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THE COMMONWEALTH OF MASSACHUSETTS  
MASSACHUSETTS GAMING COMMISSION

PUBLIC MEETING #63

CHAIRMAN

Stephen P. Crosby

COMMISSIONERS

Gayle Cameron

James F. McHugh

Bruce W. Stebbins

Enrique Zuniga

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April 11, 2013, 1:00 p.m.

OFFICE OF THE DIVISION OF INSURANCE

First Floor, Hearing Room H

1000 Washington Street

Boston, Massachusetts

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

CHAIRMAN CROSBY: We are calling to order the 63rd public meeting of the Mass. Gaming Commission. Interestingly, it was 366 days ago, April 10 of last year, when we had our first public meeting. So, thank you all for sticking with us for a year. It's been interesting. And we look forward to many more.

First item on the agenda as always is approval of minutes, Commissioner McHugh.

COMMISSIONER MCHUGH: We have two sets of minutes today, Mr. Chairman, the March 21 and March 25 minutes. They've been circulated as part of the meeting packet for the people in attendance. I'd take them seriatim. So, first I'll ask if there are any comments about the March 21 minutes.

CHAIRMAN CROSBY: No.

COMMISSIONER MCHUGH: I move that the minutes of March 21, 2013 be approved as submitted.

COMMISSIONER CAMERON: Second.

CHAIRMAN CROSBY: All in favor, aye.

COMMISSIONER STEBBINS: Aye.

1 COMMISSIONER ZUNIGA: Aye.

2 COMMISSIONER CAMERON: Aye.

3 COMMISSIONER MCHUGH: Aye.

4 CHAIRMAN CROSBY: Okay.

5 COMMISSIONER MCHUGH: The second set  
6 of minutes is the March 25, 2013 minutes. I'd ask  
7 if there are any comments with respect to those?

8 CHAIRMAN CROSBY: No.

9 COMMISSIONER MCHUGH: Then I'd move  
10 that the March 25, 2013 minutes be approved as  
11 submitted.

12 COMMISSIONER CAMERON: Second.

13 CHAIRMAN CROSBY: All in favor, aye.

14 COMMISSIONER STEBBINS: Aye.

15 COMMISSIONER ZUNIGA: Aye.

16 COMMISSIONER CAMERON: Aye.

17 COMMISSIONER MCHUGH: Aye.

18 CHAIRMAN CROSBY: Okay.

19 COMMISSIONER CAMERON: I see we have  
20 Administration on here twice. But let's skip the  
21 second one and do it now. Commissioner Zuniga, do  
22 you want to pick that up?

23 COMMISSIONER ZUNIGA: Sure. Again,  
24 there is a standing item on our agenda is review

1 of the master schedule. There is not a lot of the  
2 on the first page. We continue to forecast the  
3 same dates, as a result of last discussion from a  
4 couple of weeks ago relative to the likelihood or  
5 not of increasing the forecast date of  
6 investigations.

7 So, we'll update that as those  
8 investigations progress.

9 CHAIRMAN CROSBY: As best we know so  
10 far, nothing has happened in the investigations  
11 that's going to change our projected award time.

12 COMMISSIONER ZUNIGA: That's right.  
13 We've talked about the possibility of April 30 as  
14 an early date for some of the slots parlor  
15 investigations. All that I know is that that is  
16 ongoing. We may or may not meet that early date.  
17 But there is enough time that if those  
18 investigations progressing, we'll just see where  
19 we go.

20 What we did conclude in a previous  
21 meeting was that advancing that date prior was  
22 perhaps too aggressive or unrealistic. So, we're  
23 not forecasting anything like that.

24 We continue with tracking on the paths

1 for regulations. We've made some of these dates,  
2 and we're in the process now of receipt of  
3 comments.

4 CHAIRMAN CROSBY: And we'll be having  
5 a major public hearing on May 3 on those.

6 COMMISSIONER ZUNIGA: That's correct.  
7 That's our current public hear date. We will have  
8 to start thinking about the RFPs for our advisors,  
9 but I know that process is ongoing. And we have  
10 a little bit time before we have to dive into that.

11 I'll spend a few minutes only on some  
12 of the specifics on the master schedule. We are  
13 now reflecting the live racing for both Plainridge  
14 and Suffolk really upcoming. There's the report  
15 to the Legislature on the statutory review has been  
16 approved as presented. So, that will be shortly  
17 submitted, if it hasn't already.

18 CHAIRMAN CROSBY: I think it has.

19 COMMISSIONER ZUNIGA: Okay. The  
20 process for regulation promulgation on the Racing  
21 side is also ongoing. There is just continuous  
22 progress there. And we started to do some of our  
23 administrative activities in full swing.

24 Director Durenberger, my report on this date for

1 the auditing software relative to Racing, this  
2 date may be improved as it's currently forecasted.  
3 But the forecast continues there.

4 There's been some progress relative to  
5 the electronic document management system. That  
6 activity continues.

7 CHAIRMAN CROSBY: So, that's  
8 projected for full operational at the end of  
9 August.

10 COMMISSIONER ZUNIGA: That's correct,  
11 yes. That may or may not slip a little bit, but  
12 we'll see how long. These dates continue to be in  
13 a little bit of a state of flux.

14 Relative to hires, we continue with  
15 workforce development as well as Director of  
16 Research and Problem Gambling. Well under way for  
17 the Director of Licensing and have started with our  
18 process for CFO as well as CIO.

19 CHAIRMAN CROSBY: Great. Executive  
20 Director Day will pretty soon be talking to us  
21 about his plans for scoping out the rest of the  
22 schedule for all of the rest of the stuff that we've  
23 got to be doing as he gets his team going. Okay.  
24 Anything else on the schedule?

1 Do you want to go to finance?

2 COMMISSIONER ZUNIGA: Sure. I  
3 submitted for your review what I will call a  
4 summary report of the third quarter of operations,  
5 if I can find it in my packet. I can walk through  
6 a couple of highlights that I wanted to point out,  
7 and then take any questions if there are any.

8 You will remember that our approved  
9 budget a year ago -- three-quarters of a year ago,  
10 back in June of last year, amounted to \$7.4  
11 million. It's represented here. The way I've  
12 always reported this is with operation only for  
13 comparison purposes.

14 What we would have spent by now if we  
15 only divided the budget by three quarters, just a  
16 straight line. I am reporting the expenditures  
17 column (C). You will notice for most items we're  
18 spending a little under the initially forecasted  
19 amount.

20 CHAIRMAN CROSBY: This is accrued?

21 COMMISSIONER ZUNIGA: This is cash  
22 disbursements. These are expenditures.

23 COMMISSIONER MCHUGH: On a cash basis.

24 COMMISSIONER ZUNIGA: Cash

1 disbursements, correct.

2 CHAIRMAN CROSBY: So, is the projected  
3 amount on a cash basis, probably not.

4 COMMISSIONER ZUNIGA: The projected  
5 is really just the budget times three quarters or  
6 times 75 percent, the prorated not projected.

7 COMMISSIONER MCHUGH: But it's also on  
8 a cash basis, right?

9 COMMISSIONER ZUNIGA: Yes.  
10 Technically, yes.

11 COMMISSIONER MCHUGH: Both (B) and (C)  
12 are on a cash basis.

13 COMMISSIONER ZUNIGA: Technically,  
14 yes. But to your question, Mr. Chairman, there  
15 are some costs that may be here that may have been  
16 incurred, not yet paid that technically could go  
17 on column (C). We may be understating it a little  
18 bit.

19 CHAIRMAN CROSBY: You think that's  
20 trivial.

21 COMMISSIONER ZUNIGA: Yes, it is not  
22 significant. It's not significant. We pay our  
23 bills rather quickly turn around.

24 I wanted to highlight a couple of



1 things --

2 CHAIRMAN CROSBY: So, the bottom line  
3 is we are on a burn rate that's a million almost  
4 \$1.1 million, \$1.5 million better than we  
5 projected. And is your best guess that we'll hold  
6 that number? So, we're going to actually come in  
7 at 5.6 rather than 6.7? Those are real savings by  
8 hiring later and so forth?

9 COMMISSIONER ZUNIGA: That's correct.

10 CHAIRMAN CROSBY: That's good.

11 COMMISSIONER ZUNIGA: Again, we need  
12 to account for the actual accrual. One thing  
13 that --

14 CHAIRMAN CROSBY: That doesn't  
15 account for -- Sorry, I keep interrupting you.

16 COMMISSIONER ZUNIGA: That's okay.

17 CHAIRMAN CROSBY: The research  
18 numbers are not in here too, right?

19 COMMISSIONER ZUNIGA: Yes. Research  
20 agenda, IEB as well as Racing are not here. And  
21 I'll speak to that in a minute. We will start  
22 reporting on those in more detail fairly soon.

23 The question you may remember relative  
24 to the indirect allocation percentage, we've had

1 a number of different conversations with the  
2 Comptroller's Office. And now we need to with the  
3 Office of Administration and Finance.

4 Initially, I was under the impression  
5 that we would have to budget that statewide  
6 allocation percentage, which is why I budgeted it  
7 in the first place. Later came to find out that  
8 there's actually two things to consider. We could  
9 request a waiver given our nascent nature. And  
10 that's always a possibility and it's still a  
11 possibility.

12 Prior to requesting that, I came to  
13 learn that we would not be assessed that indirect  
14 cost on the basis of that is usually assessed in  
15 arrears. Meaning it's based on two years' worth  
16 of operations. And given our nature, two years  
17 have to pass in order to get that assessment, which  
18 made the option of asking for a waiver not  
19 necessary.

20 However, that assumption has come to  
21 some doubt right now, because in this quarter we  
22 did see a hit, if you will, for that statewide  
23 allocation percentage. Which leads us now to  
24 request the obvious of Administration and Finance

1 for that waiver.

2 CHAIRMAN CROSBY: Maybe someone just  
3 made a mistake. Wasn't that Marty Bennison who  
4 told us about this?

5 COMMISSIONER ZUNIGA: The  
6 Comptroller's Office told about the two years in  
7 arrears piece.

8 CHAIRMAN CROSBY: Why don't we just  
9 get this undone?

10 COMMISSIONER ZUNIGA: That's what  
11 we're following up on. What I wanted to do, if  
12 nothing else, is bring you up to speed with the  
13 notion that we've gotten that charge as of this  
14 quarter. We would like that to be reversed for a  
15 couple of reasons. And we have two mechanisms to  
16 do that.

17 CHAIRMAN CROSBY: Let me know if you  
18 want to talk to -- I can talk to the Secretary.

19 COMMISSIONER ZUNIGA: Absolutely.  
20 There's a couple of other areas that I will  
21 highlight relative to the under.

22 You'll remember salaries we forecasted  
23 a few salaried positions to be at 50 or 70 percent  
24 depending on the idea that they would come sometime

1 during the year, and indeed, they did. But if you  
2 submit to a prorated -- a line proration, we are  
3 effectively catching up to those costs. So, the  
4 difference in salary will likely turn out to be not  
5 as dramatic as it is showing right now because now  
6 we have more, more people here.

7 The second piece is some of the  
8 consulting advice that I budgeted initially. We  
9 did not incur and will likely not incur this fiscal  
10 year. You may remember we had a financial advisor  
11 budget number there. We have not hired one. It  
12 will likely be a hire for next fiscal year. That's  
13 in a nutshell the review of this budget for Gaming.

14 I also started to include here a little  
15 bit summary information relative to the  
16 investigations efforts. This is in essence, I  
17 would characterize as a separate financial  
18 analysis, if you will. We have the applications  
19 fees that we collected at the time -- this January  
20 when we received the applications, and the costs  
21 we have incurred today and accrued today.

22 This is an important one to reflect,  
23 the accrual here on line item three because the  
24 burn rate for investigations has really picked up

1 as evidenced by everything that Director Wells had  
2 been reporting. So, it's all here.

3 CHAIRMAN CROSBY: What is this  
4 subtotal?

5 COMMISSIONER ZUNIGA: The subtotal  
6 takes the investigations, the application fees and  
7 subtracts everything that's incurred or accrued.  
8 So, we still have some cash balance.

9 We will soon be soon be assessing -- and  
10 we have started to do that with a couple of  
11 applicants, which initial fee has gone to the point  
12 of the \$200,000 or below.

13 CHAIRMAN CROSBY: We should restate  
14 that. Why don't you restate that principle so  
15 that everybody is aware of it?

16 COMMISSIONER ZUNIGA: Yes. Our  
17 regulations provide for the initial application  
18 fee to act as a sinking fund, if you will, once we  
19 reach -- from the \$400,000 once we reach a  
20 threshold of \$200,000 in terms of how much we spend  
21 out of that initial applications fee, we will  
22 assess any remaining forecasted fees for the total  
23 of the investigation.

24 Most investigations are forecasted to

1 be in excess of \$400,000. Some by a little bit and  
2 some by more by virtue of the number of documents  
3 and qualifiers and international operations and  
4 whatnot. So, that process -- that analysis is  
5 ongoing.

6 We are reaching a point where we have  
7 notified those early applicants relative to costs  
8 that they need to submit to us the balance of those  
9 forecasts. And if there is any remaining, because  
10 this is still a forecast, if there is any remaining  
11 monies, those monies will be returned to the  
12 applicant.

13 CHAIRMAN CROSBY: Is the 16 percent  
14 calculated in our operating statement?

15 COMMISSIONER ZUNIGA: That's an  
16 important point. Effectively, it is included in  
17 the Gaming operations, in the \$4.1 million that I'm  
18 reporting as total costs to date. That will count  
19 out of that -- We need to prorate those costs to  
20 investigations like we have done.

21 CHAIRMAN CROSBY: In other words, we  
22 are going to pass -- that number is going to be  
23 lower because -- So, it doesn't take into account  
24 the 16 percent.

1                   COMMISSIONER ZUNIGA: That's correct.  
2                   It has an offsetting effect to the accrual of other  
3                   costs.

4                   CHAIRMAN CROSBY: Right, yes. Good.  
5                   Any other questions?

6                   COMMISSIONER MCHUGH: Sticking with  
7                   that section below, the \$4.4 million of initial  
8                   fees includes \$550,000 that's reserved for cities  
9                   and towns, right?

10                  COMMISSIONER ZUNIGA: That's correct.

11                  COMMISSIONER MCHUGH: So, the costs  
12                  for the monies received for cities and towns is  
13                  accounted for here but the costs for disbursements  
14                  to the cities and towns are not; is that right?

15                  COMMISSIONER ZUNIGA: Technically,  
16                  they are within the \$1.5 million remaining.

17                  COMMISSIONER MCHUGH: Have we made any  
18                  disbursements to cities and towns?

19                  COMMISSIONER ZUNIGA: We have made one  
20                  or two. Ombudsman Ziembra will remind me. And  
21                  those have been in the nature of additional  
22                  requests above the \$50,000 that are provided here.

23                  COMMISSIONER MCHUGH: So, have parts  
24                  of the \$50,000 or is the \$50,000 from each

1 contributor -- each applicant that is designated  
2 for cities and towns still in our --

3 COMMISSIONER ZUNIGA: The latter. We  
4 still are holding to the \$50,000 for each of the  
5 applicants -- each of the cities and towns.

6 CHAIRMAN CROSBY: Another way of  
7 saying it is our available cash is really only  
8 about a million, because \$550,000 is reserved.  
9 So, your point is right.

10 COMMISSIONER ZUNIGA: That's correct.

11 COMMISSIONER MCHUGH: Then with  
12 respect to footnote three in the top, 3(B), the  
13 incremental costs for investigations are offset by  
14 income, right?

15 COMMISSIONER ZUNIGA: That's correct.

16 COMMISSIONER MCHUGH: So, they don't  
17 belong up there. And Racing operations is  
18 essentially the same, right? Is that why Racing  
19 is included?

20 COMMISSIONER ZUNIGA: Racing  
21 operations is not part of the budget that we  
22 approved.

23 CHAIRMAN CROSBY: And it comes out of  
24 a separate source.



1                   COMMISSIONER ZUNIGA: It comes out of  
2 a separate source of funds. The Racing Trust that  
3 we became the trustees when Racing came under our  
4 purview.

5                   COMMISSIONER MCHUGH: So, the Racing  
6 funding that is now going on and going to start  
7 again and continue this month doesn't affect any  
8 of those numbers there because it comes from a  
9 separate source.

10                  COMMISSIONER ZUNIGA: That's correct.  
11 Let me say to that end, some costs incurred and  
12 reported here in this \$4.1 million belong in  
13 Racing. We are currently going through the  
14 process of apportioning those costs, prorating  
15 them to Racing. And before the end of this fiscal  
16 year will have two reports, one for the Gaming  
17 Commission and a subreport, if you will, for the  
18 Racing operations with the right proration of all  
19 of the Racing costs.

20                  COMMISSIONER MCHUGH: So, that may  
21 have the effect of meaning that the expenditures  
22 in column (C) are actually a little bit lower  
23 because they come from a separate source.

24                  COMMISSIONER ZUNIGA: That's correct,

1 that's correct.

2 CHAIRMAN CROSBY: Which is also true  
3 of the costs of that we're charging back to the  
4 bidders out of our overhead costs.

5 COMMISSIONER MCHUGH: And then (D)  
6 cities and towns grant agreements are also offset  
7 by money we get from the applicants that passes  
8 through us to the cities and towns and therefore  
9 has no effect on any of these numbers.

10 COMMISSIONER ZUNIGA: That's correct.  
11 To clarify that point, I will start reporting both  
12 the entry and the offset -- the entry and the  
13 payment so that you see those numbers.

14 COMMISSIONER MCHUGH: This is very  
15 helpful. Thank you.

16 CHAIRMAN CROSBY: Yes, this is great.  
17 Anything else, questions? Terrific, thank you.

18 COMMISSIONER CAMERON: Thank you,  
19 Commissioner.

20 COMMISSIONER MCHUGH: Thank you.

21 CHAIRMAN CROSBY: IEB report,  
22 Director Wells.

23 MS. WELLS: Good afternoon, Mr.  
24 Chairman, members of the Commission.

1                   COMMISSIONER CAMERON: Good  
2                   afternoon.

3                   MS. WELLS: I expect this to be brief.  
4                   The investigations are continuing full force. As  
5                   you can see through the burn rate that Commissioner  
6                   Ziemba (SIC) has presented to the Commission. All  
7                   of the investigators are hard at work with the  
8                   process.

9                   Massachusetts State Police are heading  
10                  over to Asia shortly with the consultants for some  
11                  due diligence of there. So, I expect that we will  
12                  get some further information as a result of that  
13                  and all of the other interviews that we are  
14                  conducting as this process moves forward.

15                  I did have a call yesterday with one  
16                  consultant group. I have a call tomorrow with the  
17                  second consultant group to get very, very specific  
18                  updates on where the investigations are and  
19                  timetables.

20                  I expect that we are still on target  
21                  with the timeframe that I delivered last week to  
22                  the Commission. The suitability determinations  
23                  for the slots applicants being expedited, end of  
24                  April for most. There's one I expect to get a

1 report mid-May. That's the last report I got from  
2 that consultant firm. And based on my  
3 conversations with them, I think that is pretty  
4 accurate.

5 Then the Category 1 applicants, there  
6 is something that may be done by that June target  
7 date. There are others that will go into July,  
8 potentially into August. We'll have to see  
9 depending on the results of the investigation.

10 For example, if we get information that  
11 is cause for concern, they may then go back with  
12 a particular individual and go do a sworn interview  
13 under oath. If there's no concern, they may not  
14 have to go back and do that. So, we are monitoring  
15 that kind of thing as we go on. That's just an  
16 example of where we may add a little time if we're  
17 doing some further due diligence on those  
18 investigations.

19 We had discussed last week a little bit  
20 about the process. We had some conversation with  
21 legal. Just as a very high-level overview of the  
22 process, I will be writing a report, delivering a  
23 report in large part on the basis of the  
24 consultants and State Police investigations.

1 That report will go to the Commission and a copy  
2 will go to the applicants.

3 So, they will have an opportunity to  
4 look at that. There then will be a public hearing  
5 process. Depending on the findings in the report  
6 that potentially if there's nothing of concern,  
7 the applicant, as the legal team has reviewed, they  
8 have the option to ask the Commission to waive the  
9 adjudicatory public hearing.

10 The report at the public meeting is  
11 subject to redaction of confidential and exempt  
12 information. So, we should be aware of that as the  
13 process goes forward. The Commission will I  
14 expect to file notice of the date, time and place  
15 of the public hearing and the form, whether written  
16 or oral, or conditions in the way it will take  
17 comments on that.

18 After the public hearing process, the  
19 Commission issues a written determination of  
20 suitability. There's really three options.  
21 They can find the applicant suitable. They can  
22 find the applicant not suitable. Or they can find  
23 the applicant suitable with some kinds of  
24 conditions based on the nature of the

1 investigation. So, they may have to do some  
2 things in order to make themselves suitable.

3 I'll just note as a practical matter,  
4 during the investigatory process, the applicant  
5 may take note of areas of concern and maybe cut out  
6 problematic components of their application.  
7 That has happened in other states. That is  
8 somewhat the norm in the industry.

9 That really is a signal that the  
10 investigatory process is doing its job. That  
11 people are taking note of the aggressive nature of  
12 the investigation and what we're looking at and  
13 what we're asking for. It's almost a self-  
14 regulating process.

15 So, the applicant may cut out someone  
16 who is a cause for concern. We'll have to see how  
17 that goes. That is something that happens in the  
18 industry as things progress. That would not be  
19 unexpected as a result of these investigations.

20 Do you have any questions on that?

21 COMMISSIONER CAMERON: Director, for  
22 example, that may come to light in the next month  
23 or so if there's an individual that may be  
24 problematic as you describe. So, those actions

1 could be taken immediately. In other words, it's  
2 an interactive process. The applicant wouldn't  
3 necessarily wait until you have a final report,  
4 which would then cause corrective action. That  
5 may happen during the investigations.

6 MS. WELLS: Correct. So, they are  
7 aware of what documents we're asking for. They  
8 are obviously present while we are doing  
9 interviews. So, they know somewhat the direction  
10 of the investigation.

11 And they may take action, which we may  
12 or may not have directed. It may be just the  
13 perception of their entity as well. So, they may  
14 do that in the course of this process, just so the  
15 Commission is aware.

16 So, we'll keep you updated as this goes  
17 on. Everyone is working hard and really putting  
18 a lot of effort out to try to get this done and get  
19 it in in a timely manner.

20 CHAIRMAN CROSBY: And the projection  
21 for the releasing the background checks to people  
22 who requested?

23 MS. WELLS: You mean the redactions?

24 CHAIRMAN CROSBY: Yes, the date we'll

1 be free to release to the public documents that are  
2 properly redacted, yes.

3 MS. WELLS: So, the applications right  
4 now we have sent the BED, the business entity  
5 disclosure forms. Those have been completely  
6 redacted. All of those, I think there's  
7 approximately 17,000 pages that we had to go  
8 through for that.

9 Those have been sent back to the  
10 applicants saying, okay. Here it is. This is  
11 your last opportunity to take a look at it and check  
12 for clerical errors. Those had to be returned, I  
13 think, within seven days.

14 And then those will be able to be  
15 released absent any appeal to the Commission. I  
16 have not received any word that any of the  
17 applicants are going to appeal to the Commission  
18 on that.

19 And then we are expecting that the  
20 redactions for the remainder of the documents,  
21 which include the personal history disclosure  
22 forms. Those redactions, which would make them  
23 compliant with the specimen form, those should be  
24 done by the end of next week. There have been



1 additional requests for confidentiality. So,  
2 that those reconsideration requests, those  
3 responses are going out in the next couple of days.

4 So, most of those are done. And those  
5 will be going out. And then if they want to  
6 appeal to the Commission on those, they can. But  
7 we'll have to wait and see if they do in fact do  
8 that.

9 CHAIRMAN CROSBY: Certainly within a  
10 month or so, it sounds like, all of those will be  
11 made available to whoever asks for them.

12 MS. WELLS: That is the expectation,  
13 yes.

14 CHAIRMAN CROSBY: Remind me what  
15 happened with the Cordish final qualifiers.  
16 Where are we on them?

17 MS. WELLS: I spoke to Cordish  
18 yesterday, but it was on a different issue. So,  
19 I'd have to follow up with them on the land deal  
20 and the final issue.

21 CHAIRMAN CROSBY: Weren't you guys  
22 going to figure out whether there was a solution?

23 MS. WELLS: The suitability, I think  
24 the Commission had some concerns with that as an

1 approach. And that would not be the preference of  
2 the Commission. So, I communicated that back to  
3 them. Then they were going to notify me if they  
4 came up with some other option. And I haven't  
5 heard that yet.

6 CHAIRMAN CROSBY: I think we need to  
7 get that resolved pretty quick.

8 MS. WELLS: Yes.

9 CHAIRMAN CROSBY: Anything else?

10 COMMISSIONER CAMERON: Thank you,  
11 Director.

12 COMMISSIONER MCHUGH: Sounds great.

13 COMMISSIONER ZUNIGA: Thank you.

14 CHAIRMAN CROSBY: Ombudsman Ziemba.

15 MR. ZIEMBA: Thank you, Mr. Chairman.  
16 The focus of my presentations today will be based  
17 on the importance of time. We've had numerous  
18 conversations with numerous entities where time  
19 and time deadlines are central to everything that  
20 everybody is talking about.

21 Specifically, Mr. Chairman, you and I  
22 attended a meeting last evening with a number of  
23 communities Hopkinton, Holliston, Ashland, a  
24 number of communities that are nearby the Milford

1 application. And one of the things that we heard  
2 from those communities is that surrounding  
3 communities and their time periods for review of  
4 impacts have to be considered by the Commission.  
5 And that some of our draft regulations that we've  
6 put out so far may not take into account some of  
7 the hurdles that they experience at the local level  
8 sufficiently in order for them to be able to take  
9 a look at impacts.

10 For example, one of the things that was  
11 discussed last night was the draft deadline that  
12 we have in our current draft regulations whereby  
13 involuntary disbursements can be requested but  
14 they can be requested 30 days after the execution  
15 of a host community agreement.

16 Some of the communities that were there  
17 last night talked about how that depending on when  
18 an application is filed by an applicant, that that  
19 period between the 30 days after the request for  
20 the referendum and the filing of the application  
21 may not allow them to go ahead and procure the  
22 technical advisors and to follow through on all of  
23 the mitigation reviews that they would like to take  
24 into account.

1           We noted to the communities that we are  
2 anticipating that we are hopeful that the process  
3 involves direct communication between applicants  
4 and communities well before any potential for  
5 involuntary disbursements. That the process  
6 works much better if there are direct  
7 conversations between applicants and communities.

8           However, there are concerns because of  
9 their concerns about how different applicants may  
10 proceed if they are not ready at a certain time  
11 period. The longer the clock goes, the less  
12 surrounding communities believe that they have the  
13 opportunity to review impacts. So, that was a big  
14 concern to the surrounding communities.

15           Obviously, it brings to issue our  
16 eventual schedule not only for Category 2, which  
17 we discussed recently, but once we get into more  
18 depth about the Category 1 schedule and how that  
19 works.

20           In tandem with the concerns by  
21 surrounding communities, we've also talked to  
22 applicants. And different applicants are  
23 obviously at different stages of where they are in  
24 the process. But the need for definitive

1 timelines, definitive deadlines for our actions is  
2 really hitting a crunch point whereby people are  
3 planning backwards from our eventual December  
4 dates or January dates or whatever our dates are.  
5 And they are really putting those a little bit more  
6 concretely into their plans.

7 So, to the extent that we can and I know  
8 we've discussed this. And a lot of that will be  
9 part of the staff, myself and others to come to you  
10 with more firm recommendations on concrete  
11 timelines, but I believe that conversation would  
12 be really useful in the near-term.

13 Obviously, there are a number of  
14 different items that have to be accommodated  
15 within our schedule and our draft regulations. We  
16 have protocols and procedures for resolving  
17 disputes between host and surrounding  
18 communities.

19 We're hopeful that communities can  
20 resolve these issues and applicants can resolve  
21 these issues and that it goes well. But I think  
22 we have to plan for the eventuality that it may not  
23 go well in one case. And if it doesn't go well in  
24 one case that could end up delaying the process for

1 all of the applicants within a particular region.

2 So, I'm not telling anything that you  
3 don't know. But last night was just sort of a  
4 reification of things we've been discussing.

5 CHAIRMAN CROSBY: I wanted to  
6 highlight some of that. I think what we started  
7 to see is a pattern of applicants, host communities  
8 and surrounding communities saying whoa. We're  
9 starting to come to grips with the real nuts and  
10 bolts here. And I am not sure we're going to be  
11 able to make these deadlines.

12 It's not uniform. People are at  
13 different places, but we are hearing a lot, the  
14 surrounding communities in particular. And this  
15 meeting last night was very informative. There  
16 were essentially all of -- many of the surrounding  
17 communities for the applicant that will be hosted  
18 in Milford.

19 And the two points that John made, they  
20 were quite forceful about. First of all, there  
21 really isn't a way for us to get them money if they  
22 don't -- If the applicant doesn't give them money  
23 to do the work voluntarily, there isn't a way for  
24 us to get them money quickly. Either through the

1 RPA process, which is in negotiation but is out of  
2 everybody's control, nobody knows for sure when  
3 that will get done. Or through the involuntary  
4 allocation, because as John said that's supposed  
5 to happen after the host community agreement is  
6 signed.

7 So, I think we need to rethink whether  
8 there's something else we can do there. I was  
9 persuaded in talking to them that we're going to  
10 really think about this.

11 The second thing is there enough time  
12 once they do have resources to spend to actually  
13 do the job of assessing the impacts, particularly  
14 since in many of the cases they don't even know what  
15 the project is going to be yet.

16 You can do some stuff. If you could  
17 sit down and talk to -- If there were good working  
18 relationships, which in some cases there are. But  
19 in some cases, the applicant isn't very far along.  
20 And in other cases the working relationships  
21 aren't very good.

22 So, if you could, you could begin to say  
23 look, it's going to be about this big. It's going  
24 to be located here. We can start roughing out the

1 impact assessment. But nobody is going to  
2 finalize an assessment or really spend hard money  
3 on an assessment until the application -- the  
4 project itself is pretty firm. And that's nowhere  
5 in a number of the situations.

6 So, if the project isn't really firm  
7 until say after the host community agreement is  
8 signed, we know that those could be several months  
9 down the road. Anyway, again, I think there is a  
10 legitimate concern about whether surrounding  
11 communities will have enough time with the  
12 resources.

13 Now, you have to take all of this with  
14 a grain of salt, because none of those surrounding  
15 communities want a casino. We made it clear to  
16 them that --

17 MR. ZIEMBA: I would note, Mr.  
18 Chairman, that they made it very specific in that  
19 meeting that we were not going to discuss any  
20 specifics about any one particular applicant.  
21 Obviously, the surrounding communities were  
22 probably talking about their region, but we were  
23 talking purely about our process. And that's how  
24 we arranged it.



1           And I think that among those  
2 communities that we're mentioning, some have  
3 publicly indicated that they are in direct  
4 opposition to any casino going in any fashion.

5           But other communities that were part of  
6 that process have not indicated that in a public  
7 manner. So, I just wanted to just note that for  
8 the record that we weren't talking about one  
9 applicant.

10           CHAIRMAN CROSBY: No, we were very  
11 careful not to be talking about the applicant.  
12 But what is clear is a surrounding community that  
13 hates the idea of a casino will try to use the  
14 surrounding community agreement and the studies as  
15 a proxy for killing the casino.

16           So, it's a line we're going to have to  
17 walk. But I think I came away persuaded that in  
18 good faith, we had to take a real hard look at these  
19 schedules and the way we get the money out to these  
20 people.

21           COMMISSIONER ZUNIGA: I have couple of  
22 initial reactions, which you sort of touched on,  
23 and we've talked about the past. I think there's  
24 ways to mitigate, if you will, that timeframe for

1 surrounding communities.

2           There's environmental notification  
3 form that will be a key document before --  
4 hopefully before a host community agreement is  
5 executed. This may be true for some, not for  
6 everybody. That is a key piece of information I  
7 would like to think for some surrounding  
8 communities.

9           There is also the process that you've  
10 worked on relative to the RPAs that benefits all  
11 surrounding communities. Because they take  
12 whoever they are, whether they are affected or not.  
13 And that's a mechanism that we talked about would  
14 be really efficient for every applicant, because  
15 they're dealing with one process where everybody's  
16 invited and there's different levels, if you will,  
17 of their services. We hope that people recognize  
18 that. And that's available.

19           But there's also a process that they  
20 can undertake relative to procurement of advisors  
21 in anticipation to a projected host community  
22 agreement or even a referendum. They can  
23 prequalify advisors on their own. They don't have  
24 to hire them necessarily, but the process for

1 procurement can take place now. They can  
2 specifically stipulate that the contracting will  
3 be contingent on those involuntary disbursements.

4 So, I think there are steps that  
5 communities could take practically to try to  
6 mitigate that.

7 Under the discussion of they want to  
8 oppose everything, they might not be incentivized  
9 to take those steps. But that would be true for  
10 anybody who wants to oppose it.

11 CHAIRMAN CROSBY: I think what you are  
12 saying, I think this is a good point. We did sort  
13 of talk a little bit about this. They could make  
14 their lives easier by planning in advance.

15 Can't they also procure off Comm-PASS?

16 COMMISSIONER ZUNIGA: Yes, they can go  
17 to anybody who has been prequalified.

18 CHAIRMAN CROSBY: They can go to  
19 Comm-PASS. They don't have to do an RFP. They  
20 could go to prequalify -- There's got to be all  
21 kinds of engineers and traffic consultants. All  
22 of those people must be on there.

23 COMMISSIONER ZUNIGA: That's right.

24 CHAIRMAN CROSBY: So, that saves 60

1 days right there. They all were saying this  
2 procurement is going to take forever. We can't  
3 even write the procurement.

4 COMMISSIONER ZUNIGA: My last one is  
5 perhaps the most important, the one that the  
6 statute did contemplate, which is surrounding  
7 communities can and should approach the applicant  
8 and say we believe we are. And enter into those  
9 discussions, if they haven't already. I would  
10 like to think some have.

11 CHAIRMAN CROSBY: Some definitely  
12 have, yes.

13 COMMISSIONER ZUNIGA: That's  
14 fundamentally the most important process that I  
15 think everybody should be reminded of.

16 MR. ZIEMBA: I think one of the key  
17 point that was made on the other side, again, these  
18 are things that we should consider. And I think  
19 the procurement issue perhaps we should pay a  
20 little more attention to what the range of options  
21 there are for communities and get that information  
22 available.

23 I know a lot of communities are very --  
24 they have a high degree of sophistication on what

1 procurement options they have. Again,  
2 potentially that might be an area for us to provide  
3 some focus on. And I think I'll consult with you,  
4 Commissioner, on what we can do in that regard.

5 But one of the things that was  
6 highlighted last night was that overall this is a  
7 competition. And the Commission spent a  
8 tremendous amount of time to try to make sure that  
9 we have a number of different applicants in each  
10 one of the regions. Many of the components that  
11 the Commission will be utilizing to weigh against  
12 each other -- weigh between applicants are  
13 determination of public support, public outreach,  
14 impact agreements. There are numerous things  
15 that will be evaluated as part of the Commission's  
16 evaluation.

17 So, to the extent that different  
18 applicants may not be viewed as being helpful to  
19 communities in evaluating impacts, that will be  
20 part of the evaluation.

21 Again, that's not the only answer. I  
22 think there's more to go. And I agree with the  
23 Chairman that we should take a look at some of these  
24 issues again.

1                   COMMISSIONER MCHUGH: Timing of the  
2 involuntary grants or assessments is part of the  
3 regulations that are now up for comment.

4                   MR. ZIEMBA: Correct.

5                   COMMISSIONER MCHUGH: I've forgotten  
6 why we tied the trigger for involuntary  
7 assessment to the signing of the host community  
8 agreement. That's something that is still in  
9 draft. We can change that.

10                  MR. ZIEMBA: Exactly. And we noted  
11 that it's in draft, but --

12                  CHAIRMAN CROSBY: We told them that.

13                  COMMISSIONER MCHUGH: I'm just  
14 raising it here.

15                  CHAIRMAN CROSBY: Good.

16                  MR. ZIEMBA: -- it was sort of a  
17 forward looking and backward looking thing. Part  
18 of it was that again we want to encourage  
19 applicants and communities to negotiate with each  
20 other rather than having a disputed process before  
21 the Commission. And enabling them some time,  
22 maybe not the time period that we identified in the  
23 draft, some time to make sure that that  
24 conversation occurs is probably a good idea.

1           But especially if you're taking a look  
2           at someone completing their host community  
3           agreement now or in the very near future, and with  
4           a December submittal of an application, there  
5           might be definitely some time for that  
6           conversation to occur after the host community  
7           agreement is inked.

8           The later the host community agreement  
9           occurs closer to the application deadline, the  
10          less chance there is for that conversation.

11          COMMISSIONER MCHUGH: I understand  
12          that. I understand that. But if you untethered  
13          the two, we could begin to stimulate  
14          conversations. Anyway.

15          CHAIRMAN CROSBY: I think you're on  
16          exactly the right track. I think it gets to  
17          another issue. The one reason I think that we tied  
18          it to the host community agreement is that the  
19          bidders want to have checkpoints to make sure they  
20          really are going to be in this game.

21          MR. ZIEMBA: Correct.

22          CHAIRMAN CROSBY: And if they have to  
23          put out a bunch of money to surrounding communities  
24          before the host community agreement is signed and

1 before the referendum, their concern. This has  
2 been expressed to us in a variety of terms, which  
3 gets us to another issue. But it's a legitimate  
4 problem.

5 MR. ZIEMBA: And we have said unless  
6 there's a host community agreement, there are no  
7 surrounding community agreements. So, to the  
8 extent that the ability of an applicant to explore  
9 things with the host community gets jeopardized,  
10 that also is a consideration that we have to take  
11 into account.

12 COMMISSIONER ZUNIGA: Because of that  
13 last point, unless there is a host community  
14 agreement there is not surrounding community  
15 agreements. It may be worth to note that \$50,000  
16 that was earmarked for communities could be  
17 presumed to go first to the host community, but it  
18 doesn't have to.

19 Technically, the \$50,000 could go the  
20 first one to request it. That's just another  
21 little resource, if you will, or option to  
22 surrounding communities. I don't know if that is  
23 something that we could further articulate in  
24 draft regs. or whether it matters all that much.



1                   CHAIRMAN CROSBY: How would you  
2 suggest that we reconsider some of these things?

3                   MR. ZIEMBA: I'm not prepared to make  
4 a recommendation.

5                   CHAIRMAN CROSBY: I don't mean a  
6 bottom line, but process wise? What do you think  
7 we ought to do to rethink and see whether or not  
8 we want to make any changes in schedules or  
9 process?

10                  MR. ZIEMBA: I think we should take  
11 another look at the timeline, how the timeline  
12 works in general. But in regard to the 30-day  
13 requirement, I would recommend anybody listening  
14 that they send in comments specifically about that  
15 matter and any recommendations.

16                  CHAIRMAN CROSBY: About the host  
17 community agreement.

18                  MR. ZIEMBA: Involuntary  
19 disbursements process, yes, because that is a new  
20 one. It was a new one as part of our draft  
21 regulations. It wasn't part of our previous  
22 submissions.

23                  So, we'd welcome comments. But what  
24 we'd welcome comments is that we hope that even

1     though different constituencies will have to  
2     advocate for their positions, we just hope that  
3     they put that in the context of what the  
4     Commonwealth is trying to achieve.

5             Obviously, the Commonwealth has  
6     already put a lot of the dollars associated within  
7     their budget. So, there's only so many ways to  
8     spend it the same day.

9             And do we do that? It's very tricky.  
10    And how do you accommodate all of these various  
11    interests? It's not an easy solution. We put  
12    forward one that we hoped worked, but depending on  
13    where applicants are in the process, it may not  
14    work in all circumstances. So, I think we need to  
15    take another look at it but I don't have any  
16    recommendations right now.

17            CHAIRMAN CROSBY: I don't think we're  
18    ready for recommendations. But I do think there  
19    needs to be some -- I guess we have to do it in a  
20    public meeting probably where we really do a very  
21    systematic working on the schedule and just talk  
22    ourselves through these steps.

23            Probably not next week because we've  
24    got Region C, but sometime shortly after that. I

1 think when you guys get prepared to help us think  
2 through that both the issues of the distribution  
3 of the monies or the making available of monies to  
4 surrounding communities and the details of the  
5 schedule.

6 MR. ZIEMBA: Also, the internal issues  
7 as well. Director Wells has reported about where  
8 we are with suitability determinations and that  
9 fits into the schedule directly. So, that will be  
10 part of the presentation.

11 CHAIRMAN CROSBY: Yes. Okay, good.

12 COMMISSIONER STEBBINS: Mr. Chairman,  
13 can we take a quick break?

14 CHAIRMAN CROSBY: Sure. We'll have a  
15 brief break.

16  
17 (A recess was taken)

18  
19 CHAIRMAN CROSBY: We reconvene.

20 MR. ZIEMBA: Thank you, Mr. Chairman.  
21 Next issue that we're discussing today is the  
22 emergency regulation that was discussed last week.  
23 Last week, the Commission directed staff to draft  
24 a regulation relative to the issue of the

1 referendum and whether or not that could occur  
2 before or after the suitability termination.

3 In that time, the Commission said that  
4 they would allow comment from communities if  
5 anybody had any brilliant ideas, they should come  
6 forward with those ideas. And we're here today to  
7 discuss the draft regulation.

8 There's a regulation in your -- draft  
9 regulation in your packet that incorporates  
10 options that could be considered by the  
11 Commission. To take a step back, last week the  
12 Commission discussed the long-standing policy  
13 that a referendum should not be held until after  
14 the determination of suitability.

15 Part of that conversation was relative  
16 to the Senate special election date. And I  
17 provided some background on where different  
18 communities were in the process relative to that  
19 Senate special election date.

20 You also asked me if there were any  
21 public policy considerations that the Commission  
22 should weigh against the Commission's  
23 long-standing policy. The Commission discussed a  
24 few of those, notably that applicants had

1 indicated that they would be more likely to move  
2 forward on permitting obstacles and enhanced  
3 permitting prior to our RFA-2 application earlier  
4 in the process if there were more certainty earlier  
5 in the process.

6           However, there were some issues that  
7 were not really fully discussed or I guess  
8 re-discussed since this is an issue that the  
9 Commission has discussed many, many times. But  
10 given that we have an emergency regulation, it  
11 bears repeating some of these conversations and  
12 some of these discussions.

13           So, specifically I mention that a lot  
14 of the conversation was relative to the June 25  
15 date. But perhaps I was a little constrained in  
16 my presentation last week that, obviously, it is  
17 not only for the June 25 date.

18           Director Wells discussed some  
19 timetables last week whereby suitability  
20 determinations could -- may not occur until the  
21 months of July or maybe even August. So, with that  
22 scenario, it's not only elections that would be --  
23 that would occur in June, but there are also  
24 questions regarding whether or not there would be

1     certainty regarding fall elections, September  
2     elections. Because of the 60- to 90-day  
3     requirement, obviously, communities will have to  
4     set their special -- set their election date at  
5     least two months earlier. So, if they wanted to  
6     have elections in September, they would had to set  
7     those elections in July.

8             And by July, I don't know if we will be  
9     in a place where we can give communities certainty  
10    that we will be able to get a suitability  
11    determination by that election date.

12            So, if you take our schedule and we get  
13    suitability determinations done in July or August  
14    from the IEB, there still is the issue that the  
15    Director just talked about whereby any one of the  
16    applicants could request an appeal of any  
17    determination in that report. They have the right  
18    under our regulations. It's a 30-day right to  
19    exercise that right for an appeal. It could be a  
20    public hearing. It could be an adjudicatory  
21    proceeding.

22            So, in any regard with those rights the  
23    timetable for decisions on suitability in any one  
24    situation could well exceed July or August and

1 could potentially go even into September.

2 Now, I don't believe it's the  
3 expectation that that will occur. As the Director  
4 just discussed, normal operations are that a  
5 qualifier may leave voluntarily before those  
6 determinations. And applicants may not proceed  
7 before the Commission of some things of sensitive  
8 nature. They might be more prone to accepting  
9 whatever determinations of the IEB.

10 But still, at the time that communities  
11 are going to start setting their referendum dates,  
12 the Commission will not be in a position to give  
13 them the degree of certainty that we had hoped.

14 I think when the Commission first  
15 discussed these policies a long time ago, we all  
16 hoped that everything would go swimmingly with the  
17 investigations. That we would get all of the  
18 reports that we had been asking. That people  
19 would be timely in their submissions. That people  
20 would have filled out the forms correctly. That  
21 we would have been able to devote a lot of our  
22 resources to actually looking at the  
23 investigations. However, that has not occurred.

24 So, at times the Commission has

1 discussed that it would be wise for communities to  
2 not schedule their referendums before we have the  
3 suitability determinations. And it would be wise  
4 even for communities to not even enter into their  
5 host community agreement before they know who the  
6 applicant is before them.

7 Again, that was a different day. But  
8 still, we are in a situation now where we may not  
9 be able to provide the certainty that communities  
10 would need by those July deadlines for the special  
11 election.

12 So, what we've done is we've put  
13 forward a draft regulation for you that gives you  
14 a couple of options. Maybe Catherine or Todd, if  
15 you want to join me?

16 CHAIRMAN CROSBY: Excuse me just a  
17 second, didn't -- you were talking about the issue  
18 of whether we could actually even cancel the  
19 election what would happen. Are you going to talk  
20 about that?

21 MR. ZIEMBA: I will. So, if you take  
22 a look, if you go back to the Gaming Act in trying  
23 to resolve this issue, I think there are a couple  
24 of things that are instructive. Notably, the



1 Commission decided itself to have a bifurcated  
2 process whereby we do the suitability  
3 determinations first, and then at a later date we  
4 do the RFA-2 based on the scope.

5 Obviously, we did that for very  
6 important reasons. It helps expedite the  
7 process. It provides more certainty into the  
8 process. It allows tremendous efficiencies, etc.  
9 But I don't know if that was actually anticipated  
10 in the Act itself. So, potentially --

11 CHAIRMAN CROSBY: Clearly was not,  
12 right? It was not. It was assumed that you would  
13 have host community agreement, referendum and then  
14 the application is submitted. And the  
15 application included the background checks.

16 COMMISSIONER ZUNIGA: The application  
17 then went to the IEB. We would stop. It would go  
18 to the IEB for the determination of suitability.

19 CHAIRMAN CROSBY: Right. But the  
20 point is it's after the host community agreement  
21 and the referendum. So, it was never anticipated  
22 by the Legislature that the suitability would  
23 precede the referendum.

24 MR. ZIEMBA: So, the Legislature may

1 have believed that this process, you have your  
2 local process and then you have your state process.  
3 Obviously, the Legislature gave the job to do  
4 suitability determinations to the Commission.

5 Obviously, we have the expertise to do  
6 it. We have the resources to do it. That type of  
7 a job cannot just be done at the local level. So,  
8 perhaps the Legislature also knew that when voters  
9 voted at the ballot box that they would not  
10 necessarily be making a decision based on whether  
11 or not they thought the Commission deemed an  
12 applicant suitable, because they could not,  
13 because it would have preceded our process.

14 But we decided for good reason to have  
15 this bifurcated process. So now, there may be  
16 more of a question in the population of what this  
17 means. What does the election mean? Does it mean  
18 suitability? Does it not mean suitability?  
19 We've talked across the state that it's a two-stage  
20 licensing process. And that we're doing this and  
21 then in the second phase is relative to site.

22 So, I think there's at least some  
23 degree of uncertainty in the population of what  
24 this all means. I don't know about the

1     sophistication level of every voter, but still  
2     it's probably a concern.

3             So, what we've done is we have given --  
4     given that context, what we've done is we've given  
5     a couple of options in this regulation that could  
6     be considered by the Commission.

7             The one regulation that's before you,  
8     even though it's just one regulation, it really  
9     encompasses the two different options -- And there  
10    are more that I'll discuss in a second. -- the two  
11    main options of the regulation.

12            What you have here, I'll get into what  
13    the document means that is before you. But if you  
14    just take a look at the first sentence of six, it  
15    says a host community may not hold an election in  
16    accordance with MGL 23 section 15(13) until the  
17    Commission has issued a positive determination of  
18    suitability to the applicant in accordance with  
19    205 CMR 115.05(3). If you put a period after that,  
20    I think that is what the Commission asked staff to  
21    draft last week. And that is up for consideration  
22    by the Commission.

23            But what we have done here is we have  
24    given another option to the Commission for it to

1 consider that is meant to address some of the  
2 issues that we just discussed of the uncertainty  
3 in the population, but also address some of the  
4 uncertainties that we have with the process.

5           What the option before you does is that  
6 it says that the current policy, which is to not  
7 allow a referendum until after the suitability  
8 determination stands, but with one notable  
9 exception. If the host community believes that  
10 its population, it's in the best interest of its  
11 population to move forward on a referendum prior  
12 to the determination of suitability that it would  
13 be required to show or demonstrate that it actually  
14 believes that. That there be a formal approval by  
15 the governing body of the community that it wants  
16 to move forward prior to the determination.

17           Why we say governing body, governing  
18 body is included here because it is the providence  
19 of the governing body in each of these communities  
20 to set the referendum date.

21           CHAIRMAN CROSBY: Is that a defined  
22 term, governing body?

23           MR. ZIEMBA: It is.

24           CHAIRMAN CROSBY: What does it mean

1 for city and town?

2 MR. GROSSMAN: I think it means three  
3 things. For a town, it's the Board of Selectmen.  
4 For a city, it depends upon the form of government.  
5 It's either the mayor and the city council or the  
6 city manager and the city council.

7 CHAIRMAN CROSBY: That's a defined  
8 term in the --

9 MR. GROSSMAN: In the Gaming Act, yes.

10 CHAIRMAN CROSBY: And it's clear that  
11 therefore it would require whatever the  
12 legislative body of the municipality is as well as  
13 the executive.

14 MR. GROSSMAN: That's right.  
15 Throughout our regulations, we've tried to  
16 recognize the different forms of government that  
17 may exist in the different municipalities.

18 So, we don't want to get too far into  
19 telling folks how to do that type of thing.

20 MR. ZIEMBA: Just for the record,  
21 governing pursuant to the statute is in a city  
22 having a Plan D or Plan E charter the city manager  
23 and the city council. And in any other city, the  
24 mayor and the city council. And in the town the

1 Board of Selectmen is the governing body.

2 CHAIRMAN CROSBY: Good.

3 MR. ZIEMBA: So, that part of the  
4 recommendation is designed to address -- We have  
5 received comments from the Mayor of Everett and  
6 from others that the leaders that are elected by  
7 the citizens within those communities have the  
8 responsibility to make sure that their citizens  
9 are protected. And part of their responsibility  
10 is their responsibilities under the Gaming Act of  
11 putting forward the referendum to their citizens.

12 But obviously, the Commission has its  
13 own responsibility. And the Legislature  
14 entrusted the Commission with being able to set  
15 rules regarding those referendum dates. So, it is  
16 very much a dual responsibility as seen in the  
17 Gaming Act.

18 To address the second question of the  
19 level of expectation in the community of the  
20 electorate and the confusion that may exist about  
21 what this means, especially after a year of  
22 discussion about the two-phase process. What is  
23 recommended here as an option is that at the  
24 expense of the applicant that in order for a

1 community to move forward on a referendum date  
2 prior to suitability, that the community would be  
3 required to conduct a process for informing the  
4 community about the Commission's determination of  
5 suitability standards and procedures.

6 And that process would include but not  
7 be limited to a notice that is designed to be  
8 received by voting households within the community  
9 that would be involved in the ballot question.

10 And then on top of that we recommend  
11 that the communities undertake additional  
12 measures to provide public education to their  
13 citizens, but we do not provide the specificity of  
14 what that could occur. What it could occur, it  
15 could be a mayor or other elected leaders in their  
16 speeches before citizens of explaining what the  
17 process is. Or it could be additional mailers or  
18 additional news articles. Or it could be a number  
19 different things that the community would do.

20 So, the description of what our  
21 procedures are and what suitability  
22 determinations are, that the mailer, the  
23 notification that is sent to the voters would need  
24 to be sent to the Commission for our approval and

1 what we've specified the minimum content. But  
2 that communities may want to specify other content  
3 to put it in context.

4 Because if a citizen just gets a letter  
5 that says, your applicant needs to be deemed  
6 suitable before they will go forward, it might need  
7 to put into a greater context of what this all means  
8 to them in their vote. And we would leave it to  
9 the communities to come up with that language.

10 But in order to make sure that the message is set  
11 forth, we would have to review that language.

12 Then the communities would need to just  
13 submit or notify us what those other procedures  
14 that they would utilize for the public education  
15 campaign. They would tell us about those, but  
16 they wouldn't be subject to our prior approval.

17 So, the way that we see it is there are  
18 a number of different options that the Commission  
19 could take. The Commission could stay with its  
20 long-standing policy related to the ballot in  
21 order to protect communities and for all of the  
22 excellent reasons that were articulated last week.

23 The Commission could drop the policy,  
24 the long-standing policy and allow communities to



1 move forward on their own in recognition that they  
2 have a duty to protect their citizens.

3 Or this alternative, which is sort of  
4 a middle ground where communities could move  
5 forward, but after certain protections are taken  
6 into account.

7 I guess there is also a fourth option  
8 which is that there could also be no requirement  
9 related to the referendum, but we could just  
10 independently issue a regulation stating that all  
11 communities shall inform their citizens about what  
12 our process means.

13 CHAIRMAN CROSBY: Are you making a  
14 recommendation?

15 MR. ZIEMBA: This proposal that I've  
16 come up with is my recommendation based on what the  
17 Commissioners had as long-standing concerns.  
18 Taking that into account, taking into account what  
19 communities have expressed, taking into account  
20 constraints on staff.

21 And one of the other issues that I  
22 didn't mention is that deadlines that are set  
23 regarding referendums put constraints on staff as  
24 well. Such as --

1                   CHAIRMAN CROSBY: Community staff or  
2 our staff?

3                   MR. ZIEMBA: No, Commission staff.  
4 So, to the degree that one knows that there is an  
5 outside deadline for a referendum taking place in  
6 a matter of weeks, and that the investigation has  
7 to be concluded by then that puts an artificial  
8 constraints on our ability to conclude  
9 investigations in the manner that you would  
10 otherwise see fit.

11                   Hopefully, this does not come to pass,  
12 but different issues come up at different times  
13 during an investigation. And it's not always  
14 knowable at the beginning of the process.

15                   So, based on that my recommendation  
16 here is meant to reflect what I think I've heard  
17 from the Commission what I think I've heard from  
18 communities and what I think I've heard from  
19 applicants.

20                   And one other constituency that I will  
21 mention is surrounding communities in that we have  
22 just discussed that any delays that could occur at  
23 the host community level could impact surrounding  
24 communities.

1           So, I don't know how much of a reality  
2 this could be, but if you had a situation where a  
3 particular host community wanted to hold off on  
4 finalizing its host community agreement knowing  
5 that there is this policy out there that can impact  
6 surrounding communities' timetables.

7           But I think probably in the larger  
8 sense that applicants and communities if they're  
9 ready to go, they will really want to go as quickly  
10 as possible. But that's also another potential  
11 concern.

12           CHAIRMAN CROSBY: Thoughts,  
13 reactions?

14           COMMISSIONER CAMERON: I certainly  
15 appreciate the need to be very thorough with  
16 investigations. And that whatever way we go here,  
17 knowing and having our applicants know that a  
18 favorable vote will not affect suitability. That  
19 will be done independently if this is a route we  
20 choose to go. And that that outcome will be  
21 independent of any kind of a vote. That would be  
22 to me an important piece for everyone to  
23 understand.

24           CHAIRMAN CROSBY: It should be in the

1 flyer, in the required flyer if you do that.

2 COMMISSIONER CAMERON: In other  
3 words, just because you say yes that does not in  
4 any way affect our thorough investigation and  
5 outcome of that investigation. That would be to  
6 me very important.

7 I guess by saying no, you can't vote,  
8 we are inserting ourselves in the process. And by  
9 saying okay, there is an exception and these are  
10 the two (A) and (B) portions, we are inserting  
11 ourselves in the process. But it seems to me there  
12 are really good reasons in order to do that in order  
13 to have some safeguards in place.

14 COMMISSIONER MCHUGH: We haven't  
15 gotten any comment on this from anybody outside?

16 MR. ZIEMBA: No. I didn't feel like I  
17 was at liberty to really do that.

18 COMMISSIONER MCHUGH: I understand  
19 that.

20 CHAIRMAN CROSBY: On this proposal you  
21 mean?

22 COMMISSIONER MCHUGH: Right. Would  
23 it be worthwhile to do that?

24 MR. ZIEMBA: One thing I will note is

1 that there is the June 25 date and April 25 is right  
2 around the corner. A comment period up until a  
3 week of the 18th is possible.

4 Communities that are in a position that  
5 they want to move forward by the 25th, they could  
6 take measures that would be in accordance with this  
7 draft regulation even though it is not in place.

8 For example, this would require the  
9 scheduling of the governing body to make a vote.  
10 And they could do so given that there is only two  
11 weeks left before the 25th. They could do so in  
12 anticipation of the emergency regulation. And I  
13 don't think that's an impossibility.

14 COMMISSIONER MCHUGH: Here's the  
15 reason I ask. We've put in place this freeze as  
16 a matter of policy. It's been observed. It has  
17 settled expectations throughout the state thus  
18 far. We've said we were going to put it into place  
19 essentially because a determination of  
20 suitability was an important, indeed a critically  
21 important part for the integrity of our process.

22 Then last week we added to that the  
23 notion that there was the possibility of confusion  
24 and unanswered allegations of whatever that would

1 be floating around to confuse electorate with the  
2 voting.

3           What we didn't, at least I as one  
4 person, didn't think about either when we  
5 initially set the policy or last week was the  
6 impact on surrounding communities being tied to  
7 the applicant's certainty that it had community  
8 support for its project. And its willingness, if  
9 it had the community support for its project to  
10 engage in a more positive and perhaps a more open  
11 pocketbook fashion with potential surrounding  
12 communities. That it would be willing to do it if  
13 it didn't know it had that support.

14           Nor had I consider fully the desire of  
15 the applicants to wait for a positive vote of the  
16 community before pushing forward with the approval  
17 process that ultimately would be the benefit of  
18 both the community and the applicant and the state  
19 to get things up and running fast.

20           So, it's a balancing of the need for the  
21 integrity of the process against the desire to move  
22 forward that this regulation represents. And I  
23 think it's a good balance. And those  
24 considerations have caused me to reexamine where

1 we started out with the policy we've had.

2 At the same time, it seems to me that  
3 some comments might yield yet other things we  
4 haven't thought about. And I'd hate to do this and  
5 have somebody say as soon as we do it say yes, but  
6 you forgot -- not forgot, you didn't take this into  
7 account. And then have to come back and say that's  
8 right. We have to change this again.

9 So, that's a windy way of saying that  
10 I think it is consistent we are still trying to meet  
11 the folks that want to do it on June 25, get a week's  
12 worth of comment that would be helpful. But I am  
13 inclined to take this as an acceptable substitute  
14 for where we were before because I think it safeguards  
15 the primary interests that we thought about when  
16 we crafted this policy.

17 MR. ZIEMBA: And I am hopeful that they  
18 could take these votes in the next week even  
19 without a regulation. I don't know of the  
20 schedules or anything that happens with any of  
21 these governing bodies and their willingness,  
22 etc., but I think we can only do what we can do  
23 within the context of what we have.

24 And I do agree that there certainly

1 could be a lot of things that are not considered.  
2 We do everything at the consideration of some  
3 comments. And I'm not certain that this takes  
4 into account everything.

5 COMMISSIONER ZUNIGA: It occurs to me  
6 that some of the comments that we have received in  
7 the past from surrounding communities relative to  
8 surrounding community determination may fall --  
9 maybe somewhat addressed under these or alleviated  
10 perhaps under these.

11 You'll recall that least a couple of  
12 comments received were to the effect of the  
13 Commission should draw a circumference or a radius  
14 around a proposed gaming establishment 20 miles or  
15 abutters or things like that in order to say -- to  
16 make a determination of surrounding communities.

17 We've rejected that for practical  
18 reasons because impacts could differ. There's  
19 varying degrees of impacts and it has to be  
20 significant.

21 But I wonder if those comments again  
22 would not be alleviated by the ability of somebody,  
23 a surrounding community to know earlier than later  
24 just what that agreement may be, which is the very



1 early point that you made.

2 If they have to wait until a host  
3 community agreement -- until a referendum is  
4 scheduled, which is also contingent on our  
5 determination of suitability that may leave very  
6 little time or that may crunch the time for  
7 surrounding communities.

8 MR. ZIEMBA: Mr. Chairman, you've  
9 mentioned that you wanted a quick conversation  
10 regarding some of the legal intricacies of the  
11 vote.

12 CHAIRMAN CROSBY: Right. If we stuck  
13 with our original idea, which was you could  
14 schedule it but if you didn't get suitability you'd  
15 have to cancel it. That was what you were talking  
16 about. That's where we stand today.

17 MR. GROSSMAN: Right. I think there  
18 are certainly some areas there where the statute  
19 could run up against the regulation. That is just  
20 something to consider where the statute says that  
21 the election shall be held within 60 to 90 days of  
22 the call for the election, and the regulation says  
23 you can't have an election.

24 CHAIRMAN CROSBY: Right.

1 MR. GROSSMAN: What would happen in  
2 that situation? That's a scenario that is  
3 reasonably foreseeable, I suppose, where someone  
4 would have to decide which one they would go on.

5 CHAIRMAN CROSBY: Yes. We've been  
6 foreseeing that all along as an option.

7 MR. ZIEMBA: We think we certainly  
8 have the authority and there's plenary authority  
9 in the Act, but it's not without question. But  
10 then again, most everything we do is probably not  
11 without question.

12 CHAIRMAN CROSBY: Right.

13 COMMISSIONER MCHUGH: That's becoming  
14 clearer and clearer.

15 CHAIRMAN CROSBY: Yes, right.

16 COMMISSIONER CAMERON: If we were to  
17 take comment for a week. And then after  
18 reviewing comments we felt prepared to make a  
19 determination next week that would give applicants  
20 enough time?

21 MR. ZIEMBA: I think host communities  
22 would probably -- If they think that they can get  
23 the vote scheduled, after the 18th before the 25th,  
24 that would give them enough time. If they don't

1 think that they can get it scheduled between the  
2 18th and 25th perhaps they could do that between  
3 today and the 18th just in anticipation of a  
4 regulation that we may promulgate. Again, that's  
5 iffy. I don't know if a community would want to  
6 do that. But again, we're trying to be as flexible  
7 as we can.

8 COMMISSIONER MCHUGH: We know the  
9 identity of the vast majority of potential host  
10 communities. So, we could insure that they know  
11 of its existence, emailing them.

12 MR. ZIEMBA: I think that they are  
13 listening very closely right now.

14 COMMISSIONER MCHUGH: Right. They  
15 might have stepped out for some popcorn or  
16 something.

17 MR. ZIEMBA: Right.

18 CHAIRMAN CROSBY: Get another beer.

19 COMMISSIONER MCHUGH: Right.

20 CHAIRMAN CROSBY: Commissioner McHugh  
21 said everything that I would say. I have the exact  
22 same sense of where we started and why it was  
23 important and why I think I would be inclined to  
24 modify at this point.

1           I only would span slightly on just the  
2 timing. I think we are beginning to see and  
3 everybody is beginning to see there is a lot of work  
4 to be done to get through this schedule. And any  
5 impediments that we put in the way of that are going  
6 to be a problem.

7           In good faith, you can understand why.  
8 I think if we just said let's postpone the schedule  
9 six months. We tell bidders just sit tight until  
10 the suitability. Don't do anything. Don't spend  
11 any money. Wait until you get suitability. That  
12 would be one way to go. But that's clearly not  
13 what we want to do.

14           The other thing that was persuasive to  
15 me when we talked about this last week was I think  
16 there is potential for anti's to cast dispersions  
17 on bidders. We've seen it happen. And we get  
18 mail in all of the time with stuff like that. I  
19 was concerned that a community -- the voters might  
20 not know since there hasn't been a suitability  
21 decision. And the applicant might be at risk.

22           But the applicant controls whether or  
23 not they go forward with this election or not. The  
24 applicant and the host community determine whether

1 if they're concerned there might be mudslinging,  
2 they don't have to have the election until after  
3 the suitability. So, there is some protection  
4 against that concern that I had.

5 So, I concur with Commissioner McHugh.  
6 I also concur in that I think as time sensitive as  
7 this has become, this is such a big change that we  
8 can't lock it in without time. So, I think your  
9 suggestion or somebody's suggestion, Jim's I guess  
10 that we don't formally do this for a week is right.  
11 Anybody else?

12 COMMISSIONER ZUNIGA: I agree with all  
13 that.

14 CHAIRMAN CROSBY: Okay.

15 MR. ZIEMBA: That's what I have to  
16 report.

17 CHAIRMAN CROSBY: Do you got some  
18 other stuff? No. Let's see notice of public  
19 hearing and SBIS.

20 COMMISSIONER ZUNIGA: For  
21 clarification, this draft emergency regulation  
22 will be posted for public comment, the one with  
23 option (A) and (B).

24 CHAIRMAN CROSBY: Yes. We are

1 talking about taking both of the two steps. So,  
2 you've got that Elaine?

3 You're still on, right?

4 MR. GROSSMAN: I can take that next one  
5 actually, Mr. Chairman.

6 CHAIRMAN CROSBY: Wait just one  
7 second. There's been a lot of discussion back and  
8 forth about how a vote on a propose on an HCA would  
9 be managed physically if it were done at the same  
10 time as another election. Do we have a bottom line  
11 on that?

12 MR. GROSSMAN: I think I can take that  
13 one too. We have reached out for some advice as  
14 to what the law is in that regard. And I don't have  
15 a definitive answer yet, but it has been suggested  
16 and I think there's some merit to the suggestion  
17 that there would at least have to be separate  
18 ballots in the event that this election were to  
19 take place at the same time as a state election in  
20 that --

21 CHAIRMAN CROSBY: State or municipal?

22 MR. GROSSMAN: A state election. And  
23 I'm not yet an expert in election law, but my  
24 understanding generally is that you can't put a

1 municipal issue on a state ballot absent explicit  
2 authority in some statute that says that you can  
3 do that.

4 The Gaming Act does not provide that  
5 explicit authority. So, I don't yet have, as I  
6 said, a definitive answer as to how that would go  
7 about or what involvement we would even want to  
8 have in that regard.

9 But it is certainly an issue out there  
10 for the municipal folks to be aware of in the event  
11 that they want to hold this election  
12 simultaneously with the state election.

13 CHAIRMAN CROSBY: So, if it were  
14 simultaneous with a municipal election this  
15 wouldn't apply?

16 MR. GROSSMAN: I don't think it's an  
17 issue if that's the case. I think it's just if  
18 it's a state election. I'm not 100 percent sure  
19 about that.

20 CHAIRMAN CROSBY: There is a lot of  
21 confusion out there about this. As soon as we do  
22 know, it's something we have to get out to people.

23 COMMISSIONER MCHUGH: That we have to  
24 get out to people? This is a complex area. It may

1 be that after looking at this your recommendation  
2 would be that we would direct people to the right  
3 sources of authority. We may have an answer that  
4 you'd be prepared to recommend to us. You may also  
5 look at it and conclude that our best bet would be  
6 to refer this to the experts as stated.

7 MR. GROSSMAN: I think that's exactly  
8 right. In fact, you'll recall what we've done in  
9 our draft regulations essentially in the election  
10 section is we basically just said you have to  
11 follow all of the election laws, but here's some  
12 other provisions.

13 So, for us to here say if you're having  
14 this election you also have to do this would be  
15 somewhat inconsistent with what we've done in the  
16 past.

17 But I think it's certainly fair of us  
18 to raise the issue so people are aware of it.

19 CHAIRMAN CROSBY: Right. And if the  
20 solution is to tell them who to go talk to, tell  
21 them who to go talk to.

22 MR. GROSSMAN: Right.

23 CHAIRMAN CROSBY: Okay. Thank you.

24 COMMISSIONER CAMERON: Thank you.



1                   COMMISSIONER MCHUGH: You still have  
2 another agenda item.

3                   MR. GROSSMAN: I do have one other  
4 agenda item.

5                   CHAIRMAN CROSBY: Ombudsman Ziemba, I  
6 still have one other thing, John. Sorry. This  
7 just came up I don't know when. I don't even know  
8 where this came from. But there's been this  
9 discussion, I guess it's in the media, about  
10 whether we should do anything about the amount of  
11 money spent. We never really talked about it, I  
12 don't think.

13                   I guess it was a Globe editorial that  
14 talked about doing something or other. Has  
15 anybody thought about that? Or have you had any  
16 thoughts or feedback on it?

17                   MR. ZIEMBA: No.

18                   CHAIRMAN CROSBY: Is that anything  
19 that we want to consider or undertake?

20                   COMMISSIONER MCHUGH: We might, but I  
21 haven't thought about it until this very second and  
22 since I've read the editorial. It's certainly  
23 worth talking about.

24                   CHAIRMAN CROSBY: Okay. I didn't

1 really mean right this minute. I meant is this a  
2 topic that is of sufficient (A) importance, (B)  
3 interest that we should tee it up a little bit and  
4 think about it? It sounds like you're saying  
5 perhaps yes.

6 COMMISSIONER MCHUGH: I think it'd be  
7 worth discussing.

8 CHAIRMAN CROSBY: Okay. But you've  
9 not heard anything about this?

10 MR. ZIEMBA: No.

11 CHAIRMAN CROSBY: Okay, now you're  
12 done. Thanks. Yes, sir.

13 MR. GROSSMAN: We have the notice of  
14 the public hearing issue is next on the agenda.  
15 When last we left off with the regulatory process,  
16 we had notified the Local Government Advisory  
17 Council of our regulation. Those two weeks are  
18 coming to an end tomorrow. We are set to file our  
19 draft regulations with the Secretary of State's  
20 office.

21 The law says that in addition to the  
22 notice of the public hearing, which we've  
23 scheduled for May 3, you have to file a small  
24 business impact statement. I provided for you a

1 draft of a small business impact statement that we  
2 would be required to file along with the notice.

3 I have a draft of the notice of you'd like to see  
4 that as well. There's nothing too interesting in  
5 there. It just basically lists all of the  
6 regulations and their contents.

7 The notice itself I'll just note is  
8 scheduled to appear in the legal notices section  
9 of a number of newspapers tomorrow, which will be  
10 21 days in advance of the public hearing, six  
11 different newspapers across the state in the  
12 affected regions. So, we are set in that regard.

13 We will file this notice with a small  
14 business impact statement tomorrow with the  
15 Secretary. But I thought it important for you  
16 certainly to have a look at the small business  
17 impact statement and offer any comment. And just  
18 make sure that you agree with the philosophy in the  
19 statement, which is essentially that these  
20 regulations do not themselves impact small  
21 business. Any impact on small businesses  
22 essentially was created by the Gaming Act. These  
23 regulations essentially just are a mechanism used  
24 to get the statute into place, with the limited

1 exception of live entertainment venues.

2 So, that's the general position that is  
3 encapsulated in this statement. So certainly, if  
4 there is disagreement with that position, we  
5 should adjust this statement.

6 The other question I had, we represent  
7 here that there are seven impacted live  
8 entertainment venues. I wasn't certain about  
9 that number. I thought I heard that somewhere.

10 COMMISSIONER MCHUGH: I heard they  
11 were 10.

12 MR. GROSSMAN: Were there 10?

13 COMMISSIONER MCHUGH: We had a meeting  
14 at which we got a list. The municipal and  
15 charitable theater group came in and gave us a list  
16 of all of them. I think there were 10 on it. I  
17 forgot what meeting that was, but it was back in  
18 December, November, December.

19 CHAIRMAN CROSBY: Do you remember who  
20 spoke?

21 COMMISSIONER ZUNIGA: It's the  
22 coalition.

23 CHAIRMAN CROSBY: Coalition.

24 COMMISSIONER STEBBINS: Somebody from

1 Springfield, somebody from the North Shore.

2 COMMISSIONER ZUNIGA: The Hanover  
3 Theater is the leader of that coalition, Troy  
4 Siebels.

5 CHAIRMAN CROSBY: Oh, good. Yes.  
6 When we get back to the office we could search our  
7 emails and find the name of somebody who could  
8 check that number, if you have to put a number on  
9 there.

10 MR. GROSSMAN: You do have to attempt  
11 to identify the number of small businesses that  
12 will be impacted. If you are to agree that those  
13 are the only small businesses that are directly  
14 impacted by the regulations, as opposed to the  
15 Gaming Act itself, then that number becomes  
16 important.

17 COMMISSIONER MCHUGH: The regulations  
18 in the evaluation section, the broad list of things  
19 we're going to talk about does talk about -- those  
20 regulations do talk about our taking account of the  
21 measures the applicants are taking to interface,  
22 interact with, preserve the income stream to  
23 otherwise deal in a positive fashion with local  
24 restaurants, local carriers.

1           And in that sense the regulations  
2           although they simply carry out the statutory  
3           mandate are designed to insure that these large  
4           entities don't swallow up small businesses. Is  
5           that something worth mentioning here? It is to be  
6           sure simply implementing the Act's outlook.

7           MR. GROSSMAN: The statement does  
8           incorporate those two provisions of the statute  
9           that reference small businesses. So, we do make  
10          reference to that. You are speaking of the  
11          evaluation section specifically.

12          COMMISSIONER MCHUGH: Yes.

13          MR. GROSSMAN: I would argue if we had  
14          to that all we have done is, again, put a mechanism  
15          in place by which we are implementing the statute.  
16          I don't think we created or the Commission created  
17          that element independently to be evaluated. It  
18          was really attempting to address an issue that the  
19          statute says we have to address.

20          COMMISSIONER MCHUGH: Right, right.

21          CHAIRMAN CROSBY: Does the fact that  
22          we are establishing an office in our operation part  
23          of whose job will be to work with local businesses  
24          and prepare them to do business with casinos that's

1 a positive impact. It's not in the legislation,  
2 but it's a proactive step. It's not in our regs.  
3 though.

4 MR. GROSSMAN: That's not addressed in  
5 the regulations. I think, by the way, in our next  
6 phase of regulations where we talk about  
7 regulating vendors and employees then there will  
8 be a different statement wholly.

9 But for the present set of regulations,  
10 where we're talking mostly about surrounding  
11 communities and the applicants and the host  
12 communities, they're largely not directly  
13 discussing small businesses or anything in the  
14 way --

15 CHAIRMAN CROSBY: I take that back,  
16 yes.

17 COMMISSIONER ZUNIGA: On the train of  
18 thought that we had just a view about the  
19 regulations and how they impact or not small  
20 business, is it fair to say that we could take the  
21 position that we do not have to have an impact  
22 statement because that impact is in the statute not  
23 in the regulations, those impacts?

24 MR. GROSSMAN: Well, you do have to

1 file a statement. There are actually five  
2 elements that have to be included in your  
3 statement. And they are all contained in here. I  
4 didn't number them. I just discussed them  
5 independently.

6 So, you do have to have a statement even  
7 if you say there is no impact, which is essentially  
8 what we're saying, caused by the regulations  
9 again, not by the Gaming Act. Clearly, there's  
10 impact that will come upon small businesses when  
11 casinos and the slot parlor are built, no question  
12 about it.

13 CHAIRMAN CROSBY: Okay.

14 MR. GROSSMAN: I think the whole  
15 intent of the statute is to make the Commission  
16 think about what impact you're having on small  
17 businesses.

18 CHAIRMAN CROSBY: Right.  
19 Commissioner Stebbins?

20 COMMISSIONER STEBBINS: I look at the  
21 first sentence in that second paragraph, directs  
22 the Commission to consider a number of mitigation  
23 related factors. I'm wondering if there's a way  
24 to expand upon that language. Because you would



1 read that and think all of the impacts are  
2 potentially going to be negative that we're going  
3 to evaluate.

4 Is there a way to expand upon that to  
5 say could have a negative impact, could have a  
6 positive impact? I just don't want to leave the  
7 language that far out there that we're expecting  
8 this to have a negative impact.

9 CHAIRMAN CROSBY: That is what the  
10 statute says though. The statute anticipates the  
11 possibility of negative effects. We are now  
12 putting the implementation of that statute into  
13 the reg.

14 I think you might be wrestling with the  
15 same thing I was. We're going to do things that  
16 are going to make this a positive impact on  
17 business. But that's not in our regs. as yet.

18 COMMISSIONER STEBBINS: Right. I'm  
19 struggling with it.

20 MR. GROSSMAN: It's a tricky issue.  
21 When I set out to kind of put this together, my  
22 thought was that the Legislature when it came up  
23 with the Gaming Act has contemplated what effect  
24 these establishments will have on small business.

1           And in analyzing those effects, it  
2           basically said okay, Commission you have to  
3           require certain studies be done. And you have to  
4           take certain factors into account when you issue  
5           the license. So, that's already been done.  
6           That's all we've said in the regulations is we're  
7           going to do that. We have not imposed anything  
8           above and beyond that.

9           So, this second paragraph here really  
10          in some respects is just a restatement of what the  
11          Gaming Act says, just to kind of give background.

12          COMMISSIONER STEBBINS: Right.

13          MR. GROSSMAN: The first part of that  
14          first sentence just talks about perspective  
15          impacts. It doesn't talk about negative impacts  
16          or positive impacts.

17          It's only in the second part where I did  
18          use the term mitigation only because seemingly  
19          those are the types of issues that will come to the  
20          fore. Certainly, there will be positive impacts.  
21          And those will be considered as well.

22          Your point is certainly well taken and  
23          we can replace the word mitigation with just impact  
24          related factors.

1 CHAIRMAN CROSBY: Does that help?

2 COMMISSIONER STEBBINS: Yes. If you  
3 read that you could just simply strip out  
4 mitigation, number of related factors in  
5 determining which applicants will be awarded a  
6 gaming license.

7 MR. GROSSMAN: Okay, sure.

8 CHAIRMAN CROSBY: Anything else?  
9 Great. You got another one?

10 MR. GROSSMAN: That's a all I have.  
11 So, these will be filed tomorrow. We are setting  
12 up the public hearing for May 3. At least one  
13 location will be here. We just need to figure out  
14 where any other locations may be.

15 CHAIRMAN CROSBY: Right.

16 MR. GROSSMAN: And that is all.

17 COMMISSIONER MCHUGH: Great, thank  
18 you.

19 COMMISSIONER CAMERON: Thank you.

20 COMMISSIONER CAMERON: Director  
21 Durenberger.

22 DR. DURENBERGER: Good afternoon, Mr.  
23 Chairman and Commissioners. Laurie, I apologize.  
24 I'm under the weather and my normally loud voice

1 is even softer today. So, I will try to speak up.

2 Administrative update, I wanted to  
3 start out by reminding everyone that the proposed  
4 changes to CMR 4.00 are available for public  
5 comment on the Mass. Gaming website. We do have  
6 a public hearing scheduled for Monday, April 22 at  
7 11:00 a.m. at 84 State Street. These are the regs.  
8 that primarily affect running horse racing. They  
9 were adopted by the Commission on an emergency  
10 basis on March 28. But this is as part of the  
11 regular rulemaking process.

12 I wanted to address a couple of things  
13 that Commissioner Zuniga presented to you earlier  
14 with both his revenue report and with the master  
15 schedule.

16 As he mentioned, our new auditing  
17 system may actually be up and running before the  
18 date that was on there. I think in January we  
19 forecasted possibly running in parallel on April  
20 16. We are going to be very close to that, April  
21 18. So, that was a very good forecast.

22 And we may be -- What did we have, May  
23 10? 4/30, so we are right on schedule there.  
24 Representatives from this company Pari Global will

1 be onsite next week, next Wednesday and Thursday.  
2 So, we really look forward to having them with us  
3 and being able to make the transition from our old  
4 financial reporting software system to this  
5 web-based system.

6 On the revenue side, I am very  
7 cognizant of the fact that racing has always be  
8 revenue neutral since the beginning of the  
9 previous agency. And I am trying very hard to  
10 maintain that proud tradition. But just to beware  
11 of the fact that there are some once-off costs  
12 related to the transition. And also some  
13 front-loaded costs, some start-up costs, for  
14 example, that may have to be kind of spread out over  
15 the next couple of years in order to maintain that  
16 revenue neutral balance that we're trying so hard  
17 to achieve.

18 CHAIRMAN CROSBY: Just at this point,  
19 it's a very commendable instinct. And it's pretty  
20 much right to make sure that it's revenue neutral.

21 But, you do have a job to do. And if  
22 we need to rethink the income and expense  
23 relationships in order to do the job that you need  
24 to do with an appropriate amount of people and so

1       forth, then we need to talk about that.

2                       It's great. Everybody loves a  
3       director who is committed to that proposition, but  
4       I don't want it to become a constraint to getting  
5       the job done. And we know the economics of this  
6       organization have been in deteriorating flux for  
7       a long time. And we if we need to figure out a way  
8       to rejigger the way revenues are generated, then  
9       we'll do that.

10                      COMMISSIONER MCHUGH: I don't see how  
11       you can -- particularly when we're in upgrade mode  
12       that kind of neutrality may be difficult to  
13       maintain.

14                      CHAIRMAN CROSBY: Right. Well, it  
15       sounds like you've already been willing to make  
16       exceptions for essentially investment purposes.  
17       But it sounds like Commissioner McHugh is saying  
18       the same thing I am.

19                      COMMISSIONER CAMERON: They did not  
20       use all of the revenue previously, which is why.

21                      CHAIRMAN CROSBY: There is some  
22       reserves right now. Isn't there some extra money  
23       sitting around?

24                      COMMISSIONER ZUNIGA: Yes, that's

1 correct.

2 CHAIRMAN CROSBY: So, that's in  
3 reserves.

4 COMMISSIONER ZUNIGA: But  
5 specifically the Director is talking about there  
6 was this mechanism -- In order to fund racing,  
7 there was a line appropriation and a trust in  
8 order to keep the cash flow. Every year, any  
9 excess revenues from the appropriation would be  
10 returned to the general fund.

11 But the expenditures and revenues that  
12 come directly for racing operations, the  
13 regulatory racing operations has been revenue  
14 neutral as Director Durenberger correctly points  
15 out. That may be not the case, especially because  
16 of upfront investments that we are making right  
17 now.

18 CHAIRMAN CROSBY: We're just giving  
19 her the tools to make those key decisions.

20 COMMISSIONER ZUNIGA: Right.

21 DR. DURENBERGER: And that's  
22 appreciated Mr. Chair and Commissioners. I last  
23 week promised you that I would have a procedural  
24 update on how to get the 2011 annual report

1 approved and what that would have to go through.

2 I was not able to get that done for this week.

3 But at any rate, the 2011 annual report  
4 of the old State Racing Commission does exist in  
5 a finalized form. We just have to figure out  
6 what's appropriate since it was a period of time  
7 when you were not seated. So, we're still working  
8 on that piece.

9 COMMISSIONER ZUNIGA: But 2012 - I'm  
10 sorry, Director, but 2012 is ready, right?

11 DR. DURENBERGER: 2012 is in process.  
12 It's almost ready. We're still having some  
13 difficulty as I reported last week with the  
14 financial reporting system getting some of those  
15 reports in the form that we need for that  
16 information. But we are getting very close.

17 Historically that's not been released  
18 until a little bit later than this time in the year  
19 as well. So, we're on schedule there.

20 Item B on my agenda is the approval of  
21 split sample laboratories.

22 CHAIRMAN CROSBY: Wait, you've also  
23 got the opening of Plainridge on Monday, Patriots'  
24 Day, right?



1 DR. DURENBERGER: Absolutely. I am  
2 definitely off my game. Opening day, live horse  
3 racing in the Commonwealth, Monday April 15 at 1:00  
4 at Plainridge at the harness track in Plainville.  
5 The forecast is excellent I'm told.

6 CHAIRMAN CROSBY: Really? Great.  
7 At least two of us I think will be there, maybe  
8 more.

9 DR. DURENBERGER: Thank you for  
10 catching my omission.

11 Split sample laboratories, so in the  
12 past the horsemen did not have a split sample  
13 provision that they could use. So, what would  
14 happen is if there was an alleged medication  
15 violation that was it. There would be a hearing  
16 and they would present testimony on their own  
17 behalf.

18 But many jurisdictions, not all, but  
19 many jurisdictions afford licensees the ability to  
20 send a referee sample out to another approved  
21 laboratory that uses the same or better testing  
22 standards to have a split sample, the same way that  
23 the Olympic sports do and many other drug testing  
24 processes do.

1           So, how this works is we sent letters  
2 out to other laboratories that met our criteria  
3 that were in our RFP. So, that was accreditation  
4 to that ISO 17025 standard that you've heard me  
5 talk about ad nauseam. And I also note that each  
6 of the labs that responded to us is also currently  
7 undergoing the accreditation process through the  
8 racing medication and testing consortium. So,  
9 these are very industry specific labs that have  
10 excellent testing capabilities.

11           We have respondents from four. Those  
12 labs are HFL Sports Science in Lexington,  
13 Kentucky, Industrial Laboratories in Wheat Ridge,  
14 Colorado, the Ohio Analytical Toxicology  
15 Laboratory in Reynoldsburg, Ohio, and University  
16 of California Davis Equine Analytical Chemistry  
17 Laboratory.

18           How this works is if there is a medication  
19 -- an alleged medication violation, the trainer is  
20 given 72 hours or three business days to indicate  
21 their interest in sending out the split sample.

22           So, the laboratories are all called and  
23 cost estimates are given. The cost of having a  
24 split sent out depends on the nature of the test.

1 So, for example, if there was a dermorphin positive  
2 -- I use dermorphin because it's been in the news  
3 lately. -- that shouldn't be there. So, that's  
4 essentially a pass/fail test, which is a different  
5 cost than say you have a medication that's  
6 permitted below a certain level where they have to  
7 quantify.

8 So, we get estimates from these four  
9 labs. We present them to the trainer and say here  
10 are your options. You can go to these labs. And  
11 this is what it's going to cost you. And there's  
12 a process by which the horseman's representative  
13 and a Commission representative and a State Police  
14 member are present at the time that that split  
15 sample is packaged and sent off to the referee lab.

16 CHAIRMAN CROSBY: Where does the  
17 sample reside while you're waiting to find out  
18 whether you need it?

19 DR. DURENBERGER: It's in our custody  
20 and it's behind two different locks. There's a  
21 hasp lock on the freezer and then an additional  
22 lock on the office.

23 CHAIRMAN CROSBY: Then when the result  
24 comes back with no positive, then we throw the

1 split sample away?

2 DR. DURENBERGER: That is correct,  
3 yes. So, my recommendation is that the Commission  
4 approve these four laboratories to provide split  
5 sample equine drug testing services for 2013.

6 COMMISSIONER CAMERON: I would just  
7 say that this is the best practice in drug testing  
8 and I certainly support this recommendation.

9 CHAIRMAN CROSBY: Yes, me too.

10 COMMISSIONER MCHUGH: Me too.

11 COMMISSIONER ZUNIGA: I think it's  
12 worth noting that some of these laboratories  
13 responded to our RFP and they are also accredited  
14 under those accreditations that you mentioned  
15 before.

16 DR. DURENBERGER: Yes.

17 CHAIRMAN CROSBY: Great. We don't  
18 need a vote, right?

19 DR. DURENBERGER: No. Approval is  
20 approval. Item C on my agenda, I apologize for the  
21 colloquialism, the word outs there, approval of  
22 2011 outs payments.

23 Outs refer to unclaimed wagers. By  
24 law in Massachusetts if you were to place a wager

1 today in April 2013 and you were to have a winning  
2 ticket, you would have until December 31, 2014 to  
3 present that to the place where you placed the bet  
4 and get a payout.

5 Then there's a 30-day period following  
6 that. So, that would be January, February, March  
7 of 2015 by which our auditors look at the outs books  
8 at the race tracks. We certify to them the amount  
9 that's due. They pay it to us and then we send it  
10 back to them either to go into the purse accounts  
11 in the case of the horse racing tracks. Or into  
12 the Racing Stabilization Fund in the case of the  
13 greyhound licenses.

14 So, you've seen these numbers before.  
15 I would say back in early March we sent these  
16 letters out to the tracks saying this was the  
17 amount that's certified and due to the  
18 Commonwealth. We have received all of these  
19 funds. Some were wired in and so those are already  
20 in the account. Others came in by check. So, we  
21 are still just waiting for a couple of the checks  
22 to show up in the MMARS system.

23 But upon your approval and upon  
24 confirmation, of course, that those submitted

1 funds are in the MMARS system, we will make payment  
2 to the licensee for their deposits.

3 COMMISSIONER MCHUGH: I had three sort  
4 of minor questions and you've already answered one  
5 of them. The amounts have been certified. In  
6 fact, we gave them the numbers; is that right?

7 DR. DURENBERGER: Correct.

8 COMMISSIONER MCHUGH: Why do we get  
9 the money and then give it back to them to put it  
10 in the various funds? Why don't we just put it in  
11 those funds?

12 DR. DURENBERGER: It's a mechanistic  
13 question to which I don't have an answer, although  
14 I'm sure there is one.

15 COMMISSIONER MCHUGH: That's the way  
16 it's always been done?

17 DR. DURENBERGER: Correct.

18 CHAIRMAN CROSBY: That's probably the  
19 answer.

20 DR. DURENBERGER: There may be more to  
21 it than that. But at any rate that is --

22 CHAIRMAN CROSBY: Do you know some  
23 reason for that?

24 MR. O'TOOLE: I always thought the

1 Commission didn't trust us. It goes to the purse  
2 account. It doesn't come to us.

3 COMMISSIONER MCHUGH: But it goes  
4 directly to the purse accounts or to the  
5 stabilization fund.

6 MR. O'TOOLE: Correct.

7 COMMISSIONER MCHUGH: Not to you.

8 DR. DURENBERGER: Right, it's a  
9 separate interest bearing account.

10 MR. O'TOOLE: It goes back to the track  
11 to handle inside of the purse accounts.

12 COMMISSIONER MCHUGH: So, you put it  
13 into an account. You don't just send it back to  
14 him.

15 DR. DURENBERGER: We do, and then we  
16 trust they put it in a separate interest bearing  
17 account.

18 COMMISSIONER MCHUGH: Okay. And the  
19 final question was is this in the long term  
20 something that is just automatic or will it these  
21 kinds of things require Commission approval or is  
22 this just part of the way that the racing process  
23 would operate?

24 DR. DURENBERGER: Both, I think. I

1 think that this is real money. And I think coming  
2 before you and saying we're about to encumber this  
3 amount of money and send it to our licensees, I  
4 think, is worthy of an explanation. But the other  
5 side of it is that is how it's always been done and  
6 we didn't see any reason not to do it this way to  
7 bring it before you.

8 COMMISSIONER ZUNIGA: If I may draw a  
9 parallel to the unclaimed property process of the  
10 state Treasurer's office. It's an unclaimed  
11 winning. There is a role of an overseer that bears  
12 drawing a parallel to.

13 COMMISSIONER MCHUGH: Fair enough.

14 CHAIRMAN CROSBY: This almost  
15 three-quarters of a million dollars total. It  
16 seems like a lot of money. Mr. O'Toole's got an  
17 answer again.

18 DR. DURENBERGER: I have an answer as  
19 well, but we'll let Mr. O'Toole speak first.

20 MR. O'TOOLE: Since simulcasting came  
21 to be, there's a lot of tracks going on at the same  
22 time. So, not a lot of sound because they  
23 interfere.

24 A lot of these outs monies it seems to



1 me comes from customers playing what are called all  
2 bets. In other words, they like two horses in a  
3 trifecta. So, they go one, two and then the rest  
4 of the field. Then the horse doesn't go to the  
5 gate. It gets a late scratch. So, that's a  
6 refund. That's \$2.00 for that one particular part  
7 of that haul.

8 The customer goes and gets a hotdog or  
9 whatever, comes back doesn't hear that the horse  
10 is scratched. The race is run. He sees if he has  
11 a winning ticket one, two, seven and cashes that.  
12 In that case, because he presents the ticket, the  
13 refund would bounce back. So, he gets paid \$30,  
14 he'd get 30 plus the two for the refund and he'd  
15 be happy.

16 But if he didn't hit, it came back one,  
17 two, seven and he didn't have the one and the two,  
18 then he'd probably throw the ticket away. And  
19 that's a \$2.00 ticket.

20 So since simulcasting came in before  
21 simulcasting it was lost tickets. You'd bet, it  
22 was a winner. And then you lost the ticket, you  
23 couldn't find the ticket. You either thrown it  
24 away inadvertently or whatever. There's a

1 mechanism there where you make a claim to the  
2 Commission. Then at the end of this term if it's  
3 never found, then that person gets it.

4 CHAIRMAN CROSBY: And nobody else  
5 claims it.

6 MR. O'TOOLE: And no one else claims  
7 it. So, there's only about a half-dozen or a dozen  
8 people at the end of the year that put in those  
9 claims.

10 COMMISSIONER STEBBINS: And those are  
11 investigated.

12 MR. O'TOOLE: Yes. They usually get  
13 paid up. So, there's not a lot of subtraction from  
14 that pool.

15 CHAIRMAN CROSBY: Is it lots of small  
16 money? Is it a lot of two dollars that people one  
17 way or another just basically don't care about?

18 MR. O'TOOLE: They don't know about it  
19 most of the time. And now with the automatic  
20 machines and the tellers give you a paper voucher,  
21 so not in cash. You get it back in the form of a  
22 voucher that you put into a machine and keep  
23 rolling. Then if you take that \$4.00 or \$5.00  
24 voucher home, stick it in your wallet, forget about

1 it. Same thing like a lottery ticket.

2 CHAIRMAN CROSBY: Your Charlie card.

3 DR. DURENBERGER: The other piece of  
4 that that I would add is we talk about uniformity  
5 in racing. So, the pari-mutuel laws are also all  
6 over the place.

7 So, you may not realize if you have a  
8 multiple horse wager or a multiple race wager in  
9 another jurisdiction. As Mr. O'Toole said, it's  
10 usually the not knowing. So, in some  
11 jurisdictions in what you may use to playing is  
12 that if a horse is a late scratch for whatever  
13 reason, doesn't make it in the gate or is a  
14 nonstarter, declared a nonstarter and there's a  
15 refund, if in your jurisdiction you get a  
16 consolation payoff, then you may be used to looking  
17 for that. But if in your jurisdiction the rules  
18 are the you would get the post-time favorite and  
19 you watch the post-time favorite get pulled off in  
20 the race, you don't even realize that in that  
21 jurisdiction you get some sort of a consolation.

22 So it's the not knowing. This is not  
23 an unusual figure.

24 CHAIRMAN CROSBY: Interesting.

1 COMMISSIONER MCHUGH: Geez, I didn't  
2 know that.

3 CHAIRMAN CROSBY: Learn something  
4 every day.

5 COMMISSIONER CAMERON: A lot of people  
6 don't check their lottery tickets.

7 COMMISSIONER ZUNIGA: And unclaimed  
8 properties is millions and millions of dollars.

9 CHAIRMAN CROSBY: Page after page  
10 after page, interesting. Okay. Is that it?

11 DR. DURENBERGER: That's all I have,  
12 Mr. Chair.

13 CHAIRMAN CROSBY: That was good, very  
14 interesting. Another 15 minutes of racing.

15 COMMISSIONER CAMERON: Thank you,  
16 Director.

17 CHAIRMAN CROSBY: Thank you. I think  
18 we are done. Any other business?

19 Nest week, we will be in Palmer with a  
20 big agenda. Do I have a motion to adjourn?

21 COMMISSIONER CAMERON: So moved.

22 CHAIRMAN CROSBY: All in favor, aye.

23 COMMISSIONER STEBBINS: Aye.

24 COMMISSIONER ZUNIGA: Aye.

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COMMISSIONER CAMERON: Aye.

COMMISSIONER MCHUGH: Aye.

CHAIRMAN CROSBY: Ayes have it.

(Meeting adjourned at 3:01 p.m.)

1 ATTACHMENTS:

- 2 1. Massachusetts Gaming Commission April 11,  
3 2013 Notice of Meeting and Agenda
- 4 2. Massachusetts Gaming Commission March 21,  
5 2013 Meeting Minutes
- 6 3. Massachusetts Gaming Commission March 25,  
7 2013 Meeting Minutes
- 8 4. Massachusetts Gaming Commission 205 CMR  
9 115.00: Phase I Suitability Determination,  
10 Standards and Procedures
- 11 5. Massachusetts Gaming Commission Small Impact  
12 Business Statement
- 13 6. Proposed Referendum Emergency Regulation
- 14 7. April 8, 2013 Letter from City of Everett  
15 Regarding Scheduling of Referendum Elections
- 16 8. Massachusetts Gaming Approved Budget FY 2013  
17 3rd quarter Budget to Actual Expenditures  
18 Report
- 19 9. April 11, 2013 Division of Racing  
20 Memorandum Regarding Recommendation  
21 Regarding Split Sample Laboratories fro 2013
- 22 10. April 11, 2013 Division of Racing  
23 Memorandum Regarding Payment of 2011  
24 Unclaimed Winning Wagers to Purse Accounts

1 ATTACHMENTS (continued):

2 11. April 11, 2013 Division of Racing  
3 Memorandum Regarding Payment of 2011  
4 Unclaimed Winning Wagers to Racing  
5 Stabilization Fund  
6

7 SPEAKERS:

8  
9 Dr. Jennifer Durenberger, Director of Racing  
10 Todd Grossman, Staff Attorney  
11 Steve O'Toole, Plainridge Racecourse  
12 Karen Wells, Director Investigations and Enforcement  
13 John Ziemba, Ombudsman  
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I, Laurie J. Jordan, an Approved Court Reporter,  
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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 April, 2013



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