONER ZUNIGA: But your  
13 recommendation on the zoning is not necessarily one  
14 of requiring but rather some intelligence as to  
15 whether the applicant and the host community  
16 believes that there will not necessarily be a zoning  
17 fiasco, let's say.

18 MR. ZIEMBA: My recommendation is for  
19 the whole host of municipal permits that we not have  
20 any specific requirement that they proceed in local  
21 permitting as part of our application process.  
22 With the one exception that they do have to  
23 demonstrate consistency with local zoning prior to  
24 the time of the award of the conditional license,

1 not necessarily prior to the time of the  
2 application.

3 So, that would give communities  
4 probably an extra couple of months after the  
5 submission of their applications to demonstrate  
6 that they have achieved consistency with local  
7 zoning because of the supermajority requirements  
8 and the risk.

9 COMMISSIONER ZUNIGA: Right. But  
10 your recommendation towards consistency with local  
11 zoning is not necessarily antagonistic with MMA's  
12 point about one-size-fits-all. It would be  
13 consistency with whatever the local zoning  
14 requirements are.

15 MR. ZIEMBA: I think that's a good  
16 point in some regards. One of my recommendations  
17 is that even though as a policy matter that we  
18 continue to say that we should demonstrate  
19 consistency with local zoning, I think as we go  
20 forward in the regulation process, how a community  
21 would actually demonstrate that consistency that  
22 should be further refined and as part of our  
23 regulations.

24 There are different options that

1 communities could utilize such as an opinion of  
2 counsel on local zoning consistency. They could  
3 demonstrate that they have actually significantly  
4 amended their local zoning.

5 You have other situations where for  
6 example the Boston process, it is not actually  
7 subject to the same statutory supermajority  
8 requirement. But I understand that they also have  
9 a supermajority requirement that would require some  
10 other further intricacy on how we demonstrate  
11 consistency with local zoning.

12 So, to your point our advisory would  
13 still take into account some local circumstances,  
14 potentially through the process. But because of  
15 the dangers of not having zoning in place prior to  
16 the time of award, I think respectful to our  
17 colleagues at MMA, I just think that that's probably  
18 too dangerous a situation for the Commission and for  
19 applicants.

20 COMMISSIONER STEBBINS: Outside of  
21 zoning, do you see any other permitting differences  
22 between any of the possible host municipalities?

23 MR. ZIEMBA: Each of them approached  
24 local zoning in different ways and permitting in

1 different ways. Some may be for 43D communities  
2 already. The law requires that they either be a 43D  
3 community, which is expedited local permitting or  
4 that they have a 43D process for local permitting.

5 Some may already be in that situation.  
6 They maybe in a designated 43D zone. But some may  
7 require that they set up these structures.

8 Basically what would be required is the local  
9 community would establish a permitting ombudsman  
10 that would then work with all of the relevant local  
11 authorities in issuing permits through the local  
12 process.

13 So, they each are different, but they  
14 will be approaching many of the same issues.

15 COMMISSIONER STEBBINS: Anything that  
16 you would sense beyond zoning that could potentially  
17 slow a project down?

18 MR. ZIEMBA: Just design, design  
19 approvals. There are many different things at the  
20 local level that could trip any project.

21 CHAIRMAN CROSBY: Historical  
22 commissions.

23 MR. ZIEMBA: Yes, conservation  
24 commission approvals, which would then be subject

1 to state processes. But there are many, many  
2 different things that a project can be tripped up  
3 on at a local level.

4 But I think the general thought is if  
5 the community has indicated its support for a  
6 referendum of this and the governing bodies of these  
7 municipalities have also indicated their support  
8 that they will work with all of their local bodies  
9 to try to find a way to go through the permitting  
10 process regardless of those obstacles. But again,  
11 the permitting, there is no guarantee in permitting.

12 Finally, the Foley Hoag on behalf of  
13 Mohegan Sun, they support the recommendation. They  
14 say otherwise many state agencies would have to  
15 spend very valuable time reviewing applications of  
16 projects that may not be ultimately approved by the  
17 Commission.

18 Similarly, municipal departments  
19 would also be required to spend significant time and  
20 resources to evaluate proposals. They also  
21 support the recommendation of the Commission and the  
22 agencies to develop an advisory program to inform  
23 communities. And those are the comments that we  
24 have received.

1                   CHAIRMAN CROSBY: So, your proposal  
2 stays on the table. We're not voting on it today  
3 or are we?

4                   MR. ZIEMBA: I would think that you  
5 could vote on that proposal.

6                   CHAIRMAN CROSBY: Yes, because we  
7 talked about it now for a week.

8                   MR. ZIEMBA: Yes.

9                   CHAIRMAN CROSBY: Any other  
10 questions, comments, Commissioner McHugh?

11                   COMMISSIONER MCHUGH: No. I think  
12 that this has been an enormously helpful discussion  
13 both to us and to applicants who probably are  
14 familiar with this and to others who are watching  
15 the progress.

16                   And the success of the speed with which  
17 we can actually proceed to a shovel in the ground  
18 stage depends not only on our moving as quickly as  
19 we responsibly can, but also coordinating with the  
20 other agencies and with the energy that the  
21 applicant puts into the filings designed to give the  
22 agencies the information they need in order to make  
23 their decisions for which they are responsible.

24                   So, it's a network of decision-making



1 and teamwork and coordination that's got a great  
2 foundation here that we need to make sure works well  
3 and continue to tinker with if we run into bumps,  
4 both on our side and through the ombudsman to the  
5 applicants and the cities and towns to make this  
6 thing work as quickly as we responsibly can.

7 CHAIRMAN CROSBY: I agree. I will say  
8 just for the record the Governor's office and the  
9 executive branch of representatives, they have been  
10 very clear that they take the Governor's priority.  
11 That this is something they want to move as quickly  
12 as they possibly can, and clearly are going to do  
13 everything possible, like us, within responsible  
14 parameters to move this along. And we appreciate  
15 that.

16 Does somebody want to put that into the  
17 form of a motion?

18 COMMISSIONER ZUNIGA: I sure can. I  
19 move that we accept the recommendations from  
20 Ombudsman Ziemba relative to requiring the filing  
21 of an ENF but not requiring further processes in the  
22 MEPA process as part of our application for Phase  
23 II.

24 CHAIRMAN CROSBY: What question

1 number is it?

2 MR. ZIEMBA: Question 12.

3 CHAIRMAN CROSBY: So, to nominate the  
4 recommendation pursuant to the question 12 as  
5 contained in his written memorandum.

6 COMMISSIONER MCHUGH: I think that's  
7 right. Recommendation 12 is part of the record of  
8 the last meeting. And that has a number of  
9 subparts.

10 COMMISSIONER ZUNIGA: Yes, thank you.

11 CHAIRMAN CROSBY: For packaging  
12 around 12. Second?

13 COMMISSIONER MCHUGH: Second.

14 CHAIRMAN CROSBY: Any further  
15 discussion? All in favor, aye.

16 COMMISSIONER STEBBINS: Aye.

17 COMMISSIONER ZUNIGA: Aye.

18 COMMISSIONER CAMERON: Aye.

19 COMMISSIONER MCHUGH: Aye.

20 CHAIRMAN CROSBY: Opposed? The ayes  
21 have it.

22 Thank you all very much. Thanks a lot  
23 Maeve and Dave. We appreciate it.

24 John, you're going to stay up here and

1 are you going to come back and do this or are you  
2 going to leave us in the lurch?

3 So, we've got community disbursement  
4 issue and the surrounding communities' questions,  
5 right?

6 MR. ZIEMBA: I think what we have, the  
7 surrounding community is slightly tied to the  
8 community disbursement issue, but f I could be  
9 joined by Mr. Grossman?

10 MR. GROSSMAN: Good afternoon.

11 MR. ZIEMBA: So, what we'd like to do  
12 is just to provide you some further information of  
13 where we are with the grant agreement. As I've  
14 reported previously, we've been working on the grant  
15 agreement. We've been talking to the Department  
16 of --

17 CHAIRMAN CROSBY: Just to be clear for  
18 the public. This is the ability to access some of  
19 the \$400,000 deposit, nonrefundable deposit not  
20 less than \$50,000 which is go to the communities for  
21 the sake of planning the community mitigation.  
22 That's the disbursement that we're talking about.

23 MR. ZIEMBA: That's right. And we've  
24 been working with the Department of Revenue,

1 Division of Local Services in order to address any  
2 sort of municipal finance concerns, specifically  
3 with communities that are not allowed to spend  
4 monies outside of a local appropriation.

5 But they are allowed to proceed with  
6 grants that are provided by the state. Our grant  
7 would be very similar to grants that are provided  
8 throughout the range of state government.

9 So, we are likely to have the grant  
10 agreement before you next week together with a memo  
11 of how communities can take advantage of the grants.  
12 This will dovetail with the receipt of the  
13 applications next week as well.

14 There are a couple of issues that we'd  
15 like to talk to you about, and I'll let Mr. Grossman  
16 take over in a second. Two issues, one item related  
17 to what funds can be utilized for. Involving the  
18 issues of reimbursement, there's certain questions  
19 under the regulation. But we think a commonsense  
20 reading is that we can utilize these funds to be  
21 reimburse communities for costs.

22 Then the second issue relates to  
23 something that we would like to present to the  
24 Commission next week. What funds can be utilized

1 for and was communities can receive these funds.

2 Technically, there are no surrounding  
3 communities yet. Surrounding communities pursuant  
4 to the regulation and pursuant to the statute are  
5 defined as surrounding communities that are  
6 included in the application that is submitted before  
7 the Commission.

8 So, if an applicant goes out and  
9 breaches an agreement with a community and submits  
10 that as part of their application, they are deemed  
11 a surrounding community pursuant to the  
12 regulations.

13 However, since we are in the pre-RFA-2  
14 application process, they do not have the benefit  
15 of that designation. So, we would like to recommend  
16 that communities that are not specifically a  
17 surrounding community could still take advantage of  
18 technical assistance funds regardless of the nicety  
19 of that declaration of surrounding community  
20 status.

21 And why we are recommending that is  
22 because we would like to make sure that applicants  
23 are encouraged to provide technical assistance to  
24 communities that may be experiencing impacts,

1 regardless of whether or not they may eventually  
2 find their way to the Commission as part of an  
3 application that is submitted by them.

4 So, some communities may be  
5 experiencing impacts but perhaps those impacts  
6 don't rise to the level whereby they would be deemed  
7 a surrounding community by the definition that we  
8 define in our regulations that will be promulgated  
9 later this year.

10 But still it might be in the best  
11 interest of both the applicant and that particular  
12 impacted community to have some funds available to  
13 evaluate impacts. And by evaluating those impacts,  
14 perhaps some of the concerns might be alleviated or  
15 there just might be a more realistic understanding  
16 of what those impacts may be.

17 Currently, under our standards if one  
18 were to receive a grant of technical assistance,  
19 potentially there is a question of whether or not  
20 by receipt of those funds does one actually  
21 automatically become a surrounding community for  
22 the purposes of our application? And if you receive  
23 funds and you're designated as a surrounding  
24 community, does that mean that the applicant has to

1 sign a full impact agreement with that community?

2 We don't believe that that really was  
3 what was intended. And we would like to enable both  
4 applicants and impacted communities to fully  
5 understand what those impacts may be without a fear  
6 by an applicant or by parties that by providing  
7 technical assistance funding that you might  
8 automatically become a surrounding community for  
9 the purposes of the full application and the  
10 attendant rights.

11 CHAIRMAN CROSBY: So, the early money  
12 ought to be -- It's designed, basically to give you  
13 the tools to figure out whether you're going to be  
14 a surrounding community.

15 MR. ZIEMBA: Correct.

16 CHAIRMAN CROSBY: Yes. That makes  
17 sense.

18 MR. GROSSMAN: The primary issue  
19 right now is that the law provides for these monies  
20 to be designated to the municipalities. We need to  
21 come up with a mechanism to get it there. And that's  
22 what we are going to develop.

23 We've been working with Commissioner  
24 Zuniga and have been working with John as well in

1 conjunction with DOR to come up with a protocol that  
2 will satisfy municipal finance laws as well as our  
3 own statutes and provide a clear manner in which the  
4 funds can be provided.

5           Essentially, there'll be two ways.  
6 You can either do it by way of straight reimbursement  
7 in which a municipality expends appropriated funds  
8 for these designated purposes. And we reimburse  
9 them for those, upon the determination that they  
10 meet the requirements of our statute and our  
11 regulations.

12           Or secondly, that we provide them with  
13 what they refer to as a gift grant, which is a  
14 mechanism by which municipalities can receive funds  
15 that are unappropriated and spend them.

16           So, we just need to detail who will be  
17 eligible for these funds, how they will apply for  
18 them and what decision-making goes into  
19 distributing the funds.

20           As John mentioned, we have drafted a  
21 grant agreement that should be ready for your review  
22 shortly. We are also in the process of putting  
23 together an advisory that we intend to have DOR take  
24 a look at. First to make sure that they are in



1 agreement with it as well. They have preliminarily  
2 agreed to enter or issue some type of advisory as  
3 well to municipalities as to how to deal with these  
4 monies.

5 So, this is just kind of a preview of  
6 what I think you will be hearing, whether it's next  
7 week or the week after depending on how quickly we  
8 can have this all tied up. But we are very close,  
9 I think, to having this process in place.

10 CHAIRMAN CROSBY: Informally, do you  
11 have the process by which you'll vet a proposal?  
12 Basically, the question is going to be how do we know  
13 who gets how much for what is not a finite resource  
14 but it's got to be a resource that we deal with  
15 carefully. So, how do you anticipate doing that?

16 MR. GROSSMAN: I think the Commission  
17 to some degree has envisioned this process already.  
18 In its section 114.03, the community disbursement  
19 section of the regulation, it references letters of  
20 authorization. This is what we will have to flush  
21 out in the advisories, of course, subject to the  
22 review of the Commission.

23 Whereby an applicant discusses the  
24 specific needs of the municipality with the

1 municipality and essentially signs off on it and  
2 presents it to us. So, that would be the trigger  
3 that we would look at.

4 So, our review may be in some respects  
5 perfunctory. We get this letter of authorization.  
6 We say yes, that's okay. Here you go.

7 The issue that we'll have to address  
8 will be what happens if the applicant refuses to sign  
9 off on certain things that we think that are  
10 legitimate expenses. We can, I think, get to that  
11 point once we've had a chance to put some language  
12 together.

13 CHAIRMAN CROSBY: Okay. I had  
14 forgotten that. We talked about this before.  
15 They can decide and we should be happy with it,  
16 right? If they can agree, we should be happy.  
17 Okay.

18 COMMISSIONER ZUNIGA: Even option  
19 two, the gift grant as you have described, which is  
20 something that will be part of the agreement, the  
21 Commission will retain the ability, not necessarily  
22 exercise it, but will retain the ability to audit  
23 the, if we chose, records, etc. given that this  
24 effectively is a grant that goes up front.

1           CHAIRMAN CROSBY: I think this is  
2 something that I think we've talked about but we have  
3 the ability -- if the \$400,000 is insufficient for  
4 background checks, we have the authority to assess  
5 further expenses on the bidder. If the \$50,000 goes  
6 to \$100,000 and therefore the \$400,000 isn't enough,  
7 are we clear that we have the authority to assess  
8 them for further community mitigation studies? Is  
9 that clear in there too?

10           MR. ZIEMBA: Yes. It's how our regs  
11 are written. That if you need further community  
12 disbursements then that is added to the total.

13           MR. GROSSMAN: And the statute is  
14 clear on that point as well.

15           CHAIRMAN CROSBY: Was it clear? I  
16 didn't know that. Okay.

17           Do you want to segue into surrounding  
18 communities or where are you going with that point?

19           MR. ZIEMBA: No. Surrounding  
20 communities was only mentioned in respect to the  
21 fact that we would like to provide additional  
22 technical assistance and flexibility so that the  
23 full surrounding communities would be --

24           And then I submitted earlier this week

1 my draft of surrounding communities regulation.  
2 And that I plan to bring that to the Commission next  
3 week. What my hope is that that regulation will  
4 then be submitted far and wide for comment before  
5 the Commission votes on that.

6 CHAIRMAN CROSBY: It's your answer to  
7 question one as well as a proposed reg.

8 MR. ZIEMBA: What I submitted was just  
9 the reg., which was based on my previous  
10 recommendation regarding surrounding community,  
11 recommendation one. I took that recommendation and  
12 boiled it down into the form of a regulation.

13 CHAIRMAN CROSBY: But this is for next  
14 week to consider?

15 MR. ZIEMBA: Yes. I don't think that  
16 is actually part of the public docket.

17 CHAIRMAN CROSBY: Okay, fine. I  
18 think that's it. Thank you.

19 COMMISSIONER CAMERON: Thank you.

20 MR. ZIEMBA: Thank you.

21 CHAIRMAN CROSBY: Item four, Director  
22 Driscoll, I thought you might want to -- Pardon?

23 MS. GLOVSKY: I'm Glovsky.

24 CHAIRMAN CROSBY: Driscoll, Glovsky,

1 you might want to introduce our externs.

2 MS. GLOVSKY: Yes, I would very much  
3 like to. We have two externs from MIT working with  
4 us during independent activity period. Would you  
5 guys stand up in the background?

6 We have Jamila Smith-Dell who is  
7 working with me. I'm looking at technology in the  
8 gaming sector. And Anthony Yu is working with the  
9 Racing Division on allocations. Director  
10 Durenberger can discuss that a little bit more.

11 They've been with us just since Monday  
12 and they're really doing spectacular work. We are  
13 really thrilled to have them here. Thank you.

14 CHAIRMAN CROSBY: You should know that  
15 your praises are already being sung. People are  
16 saying, wow, it's so great to have these guys. They  
17 are so smart and cooperative. Thank you very much.

18 MS. GLOVSKY: And given how busy we all  
19 are, having people who are motivated and inner  
20 directed and you can hand them a task and go off and  
21 do it, it really is a thrill to work with them.

22 CHAIRMAN CROSBY: That's great. So,  
23 thank you, you guys. Great.

24 I don't think there is much to really

1 look at on the chart. I just think maybe scroll up  
2 just a little bit, Eileen.

3 MS. GLOVSKY: Scroll down you mean?

4 CHAIRMAN CROSBY: Yes. We are  
5 talking now, we are about to finish the background.  
6 The applications everybody knows are due on the  
7 15th. On the 15th or a day or two thereafter, we'll  
8 have a comprehensive list of who are for sure in the  
9 game.

10 We are working on moving this process  
11 as fast as we possibly can. We'll talk more about  
12 this when we get to the IEB report. But we are  
13 working with our Investigations and Enforcement  
14 Bureau and our consultants to streamline this  
15 background process as much as we possibly can.

16 We have decided to hone in on the slots  
17 applications assuming we get all of the information  
18 from the various slot applicants. Try to get that  
19 done quickly, maybe even quicker than we have it here  
20 on the chart.

21 In parallel we need to make sure that  
22 the drafting of the regs. for the application  
23 process is in particular, is done in time to start  
24 the application -- the RFA-2 process when the

1 background checks are done. So, the same thing is  
2 happening here that we are going through this entire  
3 process.

4 I think we talked last week about on the  
5 chart the way it says a three-month process for RFA-1  
6 -- sorry, RFA-2. It was a two-month process for  
7 RFA-1. We think we can save some time in here. And  
8 Attorney (SIC) Glovsky and some others, the  
9 consultants are working on this -- I'm sorry,  
10 Grossman, Attorney Grossman. It was a hard day  
11 today.

12 So, any way but we are really in the  
13 guts of our work right now. And when we get -- We've  
14 been talking about having, I think we said we have  
15 11 people, organizations in process. There may be  
16 now a few more than that, but somewhere between 11,  
17 12, 13, 14 organizations. We will be moving through  
18 this background check pipeline as we are also moving  
19 as quickly as we can to get the RFA-2 regs all ready  
20 to go.

21 Meanwhile, there's a lot going on with  
22 the Racing Commission and so on and so forth. This  
23 is really I think the guts of the process. And where  
24 we are hopeful that we can move the process along

1 really expeditiously.

2 I don't think there are any other  
3 material changes or issues other than things we'll  
4 talk about when we get to them on the agenda. Okay.  
5 Thanks.

6 MS. GLOVSKY: I had a couple of other  
7 things that I just wanted to noted. There has been  
8 some question about the application fee submittal.  
9 We are going to put some additional instructions on  
10 the website either later this evening or early  
11 tomorrow morning to facilitate that. So, if any of  
12 the applicants have questions on that they can look  
13 at that information.

14 Two procurements that we had out, one  
15 for equine testing, one for the research agenda came  
16 in on Monday. We did have good response for  
17 proceeding through phase 1 and hope to get to phase  
18 2, which will be distributing the responses to the  
19 procurement teams probably tomorrow.

20 I know on the research agenda, we have  
21 a scoring meeting scheduled for next week. So, we  
22 are going to be moving through that pretty quickly.  
23 We hope to have the audit services procurement for  
24 Racing posted tomorrow afternoon.



1           And I think that's about all that I have  
2 unless there are any questions from the  
3 Commissioners.

4           CHAIRMAN CROSBY: We talked a lot  
5 about the increasing need for cash management,  
6 record keeping, the \$400,000. Now we're talking  
7 about this process of disbursing the \$50,000. That  
8 \$50,000 could go to four, five, six, seven, eight  
9 different communities. So, there's going to be a  
10 lot of paperwork processing, financial  
11 recordkeeping.

12          MS. GLOVSKY: Yes. And I am working  
13 with the Comptroller on setting up sort of the  
14 independent budgets for each of the applications so  
15 that we can keep good track of that.

16          CHAIRMAN CROSBY: And you have some  
17 personnel to help, right.

18          MS. GLOVSKY: Yes.

19          CHAIRMAN CROSBY: If we get that right  
20 now, we're fine. If we fall behind, we'll never  
21 catch up --

22          MS. GLOVSKY: Right.

23          CHAIRMAN CROSBY: -- because it'll be  
24 so complicated. Okay. Great. Thank you.

1           Commissioner Zuniga, employee manual  
2 chapter six.

3           COMMISSIONER ZUNIGA: Sure. Thank  
4 you, Mr. Chairman. I've included a revised version  
5 of the last chapter in the manual, one that no longer  
6 contains the public records section, as that will  
7 be incorporated as part of another handout that I  
8 have here in the packet on chapter two.

9           I just wanted to stay with chapter six  
10 that would complete all of the chapters. This  
11 revision also includes your comments from last week.  
12 They have been incorporated here and clarified.

13           So, I can take any comments. And if  
14 there aren't any, I would move that the Commission  
15 adopts or votes on employee manual chapter six.

16           COMMISSIONER STEBBINS: I would just  
17 raise one small correction that I noticed. Under  
18 press relations, it says when the Director of  
19 Communications is absent that inquiries be referred  
20 to the Chair. But I think we should also include  
21 our Executive Director when that person comes on  
22 board at such point.

23           COMMISSIONER ZUNIGA: That's easy  
24 enough.

1                   COMMISSIONER MCHUGH: So moved with  
2                   that motion.

3                   CHAIRMAN CROSBY: Is there a second?

4                   COMMISSIONER STEBBINS: Second.

5                   CHAIRMAN CROSBY: Any further  
6                   discussion, any other questions, issues? All in  
7                   favor, aye.

8                   COMMISSIONER STEBBINS: Aye.

9                   COMMISSIONER ZUNIGA: Aye.

10                  COMMISSIONER CAMERON: Aye.

11                  COMMISSIONER MCHUGH: Aye.

12                  CHAIRMAN CROSBY: Opposed? The ayes  
13                  have it.

14                  COMMISSIONER MCHUGH: So, this  
15                  completes now Commissioner Zuniga's excellent work  
16                  on the handbook. We have a handbook. We have one  
17                  more minor item, but basically the employee handbook  
18                  is in place. Terrific.

19                  COMMISSIONER ZUNIGA: This does and it  
20                  now begs the question of what I will be shortly  
21                  moving to incorporate. Any additions or  
22                  modifications to the manual or any other policies,  
23                  I recommend that we then only vote on that addition  
24                  or that modification not necessarily chapters or

1 each of the chapters like we did, because we all  
2 realize that this will be likely a living document.

3 So, in that venue, I have for you what  
4 Attorney Grossman drafted for us, which would be an  
5 update to section two of the manual that enhances  
6 the public records request policy. It's being  
7 submitted here for consideration. It effectively  
8 is a more detailed procedure than what we have  
9 currently. And it centralizes the response and the  
10 handling of records with the legal department as it  
11 was always the intention.

12 I am just submitting this for the first  
13 time. So, we could not vote and vote on it next week  
14 to conform with some of the procedures we said we  
15 would set for ourselves, or take any questions if  
16 anybody has any.

17 COMMISSIONER MCHUGH: We really need  
18 to have -- Filling the void here. We really need  
19 to have a centralized uniform procedure for dealing  
20 with this. We've been dealing with these requests  
21 as best we can up to this point.

22 The public is entitled to these  
23 documents. And the requests likely are going to  
24 increase as we move forward. So, we need a uniform

1 process for handling them and responding to them.

2 We need to have some body or some people  
3 who are trained in looking for exemptions and the  
4 like to make certain that we are not responding by  
5 delivering information that in fact contains  
6 privacy implications for individuals or the like.  
7 So, we need to devil up a comprehensive plan and then  
8 train people to do this. And this is the first step  
9 for doing that.

10 CHAIRMAN CROSBY: What I was thinking  
11 about going forward was whether you wanted to put  
12 any music at the beginning of this. Because we have  
13 talked about it and there are different public  
14 agencies respond in different ways. And some tend  
15 to wait as long as possible and others respond  
16 promptly.

17 And we've tried to establish a  
18 precedent of responding promptly even though  
19 sometimes it's a pain. But I don't think there's  
20 any need to -- What we say here clearly that we will  
21 respond as soon as practicable within 10 days and  
22 I don't think there's any need to add anything more  
23 than that.

24 It is clearly our intent to as part of

1 being participatory, transparent and fair, to  
2 respond as promptly as we possibly can to these  
3 things. They are occasionally abusive and  
4 excessive and we look out for our own interests as  
5 well. But we do intend to be as forthcoming as we  
6 possibly can be on these. But I think that's fine.  
7 I mean this is good.

8 And this leaves up to the discretion of  
9 the legal department basically the method for  
10 assessing costs, right -- within the Secretary of  
11 State's parameters?

12 COMMISSIONER MCHUGH: Within the  
13 Secretary of State's parameters. And our  
14 regulations talk about, I think they talk about  
15 publishing a schedule of fees. And if they don't,  
16 we can certainly do that at some point so that people  
17 know what costs we're going to charge if we charge  
18 costs. There may be situations where we waive them.

19 CHAIRMAN CROSBY: And we talked about  
20 this, I think, Commissioner Zuniga and I talked  
21 about this. There was a draft that had fees in it.  
22 And I wasn't sure that that draft conformed with --  
23 so, we can talk about that.

24 COMMISSIONER ZUNIGA: That's no

1 longer in the employee manual. That was one of the  
2 updates that you had.

3 CHAIRMAN CROSBY: Where does this go  
4 in the employee manual?

5 COMMISSIONER ZUNIGA: This updates a  
6 section in chapter two. I forget the exact section,  
7 but it's in 2.14 or something like that.

8 CHAIRMAN CROSBY: I guess we need to  
9 adopt this. But as to the employee manual in  
10 general, we've talked about this, but lots of times  
11 it gets written and then they sit on the shelf and  
12 nobody even knows they exist. And we don't want to  
13 do that.

14 MS. GLOVSKY: My intent is now that we  
15 have completed it, is to over the next several weeks  
16 send out a chapter a week to the employees. And then  
17 ultimately we'll an intranet and have it available  
18 to people and publish updates as appropriate.

19 CHAIRMAN CROSBY: And I think we ought  
20 to package it -- I think we talked about this having  
21 our vision, our mission statement on the front of  
22 it. There is some language in the front about what  
23 this means. And I think new employees ought to have  
24 some kind of -- Again, we talked about this too --

1 some kind of orientation process where they get this  
2 and other stuff.

3 Does somebody want to move on this, the  
4 adoption of this?

5 COMMISSIONER ZUNIGA: I sure can. If  
6 there are no further questions, I move that the  
7 Commission adopt the public records request policy  
8 as presented and incorporate it as part of the  
9 procedures and policy manual.

10 COMMISSIONER CAMERON: Second.

11 CHAIRMAN CROSBY: Any further  
12 discussion? All in favor, aye.

13 COMMISSIONER STEBBINS: Aye.

14 COMMISSIONER ZUNIGA: Aye.

15 COMMISSIONER CAMERON: Aye.

16 COMMISSIONER MCHUGH: Aye.

17 CHAIRMAN CROSBY: Opposed? The ayes  
18 have it.

19 MR. ZIEMBA: Mr. Chairman?

20 CHAIRMAN CROSBY: Yes.

21 MR. ZIEMBA: There is one item that I  
22 was supposed to mention during my report that after  
23 talking with our Counsel, I should bring up. In  
24 regard to the MEPA process, there's a requirement



1 under the MEPA regulations that entities that file  
2 for a state permit within 10 days after filing for  
3 a state permit they have to file an ENF form.

4 It was always anticipated that our  
5 license, which is a state permit under the state  
6 definition that that is at the RFA-2 application.  
7 People cannot act on an RFA-1 application. But in  
8 case any of our colleagues are scrambling to do the  
9 ENF form within 10 days, I was just hoping to  
10 recommend that we clarify that in our regulations.  
11 And I think that is the intent.

12 COMMISSIONER MCHUGH: Right, it is.  
13 The RFA-2 is the application for purposes of filing  
14 the ENF form.

15 MR. ZIEMBA: Thank you.

16 CHAIRMAN CROSBY: Great, thank you.  
17 Finance update, is that the next one?

18 COMMISSIONER ZUNIGA: Yes. I can  
19 speak to that Mr. Chairman.

20 CHAIRMAN CROSBY: Yes, please do.

21 COMMISSIONER ZUNIGA: In your packets  
22 there is a report. I have included a report of a  
23 budget to actual expenditure report given that the  
24 second quarter ended December 31. And the costs

1 incurred on a cash basis as of that time are now  
2 incorporated in this report.

3 The detail report from MMARS is the  
4 second page to the attachment. This represents all  
5 of fiscal year '13 expenses. And the summary report  
6 that I have here on the first pages is a comparison  
7 against the budget.

8 What I do in the second column is do a  
9 quick prorated budget. In this case that would be  
10 half the amount of the budget and compare that to  
11 the expenditures that I was just talking about to  
12 get a sense as to a rate of burn, if you will, or  
13 a rate of expenditures.

14 Worthy of note is that because I report  
15 on a cash basis, there are costs that are incurred  
16 and not yet reflected because we abide by the  
17 Commonwealth terms for payment. And in many  
18 instances, it's within 45 days. Sometimes if  
19 there's prompt payment discounts, we take advantage  
20 of those. But in instances, it's 45 days.

21 So, on any given month, we are  
22 currently spending about \$290,000 or \$300,000 of  
23 non-salaries expenditures that would not be  
24 reflected here. So, that figure of \$2.4 million of

1 expenditures is probably closer on an accrual basis  
2 to about \$2.7 or \$2.8 million, which is on track in  
3 my estimation to be within our approved budget at  
4 the end of the year.

5 CHAIRMAN CROSBY: Why don't we do this  
6 -- I'm sure we've talked about this. Why don't we  
7 do it on an accrual basis?

8 COMMISSIONER ZUNIGA: Once we get more  
9 staff, which we are, we will be doing that. It  
10 requires encumbering many of the expenditures. And  
11 Director Glovsky and I are stretched thin on other  
12 things, but we will.

13 COMMISSIONER MCHUGH: Consequence of  
14 the current cash basis means that some of the  
15 expenditures here were actually FY'12 expenses.

16 COMMISSIONER ZUNIGA: That is correct  
17 as well. Some of the expenditures here notably  
18 from May and June of 2012 hit 2013 and are reflected  
19 there.

20 COMMISSIONER MCHUGH: Right.

21 CHAIRMAN CROSBY: Okay. I can take  
22 any questions or observations.

23 CHAIRMAN CROSBY: And the statewide  
24 allocation percentage, we're not going to have to

1 do?

2 COMMISSIONER ZUNIGA: Yes, we are not.  
3 I keep it here because that was part of the budgeted  
4 amount. But since that budget -- I confirmed that  
5 that is done in arrears on the two years prior. It's  
6 assessed of agencies in arrears. So, we will begin  
7 noticing a statewide allocation percentage  
8 effectively a year from now.

9 CHAIRMAN CROSBY: But that is also  
10 something we can talk about. We'll have to  
11 discuss that because it's not clear that was  
12 anticipated that we would have that at all.

13 COMMISSIONER ZUNIGA: That's correct.  
14 If there's no other questions, this is not meant as  
15 a vote, of course. This is just meant as a report  
16 that we do periodically because we are effectively  
17 the financial overseers of our own.

18 CHAIRMAN CROSBY: Okay. Was this  
19 your --

20 COMMISSIONER ZUNIGA: Yes, I have one  
21 last item as part of the finance update. We  
22 continue to grow. And we need additional space and  
23 some technical voice and data technology  
24 requirements.

1 I am presenting for your consideration  
2 a proposal to execute a contract with Future  
3 Technologies Group, FTG to enhance and expound our  
4 voice and data technology. I have included that in  
5 this short memo.

6 FTG is a state approved vendor and part  
7 of the state vendor list. So, its procurement is  
8 very straightforward. The system will allow  
9 additional functionality that will be especially  
10 useful given that we have two and potentially three  
11 spaces within the same building.

12 COMMISSIONER MCHUGH: What's  
13 encompassed within the term data services? Is that  
14 transmission and receipt or is it something else?

15 COMMISSIONER ZUNIGA: Well, it  
16 includes wiring that is now anticipated to be done  
17 but also network services.

18 COMMISSIONER MCHUGH: It's not  
19 software? It's not the document management stuff,  
20 the filing, the electronic filing that kind of  
21 stuff. It's just the transmission and receipt  
22 infrastructure?

23 COMMISSIONER ZUNIGA: Yes. It's our  
24 ability to connect to the Web and be connected and

1 get phone over the Web. We have voice over IP.

2 COMMISSIONER MCHUGH: Right.

3 MS. GLOVSKY: It's largely enhancing  
4 the phone system.

5 COMMISSIONER ZUNIGA: So, if there is  
6 no further questions or comments, I would move that  
7 the Gaming Commission execute a contract with Future  
8 Technologies Group for \$25,000 to enhance the voice  
9 and data services that the Commission currently has.

10 CHAIRMAN CROSBY: Second?

11 COMMISSIONER MCHUGH: Second.

12 CHAIRMAN CROSBY: All in favor, aye.

13 COMMISSIONER STEBBINS: Aye.

14 COMMISSIONER ZUNIGA: Aye.

15 COMMISSIONER CAMERON: Aye.

16 COMMISSIONER MCHUGH: Aye.

17 CHAIRMAN CROSBY: Opposed? The ayes  
18 have it.

19 We've got a couple of fairly big topics  
20 coming up. Let's take a five-minute break.

21

22 (A recess was taken)

23

24 CHAIRMAN CROSBY: We will reconvene

1 meeting number 45 on January 10, 2013. And we will  
2 go to item five, the Investigations and Enforcement  
3 Bureau report, Acting Director Colonel Commissioner  
4 Cameron

5 COMMISSIONER CAMERON: Thank you, Mr.  
6 Chair. I don't have any more names for you at this  
7 present time. Scope of licensing, first of all, all  
8 of the interested parties who have requested scope  
9 of licensing meetings have had those meetings. All  
10 of our determination letters are out.

11 There are some additional people who  
12 are asking questions, but we don't know at this late  
13 date whether or not they'll A - choose to have a scope  
14 of licensing meeting or B - submit an application,  
15 which they can do without that scope of licensing  
16 meeting.

17 We do have some meetings, in fact, I am  
18 going to have to leave here early today to go to two,  
19 I'll a call them clarification meetings. In other  
20 words, they sent us their information, which was  
21 requested so we can determine in conjunction with  
22 our consultants who is required to qualify.

23 Some of our potential applicants have  
24 further information/questions about those letters,

1 two of whom have requested a meeting this afternoon.  
2 So, in trying to do this before the deadline on  
3 Tuesday, we have a lot of last-minute questions and  
4 we are being as accommodating as possible.  
5 Frankly, that's what we should do to make sure  
6 everyone has the correct information in moving  
7 forward in preparing their applications.

8 Everyone is aware that the deadline is  
9 Tuesday. We do have three applications, which have  
10 been submitted, two of which have been deemed  
11 substantially sufficient so that they have now gone  
12 to our contract background investigations to begin  
13 those investigations.

14 One is in the review process now. It  
15 will be completed by tomorrow. And if it is deemed  
16 sufficient that will be shipped immediately for the  
17 beginning of a background.

18 And a couple of the applicants have  
19 advised us that they will submit tomorrow. So, we  
20 are anticipating those. And of course, we are  
21 anticipating all of those by Tuesday who really are  
22 serious about going forth in the process.

23 So, we will be busy with investigations  
24 in determining the status of those applications.



1 So, that's my report for scope of licensing and  
2 investigations at this time.

3 Now Sir, I would like to move onto the  
4 IEB Director search update. I'd like to report that  
5 we have completed that search. We had 54 applicants  
6 in all working in conjunction with the search firm,  
7 Juristaff. Fifty-four resumes and letters  
8 expressing an interest in the position.

9 Eight of those applicants were  
10 interviewed informally. Four then moved onto a  
11 formal interview with an interview panel comprised  
12 of law enforcement executives including me.

13 There was a unanimous decision by that  
14 panel to move one candidate forward before the full  
15 Commission. I'm pleased to announce that we have  
16 that candidate here today. And I'd just like to  
17 briefly outline some of the attributes why I believe  
18 this a superb candidate for the position of  
19 Investigations and Enforcement Bureau Director.

20 That candidate, before I ask her to  
21 step forward and answer any of your questions, if  
22 I may say a few things. This candidate is presently  
23 and the Undersecretary for Law-Enforcement at the  
24 Massachusetts Executive Office of Public Safety.

1 That is Karen Wells.

2 Karen Wells comes to us as the nominee  
3 with a wealth of law-enforcement experience, nearly  
4 two decades of experience, which includes  
5 investigating, prosecuting high-level criminal  
6 cases, narcotics, corruption, organized crime and  
7 fraudulent schemes to name a few. She also has  
8 regulatory experience overseeing regulatory  
9 agencies and a long-term relationship with the  
10 local, state and federal law-enforcement agencies.  
11 I believe those three skill sets make her uniquely  
12 qualified for the position.

13 Just to name a couple of the  
14 responsibilities over at the Department of Public  
15 Safety, has regulatory and licensing, inspection  
16 experience with the Department of Public Safety.

17 Ms. Wells directs the functions and  
18 administration of the Massachusetts State Police as  
19 well as municipal training experience. Also, she  
20 took the lead on gaming enforcement, gaming related  
21 issues. She served as the secretary to lead those  
22 issues. So, she really for the last couple of years  
23 been taking lead when it comes to all of the  
24 law-enforcement partners with gaming related

1 issues. In fact, that's how I was first acquainted  
2 with Undersecretary Wells in her capacity there.

3 Previous experience, she was the  
4 Deputy Chief of Public Protection, Anti-  
5 Terrorism, Corruption, Technology this is all at the  
6 Middlesex District Attorney's Office where she also  
7 prosecuted high-level narcotics and white-collar  
8 crimes.

9 She was an assistant attorney general  
10 in the criminal Bureau in the Massachusetts Attorney  
11 General's office where she led special  
12 investigations in the narcotics division. She's a  
13 graduate of Boston University Law School and Colgate  
14 University.

15 Again, I think that those three skill  
16 sets, the prosecutorial, the regulatory and the  
17 investigative skill sets, the relationships which  
18 are critical to this new endeavor, her relationships  
19 at the AG's office with our federal partners, with  
20 our local partners, with the State Police are  
21 invaluable to us.

22 And the other thing I've come to know  
23 is that she really has the problem-solving skills  
24 as well as her collaborative work style, which I

1 think again is equally as important as the  
2 experience.

3 The ability to work collaboratively  
4 with our law-enforcement partners, with the  
5 Commission, with our applicants, I think those skill  
6 sets will make her -- I am proud to recommend her  
7 for this position. And I'd like to ask her to step  
8 up now and please answer some questions from the  
9 Commission.

10 MS. WELLS: Good afternoon, Mr.  
11 Chairman, members of the Commission.

12 CHAIRMAN CROSBY: Welcome, Ms. Wells.

13 COMMISSIONER MCHUGH: Welcome.

14 COMMISSIONER ZUNIGA: Welcome.

15 MS. WELLS: Thank you. It's a  
16 pleasure to be here.

17 CHAIRMAN CROSBY: You've heard  
18 Commissioner Cameron sing her praises.

19 COMMISSIONER CAMERON: And I don't do  
20 that easily, do I, Mr. Chair?

21 CHAIRMAN CROSBY: No, you sure don't.  
22 You can sing my praises a little.

23 Some of you have not met her at all.  
24 I've had a chance to get to know her a little bit,

1 but fire away.

2 COMMISSIONER ZUNIGA: I can volunteer  
3 to start asking. Very nice to meet you, Ms. Wells.  
4 I go back to when I first read the Gaming Act when  
5 I was first applying to be a Commissioner. And  
6 since then and especially afterwards in the Act I've  
7 come to appreciate this notion of balance.

8 There's a lot of competing priorities,  
9 if you will, very broadly. And as I think of the  
10 Investigations and Enforcement Bureau, one in  
11 particular really is one I would like you to speak  
12 and share your thoughts with us.

13 For example, one in which we have this  
14 very heavy front-loaded activity relative to  
15 investigations, prior awards of licenses. Then  
16 maybe this bump, if you will. That's something  
17 that's is really starting on Tuesday in rapid form.  
18 And is likely one that will taper off, perhaps with  
19 a real ramp-up towards opening day wherever those  
20 establishments -- whenever those establishments  
21 will open, etc. But then again a steady state in  
22 the future.

23 So, if you could share with us perhaps  
24 your thoughts around resources and ramp-up period

1 and just your view of the tasks ahead for the Bureau.

2 MS. WELLS: Yes. I think that is part  
3 of what I find interesting about this job is that  
4 it is going to evolve over time. Gaming is new in  
5 Massachusetts. We are starting a new industry, if  
6 you will, in the state.

7 And from the perspective of the  
8 Investigations and Enforcement Bureau you're  
9 correct. The first part of its job is really to do  
10 the investigations, the background investigations  
11 for the licensing. Once those licenses are  
12 granted, the job will somewhat change because I see  
13 the Investigation and Enforcement Bureau being more  
14 of a regulatory body.

15 So, there is the regulatory component  
16 of that scope of work for that part of the  
17 Commission. I think that the experience in  
18 learning about the companies that are applying and  
19 going through that background process only helps  
20 with that regulatory process. So, that background  
21 information and that knowledge about the industry  
22 and who's going to be in Massachusetts and who's  
23 going to do this kind of work in Massachusetts is  
24 going to be critical to that regulatory piece. So,

1 I think you're building on that once you get into  
2 the regulatory piece.

3 Then I also see that the IEB is really  
4 going to have to work hand-in-hand with the Attorney  
5 General's office on enforcement issues and also with  
6 other state, federal and local partners. So, I  
7 think, as Commissioner Cameron mentioned that  
8 atmosphere of collaboration is going to be very  
9 important.

10 Information sharing is critical in any  
11 kind of enforcement operation. So, I see the IEB  
12 as working with the other law-enforcement entities  
13 in Massachusetts. As we go from sort of the  
14 licensing phase into the regulatory phase into the  
15 enforcement phase, we'll be working hand-in-hand  
16 with those partners, particularly the Attorney  
17 General's office, because there will be regulatory  
18 pieces and there will be criminal pieces that will  
19 probably emerge. And we'll have to share  
20 information and share resources and work together.

21 CHAIRMAN CROSBY: Yesterday the  
22 Attorney General announced her director of  
23 something somewhat similar. What is the  
24 distinction between what you'll be doing and that

1 person will be doing?

2 MS. WELLS: Pat Hanley from the  
3 Attorney General's office, he will be assigned to  
4 the division at the AG's office. That's more of a  
5 criminal enforcement piece.

6 So, I expect that I would work very  
7 closely with AAG Hanley on issues and information  
8 that we glean as we go through sort of the  
9 enforcement and regulatory process from the  
10 Commission's perspective.

11 But the IEB is more of a regulatory  
12 piece of gaming making sure that everything is  
13 happening properly as it should in the casinos,  
14 ensuring integrity for the process and ensuring  
15 integrity for the operations.

16 I think there is going to be overlap  
17 because anyone who has done criminal investigations  
18 knows you start down one path, and you don't know  
19 where that's going to lead. And you get  
20 information, and you have to be ready to move in  
21 different direction.

22 And I think that the IEB is going to be  
23 working very close with State Police, local police.  
24 We may get information that may end up resulting in



1 a criminal case, it may not. They may have  
2 information that they may think is going to be a  
3 criminal matter, but it turns out it may actually  
4 be more of a regulatory matter.

5 So, I think interaction between the two  
6 is going to be very important. But the IEB is more  
7 on the regulatory side and then the Attorney  
8 General's office is more on the criminal enforcement  
9 side.

10 CHAIRMAN CROSBY: Prosecution side.

11 MS. WELLS: Correct.

12 CHAIRMAN CROSBY: I think this  
13 certainly to me from the outside looking in, there  
14 are a lot of fingers in this pie. And it appears  
15 that the Legislature did a pretty good job of  
16 empowering different agencies to do their piece of  
17 the puzzle, funding them.

18 But it's going to take some  
19 organizational and administrative and personal  
20 skills to make sure that we are not overlapping that  
21 we're not paying two agencies to do the same thing.  
22 That we don't get into turf wars and so forth. I  
23 think that'll be as a big a challenge probably as  
24 you have.

1 Do you feel ready to deal with that one?

2 MS. WELLS: I absolutely do. I think  
3 one of the strengths I bring to this job is my ability  
4 to collaborate and to really get to know people that  
5 are working in this business. And I think that  
6 being able to pick up the phone, talk to people,  
7 share information and work together, and realize  
8 where you're overlapping and being able to come up  
9 with a plan as a team and say okay, this is where  
10 it makes sense for person A to do this or person B  
11 to do this, and one agency to take the lead in one  
12 area and maybe my agency to take the lead in another  
13 area is very important.

14 That communication is critical in any  
15 kind of enforcement operation so that you're not  
16 duplicating efforts. You're being efficient. And  
17 you're doing the work that you need to do.

18 COMMISSIONER MCHUGH: One of the  
19 things, Madame Secretary, that I have been concerned  
20 about from the outset is the fact that in the  
21 regulatory sense there is a disciplinary piece.  
22 There are license revocation kinds of hearings.  
23 There are investigations that lead to  
24 administrative charges. We're already looking at

1 that on the racing side of things.

2 And that means that we have within a  
3 single entity an investigative unit, a  
4 prosecutorial unit and a fact-finding unit, which  
5 sets up a potential set of issues unless carefully  
6 addressed.

7 Do you have any ideas as to how that  
8 could best be made to work?

9 MS. WELLS: I think that from the  
10 get-go, any kind of -- beginning of any kind of  
11 investigation that each piece of the IEB and each  
12 role as you described has to know what their role  
13 is. And I think that as director, it's my  
14 responsibility to oversee that and to make sure that  
15 we're not going to delve into any kind of conflict.

16 So, I think it would be helpful for the  
17 director, for me to be able to manage those -- the  
18 interviews, manage the evidence gathering and make  
19 sure that there's no cross purposes. That if  
20 something is a regulatory investigation that we see  
21 that. If it becomes criminal, we have to be mindful  
22 of different constitutional protections and things  
23 like that.

24 So, I think that as far as managing that

1 kind of work, it's important that there is someone  
2 overseeing it so that different individuals are not  
3 going in different directions.

4 And I think that as far as the  
5 structure, I think that having investigators that  
6 know what they're doing that are educated that are  
7 familiar with this business is the way to prevent  
8 problems in that area. And I think that where we  
9 are starting off now, we're in a good spot for that.  
10 And I would be bringing people in that are educated  
11 in that area and know how to do that.

12 COMMISSIONER MCHUGH: That's  
13 certainly a helpful approach. In addition to the  
14 care that goes into the investigation piece and the  
15 care that goes into the prosecution piece, the  
16 adjudicatory piece can either be sent over to the  
17 Division of Administrative Law Judges, but may well  
18 be something we want to keep at home because it  
19 involves a certain amount of background expertise.

20 If we keep it home, we've got to make  
21 certain that both in the reality and the appearance  
22 it is truly an independent fact finder.

23 MS. WELLS: Yes.

24 COMMISSIONER MCHUGH: So, I just

1 wondered if you had had any time to think about that  
2 piece. We're not likely to need to get involved in  
3 it right away, although once the racing season  
4 starts we will be.

5 MS. WELLS: And I think that when you  
6 have someone -- We've dealt with hearings at the  
7 Department of Public Safety where you have an issue  
8 and even though the hearings officer was an employee  
9 there, that hearings officer had to remain separate  
10 and had to not be privy to some of the information  
11 before the hearing.

12 So, I think you are 100 percent  
13 correct. It's not only the reality of the integrity  
14 of the process but also the perception. So, I think  
15 having a policy in place about keeping fact finders  
16 separate from the information until that  
17 information is provided is critical. Also, the  
18 process by which that information is provided, the  
19 hearing, the rules for the hearing and the setup we  
20 have for the hearing is critical.

21 I think having a designated hearings  
22 officer, having the information provided in a public  
23 setting and having that process outlined in public  
24 and having a policy set up for how that's going to

1 be done so there is faith and belief in the process,  
2 I think that's very important. So, as we discuss  
3 that further, I think that's very helpful.

4 COMMISSIONER CAMERON: I had a  
5 question about, it's our intention and we've been  
6 diligent in searching and Commissioner Stebbins is  
7 leading that search to bring in an Executive  
8 Director who has significant gaming experience,  
9 casino gaming experience, which means, obviously,  
10 we need to -- we are in the process of recruiting  
11 an individual from another state.

12 So, they would have that gaming  
13 experience, which we all think is critical but they  
14 would not have that Massachusetts state government  
15 experience. Do you think you could be helpful to  
16 an Executive Director with that?

17 MS. WELLS: I think I see going forward  
18 I hope that the Director of the IEB, if that's me,  
19 and the Executive Director would have that kind  
20 partnership.

21 I think that we do need gaming  
22 experience in the Gaming Commission. However,  
23 because it's a new industry for Massachusetts,  
24 people from Massachusetts just don't have that

1 experience. And that's just how it is right now.

2 So, I think that from the  
3 law-enforcement perspective it is very helpful to  
4 have the contacts, to have the relationships, to  
5 know the judicial process here in Massachusetts, to  
6 know the administrative process here in  
7 Massachusetts.

8 So, I hope that I can be helpful to the  
9 Executive Director, and bring that person up to  
10 speed on what's going on Massachusetts. And then  
11 work in tandem with that Executive Director on the  
12 gaming issues. So, we would complement each other.  
13 So, given these are two high-level positions, I  
14 think that that combination will serve the  
15 Commonwealth of Massachusetts the best.

16 COMMISSIONER STEBBINS: The  
17 legislation probably isn't more clear and  
18 definitive about any other Bureau or position within  
19 the Commission than this one. It clearly lays out  
20 the responsibilities of the IEB and the  
21 responsibilities of the Deputy Director.

22 In that sense, you're going to be  
23 hiring other staff. I appreciate knowing your  
24 experience in hiring staff that have to have

1 responsibilities and skills related to these  
2 functions. And what kind of people are you looking  
3 for to help fill a lot of these positions?

4 MS. WELLS: I do have a significant  
5 amount of experience in hiring. Particularly as  
6 Undersecretary at the Executive Office of Public  
7 Safety and Security, I was involved in not only the  
8 search process for -- the selection process I should  
9 say for the last two Colonels. For Colonel  
10 McGovern, I was heavily involved in. And I led the  
11 process for the current Colonel, Timothy Alben.

12 And in addition, we've had many  
13 executive positions within the Executive Office  
14 that I've been involved in that search and very  
15 pleased with how that's turned out. So, I think  
16 that I've demonstrated some good judgment as far as  
17 the quality of people to bring in.

18 I think that as far as personnel for the  
19 Investigations and Enforcement Bureau, I think that  
20 experience and knowledge about financial  
21 investigations is going to be critical. This is a  
22 money business. And I think that having that  
23 background, that financial background is going to  
24 be very helpful in that area.



1 I think complementing that with the  
2 staff we're looking to -- that we have and that we're  
3 looking to have from the State Police, who have a  
4 lot of investigative background, is going to be very  
5 productive for that Bureau.

6 So, I'm looking for people that are  
7 extremely intelligent, extremely diligent and most  
8 importantly extremely ethical. I think that  
9 integrity of this division is the most important  
10 thing to me. I think as you've said over and over  
11 we have one chance to get this right and there is  
12 nothing more important than the integrity people  
13 that work in the Commission.

14 CHAIRMAN CROSBY: A little bit of  
15 following up on Commissioner Stebbins' question.  
16 The legislation clearly identified, as he said, this  
17 as the sort of first among equals among the deputies,  
18 the next tier under ED. To the extent that the  
19 legislation actually had the Director of the IEB  
20 reporting to the Chair not to the ED.

21 We have discussed that and we've  
22 decided that we thought that that responsibility  
23 should be delegated to the ED. What do you think  
24 of that distinction?

1 MS. WELLS: I think that the  
2 Legislature having that be a direct report shows the  
3 significance that it places on the IEB. And I think  
4 that is tied very heavily into the integrity of the  
5 Gaming Commission, and the importance they place on  
6 being able to investigate things that are going  
7 wrong. That we want to get on top of that at the  
8 get-go and we want to make sure that this industry  
9 in Massachusetts is second to none.

10 I think though, however, that just  
11 operations wise it is going to be easier to report  
12 directly to the Executive Director. There's issues  
13 with open meeting law and your ability to meet and  
14 communicate. Having to do that in an open meeting  
15 session, I think administratively it's going to be  
16 a lot more efficient to have that report be to the  
17 Executive Director. So, I think that'll work very  
18 well.

19 COMMISSIONER ZUNIGA: To a great  
20 degree you've already sort of answered this  
21 question. But I want to talk about a question that  
22 the Chairman was asking relative to coordination  
23 among contacts the state police, the Attorney  
24 General. And that was in the context of the state.

1       Could you share your thoughts relative to the  
2       country and the world really.  Because now it's a  
3       global economy and all of our licensees are national  
4       but also probably global operators.  What can you  
5       share?

6                       MS. WELLS:  I've always been a  
7       believer that none of us are as smart as all of us.  
8       And that we can always gather better information.  
9       We can always learn about best practices in other  
10      areas.

11                      So, I think having contacts with other  
12      jurisdictions that are doing gaming with other  
13      operations, learning from their mistakes, learning  
14      from what they do well and developing those  
15      relationships is extremely helpful in any kind of  
16      industry, but particularly helpful where we're an  
17      emerging industry here in Massachusetts.

18                      And I think that I would be remiss if  
19      I did not take that opportunity and try to learn from  
20      people who know what they're doing.  You don't need  
21      to reinvent the wheel.  Someone already knows how  
22      to do something very well, I want to go learn from  
23      that person and I want to educate myself and just  
24      bring that to the Commonwealth of Massachusetts.

1                   CHAIRMAN CROSBY: This is a question  
2 that we have talked to people in the gaming industry  
3 and that would be a nice database to have. But I'd  
4 be interested on your instinct on this. Some people  
5 have said to us when you start the regulatory  
6 environment start as tough as you can get, because  
7 you can always back down from rigorous.

8                   Others have said that's not fair.  
9 This is an industry like any other industry. It  
10 sort of needs a shakedown cruise. You don't want  
11 to have people held to the highest standards before  
12 they've had a chance to get organized. So, sort of  
13 start out by cutting some slack. Do you have an  
14 instinct on those two approaches?

15                  MS. WELLS: Well, I think hearken back  
16 to my days as a prosecutor, I think tough but  
17 reasonable is sort of a good mantra for that.

18                  I think that I would lean towards  
19 having very strict standards in Massachusetts. I  
20 think that the people of Massachusetts expect that  
21 this will be an honest and above-board process.

22                  But I think that the way to be  
23 reasonable and the way to work that out with the  
24 industry is open communication, information flow

1 and being able to let people know what the  
2 expectations are beforehand. It doesn't help the  
3 industry -- We're here to not only to do enforcement  
4 but we have an interest in having this be  
5 economically successful for the Commonwealth.

6 So, we don't want to dampen that  
7 unnecessarily. And I think that sort of managing  
8 expectations and informing parties that are going  
9 to be involved in this industry ahead of time,  
10 setting it up so nothing comes as a surprise and  
11 being very open with the process and being very  
12 transparent about what the expectations are well  
13 ahead of time so that the parties that are involved  
14 can easily live up to that, I think that's the way  
15 to manage it. That would be my instinct, but I'm  
16 certainly up for more discussion on that.

17 COMMISSIONER MCHUGH: This is  
18 regulation of an industry rather than police work  
19 in the purest sense of the word. Following up on  
20 the events of the last question, which I think I  
21 understood, how do you see the difference between  
22 industrial regulation and sort of a law-enforcement  
23 approach to a body of procedures and practices,  
24 purely law enforcement?

1 MS. WELLS: Yes. I see the  
2 difference, because as the Undersecretary I not only  
3 oversee the State Police, I understand the  
4 law-enforcement world. But I also oversee the  
5 Department of Public Safety, which deals with  
6 building practices, the elevator industry, the  
7 hoisting licenses, that whole construction world,  
8 which is more of a business world.

9 And I think that experience is going to  
10 be very helpful to me in this capacity because in  
11 some ways this is much more like that. Where there  
12 are people that have jobs, there are people that are  
13 working their businesses. And they have that  
14 interest, and we all have an interest in having that  
15 develop.

16 So, that sort of regulatory piece and  
17 my experience in that sort of regulatory piece, I  
18 understand it is a different world than law  
19 enforcement itself. It's coming to resolutions.  
20 It's solving problems.

21 We would come to issues with  
22 construction projects and what are we going to do  
23 here. And we'd work together. The Commissioner at  
24 DPS is fantastic and we would work with the industry

1 and solve problems, not just come in there with a  
2 hammer and lay down the law.

3 It's a matter in that capacity of  
4 making sure things are safe. Making sure that there  
5 were not problems with elevators or escalators or  
6 buildings. And that people could have confidence  
7 in their structures.

8 And similarly in the gaming industry,  
9 we want the industry to develop, but we want people  
10 to not only have faith that things are going properly  
11 but that they know that if there is a problem there  
12 is an enforcement agency that's going to step up.

13 COMMISSIONER STEBBINS: What was your  
14 motivation to apply for this position?

15 MS. WELLS: I think that my interest --  
16 In my background, I did a lot of proactive  
17 investigations as a prosecutor. I was in a special  
18 investigations unit both in the District Attorney's  
19 Office and the Attorney General's office. And then  
20 I also worked at EEOP and that was more of a policy  
21 administrative side.

22 So, what really appealed to me about  
23 this job was that there was a combination. It  
24 wasn't just administrative. There really is an

1 operational piece to this. Even right off the bat,  
2 getting involved in looking at the applications,  
3 doing the background investigations and actually  
4 doing the actual work as opposed to just overseeing  
5 it from way up at the top.

6 So, getting to do both sides of things  
7 really appeals to me. And I find that that would  
8 be a very good fit for my personality and for my skill  
9 set.

10 CHAIRMAN CROSBY: Anybody else?

11 Well, now we have the interesting process of  
12 discussing the candidate in public. And I guess  
13 with her present, because if she sits out there, she  
14 could watch it on her Smartphone.

15 So, the hiring manager, Commissioner  
16 Cameron has recommended Ms. Wells. What do you  
17 think?

18 COMMISSIONER ZUNIGA: I think it's a  
19 tremendous combination of experience. As she  
20 states, brings two pieces that are very important,  
21 this administrative oversight of certain  
22 departments but also the prosecutorial and  
23 investigative side. It's good to meet her and hear  
24 her respond to the questions very well. So, I'm in



1 full support of your recommendation.

2 COMMISSIONER CAMERON: Thank you. I  
3 would just like to add the third piece, which I think  
4 is as important as the experience, which is the  
5 respect she commands among the law-enforcement  
6 leaders in the Commonwealth.

7 CHAIRMAN CROSBY: Detail that because  
8 you haven't mentioned that.

9 COMMISSIONER CAMERON: One of the  
10 things I do in vetting any candidates is do some back  
11 channel work. Obviously, I expected references to  
12 say positive things about the candidate.

13 But I certainly went beyond references  
14 and talked to many, many people about Undersecretary  
15 Wells, and people that didn't expect a call from me,  
16 frankly. And just example after example of problem  
17 solving, not leaving anyone bloody on the floor,  
18 frankly, which is common in law enforcement.

19 Solve the problem, work together,  
20 collaborate. Sometimes, and I speak from my own  
21 experience, federal government, state government,  
22 local government, county government do not always  
23 -- some of them skipped kindergarten. And they  
24 don't always work well together.

1           And that's the skill set I felt was  
2           critical to this job. And that's what I heard a  
3           resounding overall -- that's the style and that's  
4           -- but also can make a tough decision. But do it  
5           in a way that people understand and the respect is  
6           already there so that they will follow out. I heard  
7           that over and over again. And I all along in  
8           evaluating this position thought that's what we  
9           needed in someone was the ability to collaborate  
10          effectively.

11           COMMISSIONER STEBBINS: I pick up on  
12          that point as well. I know establishing a Gaming  
13          Commission without having a previous history of the  
14          industry in Massachusetts, we've been having our eye  
15          towards people with commission experience.

16           But I think that this particular  
17          position and how clear the statute lays out that you  
18          need to work with the State Police. You need to work  
19          with the Attorney General's office. You need to  
20          work with the Alcoholic Beverage Control  
21          Commission. I think it's somewhat appropriate for  
22          us to find a person who has inside state government  
23          experience in Massachusetts.

24           It would be great to have partnerships

1 with these people. You have to have partnerships  
2 with these people. And I think having someone who  
3 has the background already of having worked with  
4 some of these groups, I think that's important.

5 COMMISSIONER MCHUGH: Well I too, I  
6 know Secretary Wells by reputation. I think we had  
7 some prior contact in my former life, maybe not.  
8 But her reputation is terrific.

9 And the answers to the questions she  
10 gave today, I think, exemplify why it is terrific.  
11 The difference between a pure law-enforcement  
12 approach to things, which is an important part of  
13 this job, and a regulatory approach is really  
14 important to understand not only intellectually but  
15 viscerally.

16 And I sense from the answers Secretary  
17 Wells gave, because we are trying to make our  
18 businesses grow and we're trying to make them grow  
19 in a way that hews to lines that we all expect. But  
20 they are businesses we are trying to grow.

21 At the same time, there are going to be  
22 problems that need law-enforcement approach, a pure  
23 law-enforcement investigatory, prosecutorial  
24 approach. So, I think in Secretary Wells, we really

1 have somebody who is ready to take over this  
2 important position and advance the interests  
3 embodied in the legislation and advance the  
4 interests of the citizens of the Commonwealth. I  
5 am delighted that she has agreed to come on board  
6 and join us.

7 CHAIRMAN CROSBY: And I am very  
8 mindful of the learning curve that is going to be  
9 there. We all, I think, are mindful of the fact.

10 We're now doing a stage of this  
11 process, which we do have experience that is  
12 relevant to it. That is the choosing of the  
13 licensees and the citing of the licensees. I think  
14 we all bring something to the table.

15 The actual regulation of the industry  
16 once they get up and running is something about which  
17 we know very little. And about which you know very  
18 little, but about which you're going to need to know  
19 a lot. And I'm mindful of that challenge. And you  
20 like us, I think, are going to need to immerse  
21 yourself in the meat and potatoes of the running of  
22 casinos, because that's what you're going to be  
23 regulating.

24 Having said that, I agree with you

1 about we will have an ED who has those kinds of  
2 skills. And coupling such an ED with a first among  
3 equals deputy who knows the local law-enforcement  
4 world and brings the skills that you bring, I think  
5 makes all the sense in the world. Nevertheless,  
6 there is going to be that learning curve.

7 I had a chance to talk to  
8 Undersecretary Wells for a little while. And I  
9 don't pretend to be a good enough interviewer to be  
10 able to know for sure. I do have a lot of confidence  
11 in Commissioner Cameron and the two other people,  
12 Kathy O'Toole, who has a tremendous background  
13 relative to this as well as being one of our  
14 consultants now who is part of the hiring review  
15 team. And a very senior member of the State Police  
16 who is also a part of the team.

17 And to have those three people feel  
18 unequivocally that this is a very strong candidate  
19 that gives me a lot of comfort. So, I'm certainly  
20 with the program.

21 Would you like to make a motion?

22 COMMISSIONER CAMERON: I would, Mr.  
23 Chair. I would move that we vote to appoint  
24 Secretary Wells as our first Director of

1 Investigations and Enforcement.

2 CHAIRMAN CROSBY: Do we have a second?

3 COMMISSIONER MCHUGH: Second.

4 CHAIRMAN CROSBY: Any last minute  
5 discussions or forever hold your peace. You're  
6 sure?

7 MS. WELLS: I'm sure, Sir.

8 CHAIRMAN CROSBY: Okay. All in  
9 favor, aye.

10 COMMISSIONER STEBBINS: Aye.

11 COMMISSIONER ZUNIGA: Aye.

12 COMMISSIONER CAMERON: Aye.

13 COMMISSIONER MCHUGH: Aye.

14 CHAIRMAN CROSBY: Opposed? Welcome  
15 aboard.

16 COMMISSIONER MCHUGH: Welcome aboard.

17 MS. WELLS: Thank you, very much.

18  
19 (Applause)

20  
21 COMMISSIONER CAMERON: Mr. Chair, I am  
22 going to also have to excuse myself to make these  
23 meetings.

24 CHAIRMAN CROSBY: Yes, good, thank

1 you.

2

3 (3:25 p.m. Commissioner Cameron exits  
4 meeting room)

5

6 CHAIRMAN CROSBY: Director Wells, you  
7 have big shoes to fill.

8 MS. WELLS: I know.

9 CHAIRMAN CROSBY: The interim  
10 director is a force to be reckoned with.

11 Okay. Racing Division report,  
12 Director Durenberger and associated teammates.

13 DR. DURENBERGER: Good afternoon, Mr.  
14 Chair, Commissioners.

15 CHAIRMAN CROSBY: Bring your mic over,  
16 you can introduce your guests.

17 DR. DURENBERGER: I shall as soon as  
18 we've decided how cozy we're going to be. Director  
19 Durenberger, Director of Racing. This is Danielle  
20 Holmes, she's a staff attorney and Mr. David Murray,  
21 a project consultant with us.

22 First and foremost, I just want to say  
23 that this should be my last transition update. I  
24 can't promise that it will be, but it should be. The

1 physical move involving four different locations,  
2 four different buildings yesterday was completed.

3 CHAIRMAN CROSBY: For the record, this  
4 is the move of the former State Racing Commission,  
5 which now is the Racing Division of the Mass. Gaming  
6 Commission is physically in the process of being  
7 completed.

8 DR. DURENBERGER: Yes. And the  
9 majority of the electronic files have been  
10 transferred over to the proper domains. There's  
11 just a few outstanding ticket items that should be  
12 completed by tomorrow. And at that point, I think  
13 it's 100 percent us.

14 But we have, as I mentioned in the  
15 meeting last week, operations we took over at the  
16 racetracks on December 31, 2012. And that activity  
17 is ongoing.

18 I think the meat and potatoes of  
19 today's update is going to be this pari-mutuel and  
20 simulcast statute review. And then just a reminder  
21 to everybody, the Gaming Act in section 104 required  
22 to Commission to review the simulcast and  
23 pari-mutuel laws for efficacy and for need to  
24 change.



1                   CHAIRMAN CROSBY: Did it require a  
2 report?

3                   DR. DURENBERGER: It did require a  
4 report to the Legislature as well. Thank you.

5                   What we thought we would do today is  
6 have a policy discussion based on what we feel are  
7 the important issues that we've discovered,  
8 unearthed and researched. And then to come back to  
9 you next week with some firm recommendations on how  
10 to go forward. But we figured the policy  
11 discussions starting out today would be the best way  
12 to proceed.

13                   I'm going to have David Murray start  
14 with these and Danielle and I will chime in as  
15 appropriate. And then I will summarize at the end.

16                   MR. MURRAY: Mr. Chairman, the three  
17 issues that we would like to present to the  
18 Commission as a policy matter are the issues that  
19 affect simulcasting. Since both the pari-mutuel  
20 statutes and the Gaming Act have things to say about  
21 simulcasting.

22                   And then there is an issue regarding  
23 rebating and pari-mutuel wagering on credit, and  
24 some talk about the capital improvements and

1 promotional trust funds and the process by which  
2 those funds are collected and spent and the  
3 regulatory process going from one to the other.

4 So, if we could start with  
5 simulcasting. And I think to understand what the  
6 issues are and to inform the policy approach to these  
7 issues, I should take us back prior to the passage  
8 of the Gaming Act.

9 And before the Gaming Act was enacted,  
10 in order to simulcast you had to have a racing  
11 license. And you had to conduct a minimum number  
12 of live races over a prescribed or a minimum number  
13 of days. And you had to comply with rules related  
14 to carrying local racing signals if you were  
15 bringing in signals from outside of Massachusetts.  
16 And you had to comply with an elaborate statutory  
17 takeout system, which funded a great many aspects  
18 of the racing industry.

19 So, at the point that the Gaming Act  
20 becomes law, a racing license is essential to the  
21 right to simulcast. And the Gaming Act  
22 acknowledges the continuation of the vitality of the  
23 racing statutes. That's to say chapters 128A and  
24 128C even in a gaming context where you have a racing

1 licensee acquiring a gaming license.

2           Indeed sections 19 and 20 of the Gaming  
3 Act actually make compliance with the requirements  
4 of 128A and 128C, the requirement for continued  
5 rights under your gaming license. Because if you  
6 don't do the things that you're supposed to do under  
7 128A and 128C, the Gaming Act provides for the  
8 mandatory suspension of the gaming license.

9           There's also the fact though that the  
10 Gaming Act in section 7 creates two new potential  
11 simulcasting licensees. In section 7b, the  
12 Commission is authorized to issue a simulcasting  
13 license to a gaming establishment and if appropriate  
14 to entities that were formerly licensed under the  
15 racing statutes.

16           But the Act is if not totally silent at  
17 least doesn't say much about, expressly say what the  
18 regulatory framework is to be for these new  
19 categories of simulcasting licensing.

20           But the Act isn't utterly silent,  
21 because there are a couple of provisions of the Act  
22 that point at least in our view to the legislative  
23 intent with respect to the idea of licensing  
24 non-racing licensees to simulcast.

1           And I'll just take two examples. In  
2 Section 92 of the Session Law, which addresses the  
3 question of whether or not the former greyhound  
4 racing tracks should be able to simulcast had a  
5 choice before it, the Legislature did. It could say  
6 that these ex-greyhound tracks could proceed under  
7 section 7 that's come to the Commission and say give  
8 us a simulcasting license or do something else. In  
9 fact, it did do something else.

10           What it did was to make sure that that  
11 permission to those former greyhound tracks was  
12 located right in the heart of the racing statutes.  
13 And section 92 specifically says that they continue  
14 to be licensed as racing meeting licensees. Of  
15 course, because greyhound licensing was band here,  
16 all days of the year had to be dark days, days where  
17 no racing could take place.

18           But it is significant, at least in our  
19 view, that the Legislature went through that  
20 exercise in order to locate the permission to  
21 simulcast for a non-racing applicant within  
22 chapters 128A and particularly 128C.

23           And we take that to mean that the  
24 Legislature had made a decision that no simulcasting

1 or permission to simulcast could not be granted to  
2 a non-racing licensee outside of the regulatory  
3 framework of the gaming statute or 128A and 128C.

4 So, when we look at the question of how  
5 to harmonize the gaming statute with 128A and 128C,  
6 we have come to the conclusion, I think, or we are  
7 very close to coming to the conclusion that section  
8 7b licensees should be subject to the same  
9 regulatory regime, if I can call it that, as the  
10 racing licensees.

11 What does that mean? That means that  
12 we need to craft a regulatory model that preserves  
13 the obligations to carry the local signal, if you  
14 are bringing in from out of Massachusetts a signal  
15 that is authorized or a race meeting that's  
16 authorized here that's licensed here. So, if  
17 Plainridge is bringing in a Firebred signal, it  
18 would have an obligation to carry the Suffolk signal  
19 and vice versa.

20 There are obviously some regulations  
21 that are going to need to be written or amendments  
22 to the statute that would make that system  
23 applicable to a non-racing licensee. How are the  
24 fees that are going to be chargeable for compulsory

1 carrying of these signals are going to be assessed?  
2 That's something that we are still working on.

3 But that model, refined as we're going  
4 to refine it during the next week or so, is what we're  
5 going to bring to you.

6 Because clearly if you issue gaming  
7 licenses to current racing licensees in  
8 Massachusetts, you're going to have a mix that's not  
9 at least at first blush going to have the same  
10 competitive characteristics one for the other.  
11 It's not as if you have all non-racing or all racing  
12 licensees that are going to be simulcasting. So  
13 these rules we think, are going to have to be -- are  
14 going to have to address that difference in the  
15 character of the licensees.

16 So, then we come to the rebating and  
17 wagering on credit aspect. We have looked at the  
18 issue of whether there is some articulable,  
19 quantifiable difference in the nature of the risk  
20 that's being wagered on as between games of chance  
21 with cards, dice, roulette wheels and wagering on  
22 the speed of a horse or a harness race. We are  
23 unable to have come up with some articulable  
24 difference in that risk.

1 DR. DURENBERGER: If I could just stop  
2 you there. I think the only reason we see that we  
3 can find to treat the pari-mutuel customer  
4 differently than the casino customer is that the  
5 casino customer is betting against the house. The  
6 pari-mutuel customer is betting against other  
7 pari-mutuel customers.

8 So, there are some differences. And I  
9 like to use the efficiencies of the market argument  
10 in that the pari-mutuel customer does need some  
11 protection in terms of us insuring the efficiency  
12 of the market. And that's our regulatory structure  
13 in the simulcast and in the pari-mutuel regulations  
14 does that very zealously, I think, and will continue  
15 to do so. We're going to tighten that up a little  
16 bit.

17 But to the extent that other than the  
18 fact that they are facing the house versus facing  
19 each other, we don't see any distinction especially  
20 when you're looking at a premise where somebody may  
21 walk in the door and may come over here and play some  
22 slot machines. And then go to that side of the room  
23 and place a pari-mutuel wager. Now, they're even  
24 the same customer even in the same room per se.

1           CHAIRMAN CROSBY: You might make some  
2 interesting differences in the nature of the betting  
3 or something, but it certainly doesn't seem to have  
4 any logical relationship to whether you can bet on  
5 credit or not. That seems like --

6           DR. DURENBERGER: And so to that  
7 extent I like to contextualize things and I like to  
8 go back to the fact that the initial pari-mutuel  
9 wagering statutes were from the 1930s and they were  
10 conceived in a time when the state was interested  
11 in protecting the gambler from himself.

12           And I think we've come a long way now.  
13 And it's reflected in the Gaming Act that we  
14 understand that there are some people that do have  
15 compulsive gambling problems and that that is a  
16 social entity and craft careful regulations to take  
17 care of that group of people. But we no longer try  
18 to protect people from themselves. So, I think  
19 modernizing this aspect of the statute is certainly  
20 important.

21           CHAIRMAN CROSBY: I don't quite agree  
22 with that characterization. We don't worry about  
23 protecting people from themselves. Having an  
24 aggressive self-exclusion law, for example, in



1 casinos. So, I take your.

2 DR. DURENBERGER: I could refine my  
3 point.

4 MR. MURRAY: But I think, Mr.  
5 Chairman, that her point that that's in the  
6 regulation already.

7 CHAIRMAN CROSBY: As a separate  
8 matter, right.

9 MR. MURRAY: Correct. And so we don't  
10 need these prohibitions as added protection.

11 COMMISSIONER MCHUGH: So, the bottom  
12 line there is whatever credit policy we create for  
13 casino gaming ought to be the same credit  
14 regulations we apply to pari-mutuel wagering. Is  
15 that where you come out?

16 DR. DURENBERGER: I think that's fair  
17 to say. And incidentally, we were not able to find  
18 other states. Most states are very permissive.  
19 They don't have an exclusive prohibition. But the  
20 other states, the other structures that we looked  
21 at in terms of the pari-mutuel customer are  
22 permissive for these issues.

23 MR. MURRAY: I think that Danielle may  
24 have found one state in which the only prohibition

1 was against the licensee providing the credit to the  
2 gaming customer.

3 So, to the last topic, revisiting the  
4 capital improvements and promotional activities  
5 trust funds. The business model as we understand  
6 it as such that there is no longer any need that we  
7 can see in the Commission providing supervision over  
8 licensees' utilization of its own money for  
9 promotional activities and for capital improvement  
10 funds.

11 It's not that there is no regulatory  
12 reason for requiring certain levels of capital  
13 improvements but just in the question of how is that  
14 funding.

15 The current system is -- it's expensive  
16 and it's cumbersome as a regulatory procedure where  
17 the tracks -- There are a number of different kinds  
18 of takeout mechanisms, but essentially the tracks  
19 put the money in these funds. And in order to get  
20 it out, there are requirements that they hire  
21 lawyers and engineers.

22 They produce an elaborate proposal to  
23 the Commission. And the Commission then has to go  
24 through this proposal and decide whether or not this

1 is an appropriate way to spend these funds.

2           And we have looked at this and I think  
3 we're very close to recommending that we scrap that  
4 system. Give back the so-called breaks to the  
5 tracks. And set up a fund for capital improvements  
6 where we think they are really needed, which is for  
7 the backside folks who need, in our view, targeted  
8 earmarked takeouts.

9           And as the Director will tell you, this  
10 is a movement that is catching some wind in the  
11 country. And we think that Massachusetts ought to  
12 be out in front of this.

13           DR. DURENBERGER: And so just to  
14 clarify, it would be some small percentage of the  
15 total amounts. Certainly, the monies that go into  
16 the capital improvement and the promotional trust  
17 funds are the breaks. The breaks are these odd  
18 cents.

19           Again, this is a racing history lesson.  
20 So, if you were the pari-mutuel customer and you  
21 wager two dollars on a horse, and the actual  
22 mathematical calculation is \$2.17 is what you win,  
23 mutuel tellers, they don't deal in pennies  
24 historically. So, there had to be some way to deal

1 with that.

2 The way that it's been dealt with is  
3 those odd cents over some multiple of either five  
4 or 10, depending if they dealt in nickels, was  
5 basically kept by the house.

6 Now different states have approached  
7 that differently. Sometimes it goes into various  
8 funds. Sometimes it goes to the track. Sometimes  
9 it actually goes to the Commission. In  
10 Massachusetts, it goes into this fund here. And  
11 then there is some additional small percentages  
12 depending on whether, I think, whether or not it's  
13 a live race or a simulcast race, some additional  
14 small percentages that go in there.

15 So, I think what we're proposing is not  
16 to take away, not to abolish the funds and then take  
17 all that money and put it into this backside  
18 improvement fund, but to take some small percentage.  
19 The reason for that --

20 COMMISSIONER MCHUGH: Take some small  
21 percentage of what?

22 DR. DURENBERGER: Of the breaks and  
23 put them in this, what we would propose would be a  
24 backside improvement fund, which would go towards

1 improving say dormitory areas. For example, at  
2 Suffolk, we have people that live on the backside  
3 protecting the safety and welfare of the horses  
4 through improving the barn structure.

5 There are some differences between our  
6 current licensees in terms of the barn area, the  
7 size, the number of horses that are housed there and  
8 whether or not there are dormitories. So, we need  
9 to look at what would be fair for the two licensees.

10 CHAIRMAN CROSBY: What's their  
11 reaction to this idea?

12 DR. DURENBERGER: So far, it's been  
13 positive. Obviously, they want to know what the  
14 number is because that's important. But I think the  
15 industry is watching. And I think that as business  
16 operators, I think they're aware of the fact that  
17 the industry is watching.

18 And we found two states that have  
19 gaming that have started to go down this route and  
20 have similar funds. And that has been very  
21 well-received in the industry. People are watching  
22 and the horse players are watching as well.

23 COMMISSIONER MCHUGH: Who has control  
24 over these funds, typically?

1 DR. DURENBERGER: I think that you  
2 could -- The Commission could in their regulation  
3 as part of their license application process be very  
4 clear in their regulations that we would need to see  
5 -- Again, we have to refine the recommendation. But  
6 I think you could handle it via regulation. And I  
7 think you put it either in the licensee's  
8 obligations section or in the application section.

9 COMMISSIONER MCHUGH: That the  
10 licensee would have control of the funds subject to  
11 constraints as to how they are spent.

12 DR. DURENBERGER: Yes.

13 COMMISSIONER MCHUGH: Can I go back  
14 for a second?

15 DR. DURENBERGER: Sure.

16 COMMISSIONER MCHUGH: Where are the  
17 breaks -- Where do the breaks go now?

18 DR. DURENBERGER: They currently go  
19 into these funds.

20 COMMISSIONER MCHUGH: Into the funds  
21 directly. Why would we not put the entirety of the  
22 breaks into the funds under this new scheme but only  
23 a portion of them?

24 DR. DURENBERGER: Because I think that

1 when you look at the business model, the 100  
2 percent of this pot, which is for capital  
3 improvements and also promotional trusts, which was  
4 advertising, lowering cost of admission and parking  
5 fees and things like that, which again is from rather  
6 an antiquated business model, I think if you're a  
7 business operator, you do still have some capital  
8 improvement needs.

9 And I do think that is in the interest  
10 of the horse player. So, in other words, for us to  
11 make sure that facilities that the pari-mutuel  
12 customer go to be maintained. I don't think that  
13 we should take it all and put it towards improving  
14 the life of the occupational licensees.

15 COMMISSIONER MCHUGH: The  
16 advertising, the promotion piece of the breaks would  
17 still be available to the operators?

18 DR. DURENBERGER: To the tracks to use  
19 as they see fit.

20 COMMISSIONER MCHUGH: Do the breaks  
21 always favor the house? I mean I think that's a  
22 silly question.

23 DR. DURENBERGER: Well, do they favor  
24 the house, they are rounded down.

1                   COMMISSIONER MCHUGH: They're rounded  
2 down. That's what I meant. That's what I meant  
3 it's a silly question.

4                   DR. DURENBERGER: I think you've  
5 heard the term, them's the breaks, right? That's  
6 a negative term, correct? That's a negative term,  
7 right?

8                   The pushback of course is from the  
9 pari-mutuel customer. And I think they're very  
10 sensitive to where those breaks go, because for them  
11 it operates as a tax. Because the net pool that is  
12 distributed to the pari-mutuel customer is  
13 exclusive of those breaks.

14                   So in other words, those come out. And  
15 then what's left gets distributed. So, it operates  
16 like a tax to them. However, having said that, they  
17 are watching where they go. So, if the track just  
18 keeps it wholeheartedly, it's less savory than if  
19 some of it is being earmarked to improve the  
20 industry.

21                   Having a better life for the horses and  
22 the people back there improves the product that  
23 they're gambling on. So, there is support for this  
24 backside improvement fund among the pari-mutuel



1 customers as well

2 MR. MURRAY: And just to pick up  
3 Commissioner on the question that you asked about  
4 for the size, why not the whole lot. As originally  
5 conceived, these breaks were to go to the capital  
6 improvements for the entire track. So, we're  
7 talking about a relatively large sum of money for  
8 a relatively large --

9 COMMISSIONER MCHUGH: Right.

10 COMMISSIONER ZUNIGA: It's an earmark  
11 essentially that's saying carve out a little bit and  
12 be sure it goes to the backside.

13 MR. MURRAY: Yes.

14 CHAIRMAN CROSBY: And take the  
15 Commission out of the administration of it.

16 COMMISSIONER ZUNIGA: That's the  
17 second point.

18 DR. DURENBERGER: Right. So, you  
19 currently operate as trustees for these funds. And  
20 then you have a statutory requirement to consult  
21 with -- to hire third-party services. So, an  
22 architectural firm or an engineering firm. So,  
23 there's a statutory burden on you as well to review  
24 these proposals before we give the money back. And

1 we think we can craft savory regulation that will  
2 effectuate the purpose that we're using here.

3 CHAIRMAN CROSBY: Can I go back to  
4 the first one? The bigger issue is the first one.  
5 And let me just make sure if I sort of vaguely get  
6 this.

7 There are -- 7b of the Gaming Act  
8 creates two new categories of simulcast licensees.

9 DR. DURENBERGER: Potential.

10 CHAIRMAN CROSBY: Potential, right.  
11 One is a recipient of a gaming license and another  
12 is anybody who used to have a racing license. But  
13 there is no accompanying regs. and rules about how  
14 they should be managed. There's not similar rules  
15 about the revenue sharing and so forth.

16 DR. DURENBERGER: There is 10 percent  
17 takeout.

18 CHAIRMAN CROSBY: Right, but it's not  
19 similar. It's different.

20 DR. DURENBERGER: No, yes.

21 CHAIRMAN CROSBY: Right. So, what  
22 you're suggesting is that people licensed under 7b  
23 ought to adhere to the same basic operating rules  
24 and standards and revenue-sharing as the existing

1 licensees.

2 Mr. MURRAY: Or some iteration, some  
3 mutation of the current system.

4 DR. DURENBERGER: But with the  
5 revenue-sharing piece though, this racehorse  
6 development fund, this gets to another layer of  
7 issues, which is monies that are targeted for purse  
8 accounts versus monies that are going to the  
9 operator. And that was sort of touched upon in the  
10 introduction. And we maybe didn't get into it in  
11 the same depth that we treated the others.

12 CHAIRMAN CROSBY: At the moment, I  
13 don't care about where the money goes. I'm just  
14 trying to figure who are all of these licensees that  
15 are floating around.

16 So, when 128A and C sunset, which is  
17 July 31, 2014, at that point do I understand  
18 correctly that the only possible racing licensees  
19 -- sorry, simulcast licensees will be people who  
20 have a gaming license or people who used to have a  
21 simulcast license -- I'm sorry, used to have a racing  
22 license?

23 MR. MURRAY: Unless on or before that  
24 date the Legislature does as it's always been

1 doing --

2 CHAIRMAN CROSBY: Right. That's true  
3 of everything. So, who who has a simulcast license  
4 now, would not be able to have a simulcast license  
5 after 2014?

6 MR. MURRAY: If the question is  
7 question of qualification, so who is disqualified  
8 and who is not disqualified? Everyone would be  
9 qualified because they would be former --

10 CHAIRMAN CROSBY: So, everybody today  
11 who has a simulcast license would have a right to  
12 have a simulcast license in August of 2014?

13 MR. MURRAY: No, they would not, Mr.  
14 Chairman. They wouldn't have a right.

15 CHAIRMAN CROSBY: Not a right to have  
16 it. They would have the right to apply for one.

17 MR. MURRAY: Yes, they would.

18 CHAIRMAN CROSBY: They would have the  
19 option at our discretion. Sorry, I misspoke.  
20 Okay.

21 And then we have -- Well, do we have  
22 under 7b or anywhere else in our statute the ability  
23 to regulate those folks? It sounds like you said  
24 we could deal with harmonizing the rules and regs.

1 under which various simulcast licensees operate  
2 now. We could manage that.

3 So, I'm sure we can manage that in  
4 August 2014. Is there anything we can't do to  
5 manage the simulcast industry just with our own  
6 authority from here on out?

7 MR. MURRAY: That's a somewhat  
8 complicated question, because the Commission has an  
9 administrative law issue, only has regulatory  
10 powers with respect to what it's authorized to  
11 regulate. So, that is the background.

12 If the question is whether the  
13 Commission has or would have after the sunset date  
14 a regulatory power with respect to licenses issued  
15 under Chapter 23K, which obviously 7b is in, I think  
16 the answer to that question is, at least in our view,  
17 yes. It would have.

18 CHAIRMAN CROSBY: I agree with that.  
19 What's the but clause? So, that means yes, we would  
20 have the ability to license anybody, the entire  
21 simulcast industry?

22 MR. MURRAY: Yes.

23 COMMISSIONER MCHUGH: Not only  
24 license, but regulate.

1                   CHAIRMAN CROSBY: Regulate, license  
2 and regulate appropriately, right.

3                   MR. MURRAY: Correct.

4                   CHAIRMAN CROSBY: So, the answer as  
5 you're understanding it is whether the Legislature  
6 wants to do something or not is a whole other  
7 question. But in terms of whether we have the tools  
8 to regulate the industry, it sounds like you think  
9 we go do without legislative intervention?

10                  MR. MURRAY: Yes, bearing in mind that  
11 if nothing happened, there is no legislative action  
12 at the end of July 2014, those simulcasting licenses  
13 that derived from 128A and 128C obviously would  
14 lapse. And they would have the current  
15 licensees --

16                  CHAIRMAN CROSBY: Right. Well, I  
17 understand that. That's a legislative matter.  
18 But at the moment, the Legislature has given us our  
19 marching orders. And as you pursue this thought  
20 process and as you make the recommendations to us  
21 any by way of us to the Legislature, we have on  
22 repeated occasions gotten the message that the  
23 Legislature constructed a very complicated, very  
24 nuanced bill.

1           And it is not interested in reopening  
2 that bill but for the very best of reasons. And what  
3 they consider the best of reasons is for them to  
4 decide. It's not up to us to decide. But they have  
5 been clear in saying to us we gave you the tools to  
6 do this job. And we want you to do the job.

7           If you really need us to intervene or  
8 if for some reason on their own for whatever reason  
9 we chose to intervene, they can obviously do that.  
10 But they're not anxious to do our job for us if we  
11 have the tools to do it.

12           MR. MURRAY: We understand that, Mr.  
13 Chair.

14           CHAIRMAN CROSBY: As we look into  
15 this, having that in mind and making sure that we're  
16 not asking the Legislature -- Again, the Legislature  
17 can do whatever it wants. That's not our business  
18 that but we're not asking them to do anything that  
19 we don't need to ask them to do is important, I think.

20           MR. MURRAY: Yes. Just to remind you  
21 that they actually have in our mandate to file a  
22 report, they have indeed asked us for recommended  
23 statutory language if we think it's appropriate.  
24 But that obviously is in the context of what you just

1 said. And we're fully aware of that and sensitive  
2 to that.

3 COMMISSIONER MCHUGH: We have even a  
4 bigger -- pursuant to this discussion and this is  
5 a helpful thing, because the mandate is the analysis  
6 that we are required to provide shall include a  
7 review of the efficacy of the laws. That's 128A and  
8 C that were in effect on the date of the statute.  
9 And the need to replace those laws pursuant to the  
10 continuation of chapters 128A and 128C of the  
11 general laws in this Act.

12 Pursuant to the continuation sort of  
13 doesn't make sense, pursuant to. But let's put that  
14 to one side.

15 So, we have the power if we so choose  
16 to recommend that there is no need to replace those  
17 laws. That we through our regulatory powers have  
18 the power to create a sound regulatory environment  
19 for pari-mutuel and simulcast racing. Because  
20 pursuant to the regulatory powers we could reinstate  
21 those portions of 128A and 128C that were necessary  
22 to carry that on. Right or wrong?

23 CHAIRMAN CROSBY: Or such other rules  
24 and regs. as appropriate.



1                   COMMISSIONER MCHUGH: Yes. Is that  
2 not the path down which you --

3                   MR. MURRAY: I need to think about  
4 that, Commissioner, for the following reason. As  
5 I said before, the Commission is authorized or can  
6 regulate only what it's authorized to regulate.

7                   COMMISSIONER MCHUGH: Right.

8                   MR. MURRAY: So, it would have to  
9 purport to regulate under 23K and only under 23K.

10                  COMMISSIONER MCHUGH: Right.

11                  MR. MURRAY: So, then the question  
12 would arise --

13                  COMMISSIONER MCHUGH: Which is a  
14 licensed granting enabling act, a licensed granting  
15 enabling section.

16                  MR. MURRAY: Right. So, the question  
17 would then become following your question what would  
18 be the statutory authority for example to require  
19 simulcast licensees to carry local signals? And  
20 I'm not suggesting that it's an open and shut answer  
21 one way or the other. But the answer is  
22 complicated.

23                  COMMISSIONER MCHUGH: But section 5a  
24 says that the Commission shall promulgate

1 regulations for the implementation, administration  
2 and enforcement of this chapter --

3 MR. MURRAY: Yes.

4 COMMISSIONER MCHUGH: -- including  
5 without limitation and then it goes onto list a bunch  
6 of stuff. That's pretty broad.

7 MR. MURRAY: It is broad. I agree  
8 with you. But the question is whether it's broad  
9 enough to withstand a challenge based on the  
10 following proposition: If you are not specifically  
11 authorized to regulate some particular aspect of  
12 simulcasting -- And when I say specifically  
13 authorized, I mean statutory authorization. --  
14 then arguable if the Commission were to attempt to  
15 regulate that they may be a challenge based on the  
16 fact that either the Commission has no authority to  
17 do that or if it does that the Legislature has in  
18 effect delegated its legislative authority with  
19 respect to the particular issue.

20 COMMISSIONER MCHUGH: Well, the  
21 delegation is there, right? I agree with you.  
22 And that goes back to law school, fascinating law  
23 school discussions and some real world problems.  
24 So, I am with you there.

1           But suppose the Legislature really  
2 meant to repeal 128A and 128C effective July 31, 2014  
3 and leave 7b and 5a in its wake, i.e., leave the  
4 licensing power and the regulatory power in the  
5 hands of the Commission? And suppose we get to  
6 January 31 (SIC) and there is no 128A or C? Then  
7 we are thrust into say for the delegation argument,  
8 the requirement to promulgate a series of  
9 regulations, right?

10           MR. MURRAY: Yes.

11           COMMISSIONER MCHUGH: So, that may or  
12 may not happen. But how do we deal with this issue,  
13 the 7b issue that you just described, in an  
14 environment where that might be the legislative  
15 intent and for all that is written on paper that's  
16 really all we have except precedent?

17           MR. MURRAY: The pragmatic answer is  
18 that I think the Commission would have to issue,  
19 promulgate regulations. And one of the positive  
20 things about that is to argue that the Legislature  
21 would end simulcasting in that way by simply failing  
22 to act.

23           CHAIRMAN CROSBY: They didn't fail to  
24 act.

1 MR. MURRAY: No, no. I'm saying that  
2 if the Legislature did nothing to --

3 COMMISSIONER ZUNIGA: 128A?

4 MR. MURRAY: -- repeal the repeal of  
5 128A and C then certainly simulcasting under those  
6 statutes would end because of legislative failure  
7 to act, I mean factually.

8 COMMISSIONER MCHUGH: Okay. The  
9 reason I raise this question, and you've done a  
10 thoughtful job of weaving us through these rather  
11 torturous provisions, is that the specific question  
12 is tell us about the efficacy of the current laws  
13 and the need to replace them. And it is open to us  
14 therefore, is it not, to say the laws were  
15 efficacious but there is no need to replace them.  
16 We can handle it.

17 MR. MURRAY: Yes.

18 CHAIRMAN CROSBY: Particularly in the  
19 context of what I was saying earlier. We're going  
20 to have this conversation -- As you know, we're going  
21 to have this conversation and leave it open for a  
22 week or two while we think further and while our  
23 friends in the industry and so forth comment. And  
24 we're interested to hear what other people have to

1 say and the Legislature comment too.

2 And we will, as we have in other similar  
3 issues, we will talk with them and get their advice.  
4 But I do know there is this overriding parameter that  
5 it took 20 or 30 years to build this bill. And it  
6 is not a bill that they want to mess with unless they  
7 have to or choose for their own reasons to. So, that  
8 I think fits with your bottom line point.

9 COMMISSIONER MCHUGH: Well except  
10 that they could go into 128A and 128C and not  
11 touch --

12 CHAIRMAN CROSBY: I understand that  
13 they think of them as --

14 COMMISSIONER MCHUGH: I hear you, but  
15 I would really welcome and perhaps we could put that  
16 up on the website and invite comments as to what  
17 people generally thought of an answer that said  
18 there's no need to replace 128A and 128C. We've got  
19 the regulatory authority we need, and we've got best  
20 practices and we can take it.

21 I mean it may be that we wind up not  
22 going down that route, but I would like to know what  
23 people said about that before we make the final  
24 decision.

1                   CHAIRMAN CROSBY:  Yes, and when we  
2 post this -- Janice, are you following this?

3                   MS. REILLY:  Yes.

4                   CHAIRMAN CROSBY:  When we post this  
5 for discussion, let's add --

6                   COMMISSIONER MCHUGH:  That might  
7 provoke a firestorm.  I don't know.

8                   CHAIRMAN CROSBY:  It won't be the  
9 first time.  Okay.  Well, this is fascinating.

10                  COMMISSIONER MCHUGH:  This is really a  
11 very thoughtful job.

12                  CHAIRMAN CROSBY:  And there's more of  
13 an understanding at this point.

14                  COMMISSIONER MCHUGH:  And very  
15 helpful.

16                  CHAIRMAN CROSBY:  And we will look  
17 forward to people's comments.  And we will talk to  
18 the Legislature.  And if there's anything else left  
19 for you to run to ground, feel comfortable to give  
20 us your fine recommendations.

21                  MR. MURRAY:  We're going to try to come  
22 back next week, Mr. Chairman, with something.

23                  CHAIRMAN CROSBY:  Well we should say  
24 -- Let's say it's going to be a week.  If it turns

1 out we take two, we'll take two. But let's say a  
2 week comment period. Okay. Great. Thank you.

3 COMMISSIONER MCHUGH: Thank you.

4 CHAIRMAN CROSBY: Does anybody need a  
5 break or are you ready to keep rolling?

6 COMMISSIONER MCHUGH: We don't have a  
7 lot more, do we?

8 CHAIRMAN CROSBY: We have the  
9 regulation promulgation process, right -- and a  
10 little bit of the key policy.

11 COMMISSIONER MCHUGH: Which is just a  
12 stage setting.

13 CHAIRMAN CROSBY: Yes, right. So,  
14 let's keep going. Hello, Attorney Glovsky --  
15 Grossman, one of those G attorneys.

16 MR. GROSSMAN: I respond to either.

17 CHAIRMAN CROSBY: You're here to talk  
18 about your memorandum on regulation promulgation  
19 strategy.

20 MR. GROSSMAN: Yes. I've submitted  
21 for your consideration a memorandum detailing a plan  
22 for which the comprehensive gaming regulations can  
23 be adopted. We're certainly at a point where of  
24 course the application deadline is impending and the

1 certain investigations are already underway. It's  
2 of course important that we get these comprehensive  
3 regulations in place and get a writing process  
4 together.

5 So, in order to ensure that we're able  
6 to do it at once efficiently and thoughtfully, I've  
7 made the following recommendations to you. This  
8 has been reviewed by the gaming consultancy and the  
9 legal consultants who will play a role in this  
10 process. And certainly, the Commissioners will  
11 play a critical role in the process as well,  
12 undoubtedly.

13 I'll just quickly hit some of the  
14 highlights for you. And the end goal I think would  
15 be to make any adjustments necessary and seek  
16 approval of this plan so we can commence the drafting  
17 process.

18 The first thing that I'm suggesting is  
19 that we put together a comprehensive outline of what  
20 the regulations will ultimately look like.  
21 Essentially, it would be an index that lays out all  
22 of the subject areas that regulations will be  
23 required in, with the understanding that at this  
24 point we won't be able to draft regulations in all



1 of those areas.

2 That being said, in order to ensure  
3 that we don't end up with a patchwork of regulations,  
4 we will be able to plug in the priority regulations  
5 into the appropriate area.

6 After discussion of this with the  
7 gaming consultants, they have agreed to provide us  
8 with that by the end of this week. And we intend  
9 to discuss this further with them early next week,  
10 Monday, to highlight some priority areas and to make  
11 some assignments as I'll get into in a moment.

12 But as I noted in the memo, some of the  
13 areas, regulations already exist in. Others  
14 regulations will be necessary.

15 There are certainly some on this list  
16 that we can identify as not being a priority. And  
17 those will have to be done shortly after we finish  
18 this essentially second phase. So, there'll be a  
19 third phase of regulations as well.

20 But of course, we need regulations in  
21 the area of the Phase II regulations and the slots  
22 and some other issues dealing with surrounding  
23 communities, things of that nature that we'd like  
24 to be able to get to you as soon as possible.

1           So, there are certain areas like the  
2 rules of some of the games, the ABCC regulations,  
3 the problem-gaming regulations, things of that  
4 nature that aren't of imminent importance that we  
5 wouldn't intend to focus on at first. Those would  
6 likely be in the second phase of this process.

7           Once we get an outline together, which  
8 hopefully we would have to you for review at your  
9 next meeting, which would include highlighting of  
10 priority areas. It would include assignments of  
11 the different areas. We would bring it to you for  
12 consideration.

13           At that point, if any individual  
14 Commissioner expresses an interest in either  
15 drafting regulations in a particular area or being  
16 involved in drafting of regulations in a particular  
17 area, we would identify that on the outline at that  
18 point.

19           At that point, we would start drafting  
20 the regulations in earnest. The legal department  
21 would serve as the point of contact for the gaming  
22 consultants, for Anderson and Kreiger, for any  
23 Commissioners to ensure that there is a uniform  
24 process in place and that everyone knows where to

1 go with any inquiries.

2 At that point, we would also work to  
3 weave in the intricacies of the General Laws,  
4 primarily chapter 23K. We would have an outline of  
5 all of the policy decisions that the Commission has  
6 made to date, and make efforts to the extent that  
7 they implicate any of the priority areas, to weave  
8 those into the initial draft regulations.

9 Once we have a draft of the priority  
10 regulations, I will take a look at that with our  
11 legal staff in consultation with Anderson and  
12 Kreiger. They will be circulated to all of the  
13 Commissioners for review. At that point, any  
14 Commissioner who has any issues with any of the  
15 language can come consult with the legal staff.  
16 We'll make any adjustments if they are of more of  
17 an administrative nature.

18 If they're more substantive, we'll  
19 have to look at them. The legal staff will compile  
20 a list of areas that will need review.

21 That list will be circulated to the  
22 Commissioners. So, when you sit down at a meeting  
23 to discuss the draft regulations, you won't be  
24 presented with potential issues for the first time.

1 You'll have had an issue to consider what some of  
2 the issues are.

3 At that point, you will sit down. You  
4 will make an initial deliberation over the  
5 regulations, approve them for purposes of  
6 commencing the 30A process. We will at that point  
7 make all of the required notifications to both the  
8 Secretary of State, local government advisory  
9 committee and to the newspapers.

10 Allow for public comment. We will  
11 schedule a public hearing, take in any public  
12 comment on any of the regulations. We will make any  
13 changes that come from that. And finally file them  
14 with the Secretary of State.

15 We are in the process of working on  
16 timing for all of these things and we hope to be able  
17 to hammer that out in the near future. And then we  
18 can review the Commission's chart where it lays out  
19 some of these dates and hopefully be able to revise  
20 some of those timelines to make it a little quicker.

21 So, those are the highlights of this  
22 memo. If there are any specific areas that you'd  
23 like to discuss, I'd certainly be happy to answer  
24 any questions.

1           COMMISSIONER STEBBINS: Just my own  
2 thoughts. In reviewing this, this is pretty  
3 thorough. It's pretty concise. It's an  
4 appropriate process to lay out without having us  
5 hopscotch around a bunch of different issues.

6           Do you look at the outline particular  
7 when it talks about the area of regulations - And  
8 obviously, there are going to be some that are going  
9 to be pretty hearty, thoughtful discussion in laying  
10 out of regs. Phase II is going to be huge.

11           But was you get further down the list,  
12 I would hope that there are going to be some that  
13 we're going to be able to maybe pull from best  
14 practices from other jurisdictions. Even though it  
15 might be low-hanging fruit, I think that it does make  
16 sense to keep these all in the timeline that you laid  
17 out so we don't kind of -- Let's not hopscotch and  
18 go around and do say training schools because we have  
19 a version that we can use based on another  
20 jurisdiction. It helps to kind of keep it all in  
21 focus and in line with how you've laid these out in  
22 terms of priorities.

23           MR. GROSSMAN: Well, I think the  
24 possibility certainly exists that things will move

1 quicker than anticipated. And that we will be able  
2 to fill in more than we thought.

3 In order though to move the priority  
4 regulations as quickly as possible, my sense is that  
5 we won't be able necessarily to get to all of even  
6 the low-hanging fruit, which is why we've kind of  
7 set this up so there aren't any expectations that  
8 we can't realistically meet.

9 And I think once the licensing process  
10 is in place or the regulations governing that, some  
11 of these other things will be able to easily be  
12 filled in. And we won't miss a beat at all. We  
13 won't slow the process down whatsoever.

14 CHAIRMAN CROSBY: That's not really  
15 responsive to your point, was it? Weren't you just  
16 saying that you want to make sure we don't reinvent  
17 the wheel where we can avoid reinventing the wheel  
18 and that will save us a bunch of time.

19 COMMISSIONER STEBBINS: Yes. I agree  
20 with the process. I agree with how you've  
21 prioritized these other issues.

22 And I do like the fact that there are  
23 probably as you look down this list some topics where  
24 we could easily go out and say for sense of

1 accomplishing them that we just grab regs. from  
2 another jurisdiction and say boom.

3 But instead of doing the cherry  
4 picking, I think it makes sense to stick with the  
5 schedule and stick with the priorities as he has them  
6 laid out, knowing that some aren't going to take as  
7 long as obviously the bulk of the work --

8 MR. GROSSMAN: I agree with not  
9 reinventing the wheel. We certainly don't want to  
10 reinvent the wheel. I think what I just found in  
11 just my preliminary review when we looked at the  
12 gaming schools, for example, is that there are a  
13 number of different approaches that are taken by  
14 different jurisdictions.

15 So, even though we wouldn't have to  
16 reinvent the wheel, you would have to look at three  
17 or four different models and figure out which one  
18 you want to go with. That could certainly slow down  
19 the process of getting the RFA-2 regs. in place.  
20 That's all I'm suggesting.

21 CHAIRMAN CROSBY: I get that. It  
22 seemed to me that you sort of brought the calendar  
23 in at the last minute. And I just think that it's  
24 very important that you have that calendar in front

1 of you now.

2 First of all, that calendar  
3 establishes an outside date and with we hope, we've  
4 already talked about a month in fact in that public  
5 process. So, just be as aggressive from the get-go  
6 as you can rather than going through it all and then  
7 coming back and looking at the chart.

8 I know it's not really quite what you  
9 meant, but it's what you said was then we'll come  
10 and look at the chart and see whether we can fit it  
11 in there and pick up a little time. You just want  
12 to be sensitive to the time issue right from the  
13 start and push the envelope as hard as you can.  
14 That's all.

15 MR. GROSSMAN: I think that'll  
16 certainly be the approach we'll look to take  
17 realistically speaking.

18 CHAIRMAN CROSBY: As you know, we are  
19 moving the background checks as aggressively as we  
20 can. If we get the background checks before the  
21 regs are ready, it doesn't do anything for us. So,  
22 we need to those two moving forward as fast as we  
23 can in parallel.

24 MR. GROSSMAN: Right. And certainly



1 we will have to discuss dates and the like in the  
2 near future. We are just in the process of trying  
3 to hammer those out.

4 CHAIRMAN CROSBY: Great. Anything  
5 else? Thank you. Key policy questions item number  
6 eight is just a -- I'm going to throw the ball to  
7 you. I've forgotten what we talked about here just  
8 to clarify the schedules.

9 MS. REILLY: We just wanted to let  
10 people know that meetings are scheduled for Tuesday,  
11 January 22 and Wednesday, January 23 from 1:00 to  
12 5:00 here in this room.

13 We'll be reposting the questions that  
14 we'll be covering during those two meetings.  
15 They've been posted previously when we did the first  
16 round. And people have submitted comments. We  
17 welcome additional comments. But if you've already  
18 sent comments and have no changes, there's no reason  
19 to resubmit at this point. We've already taken note  
20 of those.

21 CHAIRMAN CROSBY: And that is all she  
22 wrote, unless there's anything else. Anybody else?  
23 Motion to adjourn?

24 COMMISSIONER MCHUGH: So moved.

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CHAIRMAN CROSBY: Second?

COMMISSIONER STEBBINS: Second.

CHAIRMAN CROSBY: All in favor, aye.

COMMISSIONER STEBBINS: Aye.

COMMISSIONER ZUNIGA: Aye.

COMMISSIONER MCHUGH: Aye.

CHAIRMAN CROSBY: You're adjourned.

Thank you.

(Meeting adjourned at 4:21 p.m.)

ATTACHMENTS:

1. Agenda
2. Massachusetts Gaming Commission January 3, 2013 Meeting Minutes
3. MAPC Response to Policy Question 12 Analysis
4. MMA January 9, 2013 Response to Policy Question 12 Analysis
5. DLA Piper January 9, 2013 Response to Policy Question 12 Analysis
6. Massachusetts Gaming Commission Section 6 of Employee Manual
7. Massachusetts Gaming Commission Public Records Request Policy
8. January 10, 2013 Memorandum Regarding Recommendation to Execute a Contract with FTG for Expansion of Voice & Data Technology
9. Massachusetts Gaming Commission 2nd Quarter Budget to Actual Expenditure Report
10. Racing Division Staff Update on Legislative Report Review
11. January 10, 2013 Memorandum Regarding Regulation Promulgation Strategy

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SPEAKERS:

Dr. Durenberger, Director of Racing

Eileen Glovsky, Director of Administration

Todd Grossman, Staff Attorney

David Mohler, DOT Executive Director, Office of  
Transportation Planning

David Murray, Racing Consultant

Maeve Vallely-Bartlett, MEPA Director

John Ziemba, Ombudsman

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I, Laurie J. Jordan, an Approved Court Reporter, do hereby certify that the foregoing is a true and accurate transcript from the record of the proceedings.

I, Laurie J. Jordan, further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format.

I, Laurie J. Jordan, further certify I neither am counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken and further that I am not financially nor otherwise interested in the outcome of this action.

Proceedings recorded by Verbatim means, and transcript produced from computer.

WITNESS MY HAND this 12th day of January, 2013.



LAURIE J. JORDAN                      My Commission expires:  
Notary Public                              May 11, 2018