

1 THE COMMONWEALTH OF MASSACHUSETTS  
2 MASSACHUSETTS GAMING COMMISSION  
3 PUBLIC MEETING #134  
4 Volume III

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6  
7 COMMISSIONERS

8 Gayle Cameron

9 James F. McHugh

10 Bruce W. Stebbins

11 Enrique Zuniga

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18  
19 September 10, 2014 10:30 a.m. - 4:31 p.m.

20 BOSTON CONVENTION AND EXHIBITION CENTER

21 415 Summer Street, Room 052B

22 Boston, Massachusetts

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

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3 COMMISSIONER MCHUGH: Good morning,  
4 everybody. I'd like to call order this third  
5 session of Gaming Commission meeting number  
6 134, a session that we have called to begin the  
7 day by talking about the claims of material  
8 error that we have received from the  
9 applicants.

10 We are going to deal with the claims  
11 of material error that deal with the Monday  
12 presentations, first of all. We got those  
13 yesterday, have considered them, have responses  
14 to them. And we'll deal with those now.

15 Then we'll take a short recess,  
16 short break to deal with the claims with  
17 respect to yesterday's proceedings. The  
18 deadline for those was not until 9:30 this  
19 morning. We're considering, our consultants  
20 are considering them now. So, we'll take a  
21 short recess so we can formulate responses and  
22 then come back and present those responses.

23 Some of the claims of error bled  
24 over into concerns about the proposed

1 conditions that individual Commissioners  
2 proposed over the last two days. We're not  
3 going to deal with them during these first two  
4 parts of the session today. We'll deal with  
5 them when we get to a discussion, a  
6 collaborative discussion about the conditions  
7 that we're going to impose or at least going to  
8 put to the applicants for their response.

9           We haven't decided that yet as I  
10 said yesterday. The conditions mentioned by  
11 individual Commissioners are just that, they  
12 are conditions mentioned by individual  
13 Commissioners. And we want to talk about them  
14 collaboratively before we decide that they  
15 should go to the applicants for a response.  
16 So, that's how we're going to handle that.

17           In the end, everybody will have a  
18 full opportunity to respond to each part of  
19 this process, but that's the order in which  
20 we're going to take it.

21           We'll respond to claims of material  
22 error, I think, in the way that we made  
23 presentations in the order that is that we made  
24 the presentations. So, I'll begin with the

1 responses. And I should say this about the  
2 form of the responses.

3 First of all, the claims will be  
4 posted on the website so that everybody can see  
5 what the letters were and what the claims of  
6 error were. Many of the claims refer to not  
7 the presentations that were made as much as  
8 they do the contents of the formal reports that  
9 each Commissioner prepared and that also are  
10 posted on the website.

11 And there are some changes that  
12 we're going to make as a result of the claims  
13 to those, some changes to report that we will  
14 make. Each of us is going to touch on those  
15 claims at a high-level and not read the  
16 technical changes that'll be made, but we'll  
17 explain what changes are going to be made.

18 And I don't think there'll be any  
19 misunderstanding or doubt about what the nature  
20 of the change is. So, we'll proceed in that  
21 fashion.

22 And then we'll make the changes and  
23 post those changes on the website where the  
24 original reports have been posted.

1           So, let me begin by dealing with the  
2 claims with respect to the presentation that I  
3 made on Monday to lead off this process,  
4 presentations -- presentation, I should say  
5 related to building and site design.

6           Mohegan Sun MA made two claims.  
7 Mohegan Sun said first of all they would like  
8 to note that as part of the clarification -- I  
9 said in my presentation that in the LEED  
10 certification process, you'll remember that  
11 that's the green energy or the sustainable  
12 energy component of the application, I said  
13 that Mohegan Sun had committed to a level of 66  
14 points. In fact, a clarification raised that  
15 number to 69 points. I missed that  
16 clarification.

17           What they did is take an  
18 aspirational credit of three points. They had  
19 three points that they thought that they could  
20 get for using energy-efficient vehicles. They  
21 thought they could get it.

22           And then on further reflection, they  
23 concluded that they could get it. So, they  
24 claim that as something they were in fact going

1 to do rather than something they were going to  
2 aspire to. That raised their total to 69  
3 points. It doesn't change in my view the  
4 overall rating.

5 But it does indicate the flexibility  
6 of that standard and the ability of developers  
7 to move one credit to another. And that's  
8 going to happen again for both developers as  
9 the plans move forward.

10 So, we acknowledge that mistake and  
11 we'll correct it, and ensure that the  
12 presentation shows that Mohegan Sun MA has a  
13 total of 69 points that they're claiming.

14 The second one is Mohegan Sun says  
15 that the reference images on pages 53 through  
16 55 of my presentation were not supplied by  
17 Mohegan Sun nor are we aware that the images  
18 are from a Mohegan Sun facility. Those were  
19 images of not what was proposed for this  
20 facility but reference images of public spaces,  
21 hotel lobby and dining spaces.

22 The images on page 53 came from the  
23 application. The answer to question 4-11, the  
24 supplement, the last slide on the supplement

1 contained those reference images. The images  
2 on page 54 came from the answer to question 4-  
3 13, the reference slides, the slides in  
4 attachment two to that answer, the last slide  
5 contains those images.

6 And the images on page 55 came from  
7 answer 4-16 to the application, again from  
8 attachment two, the last slide.

9 So, those images were in fact  
10 supplied by Mohegan Sun. If they don't have  
11 anything to do with the Mohegan Sun facility  
12 then I'd welcome an explanation as to why they  
13 are there, but that's where they came from.

14 Insofar as the Wynn claims of  
15 material error are concerned, they all have to  
16 do with the report that we prepared -- that I  
17 prepared and that is posted on the website.  
18 The first claim is that the permitting  
19 schedules conclude that Mohegan Sun will finish  
20 -- our permitting schedules will conclude that  
21 Mohegan Sun will finish earlier than Wynn based  
22 on a faster conclusion of the MEPA regulatory  
23 process by Mohegan Sun and a longer  
24 construction period by Wynn Everett. In

1 reality, Wynn Everett is further along in the  
2 MEPA process than Mohegan Sun. Yes and no is  
3 my response.

4 Wynn's response to the schedule,  
5 they are at a different stage of the schedule.  
6 They still have a number of steps to go through  
7 before the permitting is completely finished.  
8 It's my estimate based on the conversations and  
9 the advice of the consultants that the schedule  
10 that we have posted is a reasonable one.

11 It is entirely possible that an  
12 accelerated construction schedule or an  
13 accelerated permitting schedule will change  
14 that. That's an estimate at the moment. And  
15 that's the best estimate that we have.

16 The second error is that Wynn states  
17 that it's in discussion with the MBTA. I said  
18 in the report, I said that Wynn needed to get  
19 some property from the MBTA in order to effect  
20 its preferred method of entry into the site.  
21 And I noted in the presentation that they had  
22 signed an agreement now with the MBTA to begin  
23 the public bidding process that's necessary.

24 The report was prepared earlier



1 before we were informed of that. It does not  
2 say anything about the fact that there is an  
3 agreement now to put it through the public  
4 bidding process. We will change the report to  
5 reflect that because that's accurate. But in  
6 the presentation I did note that and we are  
7 aware of that. So, we'll make sure the report  
8 is congruent with what we understand.

9           The third is that Wynn commits to  
10 achieving -- our report says Wynn commits to  
11 achieving a project that would be certifiable  
12 under US -- LEED certifiable at the level of  
13 gold or better.

14           But I made a point in the  
15 presentation that there was no commitment to  
16 have it certified, unlike Mohegan Sun. And  
17 Wynn's claim is that that's an error because  
18 you can't certify a building until it's built.  
19 I get that. And if it's certified that's  
20 terrific and we hope that it will be certified.  
21 So, we look forward to that happening.

22           In the traffic and parking review  
23 area, Wynn says that an estimate -- our  
24 statement that an estimate of traffic volumes

1 that would be expected to use the busway link  
2 in Sullivan Square. You may or may not  
3 remember that we talked about the busway link.

4           Actually, Commissioner Cameron spent  
5 more time on it than I did, but the busway link  
6 is part of the solution for Sullivan Square.  
7 And said that in our report that an estimate of  
8 the traffic volumes was not provided. Wynn  
9 says that they're in consultations with Mass.  
10 Department of Transportation. We look forward  
11 to the results of those conversations.

12           There are two or three other claims  
13 of error in that regard that are really claims  
14 that we didn't acknowledge that they were  
15 discussions with Mass. Department of  
16 Transportation. We understand that those  
17 conversations are going forward, but they're  
18 conversations that are going forward. And the  
19 information contained in the report is the best  
20 information that we have at the moment.

21           In our report and in my presentation  
22 and in Commissioner Cameron's presentation, we  
23 mentioned that insofar as Sullivan Square was  
24 concerned, Wynn had proposed changes to the

1 west side of the square not to the east side.  
2 And Wynn says that it is not planning -- And  
3 the east side drains Main Street, Rutherford  
4 Avenue and Medford Street coming out of  
5 Charlestown.

6 And Wynn says that it is not doing  
7 that because it is not adding any traffic to  
8 Main Street or Rutherford Avenue or Medford.  
9 And therefore it shouldn't be responsible for  
10 making any changes.

11 In my view, if you put more traffic  
12 into the circle from one place, you're going to  
13 adversely affect traffic in another place. So,  
14 that needs to be considered, I submit, in an  
15 overall approach to the Sullivan Square  
16 solution. I do not believe that that's -- the  
17 way we presented that is a material error.

18 And finally, we said in the report  
19 that Wynn's current mitigation plans did not  
20 include any discussion of a collaborative  
21 process between the applicant, the city of  
22 Boston and various other interested parties  
23 that would need to occur in order to move the  
24 process forward in determining a preferred

1 long-term solution and design and construction  
2 of that preferred solution.

3           Wynn's claim is that that is a  
4 material error because they have committed in  
5 their best and final offer to providing an  
6 amount of money that can be used by anybody who  
7 wants to use it -- by the city to implement  
8 whatever solution the city wants to implement.  
9 I said in the presentation the other day and I  
10 reiterate now that a simple concrete and  
11 asphalt fix is not necessarily going to solve  
12 this problem.

13           There are permitting issues that  
14 have to be considered. There are in the course  
15 of the permitting issues, traffic reduction  
16 issues that have to be considered. This has to  
17 be a collaborative process.

18           The Commission cannot impose a  
19 number. The Commission cannot impose a  
20 configuration to traffic lanes, a striping  
21 plan, a stoplight signaling plan. Wynn can't  
22 do it by itself. I mentioned that yesterday.  
23 The Commission can't do by itself. The  
24 political leadership and the permitting

1 authorities, which are part of the political  
2 establishment, have to be involved. And that's  
3 what that part of the report was aimed at.

4 Without that kind of collaborative  
5 involvement, no solution that anybody picks out  
6 and says is the desirable solution can succeed.  
7 So, that's the point that that part of the  
8 report was designed to make. That's the point  
9 that I reiterate today.

10 And that concludes my piece of  
11 dealing with the claims of material error for  
12 Monday. There are some from Tuesday and we'll  
13 get to those later. All right. The next  
14 presenter was Commissioner Zuniga.

15 COMMISSIONER ZUNIGA: Thank you. I  
16 am going to ask Rob to come up front in case  
17 there's questions from the Commissioners to be  
18 available. I will deal with the claims of  
19 material errors myself, but in case we have  
20 questions or need to refer to Rob he'll be  
21 available.

22 Melissa do you have the finance  
23 presentation available? If you don't mind, I'm  
24 going to refer to a couple of slides as well.

1 It may be helpful for the audience to see which  
2 slide I am talking about.

3 So, we received a letter from  
4 Mohegan Sun stating that there are a number of  
5 material errors and omissions regarding the  
6 finance presentation. The letter is in our  
7 view can be organized by topics which is how I  
8 am going to talk about them, not necessarily  
9 refer to all of the letter.

10 First, Mohegan Sun asserts there's  
11 an error in the depiction of the Mohegan Sun  
12 funding plan on page 14, Melissa, please. And  
13 this funding plan depiction is inaccurate based  
14 on three factual inaccuracies. So, I'm going  
15 to take each one of them at a time.

16 They said the first inaccuracy being  
17 that 82.9 million figure that appears on this  
18 chart of senior debt payment would likely  
19 result in a more modest amount of 30 million.

20 COMMISSIONER MCHUGH: We can wait  
21 for a second. Not much you can do with these  
22 machines. You can't talk to them. There we  
23 go.

24 COMMISSIONER ZUNIGA: So, to recap a

1 little bit, the assertion of an error relative  
2 to the funding plan. The first part of that  
3 that the \$82.9 million senior debt payment that  
4 we calculated would likely result in their view  
5 on a more modest amount of 30 million. We  
6 don't believe this is a matter of a material  
7 error. We believe this is a difference of  
8 interpretation.

9           The purpose of this chart and this  
10 funding plan was simply to illustrate which  
11 entities would ultimately participate in  
12 distributions in either a base case scenario or  
13 a worst-case scenario.

14           In our presentation we contemplated  
15 that the third-party debt would be retired in  
16 an equal payment basis over the 15-year period,  
17 which is the term of the license.

18           And that footnote that I am sure  
19 many of you cannot see states just that. We've  
20 assumed that the \$732 million senior debt with  
21 a 7.5 percent interest rate over that period  
22 would come up to that annual payment.

23           The written report, however,  
24 identifies on page 63, and we don't have to

1 necessarily flip through all of that in the  
2 presentation that the applicant has stated that  
3 approximately 528 million would be outstanding  
4 at the end of the license term. Because this  
5 is highly technical, I can take questions from  
6 each one of these or from Commissioners if you  
7 think or just keep going.

8           The second assertion of a material  
9 error that Mohegan lets us know relative to the  
10 funding plan says that the Suffolk stakeholder  
11 income in the same chart and the ground lease  
12 payment do not match.

13           This is in fact an error. The \$39.9  
14 million at the bottom that corresponds to the  
15 figure in the top will be corrected. And  
16 indeed, Commissioner McHugh actually pointed  
17 that out during the presentation.

18           The third assertion about a material  
19 error on the funding plan reads that Brigade or  
20 we assume that Brigade, Mohegan and Sterling  
21 Suffolk had decided to split the stakeholder  
22 income into thirds under the base case.

23           We don't believe this to be a  
24 material error. The Commission and myself



1 stated that the deal was structured so that the  
2 stakeholder income be split three ways was  
3 based on the base case scenario. And this is  
4 our analysis of those figures.

5 Mohegan has stated that this is just  
6 a coincidence, which may be the case. This is  
7 in no way affecting my rating of the Mohegan  
8 Sun ability to obtain project capital.

9 COMMISSIONER MCHUGH: I did want to  
10 comment on that one. I heard that when the  
11 presentation was made. And that is, and I  
12 think you've clarified it now, that's an  
13 inference you drew from the numbers that appear  
14 at the bottom of that chart; is that right?

15 COMMISSIONER ZUNIGA: That's right.

16 COMMISSIONER MCHUGH: And that  
17 inference affected or did not affect the  
18 rating?

19 COMMISSIONER ZUNIGA: It does not.  
20 The purpose of this chart is to illustrate what  
21 happens under two scenarios that the  
22 distributions to the parties are quite  
23 different in the event of revenues not  
24 materializing the way they project them.

1                   COMMISSIONER MCHUGH: Right. So,  
2 whether or not they agreed to a three-way split  
3 or whether or not is a coincidence as they  
4 claim is really immaterial to the analytical  
5 outcome.

6                   COMMISSIONER ZUNIGA: That's right.

7                   COMMISSIONER MCHUGH: That's what I  
8 thought. Thank you.

9                   COMMISSIONER ZUNIGA: Okay. The  
10 second topic in the letter from Mohegan Sun  
11 refers to a notion that Mohegan Sun only has  
12 \$45 million to initiate development. And they  
13 assert that this notion is not true.

14                   We believe this is not a material  
15 error. We noted in my presentation that \$45  
16 million -- and the report that 45 million of  
17 stated equity was available to initiate  
18 construction not financing.

19                   It was never stated that 45 million  
20 altogether would be available to initiate  
21 construction. I could leave it at that. This  
22 dovetails a little bit into that notion of  
23 conditions but I could take questions if you  
24 think you want to discuss.

1                   COMMISSIONER MCHUGH: Were you going  
2 to discuss anything more about that claim,  
3 Commissioner?

4                   COMMISSIONER ZUNIGA: I can if you  
5 want me to.

6                   COMMISSIONER MCHUGH: No, no, but if  
7 you were I had another observation. Because  
8 the letter goes on to talk about a way  
9 typically things that are accounted for and the  
10 like. And it seemed to me that we are talking  
11 about what was available cash now not how  
12 things are accounted for in an overall scheme.  
13 We're talking about how much equity money is  
14 left now to participate in further  
15 expenditures.

16                   COMMISSIONER ZUNIGA: That's right.  
17 Yes.

18                   COMMISSIONER MCHUGH: Rather than  
19 how it's all accounted for at the end.

20                   COMMISSIONER ZUNIGA: Yes. There's  
21 a third topic relative to -- in Mohegan's  
22 letter, they assert there is an error on the  
23 Commission's presentation having incorrectly  
24 characterized that the preferred equity

1 interest in short-term debt.

2 As I stated in the presentation  
3 certainly during the presentation, we don't  
4 believe this is a material error. This is a  
5 matter of interpretation. What I stated is  
6 that I believe that this type of interest  
7 behaves more like a debt.

8 It may be -- The nomenclature may be  
9 totally fine, preferred equity or preferred  
10 interest. In my opinion and observation is  
11 that the stipulated 15 percent annual return  
12 makes it behave a lot more like debt.

13 COMMISSIONER MCHUGH: So, it's  
14 subordinated. It comes right above the  
15 ordinary equity.

16 COMMISSIONER ZUNIGA: That's right.

17 COMMISSIONER MCHUGH: And it pays  
18 interest, so it has some characteristics of  
19 both.

20 COMMISSIONER ZUNIGA: Both, right.  
21 A fourth topic here is Mohegan asserts there's  
22 an error that disregard of Brigade's financial  
23 strength in analyzing the current financial  
24 strength of the applicant was not considered.

1 They assert that their financial strength was  
2 disregarded.

3 We don't believe this to be a  
4 material error. Do you have page 17? I think  
5 that's on the appendices and you may not have  
6 it. But page 17 of the finance report states  
7 that Brigade's strength is clearly  
8 demonstrated.

9 We did consider the financial  
10 strength of both Brigade and Mohegan. Page 17,  
11 Melissa if you could go to that. It's in the  
12 presentation. Now I remembered. It was a  
13 chart with the public companies. That's not  
14 page 17. It's page 19. I'm sorry. Page 19,  
15 the title of the page is a comparison of the  
16 publicly traded gaming companies. We were able  
17 to put Mohegan Sun there because they do borrow  
18 from the capital markets and all of the ratios  
19 are evaluated.

20 We of course cannot have an equal  
21 comparison of Brigade's financials. This is  
22 perhaps a little similar to what we did when we  
23 evaluated Cordish, a private company against  
24 Penn and Raynham.

1 Penn, there was a lot of  
2 information. In fact, it is over there. We  
3 can ascertain ratios to get to some of the  
4 financial strength. In our case, we have to  
5 glean information from other sources not this  
6 source exclusively possibly.

7 In my view this would not change the  
8 rating. And that's my response.

9 Going onto the next topic of the  
10 letter, Mohegan Sun asserts that there is an  
11 error when characterizing or accounting for the  
12 105 million in predevelopment cost or spent and  
13 the difference between characterizing some of  
14 that as eligible or ineligible. In our  
15 presentation, we characterized all of that as  
16 ineligible.

17 We determined -- Our belief is that  
18 this is not a material error. This is a matter  
19 of interpretation. Our determination of all  
20 eligible costs, and Melissa perhaps you could  
21 go to that slide, 27 or 26. Our determination  
22 of eligible costs was based on our  
23 understanding of all of the financials  
24 provided. And there were different formats

1 initially.

2 We asked the applicants to  
3 characterize and go back and group certain  
4 costs differently. There was a little bit of  
5 back-and-forth. With that said, even if the 59  
6 million that Mohegan asserts should be counted  
7 as eligible costs that they have spent to date,  
8 this would in my mind not change the rating.  
9 The rating I was analyzing in terms of and  
10 comparing to the other applicant. Any  
11 questions on that so far?

12 COMMISSIONER MCHUGH: No. So, if  
13 it's an interpretive matter then you've  
14 prepared to give Mohegan Sun the benefit of the  
15 doubt and accept their interpretation for  
16 purposes of proceeding further.

17 COMMISSIONER ZUNIGA: That's right.  
18 Number six, Mohegan Sun asserts there's an  
19 error relative to the opening date on page  
20 nine. There's a timeline for construction. We  
21 have a slide.

22 MR. SCARPELLI: Page 30.

23 COMMISSIONER ZUNIGA: Yes. The  
24 chart there reads that the Mohegan Sun opening

1 date is listed as not provided and it has been  
2 identified as September 2017. We do not  
3 believe this to be a material error but the  
4 date will be remedied and we will correct it.

5 COMMISSIONER MCHUGH: We had a date  
6 in the building and site design chart. It's  
7 the same date obviously. We'll use that.

8 COMMISSIONER ZUNIGA: Similarly, I  
9 don't believe this would have an impact on our  
10 interpretations of the factors that matter to  
11 the rating.

12 COMMISSIONER MCHUGH: The 30 months  
13 on that slide that's still up there that  
14 doesn't change. That is what we used for  
15 building and site design well.

16 COMMISSIONER ZUNIGA: That's right.  
17 And from a finance perspective when it came to  
18 this rating, and I'm pretty sure I discussed  
19 this, these are highly complex projects either  
20 way. The construction schedule is long and has  
21 a lot of moving pieces. And from a finance  
22 perspective, they both appear to me to be very  
23 comparable.

24 Next Mohegan asserts there's an



1 error relative to the market assessment. The  
2 market assessment section fails to consider the  
3 rest of Mohegan's, MSM's RFA-2 responses and  
4 the clarification responses MSM has already  
5 provided. They state that it is a material  
6 error for the Commission and our consultants  
7 HLT to rely almost exclusively on the PKF  
8 market study that they provided as statement of  
9 future marketing intentions.

10 We don't believe this to be a  
11 material error. The applicant has clearly  
12 stated that revenue projections were derived  
13 from the PKF market study. And we took those  
14 assertions to be the case. I can take  
15 questions on that if you believe it merits more  
16 discussion.

17 COMMISSIONER MCHUGH: No. I'm not  
18 sure it does. If I understand you correctly,  
19 they gave us a study. We used that study as  
20 the test for the projections that you did or  
21 you used it. And that's the basis for the --

22 COMMISSIONER ZUNIGA: Yes. They  
23 provided the study to derive the projections.  
24 And we've also used that study to derive their

1 marketing intentions.

2 COMMISSIONER MCHUGH: But the study  
3 was dated December of last year, right? That  
4 was done in December of last year before the  
5 application was filed.

6 COMMISSIONER ZUNIGA: Correct.

7 COMMISSIONER MCHUGH: And that's the  
8 study that they provided. That's the study  
9 that you used.

10 COMMISSIONER ZUNIGA: It's their own  
11 study, right. The basis for the market  
12 assessment section from our perspective is HLT  
13 has done a framework to compare those  
14 projections and marketing plans from all  
15 applicants. But that's not what is being  
16 disputed here.

17 COMMISSIONER MCHUGH: Right.

18 COMMISSIONER CAMERON: But the other  
19 information was considered.

20 COMMISSIONER ZUNIGA: Absolutely,  
21 yes. Actually, I should mention Mohegan Sun  
22 provided a summary on August 21, a summary,  
23 they sent us letters relative to each of the  
24 sections. In that letter, they assert that the

1 PKF consulting report is comprehensive and  
2 conservative.

3 It projects primary and secondary  
4 zones that are within reasonable driving  
5 distances. The report acknowledges that  
6 Mohegan Sun could generate revenue from beyond  
7 its market area, but conservatively  
8 acknowledges that these visitors will lead to  
9 relatively modest additional revenue for the  
10 casino.

11 MSM has provided plans to market to  
12 the geographic area that PKF Consulting has  
13 identified as a primary and secondary market  
14 area.

15 COMMISSIONER MCHUGH: So, that was  
16 the letter we got in late August that referred  
17 to the December study.

18 COMMISSIONER ZUNIGA: Correct.  
19 Number eight, MSM asserts there's an error in  
20 the sense that MSM will not be able to assert  
21 full control over third-party tenants. We  
22 don't believe this to be a matter of a material  
23 error. We do believe it's a matter of  
24 interpretation.

1                   When we discussed the notion of  
2 flexibility and control through a couple of the  
3 slides, our intention was not to imply that  
4 Mohegan's leasing to third-party tenants is  
5 outside of industry norms. Our assertion was  
6 that leasing 100 percent of food and beverage  
7 outlets on the property comes with more risk  
8 and less control than owning some of the  
9 operations of food and beverage.

10                   We do appreciate that the terms and  
11 conditions of the retail, dining and  
12 entertainment lease with New England  
13 Development and Finard includes control of the  
14 product. It will include minimum hours of  
15 operations, employee relations, hospitality  
16 standards, compliance with the Mohegan Sun  
17 Momentum Points program.

18                   That said, these items will  
19 ultimately have to be agreed to by the third-  
20 party tenants that New England Development and  
21 Finard enters and subleases to.

22                   The concern is that having to  
23 enforce these terms and conditions is more  
24 onerous than having direct control. Any

1 questions on that?

2           There's four other topics, four  
3 other assertions that all relate to the  
4 marketing restriction. I'll read the topics  
5 that we glean from the letter, but I will  
6 reserve some of that discussion for later on  
7 this afternoon. Let me just mention what  
8 Mohegan asserts again, understanding and  
9 gleaning the topics that they've articulated in  
10 the letter.

11           Mohegan Sun asserts there's an error  
12 in the sense that Mohegan Sun does not have  
13 access to the entire Mohegan Sun database. I  
14 will mention this, the reports are in our  
15 opinion not incorrect. We did incorrectly  
16 orally stated that the marketing restriction  
17 was limited to the 30-minute drive. And we  
18 know that to be in general limited to the 60-  
19 minute drive from the facility.

20           COMMISSIONER MCHUGH: So, the report  
21 is accurate but the presentation --

22           COMMISSIONER ZUNIGA: The oral  
23 presentation, when you asked the question,  
24 Commissioner, on a map that had a green 30-

1 minute drive and a lighter orange, I stated  
2 incorrectly that the seed database was limited  
3 to that area. It is not. And I understand  
4 that.

5 COMMISSIONER MCHUGH: I probably  
6 compounded the error by using for a point of  
7 discussion roughly inside the 495 belt.

8 COMMISSIONER ZUNIGA: That's right.

9 COMMISSIONER MCHUGH: I understood  
10 that it goes farther to the South, farther to  
11 the North and slightly farther West. I was  
12 using that simply as a talking point. The  
13 chart is part of the presentation, it's part of  
14 the materials, it's part of the report. The  
15 zip codes, precise zip codes are all part of  
16 the application.

17 So, I was using that simply as a  
18 method of facilitating the discussion.

19 COMMISSIONER ZUNIGA: Right.  
20 Actually, to further complicate the depiction,  
21 the marketing restriction applies to zip codes,  
22 and what we represented in the PowerPoint are  
23 counties and cities and towns. So, they don't  
24 perfectly align.

1                   COMMISSIONER CAMERON: So, the  
2 analysis was done on the proper numbers.

3                   COMMISSIONER ZUNIGA: Yes. But to  
4 correct the record on the oral statements that  
5 we made, the Commission appreciates that  
6 Mohegan Sun MA seed database will include all  
7 existing customers not just those in the  
8 defined market area.

9                   COMMISSIONER MCHUGH: So, that is a  
10 change.

11                   COMMISSIONER ZUNIGA: That is a  
12 change, yes.

13                   COMMISSIONER MCHUGH: So, the seed  
14 customers are the entire database, not just  
15 those --

16                   COMMISSIONER ZUNIGA: -- in the  
17 defined market area.

18                   COMMISSIONER MCHUGH: Yes. All  
19 right. So, we understand that change and we'll  
20 make it.

21                   COMMISSIONER ZUNIGA: Any oral  
22 references on Monday will be corrected or were  
23 incorrect relative to that effect.

24                   Number 10 Mohegan Sun asserts there

1 is an error. Mohegan Sun shares data for  
2 customers outside of the specified zone. These  
3 I believe we already addressed.

4 I already talked a little bit about  
5 their next assertion that relative to this  
6 marketing restriction that it applies to the  
7 30-minute drive time and that's an error. We  
8 agreed that the oral statement will be  
9 remedied. It applies as already discussed  
10 here.

11 Lastly, Mohegan Sun states there's  
12 an error in that Brigade's interest is not  
13 aligned to MGC, when we depicted some of that  
14 in one of the slides, I forget exactly which  
15 one. We don't believe this to be a material  
16 error. We believe it's a matter of  
17 interpretation.

18 Their assertion is that Brigade's  
19 interests and those of the Mohegan Sun -- I'm  
20 sorry those of the Commission are perfectly  
21 aligned. And as I stated, this dovetails a  
22 little into the condition that we had. So, I  
23 could leave it at that at this point.

24 COMMISSIONER MCHUGH: And discuss it



1 further when we come to the desirability and  
2 efficacy of the conditions.

3 COMMISSIONER ZUNIGA: Right. Any  
4 questions? Rob anything you need to further  
5 clarify?

6 MR. SCARPELLI: No.

7 COMMISSIONER ZUNIGA: Thank you.

8 COMMISSIONER MCHUGH: All right.  
9 Commissioner do you have any that you are  
10 prepared to deal with now.

11 COMMISSIONER CAMERON: No, I'll be  
12 prepared after a break.

13 COMMISSIONER MCHUGH: So, claims  
14 with respect to Commissioner Cameron's  
15 presentation and Commissioner Stebbins'  
16 presentation came in at 9:30 this morning.  
17 That was the deadline we set. So, they were  
18 timely.

19 But we need a few minutes more to  
20 consider them. So, I'm going to have a break  
21 now and we'll resume -- It's 11:30 now. I  
22 think we will resume at 12:30. I think the  
23 response to those probably won't take as long.  
24 So, we'll resume at 12:30, deal with that. And

1 then probably break for lunch and begin the  
2 condition discussion right after lunch. So,  
3 that'll be the schedule. That will be the  
4 schedule we'll --

5 COMMISSIONER CAMERON: Do we need an  
6 hour?

7 COMMISSIONER MCHUGH: We do need  
8 another hour for that. So, that'll be the  
9 schedule that we'll plan to follow.

10 Janice, can we take a lunch break  
11 now and come back? This is a fluid process.  
12 We have not stage-managed all of this.

13 COMMISSIONER CAMERON: This will  
14 become a working lunch, Commissioner.

15 COMMISSIONER MCHUGH: Let's just see  
16 if we can do that. That probably makes more  
17 sense to take a lunch break now and finish the  
18 work and then come back and proceed further, if  
19 we can.

20 COMMISSIONER ZUNIGA: We could  
21 always just resume at one say, regardless of  
22 how much we work or eat.

23 COMMISSIONER MCHUGH: How much we  
24 eat? We could do that. Why don't we do that.

1 That's a great solution. That's why we have  
2 four of us.

3 Let's take a recess now and resume  
4 at 1:00.

5  
6 (A recess was taken)

7  
8 COMMISSIONER MCHUGH: We're prepared  
9 to resume with the third session of the 134th  
10 meeting. As I said before we took the last  
11 break, we are prepared now to continue with  
12 responses to the claims of material error.  
13 We'll continue in the same order that we  
14 proceeded before. So, Commissioner Cameron.

15 COMMISSIONER CAMERON: Good  
16 afternoon, I'm going to -- I'll go in the  
17 order. Mohegan Sun had a one line comment  
18 actually which is that they're noting the exact  
19 regulation 205 CMR 119.03 and they provide that  
20 the Commission must evaluate the quality of the  
21 host community agreement, surrounding community  
22 agreement and live venue agreements in its  
23 analysis.

24 My response is this is not a

1 material error. The quality of the individual  
2 host, surrounding and ILEV agreements was  
3 evaluated. Host community agreements were both  
4 deemed very good. And surrounding community  
5 agreements and ILEV agreements were deemed  
6 sufficient for each applicant.

7 The number of surrounding community  
8 agreements and the specific content of  
9 individual agreements were not compared or  
10 rated as impacts and mitigation needs vary from  
11 municipality to municipality.

12 This is consistent with the approach  
13 we took for Category 2 and Region 1 -- I mean  
14 Category 1 Region B applicants. So, we did  
15 take a look. We evaluated. We chose not to  
16 rate each one agreement versus another due to  
17 the individual nature of those municipalities  
18 and what their needs are different from  
19 community to community. That was the extent  
20 from Mohegan Sun.

21 With Wynn, they sent a letter which  
22 had a number of issues. But the one that was  
23 listed as an error was in the mitigation  
24 presentation, and I'm taking this from the

1 letter itself, provides that approximately 73  
2 percent of our traffic travels through Sullivan  
3 Square. This incorrect. The 73 percent figure  
4 represents the patrons' traffic only. When one  
5 looks at the blended rate of patrons plus  
6 employee traffic, the actual portion of the  
7 traffic entering through Sullivan Square is 58  
8 percent. The existing traffic is 63 percent  
9 and is after the peak period.

10 My response, certainly we understand  
11 the difference, the distinction between the  
12 patron and employee traffic. The numbers that  
13 were used repeatedly yesterday were two-thirds  
14 of casino traffic through Sullivan Square  
15 during the peak Friday period. That's taken  
16 directly from the data in the Wynn FEIR. This  
17 issue does not change our evaluation related to  
18 Sullivan Square.

19 There was some other information,  
20 additional information regarding the mitigation  
21 plans based on ongoing discussions with  
22 MassDOT. We will review this material in  
23 detail when we have all of the information  
24 regarding the refined plans as we expect to be

1 provided in the supplemental final  
2 environmental impact report.

3           So, we understand there are ongoing  
4 discussions, information. We're aware of that.  
5 We're glad progress is being made and we look  
6 forward to reviewing that when the final, when  
7 the supplemental final is out there, is  
8 published. So, those are my two responses to  
9 the issues that were brought from the  
10 mitigation presentation. Any questions?

11           COMMISSIONER MCHUGH: I understood  
12 that we used the percentage figures of traffic,  
13 patron traffic at the peak hours as are  
14 contained in the FEIR materials and I think  
15 contained in one of the Wynn presentations as a  
16 mechanism for estimating the actual number of  
17 cars, which then was used to look at the impact  
18 of patron traffic on the existing traffic  
19 picture. Is that essentially what we did?

20           COMMISSIONER CAMERON: Yes. Yes,  
21 and two-thirds, we actually recalculated, is a  
22 very accurate number to use. And that's the  
23 number we used for our evaluation.

24           COMMISSIONER MCHUGH: So, we were

1 more interested in number of cars at peak hour  
2 than we were with anything else. That's what  
3 we were trying to figure out, at least, on the  
4 site design piece of it we were. And I think  
5 we worked in harmony on that.

6 COMMISSIONER CAMERON: We did. We  
7 shared luckily and fortunately, we shared the  
8 same experts. And we each used that two-  
9 thirds, which is accurate.

10 COMMISSIONER MCHUGH: Good. Let's  
11 turn then to Commissioner Stebbins and the  
12 claims with respect to economic development.

13 COMMISSIONER STEBBINS: First, I'll  
14 go through the assertions of material errors by  
15 Mohegan Sun MA with respect to economic  
16 development.

17 The first identified error is a  
18 material error for the evaluators to repeatedly  
19 assert that MSM proposes to narrow regional  
20 marketing model when MSM has provided  
21 significant evidence that it intends to market  
22 to an international and domestic audience  
23 outside of Massachusetts.

24 The MGC acknowledges the

1 international market awareness activities  
2 discussed by Mohegan Sun MA within their RFA-2  
3 application. And in response to questions at  
4 the host community hearings including a  
5 potential partnership with a track to Asia and  
6 plans to open international marketing offices.

7 Again, however while we were  
8 reviewing the RFA-2 application, there were  
9 references to these international marketing  
10 activities. And MSM has consistently referred  
11 to the PKF marketing study that we discussed  
12 this morning as the basis for their revenue and  
13 visitation projections.

14 The review of the economic  
15 development components of the application are  
16 linked to the financial components as set out  
17 in section two. And MGC was given no reason to  
18 assume that projected origin of customers  
19 attending the MSM project would differ in any  
20 way from what the PKF study had projected.

21 So, did not feel there was a  
22 material error with respect to that first  
23 identified error from Mohegan Sun MA.

24 The next one, it is a material error



1 not to evaluate the merits of MSM's proposal  
2 for a balanced approach that acknowledges the  
3 importance of international high rollers but  
4 does not over rely on this riskier market  
5 segment.

6           Again, did not feel that this was --  
7 there was no material error. MSM did detail or  
8 reference a balanced approach in describing its  
9 source markets. Again, the PKF Consulting  
10 study is noted in response to identified error  
11 above projecting 95 percent plus of visitation  
12 and revenue from within an approximately 60-  
13 minute drive of the casino.

14           No additional detail was provided in  
15 the PKF Consulting study, the marketing plan or  
16 the financial projections regarding a balanced  
17 approach to the market.

18           The next identified error was  
19 because the Commission evaluators concluded  
20 that both applicants lacked specificity in  
21 their applications regarding international and  
22 domestic marketing plans, MSM will propose a  
23 Commission approval of a MSM marketing plan be  
24 a condition of its license. This isn't really

1 a material error. And again, the MGC is going  
2 to consider license conditions as part of its  
3 deliberations.

4           Next identified error was the  
5 Commission's assumption regarding visitor  
6 spending at local businesses are materially  
7 erroneous. Again, not finding a material  
8 error, but the reference to visitor  
9 expenditures by casino patrons at MSM or Wynn  
10 was derived based on expected geographic  
11 sources of visitation and the distance  
12 traveled. The assumption includes not only  
13 those staying onsite at either MSM or Wynn  
14 casino, but also those who choose to stay  
15 elsewhere.

16           With respect to MSM's reward/loyalty  
17 program, the Momentum Reward Loyalty program,  
18 we did discuss the uniqueness and creativity.  
19 They were acknowledged as part of the  
20 presentation as part of their outreach to  
21 potential businesses.

22           However, again we highlighted some  
23 repeated requests for clarification, our  
24 request for clarification questions to Mohegan

1 Sun MA to provide a meaningful estimate of the  
2 dollar value spent at the local businesses as  
3 opposed to being outside on-site at the Mohegan  
4 Sun MA casino was also noted.

5 The next, Melissa if you could pull  
6 up slide 17, identified error MSM will market  
7 to New York, Rhode Island and Connecticut and  
8 the evaluators conclusion otherwise is a  
9 material error.

10 I do acknowledge an error in the  
11 presentation. The identified error refers in  
12 part to slide 17 of the economic development  
13 presentation. No mention of New York,  
14 Connecticut or Rhode Island marketing strategy.  
15 MGC does acknowledge that MSM will market to  
16 New York, Rhode Island and Connecticut and that  
17 there's no restriction preventing MSM from  
18 doing so.

19 The language on slide 17 should read  
20 limited mention of New York, Connecticut and  
21 Rhode Island in marketing strategy with a small  
22 percentage of casino visits projected from a  
23 visitor market.

24 The MGC acknowledged on page 53 of

1 the economic development report that again MSM  
2 will send out mailers 60 times annually and  
3 considers New York a long-term market for the  
4 facility. However, the market study again, and  
5 therefore MSM did not recognize these markets  
6 in the primary or secondary zones in visitor  
7 projections.

8 The use of the PKF market study for  
9 revenue visitor projections has been previously  
10 discussed. So, it's an acknowledgment of an  
11 error in the presentation in that bottom  
12 section.

13 Next identified error, MSM has  
14 provided significant detail about its plans for  
15 use of organized labor in its operations. I do  
16 acknowledge again an error in the presentation.

17 The RFA-2 application review  
18 acknowledges labor agreements for permanent  
19 nonsupervisory employees. This was considered  
20 as part of the evaluation process. Both  
21 applicants achieved a rating of very good on  
22 this question grouping. The presentation did  
23 include an erroneous statement with respect  
24 providing no detail of operations.

1           Next an identified error, the  
2 consultant should explain the verification  
3 efforts, if any, they have taken related to our  
4 competitor's aggressive assertions. Again, I  
5 do not feel this is a material error. The  
6 MGC's approach to review of both applications  
7 has been undertaken in a consistent manner.

8           Next identified error, MSM is not  
9 relying on its general contractor to meet its  
10 construction diversity goals. Really there's  
11 no material error, more a matter of  
12 interpretation.

13           The MGC noted that MSM has not  
14 entered into a contract with a general  
15 contractor. And that a general contractor will  
16 be at least partially responsible for meeting  
17 diversity goals. Any representation made  
18 during the presentation to the contrary was an  
19 error.

20           The licensing condition address the  
21 interest of MGC that we discussed addressed the  
22 interest of the MGC and making the general  
23 contractor aware of diversity requirements.

24           Finally, an identified error, the

1 presentation failed to recognize that MSMs  
2 commitments ILEVs to provide specific economic  
3 benefits and drive concertgoers to Boston while  
4 our competitor's commitments relate to a single  
5 sponsorship of a toy drive and a commitment to  
6 be a commercial sponsor to do Christmas  
7 concerts.

8           Again, I do not feel this was a  
9 material error. The details surrounding the  
10 various agreements, plans and initiatives of  
11 both applicants we felt were fairly presented.

12           Those were the challenges of  
13 material errors from Mohegan Sun MA. There  
14 were no assertions of material errors from Wynn  
15 MA relative to the economic development  
16 section.

17           COMMISSIONER MCHUGH: The PKF study  
18 of December 2013, were we ever notified that  
19 that was invalid, out of date, no longer to be  
20 relied on?

21           COMMISSIONER ZUNIGA: No.

22           COMMISSIONER STEBBINS: No. And as  
23 we heard this morning, the PKF study was  
24 recognized as most recently as the end of

1 August as albeit a conservative study but one  
2 that the applicant said was still being  
3 utilized.

4 COMMISSIONER MCHUGH: You said in a  
5 couple of occasions in there, you made  
6 reference to the MGC's conclusions. I take it  
7 you were speaking about MGC Commissioner  
8 Stebbins.

9 COMMISSIONER STEBBINS: That would  
10 be correct.

11 COMMISSIONER MCHUGH: I say that not  
12 as simply a point of order but these are the  
13 reports of the individual Commissioners. The  
14 deliberations that will follow maybe -- may  
15 contain instances in which we query each other  
16 about conclusions that have been reached and  
17 about the weight we add to them and about the  
18 methodology and about our thinking that went  
19 into them.

20 So, this is still a work in  
21 progress, and a work in progress that is going  
22 to be the basis for our substantive discussion  
23 when we get to the end. So, I just wanted that  
24 clarified.

1 All right. Anything further any  
2 Commissioner wishes to raise before we move  
3 into the next phase? And we received no  
4 assertions of material error with respect to  
5 the overview presentation; is that right?

6 I'm about to move into the next  
7 stage of the proceedings which is to consider  
8 the conditions. I'm sorry. Did you have  
9 something you wanted to say?

10 COMMISSIONER ZUNIGA: I was going to  
11 bring up something relative to the PKF market  
12 study that was again referenced in economic  
13 development, but I know was referenced prior to  
14 the finance section.

15 COMMISSIONER MCHUGH: Okay, if you  
16 want to do it briefly. I've got a request for  
17 a five-minute recess, which I'm going to allow  
18 in just a second. But why don't you go ahead  
19 and finish that thought.

20 COMMISSIONER ZUNIGA: In its  
21 application or in the proposal, Mohegan Sun MA  
22 attached and referred to the PKF market study  
23 in answers to six different questions in the  
24 RFA application including their response to



1 2-36, marketing to out of state visitors and  
2 use of junkets, and question 2-37 marketing to  
3 in-state visitors. I just wanted to read that  
4 into the record.

5 COMMISSIONER MCHUGH: Okay. As I  
6 said we're going to talk more about that, more  
7 about all features of both our work and the  
8 information we've gotten as a result of these  
9 claims of material error. And all of that will  
10 be an essential feature of the deliberations  
11 that we'll get into once we start that process,  
12 which I am very eager, as I know everybody else  
13 is to start.

14 We have a request for a five-minute  
15 recess. Okay, five minutes.

16  
17 (A recess was taken)

18  
19 COMMISSIONER MCHUGH: We are ready  
20 to proceed to the next stage. The purpose here  
21 now, as I explained the other day, is to take a  
22 look at the proposed conditions.

23 The proposed conditions are  
24 conditions thus far proposed by a single

1 Commissioner. We need to talk about them. We  
2 need to decide which of them we are going to  
3 submit to the applicants for their response.

4           Either they accept them or they  
5 don't accept them or they don't accept them  
6 exactly and have something better that they  
7 think will work. And then we'll get those  
8 responses and iron all of that out before we  
9 begin our deliberations. And at that point,  
10 we'll be ready for those deliberations.

11           So, these proposed conditions which  
12 have been sitting on the table now for 24 to 48  
13 hours are the conditions that we're going to  
14 discuss now.

15           It should also be clear and  
16 understood, and I hope it is clear and  
17 understood that all we are voting on today is a  
18 list of conditions to send to the applicants  
19 for acceptance or rejection.

20           The fact that the applicant rejects  
21 a condition is not dispositive of anything.  
22 The fact that they agree to a condition doesn't  
23 mean we'll necessarily impose it. It may be  
24 that as we proceed with our deliberations and

1 our discussions, it turns out that that  
2 condition is unnecessary we convince each  
3 other.

4 Or it may turn out that it's not  
5 desirable. Or it may turn out for some other  
6 reason that we decide not to impose it. But we  
7 want to find out at least what the landscape  
8 looks like before we go into those  
9 deliberations. And we want the applicants'  
10 input on that before we begin to talk.

11 We're doing it this way to avoid  
12 after all of the work and energy and thought  
13 that's gone into these proposals by both sides  
14 and by ourselves a situation in which we award  
15 -- make a license decision then impose a  
16 condition, and then find out that the  
17 conditions are unacceptable and we have to  
18 either withdraw the award or go into some  
19 protracted period of negotiation, which we  
20 don't want to do.

21 We want to make this final. We want  
22 to make it final after a thorough exploration  
23 of what we believe is necessary to make these  
24 proposals work.

1                   So, that's why we're doing it.  
2                   That's what we're going to do. We're going to  
3                   start now. And we're going to go in the same  
4                   order that we went in with respect to our other  
5                   -- with respect to the presentations.

6                   So, I began. I have very few. I  
7                   have only two on the building and site design.  
8                   And I therefore propose to the Commissioners  
9                   that on the list of conditions we submit to  
10                  Mohegan Sun is a condition that Mohegan shall  
11                  submit exterior material and finish selection  
12                  and samples for review and approval by the  
13                  Commission as part of the planned reporting to  
14                  the Commission in accordance with the design  
15                  and construction schedule ultimately to be  
16                  approved by the Commission. That'll be  
17                  approved as it was for the others after the  
18                  license is awarded.

19                  The basis for this condition, and  
20                  it's similar to those we have imposed  
21                  elsewhere, is a desire to ensure that some of  
22                  the features of the casino exterior are in fact  
23                  carried out the way they are portrayed or in  
24                  some suitable equivalent in the renderings and

1 drawings that we've gotten, because they are an  
2 important aspect of the basis for our building  
3 and site design evaluation. So, that's that  
4 condition and that's what I'd recommend.

5           Insofar as Wynn Everett is  
6 concerned, I'd recommend a condition which  
7 states that the Commission strongly urges Wynn  
8 to reconsider the exterior design of the  
9 buildings and present a revised design to the  
10 Commission. That's an urging not a command.

11           And in any event, Wynn shall submit,  
12 and that is a command, exterior material and  
13 finish selection and samples for review and  
14 approval by the Commission as part of the  
15 planned reporting to the Commission in  
16 accordance with the design and construction  
17 schedule to be approved by the Commission.  
18 That condition exactly parallels the one for  
19 Mohegan Sun that I just finished.

20           The additional request is for a  
21 review of the exterior design of the buildings  
22 and presentation of a revised approach. That's  
23 not a requirement. We hope that that would be  
24 done because of the comments we made during the

1 course of my building and site design  
2 presentation.

3 So, colleagues those are the two  
4 conditions I'd recommend from the building and  
5 site design standpoint. Happy to have  
6 discussion.

7 COMMISSIONER ZUNIGA: Yes. I have a  
8 question. I realize it's a strong urging, but  
9 what could we expect in terms of measurable  
10 outcome out of this request or urging? And I'm  
11 going towards what if there is another drawing  
12 façade produced that --

13 COMMISSIONER MCHUGH: -- is  
14 unacceptable.

15 COMMISSIONER ZUNIGA: -- is  
16 unacceptable or somewhat acceptable, what could  
17 be the standard to measure that they have  
18 complied with.

19 COMMISSIONER MCHUGH: Yes. I think  
20 that's a sound and important question. We have  
21 in the building and site design section listed  
22 nine criteria to judge design.

23 And I think that the problem is that  
24 no matter how one tailors or identifies

1 criteria for good and sound design, there is a  
2 measure of subjectivity that cannot be removed.  
3 Each of those criteria, and they're distilled  
4 from a variety of writings by architects, city  
5 planners and others, each of those contains a  
6 number of subjective at least broadly elements.

7           So, I think the ultimate choice  
8 despite what this condition says, the ultimate  
9 choice is to rely on -- to make that request.  
10 To list those criteria as things we had in mind  
11 when we made the condition, to rely on the  
12 developer to take everything the developer has  
13 heard about the current design into account and  
14 to present a different and better design,  
15 recognizing that this developer, this  
16 particular developer is capable of much better  
17 designs. That's one hand.

18           On the other hand, the other choice  
19 is to say we don't have a design that's  
20 acceptable generally, and we don't want to  
21 leave in that kind of state, appealing to the  
22 highest caliber and quality of the developer's  
23 demonstrated abilities. And therefore it's  
24 important enough that we're not going to award

1 a license. It seems to me those are the two  
2 alternatives.

3 But to try to make this contingent  
4 on some kind of a Commission driven design  
5 review it seems to me is not a useful course to  
6 take.

7 COMMISSIONER ZUNIGA: Yes. But your  
8 position is the former not the latter?

9 COMMISSIONER MCHUGH: The position  
10 is the former not the latter. And we are  
11 simply putting this out as condition. We're  
12 not deciding now this is -- We're not deciding  
13 that ultimate question now.

14 We're deciding whether this is a  
15 condition we're going to ask them to consider.  
16 We'll consider the response but we still have  
17 the choice of how to approach this once that's  
18 finished.

19 And if after I suppose, if after all  
20 of our discussion we are convinced that some  
21 kind of a Commission driven design review is  
22 appropriate, we can come back to that and  
23 consider it. I would not favor that for the  
24 reasons that I've said.



1           But if the Commission as a whole is  
2 persuaded that that's the better course to go,  
3 we can certainly discuss that and ultimately do  
4 it as well.

5           COMMISSIONER ZUNIGA: This may go  
6 without saying but it would of course be up to  
7 the Commission to determine whether they have  
8 complied once they accept the condition if  
9 that's the case, whether they have complied  
10 with that condition or not.

11           COMMISSIONER MCHUGH: Surely, except  
12 that this is consider a new design condition.  
13 That's what it is.

14           COMMISSIONER ZUNIGA: Okay.

15           COMMISSIONER STEBBINS: One of the  
16 comment letters that we received and it might  
17 have been the AIA letter that we referenced,  
18 there mentioned that this doesn't apply one  
19 particular applicant or the other, but there is  
20 reference about building materials and their  
21 ability to survive and weather through the  
22 lovely weather we enjoy here in New England.  
23 And mentioned of --

24           COMMISSIONER MCHUGH: EFIS.

1           COMMISSIONER STEBBINS: -- EFIS but  
2 also mention of recommending or suggesting that  
3 we require some type of maintenance plan for  
4 the exterior of the building. I didn't know if  
5 you would consider that an amendment to the  
6 condition for both.

7           COMMISSIONER MCHUGH: There's a  
8 philosophical issue here that I think will be a  
9 thread through at least my comments as we go  
10 forward. And that is how deeply want to get  
11 involved in minutiae.

12           It's not minutiae in a sense that if  
13 the building isn't maintained it's going to  
14 look like a dump. But one has to believe that  
15 applicants of the quality and caliber that we  
16 have before us aren't going to let that happen.

17           And therefore I am philosophically  
18 reluctant to get into a series of governance  
19 issues of that kind and would leave it to the  
20 successful applicant and confident that that  
21 applicant would do it.

22           The quality of the materials is a  
23 little bit different. There's precedent for  
24 that. With the MGM facility, for example, we

1 did say that on one side of that massive garage  
2 that runs along the river, we wanted materials  
3 of the quality that were on the other side  
4 because the drawings showed a big blank wall of  
5 inferior material. So, we put that in as a  
6 condition. And I think that's not the kind of  
7 detail that I shrink from, but the other kind  
8 is.

9 COMMISSIONER STEBBINS: Okay.

10 COMMISSIONER CAMERON: I would  
11 agree. I really think it's important that  
12 we're consistent. Part of the condition that  
13 is identical to both applicants is what we've  
14 done in the past for the other two licenses.

15 And the urging rather than some kind  
16 of a mandate is absolutely -- I would not to be  
17 comfortable with a mandate here and imposing  
18 our judgment with this matter. So, I'm very  
19 comfortable with this condition for both the  
20 way it's written.

21 COMMISSIONER ZUNIGA: I would agree.

22 COMMISSIONER MCHUGH: Okay. I don't  
23 think we need a formal vote. I think we'll  
24 proceed by consensus. And I sense a consensus

1 on those two conditions. So, Counsel are  
2 keeping track of these. Where is Catherine,  
3 someplace. Counsel are keeping track of these  
4 conditions and they are going to appear in a  
5 more formal form in a list that we ultimately  
6 give to each applicant.

7 All right. That finishes building  
8 and site design. Let's turn, if we might now,  
9 to finance.

10 COMMISSIONER ZUNIGA: Okay. When I  
11 presented, as part of the conditions for  
12 finance applied to Mohegan Sun. We may have  
13 that up on the screen. The condition is  
14 perhaps better outlined -- it's outlined on  
15 page two or three, Melissa. Actually, let's  
16 start with two.

17 It actually relates to a  
18 clarification or an assertion of material  
19 error. So, I should start by refreshing the  
20 statement from this morning that what we're  
21 coming here to calculate is the equity that  
22 would be available after the stated equity from  
23 the applicant that would be available to  
24 commence the project. A lot of the work that

1 has to happen. We term it construction, but  
2 it's a lot of design work would have to happen  
3 as well.

4           The way we arrive to it is taking  
5 their stated equity of 235 million that's the  
6 applicant's number, and subtracting the spent  
7 to date by both parties that arrive at this  
8 juncture as well as subtracting the licensing  
9 fee, which is payable 30 days after the actual  
10 award of a license, 45 million is what remains.

11           So, that in my view is little equity  
12 that is available to start to comply with a lot  
13 of commitments that come soon after award of a  
14 license. Without necessarily making a judgment  
15 relative to how quickly or how soon the  
16 applicant can obtain actual financing, in my  
17 opinion, this is little equity for all of the  
18 costs that are significant that are to go  
19 forward.

20           We flip to the next page. By our  
21 calculation the debt-to-equity ratio at that  
22 juncture looks a little bit like what's  
23 represented on the screen there, 94.2 of debt  
24 to 5.8 percent of equity.

1           It's calculated in the fashion in  
2 that chart over there. If you divide 45 into  
3 the total number that's required at that  
4 juncture, the ratios are as we see them on the  
5 screen and as I just mentioned.

6           Taken from that point and picking  
7 something that is a little bit more  
8 comfortable, in my opinion, an 80/20 split of  
9 debt-to-equity, it would hover around \$100  
10 million. It's not an exact figure. If we add  
11 100 million to the 45, the numbers at the  
12 bottom that chart would imply actually an 18.7  
13 percent equity and a 81.3 of debt.

14           So, 100 million was a good round  
15 number. It's not predicated on an actual  
16 percentage or trying to dictate an actual  
17 percentage. It's looking at a one point in  
18 time and saying that from my perspective, I  
19 believe there's more equity that would make  
20 this project or this proposal rather to stand  
21 up better on a firmer ground. I can take  
22 questions.

23           COMMISSIONER CAMERON: You just  
24 mentioned that the 20 percent equity figure

1 really is a comfort level. Is there any other  
2 basis for that 20 percent, industry standards  
3 or is it just that's a number that takes risk  
4 out of this calculation.

5 COMMISSIONER ZUNIGA: I would  
6 characterize it this way. The more risky that  
7 a project is by its nature the more that things  
8 can go wrong from the perspective of where we  
9 sit, we would want more equity.

10 If the project is small, if the  
11 project is a sure thing in terms of small  
12 risks, little things that could go wrong,  
13 there's a case to be made that the equity  
14 amount doesn't have to be that much.

15 I will give a couple of examples of  
16 what we've seen. MGM proposed two alternatives  
17 of project financing. Both proposals hover  
18 around 35 percent of equity in one instance, 50  
19 percent equity in the other option, which I  
20 believe to be right along the notion of  
21 mitigating risk that's associated with a  
22 project. And that mitigation comes from the  
23 applicant taking a lot of its risk on its own  
24 not putting it all on the borrowing.

1           So, there's not a formula. This is  
2 a big reason in my view as to why we did not  
3 put a particular number in regulations, for  
4 example. It's something that changes over  
5 time. The debt-to-equity ratio is important to  
6 look at at different times in the project  
7 lifecycle.

8           At the beginning of the project,  
9 there's many more risks than at the end of  
10 construction. Therefore, the project -- the  
11 debt-to-equity ratio could considerably change  
12 and it does in fact change.

13           COMMISSIONER CAMERON: Thank you.

14           COMMISSIONER MCHUGH: I have again,  
15 a philosophical question. It's along the same  
16 lines as my last one. And it applies to the  
17 next condition too. I'm jumping ahead a little  
18 bit, but I know you'll get there. And that is  
19 why do we want to get this deeply involved in  
20 the financing arrangements?

21           It seems to me that this is the kind  
22 of thing that one could approach by taking a  
23 look at the financing package that's been  
24 presented and saying that the degree of risk is



1 unacceptable, and it goes to the heart of the  
2 proposal. And therefore, it's not a matter of  
3 filigree.

4 Or say that the degree of risk is  
5 acceptable particularly given the fact that  
6 it's spread among a variety of funding sources.  
7 Here, of course, we have the third-party that's  
8 going to operate the hotels and the shopping.  
9 They're going to come up with some financing.  
10 We've got other financing. We've got financing  
11 backstop. It's a complicated package.

12 So, that can cut in two ways. It  
13 may cut in the direction of making it riskier.  
14 It may cut in the direction of spreading the  
15 risk so it's not quite as risky. But in either  
16 case, why do we philosophically want to get  
17 this deeply involved in supervising and setting  
18 the terms of the financing package that is  
19 being put together for this project?

20 COMMISSIONER ZUNIGA: Well, I'm  
21 going to start with the statute. The statute  
22 says that the Commission can determine debt-to-  
23 equity ratio. And in prior times, I didn't  
24 feel it was necessary because I was confident

1 with the level of risk for one.

2 I do agree and I struggled, as I  
3 mentioned or alluded to in my presentation,  
4 relative to making sure we're not recreating a  
5 deal that they put together. That would be  
6 clearly going down a slope that we may not want  
7 to go.

8 The parties did indeed agree to  
9 this. There's multiple parties. They have  
10 different responsibilities. None of that makes  
11 this very worrisome in and of itself. But when  
12 you add all of the pieces including some of the  
13 funding and some of the promises that they've  
14 made, some of the loan-to-value that I  
15 explained, the picture starts to get a little  
16 uncomfortable, in my view.

17 And the tool that we have here, I'm  
18 picking from the statute saying at least at  
19 this juncture, I would be a lot more  
20 comfortable with a debt-to-equity ratio that's  
21 higher. That could by itself be the condition,  
22 see what we get back.

23 I felt that it was important to  
24 throw out a number, a figure. A ratio is

1 tricky. And I did not want to get into the  
2 notion of what do you count as equity; what do  
3 you count as debt, especially because I knew  
4 that there's a subordinated notion there in  
5 between. A preferred equity that has a  
6 stipulated rate, and again, by some measures  
7 and in my opinion it starts to look a little  
8 bit like debt.

9           So, rather than trying to figure out  
10 -- trying to say here's a ratio, tell us how it  
11 fits. I'm saying that with proxy for a ratio  
12 at the juncture when you start construction, I  
13 would be a lot more comfortable if some of your  
14 funding came in the form of equity or  
15 additional equity.

16           COMMISSIONER MCHUGH: No. I hear  
17 that. I ultimately may not vote against or say  
18 we shouldn't put this on as a condition and see  
19 what the response is.

20           But I'm troubled by -- And I don't  
21 want to repeat myself. I'm troubled by  
22 insinuating ourselves this deeply the financing  
23 plan. Because it seems to me conceivable, and  
24 this is not my area of expertise, but it seems

1 to me conceivable that the entire financing  
2 structure has been calculated on the basis of  
3 the various things that the parties have  
4 brought to the table.

5 In other words, the rental has been  
6 calculated on something. The financing package  
7 as a whole has pieces that were fit together  
8 based on an existing financing plan to produce  
9 yields consistent with that plan.

10 And to put in a requirement now that  
11 somebody put in another 100 million has the  
12 potential, it seems to me, in addition to  
13 insinuating us into the middle of saying what  
14 the terms of the deal should be, to have ripple  
15 effects throughout the whole deal that need to  
16 be re-calculated in order to account for the  
17 additional equity that's been plopped into the  
18 middle of it, and may make it unpalatable for  
19 some party or other who's already committed to  
20 a piece of this to rethink its participation.

21 And it seems to me that to go from  
22 the outside in that fashion rather than say  
23 here it is. We've examined it. We know what  
24 it looks like. It's okay. We'd like it if it

1 were a little bit more equity rich. Or it's  
2 not okay because it's too equity poor, is the  
3 better approach.

4 But as I say, I am prepared on let  
5 the condition go to the applicant but  
6 reluctantly because I do have doubts and in any  
7 event would want to talk about it a lot more  
8 even if they say they'll do this.

9 COMMISSIONER ZUNIGA: Well, for me  
10 the choice is it's too complicated. Let that  
11 be the case. The parties agree to this. It's  
12 too onerous or there's no time to put that  
13 condition in front of them then I would be on  
14 the side of saying I'm uncomfortable with the  
15 way that I see relative to the leverage of this  
16 proposal.

17 COMMISSIONER MCHUGH: On the merits  
18 when we get to that piece.

19 COMMISSIONER ZUNIGA: On the merits,  
20 right. And if that discussion is for later,  
21 I'm prepared to table that.

22 COMMISSIONER MCHUGH: I think it is  
23 for later. Something else might happen. But I  
24 hear you.

1                   COMMISSIONER ZUNIGA: I can put  
2 another notion if it's where you were going.  
3 Or I could also wait for other Commissioners to  
4 chime in. The condition could also be a lot  
5 more general. Go get equity. Demonstrate to  
6 us in some other form why this is a good debt-  
7 to-equity ratio. I don't know.

8                   COMMISSIONER MCHUGH: Other  
9 thoughts, questions?

10                  COMMISSIONER STEBBINS: In your  
11 rankings in your review, you raise the issue  
12 of your concern over the level of equity in the  
13 deal. I think we'd all be concerned about this  
14 applicant being able to meet its commitments  
15 which some of them happen kind of on day one.

16                   I'd almost in rather being  
17 prescriptive just acknowledge that there's a  
18 general consensus among the Commission that we  
19 recognize there is a question of enough equity.

20                   And as a condition, would you come  
21 back with a plan or come back with a  
22 recommendation as to again, maybe not to go  
23 back and scramble the existing financial  
24 arrangements that are already in place, but

1 request as a condition of license or prior to  
2 license that this particular applicant come  
3 back with a recommended this is what we can do  
4 in terms of acknowledging our concerns. This  
5 is the additional equity we're willing to put  
6 into the deal, without being this prescriptive  
7 to a certain dollar amount.

8 COMMISSIONER CAMERON: They have the  
9 ability to do that anyway. They'll be able to  
10 respond to all of the conditions. So, I am not  
11 uncomfortable. I think that we have unique  
12 conditions recommended for each applicant,  
13 different than we've done in prior licensing  
14 decisions because the circumstances are unique.

15 So, I think this is general enough.  
16 We're not saying exactly what should happen  
17 other than we're looking for more equity. So,  
18 I am not uncomfortable moving forward with this  
19 language.

20 COMMISSIONER ZUNIGA: Can I mention  
21 something else, which kind of has a little  
22 bearing. I mentioned in my presentation and  
23 maybe it's a good time to talk a little bit  
24 about.

1           The applicant did provide two highly  
2 confident letters from financing institutions.  
3 One of which if I'm not mistaken did  
4 corroborate that they understood that their  
5 stated equity, the bank did, that the stated  
6 equity was -- that some of it was already spent  
7 for example. And that the stated equity came  
8 from the parties that it did.

9           I've dealt with banks in my previous  
10 life. And the highly confident letter is not a  
11 commitment letter. It's not money in the bank.  
12 The people that you deal with when they present  
13 to you those kinds of letters are more the  
14 sales and marketing people.

15           The same highly confident letter  
16 contains disclaimers that all of that is  
17 subject to the review, eventual review of the  
18 credit committee or the people who are actually  
19 later going to raise the money.

20           So, I come from an understanding of  
21 this is not -- although they have these  
22 letters, and it's about as much as they can  
23 realistically obtain at this point, a bank is  
24 going to look at first go obtain the license



1 and then we'll put the final deal together, or  
2 the final financing together. I get that.

3 Where we are in this juncture, I put  
4 not a lot of comfort in the notion of those  
5 letters at this point.

6 COMMISSIONER MCHUGH: Yes. That was  
7 crystal clear in your presentation. So, you'd  
8 be more confident about their ability to obtain  
9 financing if there were more equity in the  
10 deal. That's the thrust of this, I take it.  
11 And there'd be more of a buffer there for heavy  
12 weather if that occurred. So, I certainly  
13 understand that.

14 And I'm not going to repeat it. My  
15 overall concern remains. I'm happy to put the  
16 condition. I've stated my piece. I've said my  
17 piece. I look forward to discussing it further  
18 later after we see what the response is.

19 I've said my piece about how I feel  
20 philosophically about this road. But I'm  
21 content to let it go forward and see what they  
22 say. Anybody else? Okay. Let's look at the  
23 next one then.

24 COMMISSIONER ZUNIGA: The second one

1 applies to finance as well.

2 COMMISSIONER MCHUGH: No, there's  
3 some more on that page, Commissioner, unless  
4 you were treating them all as a package but I  
5 think I have different views on the next two.

6 COMMISSIONER ZUNIGA: Okay. That's  
7 right. The second part that deals with this is  
8 for the Commission to approve the credit  
9 agreements with the senior lenders.

10 In here, there will be my  
11 estimation, there may be covenants or  
12 requirements from the senior lender that may  
13 change the applicant's ability to deliver on  
14 some of the promises that they've made or some  
15 of the assumptions that they've made relative  
16 to their cash flows and etc.

17 So, I would like a juncture of  
18 understanding what those requirements may be  
19 insofar as they affect their project financing.

20 COMMISSIONER MCHUGH: Okay. This  
21 one I really do, I say what I said a minute  
22 ago, but I up the volume.

23 I think getting into the middle of  
24 the credit agreements between the borrower and

1 the lender is something that with all due  
2 deference to you and I'm sure you're able to do  
3 this, is not a function for the Commission.

4 Those agreements are extensive.  
5 They're complicated. Pulling out one piece  
6 affects other pieces. It is just a kind, I  
7 think, of micromanagement of the plan, the  
8 financing, the business that the Commission  
9 really ought to stay out of.

10 If we think we have to do then it  
11 seems to me we shouldn't get involved in the  
12 first place. That again is something we can  
13 discuss later, but if your concerns are so  
14 strong then I would be inclined not to go in  
15 that direction. But I think to be a  
16 micromanager of their financial relationship  
17 with lenders is just not a good idea.

18 COMMISSIONER ZUNIGA: I will concede  
19 that the way that this was initially stated  
20 puts us a lot further in that area of  
21 micromanaging.

22 My intention here was relative to  
23 covenants that may have a material effect on  
24 some of the other promises that they've made.

1 I'm specifically thinking of promises they've  
2 made to surrounding, host community and about  
3 infrastructure spending that the bank may look  
4 very critically given that it's all on assets  
5 that they will not have the ability to go after  
6 if something goes wrong.

7 So, I'm perfectly fine to word it  
8 differently, even if it's reporting prior to  
9 closing. Reporting requirement that the  
10 applicant identifies covenants that may affect  
11 other cities and towns for one.

12 I understand that being in the  
13 middle of approval carries a whole bunch of  
14 other perhaps unintended consequences. We  
15 don't want to be delaying any of these  
16 financing. So, I've argued toward that point  
17 with our project managers in the past. So, I  
18 recognize that and I'm willing to amend it of  
19 course.

20 COMMISSIONER MCHUGH: I don't have  
21 any problem with a reporting requirement.  
22 We'll keep under confidentiality, reporting  
23 requirements so we know what's going on.

24 So, I would be comfortable sending

1 that one out at least. So, if you're willing  
2 amend that one to a reporting requirement, I'd  
3 be prepared to send that one out.

4 I'm prepared to send the other one  
5 out despite my doubts as to whether I think  
6 it's a good idea. I'm not prepared to send  
7 this one out in its current form.

8 COMMISSIONER CAMERON: Commissioner,  
9 you mentioned earlier that more equity would  
10 make those agreements would be looked upon  
11 favorable by creditors, correct?

12 COMMISSIONER ZUNIGA: Yes, I would  
13 think so.

14 COMMISSIONER CAMERON: Maybe that  
15 would be the situation here. So, reporting  
16 would be appropriate.

17 COMMISSIONER ZUNIGA: Yes,

18 COMMISSIONER MCHUGH: So, is the  
19 consensus that -- Commissioner Stebbins are you  
20 comfortable with changing that to a reporting  
21 requirement?

22 COMMISSIONER STEBBINS: I am.

23 COMMISSIONER MCHUGH: Okay.

24 COMMISSIONER ZUNIGA: Prior to

1 closing. The last one talks about transfers of  
2 ownership even among existing partners.

3           There's something that would happen  
4 here that we haven't dealt with in the past.  
5 We don't have regulations yet on transfers of  
6 ownership. You might remember we had a policy  
7 discussion about a number of things relative to  
8 statutory requirements. And because we did not  
9 anticipate many transfers of ownership, we put  
10 that off. And those regulations have not been  
11 drafted.

12           The unique situation here is that  
13 Mohegan is the applicant. And upon award of  
14 the license, the first transfer of ownership  
15 would occur in which Mohegan transfers 60  
16 percent of ownership to Brigade. And Brigade  
17 is in a couple of different positions as a  
18 preferred equity position and a common equity  
19 position, and controls the board of the  
20 project, may be in a position of transferring  
21 ownership for which regulations haven't even  
22 been created.

23           So, my intention with putting this  
24 condition forward was one of timing. Until

1 such time we have thought about the  
2 implications of transfers of ownerships among  
3 parties, either internally or with external  
4 parties, that we approved those transfers even  
5 among existing partners.

6 This is not something that I  
7 envision would happen often. This is not  
8 something that would be necessarily in the  
9 middle of the parties or impeding the parties'  
10 progress in my opinion. If there's an  
11 intention of transfer of ownership there would  
12 ample time.

13 I can anticipate that your thematic  
14 concern could also apply to this but I'm  
15 preemptively trying to address it.

16 COMMISSIONER CAMERON: If we didn't  
17 approve it, the deal wouldn't be able to move  
18 forward, correct?

19 COMMISSIONER ZUNIGA: I'm not  
20 talking about the one transfer that they have  
21 proposed. I'm not just talking about the one  
22 transfer that they have proposed.

23 There may be transfers after the 60  
24 percent transfer that I want to have covered

1 with this condition.

2 COMMISSIONER MCHUGH: So, are you  
3 exempting from this condition the 60 percent  
4 transfer?

5 COMMISSIONER ZUNIGA: Well, given  
6 that there's a first condition of additional  
7 equity, my guess is that that could have an  
8 effect on the current proposed transfer.

9 COMMISSIONER MCHUGH: Then you  
10 correctly anticipated my response and reaction.  
11 I think this again is getting too deeply  
12 involved.

13 But there's a caveat to that. And  
14 I'm not sure this condition addresses it. And  
15 that is we have already seen in some of the  
16 agreements that were part of the initial  
17 package that was put together arrangements for  
18 transfer of operational control that were  
19 troublesome. So, there's a bit of a history  
20 there.

21 Those were excised but they were  
22 there. And they raise the specter that there  
23 may be situations in which we would want to  
24 have a say. Those proposals, the particular



1 one that I'm thinking about did condition the  
2 transfer on Commission approval.

3 So, perhaps some kind again of a  
4 notification process would be appropriate. But  
5 I really can't see, Commissioner, at this date  
6 us creating a condition that we know -- a  
7 condition that we have to approve, a transfer  
8 of ownership that we know is a fundamental part  
9 of the deal and is going to happen.

10 We either issue the license knowing  
11 that that's going to happen or we don't, it  
12 seems to me. And further transfers of  
13 ownership down the road may well be covered by  
14 regulations we draft. And we'll get to them.  
15 But I'm not sure this is the right one.

16 I know that's fuzzy, but I guess I  
17 am saying I am not in favor of this condition.  
18 Again, I'm happy to put it out to them and see  
19 what their response is, but I ultimately am  
20 doubtful that I would, unlike the previous one,  
21 approve it.

22 COMMISSIONER ZUNIGA: Perhaps a  
23 little history might help. When we had during  
24 the question and answer period, if I'm not

1 mistaken, no, in the application, there's  
2 assertions that the applicant asserts that the  
3 interests of Brigade are perfectly aligned with  
4 those of the Commission. And that bears a  
5 little bit in the marketing restriction that  
6 I'll speak to later.

7 COMMISSIONER MCHUGH: Perfectly  
8 aligned with those of --

9 COMMISSIONER ZUNIGA: -- those of  
10 the Commission.

11 COMMISSIONER MCHUGH: Of the  
12 Commission?

13 COMMISSIONER ZUNIGA: Yes. However,  
14 the way that they have structured their  
15 involvement here could result in a situation  
16 where those interests begin to digress.

17 So, part of my intention with this  
18 was even transfers among some of the partners,  
19 and you alluded to some of that situation  
20 earlier, but prior to final regulations may not  
21 be covered.

22 And I'd be comfortable if we put a  
23 more fine point to this until such time we get  
24 regulations or limit it to after the initial

1 transfer. I agree that the proposal arrives  
2 with this important transfer, so de facto  
3 awarding the license to this applicant would  
4 mean agreeing to this transfer.

5 But prior to the time when we craft  
6 regulations to this effect, if we limit this  
7 condition to that period, would you be less  
8 concerned, Commissioner?

9 COMMISSIONER CAMERON: Can I just  
10 add something to that? What we've been doing  
11 so far is the condition is either generic to  
12 each applicant as they have been in the past  
13 and consistent with what we've done in the  
14 prior licensing processes. Or they're specific  
15 because of a certain situation whatever that  
16 may be. In my case, what I'm proposing is a  
17 situation based on transportation management.

18 This is generic. This is not  
19 specific. This is in case something happens in  
20 the future. And I think I'd be more  
21 comfortable if we just go ahead and write that  
22 regulation, make it a priority and put forth a  
23 regulation that applies to everyone.

24 I think this is kind of outside of -

1 - Specifically, up here it's an equity issue  
2 because of their particular financing plan.  
3 This is something that we don't know what that  
4 will be in the future because we know of one  
5 particular transfer. Other than that, we don't  
6 know of anything.

7 So, I'm just not sure why we can't  
8 go ahead and prioritize a regulation that would  
9 apply to everyone.

10 COMMISSIONER ZUNIGA: Can I offer a  
11 suggestion? Could we table this one in  
12 particular for a time when we break? I'd like  
13 to consult with some of our consultants on  
14 this.

15 COMMISSIONER MCHUGH: Yes, surely.  
16 All right, the next one.

17 COMMISSIONER ZUNIGA: The next one,  
18 I do want to emphasize a point here that maybe  
19 didn't come across yesterday or Monday. The  
20 condition that I am proposing relative to the  
21 marketing restriction is an amendment to the  
22 structure that they have suggested.

23 They've suggested a specified zone  
24 and the activities that a third-party will

1 monitor relative to how those customers within  
2 that specified zone would be marketed to.

3           In my opinion, I'd like to  
4 understand what those policies and procedures  
5 and those rules would be. There's not a lot of  
6 clarity as to how that would work in my mind.  
7 And for one, I'd like to understand what those  
8 are.

9           The second one is the principle of  
10 extending the market area to what we believe to  
11 be the market area and putting everybody in  
12 equal footing, not just limiting it to the  
13 specified zone.

14           COMMISSIONER CAMERON: Wouldn't it  
15 be simpler to just say no marketing  
16 restrictions? We're not comfortable with any  
17 marketing restrictions rather than trying to  
18 change a restriction that they have in place?

19           COMMISSIONER ZUNIGA: Yes, right. I  
20 thought about that scenario. They put this  
21 forward. They represent that this is something  
22 that will protect the interest of the  
23 Massachusetts facility. And I'm saying the way  
24 I view this it would if everybody was on equal

1 footing.

2 COMMISSIONER CAMERON: How is equal  
3 footing different than no restriction?

4 COMMISSIONER ZUNIGA: It would  
5 really allow the customer to decide what  
6 facility to go to based on market preferences.

7 They've also represented, and I  
8 believe that the quality of the facility in  
9 Massachusetts will be very similar to the one  
10 in Connecticut. The whole gravity modeling  
11 begins -- the gravity modeling notion starts  
12 with the assumption that distance, all other  
13 things being equal, distance will dictate what  
14 customers decide to patronize which facility.

15 However, there's all exceptions to  
16 that gravity modeling. We all know that we  
17 drive sometimes a little bit more to get to a  
18 grocery store because we like certain things  
19 that we don't like in the one that's nearest to  
20 us. However, it has the ability to have  
21 everybody, everybody in the market area give  
22 enough choice to patronize whichever facility  
23 they like.

24 So, my read or lack of understanding

1 of how this, what they propose will actually  
2 work, in my mind begins to be addressed a lot  
3 better if the market is, all of the market  
4 area, and as we have defined it is New  
5 Hampshire, Massachusetts, Connecticut, Rhode  
6 Island and leave everybody on equal footing.

7 COMMISSIONER MCHUGH: Other  
8 thoughts? Certainly, the middle one is one in  
9 some form that I'd be prepared to send to them  
10 as a condition. We are trying to recapture the  
11 money that's going out-of-state. That's part  
12 of the whole purpose of this legislation.

13 On the other hand, think that we're  
14 going to recapture money that's going to them  
15 from the citizens Uncasville is unrealistic.  
16 So, it seems to me that we ought to think about  
17 how to tailor this. I agree that a broader,  
18 evenhanded approach is a condition that we  
19 ought to have. But I'm not sure that this is  
20 the one that's most realistic.

21 So, I'd be in favor of sending this  
22 condition, the next one and the next one to  
23 them, but understanding that what we got back  
24 may not be a full acceptance of that and seeing

1 what better they can come up with.

2           The first one, I'm going to beat the  
3 same drum. If we have to get in and approve  
4 the policies and procedures that are  
5 implemented to carry out the second one that's  
6 basically what we'd be talking about, it seems  
7 to me we are inserting ourselves now as deeply  
8 into the marketing plan as we would be in some  
9 of those others with the financing plan. And I  
10 just don't think we should do that.

11           I think we should have somebody  
12 oversee it, somebody who knows what they're  
13 looking at and can report to us so that we can  
14 use whatever leverage, bully pulpit or  
15 otherwise, to make them change if they're not  
16 really doing it in an evenhanded fashion.

17           But to have us get into the approval  
18 of policies and procedures, I think, puts us  
19 really deeply into an arena that these people  
20 are much better at than we are. They've been  
21 at this for a while.

22           And we either believe that they're  
23 going to do it and use their best energy to  
24 make it financially viable or they're not. And



1 I'm sure we've got either the competence or the  
2 business of getting that deeply involved in it.

3 COMMISSIONER ZUNIGA: With this I'm  
4 going to disagree. This is a one-time  
5 approval. And maybe what we mean here is the  
6 standards and procedures that they in their  
7 response say will work to figure out.

8 And I have a concrete example that I  
9 think may help illustrate. What would  
10 constitute a marketing dollar is something that  
11 could be interpreted very differently. Free  
12 play or a free night stay they could be  
13 nominally equivalent. They could both be  
14 worth, I don't know, \$75. But nine out of 10  
15 times a customer is going to choose free play  
16 because that has of course the potential to  
17 turn into, I don't know, double.

18 So, those are the standards that I'm  
19 talking about when I'm talking about this. How  
20 do you count and price a room rate that you  
21 offer as a comp.? It's not the stated rate.  
22 We all understand that the accounting for a  
23 room rate is different at different times in a  
24 year, for example.

1           And a marketing equivalent could be  
2 a two night stay over in one place and one  
3 night stay over the other. They could be  
4 nominally the same amount of money, however,  
5 the market may prefer one or not the other.

6           That could be inevitability the way  
7 it is. There could be little or nothing that  
8 we could do about that. But those are some of  
9 the details that I would like to understand  
10 that third-party may be doing and auditing for  
11 us. And that's the reason of this.

12           COMMISSIONER MCHUGH: And I  
13 understand that. And I have exactly the same  
14 question. How do you determine what  
15 equivalency is in this area? But it seems to  
16 me two things. Number one, that maybe a very  
17 hard thing to describe in the abstract. Maybe  
18 it isn't, but it may be.

19           And secondly, it seems to me we are  
20 looking at an evolutionary process. We know  
21 that this industry is changing and it's  
22 changing rapidly. And the kinds of changes  
23 that are going to come in the next 10 years,  
24 certainly over the life of the licenses are

1 going to be vastly different, present a vastly  
2 different landscape than we have now, I think.

3           So, it seems to me that the general  
4 command to do equivalency and then to hire  
5 somebody as our agent whose versed in this  
6 industry and who can answer the kinds of  
7 questions that you're posing, and know what is  
8 equivalent, and report to us on the compliance  
9 or noncompliance with that condition in terms  
10 of the actual equivalency of the marketing  
11 that's being done on the ground is the right  
12 way to go.

13           It provides us with oversight. it  
14 provides us with an agent. It provides us with  
15 flexibility. And it provides us with the  
16 expertise that we need in order to understand  
17 that the equivalency is being carried out.

18           So, I would much prefer to go that  
19 way than to have a requirement that we approve  
20 all of the policies and procedures and the  
21 kinds of things that you're talking about in an  
22 area that needs a lot of rapid change and a lot  
23 of rapid response to evolving conditions.

24           We don't move with particular speed

1 sometimes.

2 COMMISSIONER ZUNIGA: As evidenced  
3 by the last three days. Would you accept a  
4 deletion of policies and procedures?

5 COMMISSIONER MCHUGH: Then what are  
6 we approving?

7 COMMISSIONER ZUNIGA: Commission to  
8 approve the marketing rules and restrictions.

9 COMMISSIONER MCHUGH: I would  
10 welcome the thought from the other -- my  
11 colleagues here, from our colleagues.

12 COMMISSIONER CAMERON: Again, I want  
13 to get back to being consistent. This is  
14 specific, which is why we're addressing it.  
15 This is something we think is an issue. But we  
16 do have the ability to -- If there's an issue,  
17 through monitoring we find out there's issue,  
18 we could address it there. Is that accurate?

19 COMMISSIONER ZUNIGA: How would we  
20 determine there is an issue if we had no input  
21 in the rules and restrictions?

22 COMMISSIONER CAMERON: Because we  
23 would determine that number two is we don't  
24 believe that there is an issue around --

1                   COMMISSIONER ZUNIGA:  --  
2                   equivalency.

3                   COMMISSIONER CAMERON:  Yes.  So,  
4                   that's how we determine the third.  And then we  
5                   could address it at that time as any issue that  
6                   comes up in a regulatory environment happens.  
7                   So, I would be comfortable with monitoring  
8                   because we do have number two which says look,  
9                   this is the standard.

10                  COMMISSIONER MCHUGH:  As an example,  
11                  to take your example, one or the other markets  
12                  two nights free stay and the other is marketing  
13                  \$50 in free play.  And there's a claim that  
14                  those are equivalent.

15                  I would want to have somebody in the  
16                  position of our agent who could say that's  
17                  right or that's wrong.  And if it's not right  
18                  then we bring some action to change it.  That's  
19                  a gross example.

20                  COMMISSIONER ZUNIGA:  I'm just  
21                  coming from the agent or the auditor needs a  
22                  standard to audit to.  All I'm saying is we  
23                  don't come up with that standard.  We will rely  
24                  on an agent, but the starting point is here's

1 going to be the standard, now you go back and  
2 audit to that standard.

3 COMMISSIONER MCHUGH: I hear what  
4 you're saying. I have grave doubt that we can  
5 to it and maintain the flexibility that we need  
6 to respond to rapidly changing competitive  
7 conditions.

8 COMMISSIONER ZUNIGA: The standard  
9 could be flexible. The standard could be  
10 drafted in a way that responds to changing  
11 conditions. We may be at a stalemate.

12 COMMISSIONER MCHUGH: All right.  
13 I've said my piece. Commissioners, the  
14 question is do we send these four bullets to  
15 the licensee -- to the applicant for a  
16 response?

17 COMMISSIONER ZUNIGA: You know where  
18 I stand.

19 COMMISSIONER CAMERON: I'm  
20 comfortable with the three and I understand  
21 your point with the first one. I'm just not  
22 sure when you say a standard, even an expert  
23 it's not always apples to oranges. So, I guess  
24 I'm uncomfortable even thinking how do we

1 develop a standard.

2 COMMISSIONER MCHUGH: So, you would  
3 not send the first one?

4 COMMISSIONER CAMERON: Yes. I'd be  
5 more comfortable with the three.

6 COMMISSIONER MCHUGH: Commissioner  
7 Stebbins?

8 COMMISSIONER STEBBINS: I'm  
9 comfortable with that and see what they come  
10 back with.

11 COMMISSIONER MCHUGH: With all four  
12 or with the three?

13 COMMISSIONER STEBBINS: No, with the  
14 three.

15 COMMISSIONER MCHUGH: Let's do the  
16 three. We can always resurrect the fourth as  
17 an aid to the second of the three that we're  
18 sending if we think we need to do it. Let's  
19 send bullets two, three and four to Mohegan Sun  
20 MA for their response.

21 All right that brings us I think to  
22 the end. I think that was a good and helpful  
23 discussion. That brings us to the economic  
24 development conditions.

1                   COMMISSIONER CAMERON: Did you want  
2 to go in order?

3                   COMMISSIONER MCHUGH: I'm sorry it  
4 doesn't bring us. Let's go to traffic.

5                   COMMISSIONER CAMERON: Mitigation.  
6 So, we had a little bit of background  
7 information which I don't think we need to go  
8 over again.

9                   So, if we turn to page three. And  
10 we started this condition with accepting or  
11 incorporating all of the elements of the best  
12 and final offer that's the BAFO for Wynn to  
13 Boston.

14                   These are the elements that are  
15 included in that BAFO. Are there any questions  
16 or concerns about incorporating this piece into  
17 the condition?

18                   COMMISSIONER STEBBINS: I have none.  
19 And as I stated yesterday, I think some of the  
20 BAFO conditions that are more along the lines  
21 of the job guidelines and the business spending  
22 guidelines I would support.

23                   COMMISSIONER CAMERON: Which means  
24 you're supporting all of them?



1 COMMISSIONER STEBBINS: Yes.

2 COMMISSIONER CAMERON: Okay.

3 COMMISSIONER MCHUGH: I said when we  
4 talked about this as it was being presented  
5 that this was -- our job is to mitigate adverse  
6 conditions that are likely to arise. And this  
7 is Wynn's estimate of conditions that would be  
8 mitigated by these payments.

9 And this is the minimum that the  
10 city could have come out of the arbitration  
11 with. And I think it's the appropriate place  
12 to start for that reason.

13 COMMISSIONER CAMERON: Commissioner  
14 Zuniga, do you agree?

15 COMMISSIONER ZUNIGA: Yes, I agree.

16 COMMISSIONER CAMERON: So, we can  
17 move onto the second portion of the condition,  
18 which is traffic mitigation at Sullivan Square.

19 We started this with kind of short-  
20 term and long-term. There are photos there of  
21 both of those. And we started this with --  
22 which is a requirement anyway, to complete the  
23 MEPA process and receive the permits for short-  
24 term mitigation at Sullivan Square by July 1,

1 2015. We really want this to move along  
2 smoothly if this applicant is the licensee.

3 So, kind of having a deadline out  
4 there I think is helpful. Certainly, if there  
5 were issues obviously they would be brought to  
6 our attention and we would deal with them as we  
7 do with every other issue that's brought to our  
8 attention, we make a decision. So, that's the  
9 first portion of this.

10 And the second piece is to mitigate  
11 the impacts at the intersection of Main and  
12 Rutherford Ave. That's the other side of  
13 Sullivan Square. That's regardless of whether  
14 the MEPA requires that. And that's provided  
15 that the city of Boston does require that. I  
16 think that's an important element that all of  
17 the short-term mitigation pieces be completed.

18 The third piece is public safety  
19 access vehicles. I don't think that's at all  
20 controversial, but please jump in if any one of  
21 these there's an issue with or a question.  
22 Wynn to comply with its stated goals for  
23 alternative modes of transportation public  
24 transit, boats, for example.

1                   COMMISSIONER MCHUGH: I'm just  
2 trying to see where you're reading from.

3                   COMMISSIONER CAMERON: I'm reading  
4 from page four. These are the elements of the  
5 Sullivan Square. So, Wynn proposed 29 percent  
6 of the trips will take alternative  
7 transportation. This piece of the condition  
8 just we'd like them to comply with those stated  
9 goals.

10                   And there is an enforcement  
11 mechanism here which is conditions through  
12 measures such as reduction in the uses of  
13 spaces in Wynn's on-site garage and/or variable  
14 pricing at the garage. Just some kind of ways  
15 to enforce those conditions.

16                   COMMISSIONER MCHUGH: Okay. I'm  
17 sorry. I was on the wrong page, not the first  
18 time.

19                   COMMISSIONER CAMERON: Okay. So, if  
20 we go to the next page, which is page five of  
21 the condition, this is a continuation of short-  
22 term and long-term mitigation.

23                   Wynn to pay 10 percent of the cost  
24 of a long-term Sullivan Square/Rutherford Ave.

1 plan provided that its design is to accommodate  
2 casino traffic.

3 We're not saying what the design  
4 should be, but that that design should  
5 accommodate casino traffic in order for Wynn to  
6 be responsible for 10 percent of the costs.  
7 Again, that 10 percent is the projected amount  
8 of traffic from the casino during the Friday  
9 peak hour.

10 We thought it was important to cap  
11 that at \$20 million. And that's reflecting the  
12 cost of the long-term solution may grow to more  
13 than the \$100 million estimate.

14 And the 10 percent is in addition to  
15 the one million annual transportation payments  
16 specified in the BAFO. This is important  
17 because the one million in the BAFO is not  
18 earmarked for Sullivan Square, the long-term  
19 solution there. That could be used for other  
20 transportation issues. So, I thought it was  
21 important that that be a separate number for  
22 that reason.

23 So, this is the incentive piece  
24 next, which is really incentivize reducing

1 vehicle traffic through Sullivan Square. And  
2 that's each year Wynn to pay \$20,000 for each  
3 vehicle trip above the number of peak hour  
4 vehicle trips determined through the city of  
5 Boston's roadway improvement permit process.

6           These permits will come from Boston.  
7 That's the appropriate number to use. An  
8 example of this would be if the traffic exceeds  
9 the approved estimates by say 200 vehicles,  
10 Wynn would have to pay an additional four  
11 million annually. That would be the 20,000  
12 times the 200 vehicle overage.

13           There was a question asked about  
14 this. How do you make sure that those vehicles  
15 -- Our engineers are in fact very certain that  
16 we can come up with accurate numbers here. And  
17 there was a question asked about someone trying  
18 to say inflate these numbers by having a  
19 vehicle just go in and out, in and out and  
20 getting counted.

21           First of all, the general public  
22 wouldn't know when we'd be counting. They  
23 could be done a couple of times a month or  
24 different months. Do you know what I'm saying?

1 In other words, it's not going to be every  
2 Friday at five o'clock and everyone knows we'd  
3 be out there counting or our agent would be.

4 So, I think we could be assured that  
5 the numbers would be accurate. Of course, I'm  
6 relying on our traffic engineers to advise me  
7 accordingly here. And what's important here is  
8 if Wynn is successful in not exceeding traffic  
9 projections, such annual payments may not be  
10 required. So, the goal really is to minimize  
11 vehicle trips during those peak hours.

12 The last portion of this condition  
13 would be that Wynn may petition the Commission  
14 to refund any unused funds if the long-term  
15 solution is not commenced within 10 years of  
16 the casino opening. Again, this is another  
17 incentive to really move ahead with a long-term  
18 solution. Questions?

19 COMMISSIONER MCHUGH: Comments,  
20 questions?

21 COMMISSIONER ZUNIGA: I have a  
22 question. What is the peak hour?

23 COMMISSIONER CAMERON: Friday night  
24 5:00 to 6:00.

1                   COMMISSIONER ZUNIGA: So, it's one  
2 hour? It's five to six?

3                   COMMISSIONER CAMERON: Yes, that's  
4 the peak hour that we've all been using.

5                   COMMISSIONER ZUNIGA: Could it move  
6 from 5:30 to 6:30 or from 5:00 to 7:00?

7                   COMMISSIONER MCHUGH: Sure. The  
8 answer is sure. That's what it's set at now is  
9 the 5:00 to 6:00 hour, which is the heaviest  
10 traffic both for commuters and casino traffic  
11 combined.

12                   The actual peak for the casino is a  
13 little later but by then the commuter traffic  
14 has abated. So, that five to six period is  
15 typically used. It could be adjusted, but it  
16 would be set in advance and everybody would  
17 know what the peak hour would be. It would be  
18 someplace in that time range.

19                   COMMISSIONER CAMERON: It would be  
20 60 minutes?

21                   COMMISSIONER MCHUGH: Right.

22                   COMMISSIONER ZUNIGA: I heard you  
23 mention peak hours and I wasn't sure.

24                   COMMISSIONER CAMERON: There are

1 peak hours, but this is the -- You use when you  
2 make these calculations, this is the hour where  
3 both of those things happen, casino traffic as  
4 well as the commuter traffic. So, that's the  
5 hour that is most affected and on a Friday  
6 night.

7 COMMISSIONER MCHUGH: And it would  
8 be functional. So, you could adjust it. And  
9 you would measure it to adjust it to the hour  
10 that in fact had the greatest volume of traffic  
11 going through there. It's designed to measure  
12 traffic at the worst condition.

13 COMMISSIONER ZUNIGA: But the  
14 coefficient is an hour?

15 COMMISSIONER MCHUGH: Yes.

16 COMMISSIONER STEBBINS: The last  
17 bullet on the second page talking about  
18 petitioning us to refund any unused funds if  
19 the long-term solution is not commenced. What  
20 stage of the process, the long-term solution to  
21 Sullivan Square, at what step is commenced? Is  
22 it the final design, shovels in the ground?

23 COMMISSIONER ZUNIGA: Planning?

24 COMMISSIONER CAMERON: We didn't



1 specify.

2 COMMISSIONER MCHUGH: It is  
3 specified, I think, in some detail in the  
4 actual sheet that's being given as the actual  
5 start of construction. The planning's been  
6 going on since 1999. So, planning would not be  
7 a good departure point.

8 COMMISSIONER STEBBINS: No. And we  
9 have local officials in the room, understand  
10 there's certain percentages of design.

11 COMMISSIONER CAMERON: I guess  
12 hesitation was when you said shovels in the  
13 ground, I don't actually know. Construction  
14 has started. Something has happened there.  
15 I'm just not sure exactly what they consider,  
16 moving, starting to disassemble, whatever. I  
17 don't know. Yes, construction started is  
18 accurate enough.

19 COMMISSIONER MCHUGH: All right. I  
20 had one, a couple of questions and one thought  
21 unless somebody else has some. How do we --

22 COMMISSIONER CAMERON: Page four?

23 COMMISSIONER MCHUGH: It's page  
24 five.

1           COMMISSIONER CAMERON: Do you have  
2 your pages stapled incorrectly?

3           COMMISSIONER MCHUGH: I've got the  
4 numbers on there. Number five right there. Do  
5 you have number five? You got number four.  
6 Well, that's all right. Your number four, my  
7 number five. Wynn to mitigate intersections of  
8 Main and Rutherford and Sullivan Square  
9 regardless of whether the MEPA requires such  
10 mitigation, provided that the city of Boston  
11 requires such mitigation.

12           This is a recognition, as I see it  
13 and correct me if I'm wrong, that the city of  
14 Boston has an essential role in the permitting  
15 process. This doesn't work unless MassDOT, the  
16 city of Boston, Wynn and others, and we've said  
17 this before come together and there is a common  
18 solution.

19           The next one Wynn to develop an  
20 updated plan to improve public safety vehicle  
21 access in the Sullivan Square/Rutherford Avenue  
22 area. How is Wynn to do that?

23           COMMISSIONER CAMERON: A common  
24 method would be staging vehicles. So, that

1 you'll see that during peak hours you'll see  
2 that with tow trucks on interstate highways.  
3 Staging vehicles so that there can be a quicker  
4 response. That's one way, common method that  
5 I'm aware of that accomplishes that goal.

6 COMMISSIONER MCHUGH: That staging  
7 is overseen, approved and permitted probably by  
8 some public authority, right?

9 COMMISSIONER CAMERON: I'm not  
10 familiar with permitting but certainly a plan  
11 that would be -- And again, this would be in  
12 coordination with others. They certainly  
13 wouldn't be able to do this. But we're asking  
14 them to come up with a plan to improve the  
15 public safety there.

16 So, they would be working with  
17 officials in the city to accomplish this goal.

18 COMMISSIONER MCHUGH: Should we add  
19 that so that it's clear again that the city has  
20 a role, I think, in this. This is not  
21 something that we just said Wynn you go out and  
22 fix. The city has to participate in this in a  
23 meaningful way that serves the city's needs.

24 COMMISSIONER CAMERON: I think we

1 can be more specific without a problem there so  
2 that that is made clear, yes.

3 COMMISSIONER MCHUGH: Then the piece  
4 about the 10 million being in addition to the  
5 one million annual transportation fee, it seems  
6 to me is important to understand that that one  
7 million annual transportation fee specified in  
8 the BAFO is for non-MEPA required traffic  
9 impacts on Charlestown area.

10 And those may be some that are  
11 currently unforeseen. One of the provisions  
12 here, one of the very good provisions here is a  
13 look back provision. So, there may be things  
14 and probably will be things that we can't  
15 envision right now that will occur if this  
16 facility is licensed and that need some funding  
17 to fix.

18 The look back provisions have some  
19 provisions for assessing those amounts. But  
20 the one million, as I understood it from the  
21 BAFO, was designed to provide a fund that would  
22 allow the city to deal with conditions as they  
23 arose and to make improvements for traffic  
24 conditions that were not anticipated and didn't

1 come through the MEPA process.

2 So, it seems to me that's an  
3 important component to have in this mitigation  
4 package. They can use it for Sullivan Square  
5 improvements, but it also is available for  
6 other improvements as well.

7 COMMISSIONER CAMERON: That is  
8 exactly my understanding. That's exactly what  
9 our engineers have advised.

10 COMMISSIONER MCHUGH: Okay. This is  
11 a key to the success of this proposal. And as  
12 I said before, it requires the participation of  
13 a number of people to work. So, this is  
14 something that is designed to elicit that kind  
15 of cooperation. There are other keys to the  
16 success of other proposals but this is a key to  
17 the success of this proposal. Okay.

18 COMMISSIONER CAMERON: Questions,  
19 additional questions?

20 COMMISSIONER STEBBINS: Yes, I'm  
21 sorry. Can I go back to page four. The fourth  
22 bullet talking about Wynn's goals for getting  
23 more people to their facility from alternative  
24 modes of transportation is something that they

1 suggest in their MEPA filings.

2 Is there any expectation that if and  
3 when MEPA issues their certificate that that  
4 would be an enforcement measure in their  
5 certificate? Is that expected?

6 Or is this, short of that we're  
7 making it a condition of the license? I'm just  
8 asking if we're going to have it as a condition  
9 of the license and it's going to be duplicated  
10 if and when a MEPA certificate is issued.

11 COMMISSIONER MCHUGH: I'm sorry.  
12 Could you restate that question?

13 COMMISSIONER STEBBINS: Sure.

14 COMMISSIONER MCHUGH: Which page are  
15 you on now?

16 COMMISSIONER STEBBINS: Page four.

17 COMMISSIONER MCHUGH: Page four, all  
18 right.

19 COMMISSIONER STEBBINS: The second  
20 bullet from the bottom, they're proposing 29  
21 percent of the trips in and off the property  
22 will take alternative transportation the T, the  
23 boats, etc. And it's been referenced in the  
24 MEPA filings.

1 I guess my question is could MEPA  
2 issue a certificate enforcing those guidelines  
3 and then we're kind of duplicating enforcement  
4 in our license condition and MEPA is going to  
5 enforce that same requirement as well.

6 COMMISSIONER MCHUGH: The MEPA isn't  
7 going to set a requirement. The MEPA is going  
8 to say that they've got an adequate plan or  
9 they've adequately addressed. That's what the  
10 certificate says. And they can move forward to  
11 the permitting stage.

12 Then at the permitting stage, the  
13 city ultimately will or the MassDOT will decide  
14 whether to issue permits and approve plans for  
15 construction and other measures designed to  
16 improve that intersection, at least as I  
17 understand it.

18 And the 7129 will figure in the  
19 volume of traffic that's moving through there  
20 and will be a basis on which the permits will  
21 be issued. And then the \$20,000 per car thing,  
22 the mitigation payment will be in place to  
23 enforce whatever number of automobiles is  
24 derived through that process.

1                   So, it's really the permitting  
2 process that picks the number of vehicles based  
3 on the percentage of anticipated traffic. Does  
4 that answer the question or just confuse  
5 things?

6                   COMMISSIONER STEBBINS: A little bit  
7 of both. I'm fine leaving it the way it is.  
8 If we duplicate whatever MEPA requires as part  
9 of the certificate, obviously they're not going  
10 to approve transportation plans that doesn't  
11 take this number into consideration.

12                  COMMISSIONER MCHUGH: Right. This  
13 is the projected amount of traffic. The  
14 permitting authority now and through the MEPA  
15 process getting started may say that that  
16 number just won't work and therefore the permit  
17 doesn't get issued.

18                  COMMISSIONER ZUNIGA: Are we making  
19 a distinction -- Is part of the distinction of  
20 the short-term solution and the long-term  
21 solution the opening of this casino in between?

22                  COMMISSIONER CAMERON: The short-  
23 term mitigation must be complete before  
24 opening.



1                   COMMISSIONER ZUNIGA: Opening the  
2 casino.

3                   COMMISSIONER MCHUGH: Yes, but if I  
4 understood the question, the long-term solution  
5 is on maybe your page four, but my page five on  
6 the right-hand side. And that is the now  
7 community consensus city adopted maybe future  
8 plan for what Sullivan Square is going to look  
9 like. That's the long-term solution.

10                   The short-term solution is on the  
11 left side. And that is to rework the existing  
12 basic pattern of Sullivan Square to allow more  
13 traffic to flow through there more easily. And  
14 the short-term, the length of the short-term is  
15 until the long-term is implemented. That's why  
16 the 10-year feature is there as a hopefully  
17 helpful incentive to get the long-term solution  
18 underway.

19                   That's how those pieces fit  
20 together. Does that answer your question?

21                   COMMISSIONER ZUNIGA: Where I was  
22 going is the statute speaks about the  
23 improvements outside of the site to be done as  
24 determined by the Commission prior to opening

1 of the casino. In this case the short-term  
2 solution needs to be done prior to that  
3 opening.

4 COMMISSIONER CAMERON: Correct.  
5 More questions about those bullets, Sullivan  
6 Square pieces? So, we'll move onto my page six  
7 which is the piece of the condition dealing  
8 with parking.

9 And what we're asking for here is to  
10 prepare a report for review by the Commission  
11 identifying the appropriate number of parking  
12 spaces in the underground garage on the site  
13 and to submit that draft report to the  
14 Commission no later than 30 days after an award  
15 of the license.

16 COMMISSIONER MCHUGH: Is this report  
17 intended to determine the size of the garage or  
18 the number of parking spaces in the garage  
19 whatever size they are going to use?

20 COMMISSIONER CAMERON: This is to  
21 take a look, we would like Wynn to take a look  
22 at what really is the appropriate number.  
23 There is one number in the draft report and a  
24 separate number in the final. And we'd like

1 some additional analysis in a report to us  
2 about what that number should be.

3 COMMISSIONER MCHUGH: The reason I  
4 ask that question is that there was some  
5 thought at some point that Wynn could build a  
6 garage of whatever capacity it thought was  
7 appropriate.

8 And they've told us now 3700 cars is  
9 the target but that under some circumstances we  
10 had the power to limit the number of spaces  
11 they could use in an effort to incentivize  
12 reduction in the traffic, if necessary that was  
13 going through Sullivan Square.

14 So, is this a report that's designed  
15 to tell us how many cars they think they need  
16 to park in the parking lot of whatever size?  
17 Or is this going to be the basis for us saying  
18 that's as big a parking lot you can build?

19 COMMISSIONER CAMERON: Because of  
20 the differences in the two reports, because of  
21 our plan to try to encourage the applicant to  
22 reduce the number of vehicles traveling to the  
23 facility, in consultation with our traffic  
24 engineers, just take a look at this issue one

1 more time and let us know what you think the  
2 appropriate number would be.

3           There are comments about parking.  
4 There are different philosophies about parking.  
5 And we just thought a report identifying that  
6 number would be appropriate. There's no  
7 stipulation that we're going to say -- just  
8 take a look at this issue one more time.

9           COMMISSIONER MCHUGH: Okay. It's  
10 basically an advisory report to let us know  
11 what their current thinking is.

12           COMMISSIONER CAMERON: Yes. So, now  
13 we have a piece of the condition having to do  
14 with community outreach and the site cleanup.  
15 This is a Charlestown community outreach. This  
16 is Wynn shall engage in community outreach to  
17 Charlestown and report to the Commission on  
18 that outreach.

19           We know that there has been outreach  
20 in the past. But this a way to encourage  
21 knowing that there are now conditions in place,  
22 we'd like to see that engagement.

23           And with regard to the site cleanup,  
24 we want to make sure they implement a public

1 participation program per Mass. Contingency  
2 plan. We just want to state that and have that  
3 out there and have a draft plan in place no  
4 later than 30 days after the award of the  
5 license. And we'd like the applicant to  
6 include public officials in Everett, Boston,  
7 Somerville and interested parties in  
8 Charlestown.

9 As we know, we are trying to make  
10 sure we're capturing all of the impacts on  
11 behalf of the city of Boston. We've had a lot  
12 of comments. I think there's frankly some  
13 misinformation out there about site cleanups  
14 and the danger and whatnot. So, having that  
15 participation that education we think is an  
16 important piece of the condition.

17 COMMISSIONER STEBBINS: Can I  
18 suggest at least on the first bullet that we  
19 offer to be a little more specific as to the  
20 community outreach? It's project update  
21 outreach which could consist of update on the  
22 MEPA process, updates on Sullivan Square  
23 construction.

24 We certainly want them to be nice

1 and get along but I think what we're driving at  
2 is for them to have an effective community  
3 outreach and communication strategy to keep  
4 folks in Charlestown updated as to the progress  
5 that they're making.

6 COMMISSIONER CAMERON: Progress of  
7 project, we can absolutely do that. Good  
8 suggestion.

9 COMMISSIONER MCHUGH: With respect  
10 to the second bullet on the site cleanup, there  
11 is an elaborate regulatory procedure for this.  
12 And I don't know that that can be done in 30  
13 days after award of the license.

14 I think this is a good point and we  
15 ought to do it. It's required by the regs.  
16 But have a draft plan for public participation  
17 -- That's what we're talking about here. -- in  
18 place promptly after award of the license I  
19 would say.

20 Because there may be steps that you  
21 have to go through to comply with the  
22 regulation that take longer than 30 days. So,  
23 I would say promptly after.

24 COMMISSIONER CAMERON: We can make

1 that change. We were too aggressive,  
2 Commissioner.

3 COMMISSIONER MCHUGH: Oh, no. We're  
4 never too aggressive.

5 COMMISSIONER CAMERON: We can  
6 certainly make that change.

7 COMMISSIONER MCHUGH: All right.

8 COMMISSIONER CAMERON: Any other  
9 comments?

10 COMMISSIONER CAMERON: So, we move  
11 onto another piece of the condition which is a  
12 look back study. This has been done. As we  
13 know MGM and Penn National both incorporated  
14 look back studies. In Wynn's agreement with  
15 the city of Malden does the same.

16 So, I am recommending that Wynn be  
17 required to pay for an independent study of  
18 specified impacts during the construction  
19 period the year after operation and then five  
20 years after operation.

21 Upon the issuance of the report,  
22 Wynn is required to work with the city of  
23 Boston, determine the appropriate mitigation  
24 and then proceed if necessary to arbitration.

1           The look back will apply to public  
2 safety impacts, non-Rutherford Ave./Sullivan  
3 Square related traffic impacts, water, sewer,  
4 storm water impacts, construction noise  
5 impacts, and Ryan Park construction and traffic  
6 impacts.

7           This is again part of our  
8 responsibility. It's been done in a similar  
9 fashion with other applicants as well as with  
10 one city in this particular region.

11           COMMISSIONER MCHUGH: Comments,  
12 questions?

13           COMMISSIONER STEBBINS: The first  
14 bullet you're talking independent study of  
15 specified impacts. Who comes up with those  
16 specified impacts?

17           COMMISSIONER CAMERON: We specify  
18 them in the third bullet.

19           COMMISSIONER STEBBINS: Okay.

20           COMMISSIONER MCHUGH: All right.  
21 Any other questions, comments, concerns?

22           COMMISSIONER CAMERON: The next is  
23 just an example. I think that completes, other  
24 than the last page which really does -- we want



1 to reaffirm that Wynn and the city of Boston  
2 can negotiate an alternative to these  
3 conditions. We just think that's important to  
4 state in concluding the condition.

5 COMMISSIONER MCHUGH: All right.  
6 Good. Thank you, Commissioner. Let's move  
7 onto the economic development conditions.

8 COMMISSIONER ZUNIGA: Before we do  
9 that. I know this is wordsmithing a little  
10 bit, but it's understood in the look back study  
11 that it's all impacts attributable to Wynn.  
12 It's not stated but all impacts that would be  
13 studied and then mitigated or arbitrated are  
14 those that can be attributable to the operation  
15 of the casino.

16 COMMISSIONER CAMERON: Correct. We  
17 can put that in there. That's fine. Thank  
18 you.

19 COMMISSIONER STEBBINS: Can I make a  
20 quick recommendation? I know he asked for a  
21 five-minute break before. I need a five-minute  
22 break.

23 COMMISSIONER MCHUGH: Let's take a  
24 five-minute break and then we'll continue.

1 (A recess was taken)

2

3 COMMISSIONER MCHUGH: Ladies and  
4 gentlemen. We are prepared to resume and  
5 conclude, but first Commissioner Zuniga.

6 COMMISSIONER ZUNIGA: Yes. Maybe I  
7 can just go back to the last two conditions of  
8 the page two, Melissa.

9 I just want to talk to these. It  
10 may not change the consensus that we, I  
11 presume, tentatively arrived at. But the  
12 specific example that I was thinking and maybe  
13 didn't articulate quite well is the senior  
14 lender could come in and establish a covenant  
15 or a series of covenants with repercussions  
16 later on that might cause them to come back and  
17 say you cannot strip anymore cash out of this  
18 operation until I get the payments the way they  
19 were stipulated.

20 Under that scenario they may put at  
21 least in theory, assuming things are not going  
22 according to plan, in jeopardy the promises  
23 they've made to surrounding communities, for  
24 example, or even the host community.

1           Now those are a condition of the  
2 license. So, of course if they were to find  
3 themselves in that situation, granted it's not  
4 a desirable one or anything like that they  
5 would be faced, I guess, with not being in  
6 compliance with a condition of the license or  
7 with a condition or with a covenant of their  
8 borrowing.

9           So, that was the intention in having  
10 the Commission approval of that covenant.  
11 Indirectly, I realize we do have the catchall  
12 conditions of all of the host and surrounding  
13 community payments for example. So, I think  
14 it's covered there.

15           I do believe however that having  
16 approval of those covenants would be a failsafe  
17 in my opinion. But if that's not something  
18 that you all agree with I'll be happy to have  
19 that as a reporting mechanism, especially as it  
20 applies to all of the conditions of the  
21 license.

22           COMMISSIONER MCHUGH: Actually, that  
23 was the example you used before, and I think  
24 it's an important example. But generically

1 it's no different than any other subordination  
2 clause in the lending agreement.

3           It would have the effect of  
4 subordinating payments under contracts with,  
5 and that's what they are, host and surrounding  
6 communities to payments to the lender. Or  
7 keeping cash on hand to pay the lender or to  
8 feed other operations at the lender's  
9 discretion. And there could be a whole host of  
10 those.

11           That's why I just view this as  
12 better done on an information basis than  
13 allowing us to insert ourselves into the middle  
14 of that kind of an agreement formation up  
15 front. I don't see any end to it.

16           And we'd have to calculate the  
17 impact of every subordination agreement, every  
18 cross collateral clause, every clause in an  
19 equal fashion and get ourselves involved  
20 basically as a third-party in the financing  
21 transaction.

22           So, I hear you, period. That's why  
23 I'm concerned about that.

24           COMMISSIONER ZUNIGA: Okay. Our

1 good staff pointed out that the statute is very  
2 clear relative to the transfer of ownership  
3 even among existing partners. So, I think we  
4 are well covered. I'll be happy to delete the  
5 last condition.

6 COMMISSIONER MCHUGH: Delete the  
7 last condition?

8 COMMISSIONER ZUNIGA: The last  
9 section of this condition.

10 COMMISSIONER MCHUGH: The Commission  
11 to approve all transfers of ownership, surely.  
12 That's in the statute.

13 COMMISSIONER ZUNIGA: That's in the  
14 statute.

15 COMMISSIONER MCHUGH: Right.

16 COMMISSIONER ZUNIGA: So, the  
17 statute trumps me in a way.

18 COMMISSIONER MCHUGH: Right. We can  
19 write the regs.

20 COMMISSIONER ZUNIGA: We can write  
21 the regs. accordingly on an emergency basis.

22 COMMISSIONER MCHUGH: If necessary.  
23 So, we'll delete the last of those proposed  
24 conditions on page two. Anything further?

1 Okay, Commissioner Stebbins.

2 COMMISSIONER STEBBINS: We have some  
3 conditions for each applicant. I'll again  
4 start with the recommended conditions I propose  
5 for Mohegan Sun MA.

6 The first recommended condition  
7 bullet, MSM agrees to report to the MGC upon  
8 selection of a general contractor and meet to  
9 review MBE/WBE/VBE commitments set out by MSM  
10 in their RFA-2 application. We've seen this  
11 language before. It was similar language that  
12 we had adopted for MGM in their Springfield  
13 proposal.

14 The next condition, this is with  
15 respect to the Momentum Loyalty Card program  
16 that MSM has profiled in its application. With  
17 respect to the Momentum Loyalty Card program,  
18 MSM will agree to provide the following: an  
19 annual report on the number of participating  
20 businesses enrolled and the dollar value of  
21 points redeemed by each business. The formula  
22 to be used to convert points earned at Mohegan  
23 Revere to the net amount spent at participating  
24 businesses; and an estimate from MSM's

1 projected 50 million plus points earned per  
2 annum of the net amount spent at participating  
3 businesses for the initial three years of  
4 operation and annually thereafter for approval  
5 by the MGC.

6 I'd even be comfortable necessarily  
7 not requiring approval but for review by the  
8 MGC.

9 COMMISSIONER MCHUGH: Okay. So, at  
10 the end of the year they can give us a report  
11 of the amount they estimated they spent or at  
12 the end of the three-year period.

13 COMMISSIONER STEBBINS: Yes. Again,  
14 I think yesterday we acknowledged or I  
15 attempted to acknowledge MSM refers to it in  
16 their RFA-2 application that there's somewhat  
17 of a novel approach. It has never been tried.  
18 And I think for both of our assurances, we want  
19 to monitor the ongoing success or just progress  
20 of the program.

21 COMMISSIONER MCHUGH: Right.

22 COMMISSIONER STEBBINS: I have  
23 rewritten my third license condition because I  
24 tried to go from legalese to non-legalese and

1 realized I probably didn't capture the  
2 information adequately for anybody.

3           So, I've rewritten this condition.  
4 Most of what you'll see at the top is more  
5 background to the information I was relaying.  
6 In the host community agreement with the city  
7 of Revere, MSM agreed to make good-faith  
8 efforts to purchase 10 million of goods and  
9 services within the Revere municipal  
10 boundaries.

11           They also incorporated a similar  
12 commitment to Boston, \$50 million with  
13 businesses having a primary place of operation  
14 within city boundaries. And Chelsea, a similar  
15 agreement and commitment of again good-faith  
16 efforts to purchase goods to the tune of a  
17 total of 2.5 million. Those were both included  
18 in the surrounding community agreements that  
19 MSM signed with those two communities.

20           These three municipalities' specific  
21 commitments total 62.5 million. In the other  
22 10 surrounding community agreements, MSM  
23 provided a blanket commitment to make good-  
24 faith efforts to spend 50 million on goods and



1 services within a 15-mile radius of Revere City  
2 Hall.

3 And as we saw outlined yesterday,  
4 MSM's projected local goods and services spend  
5 is projected at 62.2 million.

6 So, the license condition is the  
7 last line and that is that MSM is required to  
8 reconcile the difference in goods and service  
9 spending and commitments in host and  
10 surrounding community agreements to the MGC  
11 prior to license award and to communicate the  
12 reconciliation to the beneficiaries. In this  
13 case, the beneficiaries being the identified  
14 communities above.

15 COMMISSIONER MCHUGH: Yes, it's  
16 perfectly comprehensible. Is there a  
17 requirement that they report on the  
18 reconciliation and the host and surrounding  
19 communities' acceptance of that reconciliation  
20 to us?

21 COMMISSIONER STEBBINS: I haven't  
22 made that a stipulation or a requirement. I  
23 would fully expect the communities -- First of  
24 all, each surrounding community agreement has a

1 dispute resolution provision within it. And I  
2 would also suggest that we know the communities  
3 and the leadership in the communities are not  
4 bashful about bringing something to our  
5 attention.

6 COMMISSIONER MCHUGH: Right, right,  
7 right. So, this would be a requirement that  
8 they specifically address the apparent  
9 disparity between the total amount pledged to  
10 the entire group and the amount of projected  
11 goods and services that they mentioned to us.  
12 Okay. I understand that.

13 COMMISSIONER STEBBINS: And I've  
14 included language in there about prior to  
15 license award. I think we can fully anticipate  
16 or should anticipate or be prepared to  
17 anticipate that designating a license would  
18 probably be, as we saw with MGM, would probably  
19 be a step that either one of our applicants  
20 would proceed with prior to the November 7  
21 ballot referendum.

22 COMMISSIONER MCHUGH: Questions,  
23 comments? All right.

24 COMMISSIONER STEBBINS: The three

1 license conditions, recommended license  
2 conditions for Wynn MA, the first two of these  
3 come out of statements, commitments discussed  
4 or raised at a host community hearing and not  
5 part of an RFA-2 application.

6 So, we wanted to kind of find a way  
7 for our applicants to commit to these hearings  
8 and commitments made during the host community  
9 hearing.

10 The first condition is that Wynn  
11 Everett, LLC will commit to hire 75 percent of  
12 employees from within 30 minutes of Everett,  
13 again as stated at the June 25, 2014 Everett  
14 host community hearing.

15 The second bullet also again coming  
16 out of statements and commitments made at that  
17 June 25 hearing. Wynn Everett, LLC will offer  
18 jobs to Suffolk Downs employees on a  
19 preferential basis. Wynn will also provide a  
20 recruiting and training plan with MGC approval  
21 for these employees should Suffolk Downs close  
22 at any time.

23 And the third license condition is  
24 Wynn will commit to provide medical/dental

1 benefits to unionized and nonunionized  
2 employees at Wynn Everett at least commensurate  
3 with benefit programs offered at Wynn's Nevada  
4 casinos.

5 COMMISSIONER MCHUGH: And that comes  
6 from Wynn itself in some presentation, right --  
7 that third one?

8 COMMISSIONER STEBBINS: Yes. It was  
9 in the application as we talked about. There  
10 was some question about those figures not being  
11 included in the benefit budget.

12 COMMISSIONER MCHUGH: All right.  
13 Questions, comments?

14 COMMISSIONER CAMERON: Quick  
15 question. So, that was a firm commitment to  
16 hire 75 percent of the employees within 30  
17 minutes of the Everett?

18 COMMISSIONER STEBBINS: That's what  
19 we pulled from the transcript of the hearing as  
20 was the commitment with respect to current  
21 employees at Suffolk Downs.

22 COMMISSIONER CAMERON: Okay. So  
23 many of the others are good-faith efforts, but  
24 this is a firm commitment.

1           COMMISSIONER MCHUGH: All right. Is  
2 everybody in agreement that those are  
3 conditions we send to the applicants?

4           COMMISSIONER STEBBINS: One more.  
5 This is a license condition. It's for both  
6 applicants. It isn't necessarily -- We've had  
7 standard stipulations or license conditions for  
8 both the Category 2 licensee and the Region B  
9 license designee that outlines what you see are  
10 programs and plans to be presented to the  
11 Commission.

12           An affirmative marketing program  
13 required within 30 days for MBE, WBE and VBE  
14 businesses for design and construction. The  
15 same 90 days after licensure for the goods and  
16 services operation. All we're asking is that  
17 there be a required component in these plans  
18 prior to their presentation to us outlining a  
19 visible public outreach component. So, you  
20 could almost suggest it's a slight modification  
21 of an existing condition that we already have.

22           Then I would just note that similar  
23 to other conditions and it's just a reminder  
24 mostly for legal staff but certainly for my

1 colleagues that we've had a requirement that a  
2 condition of license is that licensees adhere  
3 to the salary wage and benefit tables that they  
4 provide to us in the RFA-2 application. And  
5 I've asked that that be included also in the  
6 license condition to be shared with both  
7 applicants.

8 COMMISSIONER MCHUGH: Yes. I think  
9 we've done that in all of the other licenses  
10 that we've issued, the two other licenses that  
11 we've issued.

12 COMMISSIONER STEBBINS: Yes.

13 COMMISSIONER MCHUGH: All right.  
14 Questions, comments? That's it.

15 COMMISSIONER ZUNIGA: I did want to  
16 talk a little bit about a potential condition,  
17 I don't know exactly how to phrase it that  
18 would fall under the economic development piece  
19 if this is the appropriate time.

20 COMMISSIONER MCHUGH: Another  
21 condition?

22 COMMISSIONER ZUNIGA: Yes. The  
23 statute talks about section 18, subsection 18  
24 in determining the award of the license whether

1 the applicant has a contract with organized  
2 labor including hospitality services.

3 And of course, the thrust of this is  
4 how the applicant plans to assure labor  
5 harmony. In the case of Mohegan given their  
6 structure, there's a number of employees that  
7 would be presumed to be employees of the people  
8 that are leasing space from the party that  
9 Mohegan leases space to.

10 So, under that scenario, those are  
11 perhaps not directly -- they are not direct  
12 employees of the applicant, but clearly they  
13 are employees of the gaming establishment.

14 I don't know exactly how to phrase  
15 that in the form of a condition. It was some  
16 of the findings that Commissioner Stebbins  
17 identified that does not appear to be a clear  
18 plan for that. I think it's a risk factor when  
19 it comes to this proposal, and wanted to throw  
20 it out there for discussion.

21 COMMISSIONER CAMERON: The risk is  
22 having employees that would not be covered by a  
23 union?

24 COMMISSIONER ZUNIGA: The risk would

1 be not labor harmony because of the structure  
2 that they have.

3 COMMISSIONER MCHUGH: The statute  
4 says that we're to issue findings about how  
5 they propose to achieve those objectives. And  
6 why isn't the indefiniteness of their plan or  
7 their failure to have a plan or the like a  
8 licensing factor rather than a condition that  
9 we impose?

10 In other words, if there is concern  
11 about that that is there, we make a finding  
12 about that. And if the concern about that is  
13 substantial enough to suggest that the  
14 licensing of that entity, that applicant would  
15 be a risk because labor disruption may prevent  
16 its effective opening that's a factor to  
17 consider in the licensing process.

18 I ask that because I wonder how we  
19 could craft such a condition in a way that was  
20 enforceable. Once again, it takes two to  
21 bargain and come to an agreement in the end.  
22 In particular, since the identity of many of  
23 the retail and food and beverage and other  
24 employees hasn't yet been determined nor has



1 the identity of the employers. It's really  
2 hard to, it seems to me, craft a solution to  
3 that in advance.

4 COMMISSIONER ZUNIGA: If there was a  
5 way in which the applicant through its lease  
6 and subleases was able to stipulate that there  
7 would be neutrality relative to organizing as  
8 opposed to being silent, in my opinion would go  
9 a long way towards the efforts of ensuring  
10 labor harmony.

11 COMMISSIONER CAMERON: We haven't  
12 stipulated that or made that a condition for  
13 any other licensee.

14 COMMISSIONER ZUNIGA: Because the  
15 employees have been direct employees of the  
16 licensee.

17 COMMISSIONER CAMERON: Not all.

18 COMMISSIONER STEBBINS: Not all.

19 COMMISSIONER ZUNIGA: That's right.  
20 Not all. But this is a big portion of the  
21 employees are outside of the licensee's  
22 purview.

23 COMMISSIONER MCHUGH: The MGM one,  
24 they've talked about the number of jobs created

1 but that includes the cinema people and the  
2 bowling alley people and the restaurant people.  
3 That's a big diverse labor force for example.

4 COMMISSIONER ZUNIGA: Yes, but they  
5 work for MGM. MGM subcontracts some of those  
6 but not everybody. I understand the  
7 difficulties here. I know that it's not a  
8 straightforward, but the structure of this  
9 applicant is one where I think that risk is  
10 real and I just wanted to throw it out there.

11 COMMISSIONER MCHUGH: All right.  
12 Comments by Commissioners?

13 COMMISSIONER STEBBINS: I would  
14 struggle with how we would phrase that. Again,  
15 we have two different applicants with two  
16 different operating strategies.

17 And it's something that we do look  
18 at when we consider awarding the license. I  
19 just don't how we'd include it as a condition  
20 of license at this point. It's more something  
21 to evaluate at the appropriate point.

22 COMMISSIONER MCHUGH: Commissioner  
23 Cameron.

24 COMMISSIONER CAMERON: I would

1 agree. I can't think of a way, a judgment call  
2 some employees are okay but not too many. It's  
3 just hard to quantify, I would think.

4 COMMISSIONER MCHUGH: I too would  
5 prefer to consider it as one of the many  
6 licensing factors we're going to have to  
7 consider rather than try to craft a condition  
8 that in some way that we just can't envision  
9 right now has unintended consequences.

10 I understand clearly the intended  
11 consequence but I think we risk unintended  
12 consequences by doing that rather than  
13 considering it as a licensing condition -- as a  
14 factor in the licensing decision.

15 All right. Anything else then?

16 COMMISSIONER STEBBINS: One of the  
17 conditions I talked about I'd like to amend  
18 just slightly. And it's one of the recommended  
19 conditions for Wynn.

20 Obviously, I know what they promised  
21 in the host community hearing, but I want to  
22 take it a little step further and just add the  
23 language that Wynn Everett, LLC will commit to  
24 hire no less than 75 percent of its employees

1 from within the 30 minutes of Everett, instead  
2 of using it as a ceiling, using it as a floor.

3 COMMISSIONER MCHUGH: All right. I  
4 have no difficulty with that.

5 COMMISSIONER ZUNIGA: Is that what  
6 they represented a ceiling and not a floor?

7 COMMISSIONER STEBBINS: The  
8 transcript said commit to hire 75 percent of  
9 the employees. That's what they committed to  
10 in the transcript. But as a condition of  
11 license, I'm just saying amend that slightly to  
12 say no less than.

13 They committed 75. I would like to  
14 recommend a license condition, and again, we're  
15 going to get feedback and responses to all of  
16 these but to start with saying no less than 75  
17 percent of employees.

18 COMMISSIONER MCHUGH: So, that is if  
19 they choose to hire 80 percent, the condition  
20 doesn't prevent them from doing so.

21 COMMISSIONER STEBBINS: Right, happy  
22 to have them do that.

23 COMMISSIONER MCHUGH: Right.  
24 Commissioner Zuniga?

1                   COMMISSIONER ZUNIGA: So long as  
2 that was the commitment. If the commitment was  
3 up to 75 then the condition really is very  
4 different, but if it was 75 no less would be  
5 fine.

6                   COMMISSIONER MCHUGH: Right. And  
7 you say it was 75. So, let's put that  
8 condition out there and we'll get their  
9 response. All right. Anything further?

10                   All right. What we're going to do  
11 now then is this. We're going to take a 15-  
12 minute recess, and then ask the applicants  
13 who've heard some of these conditions for the  
14 first time, although the thrust of them has  
15 been clear for -- has been on the table for a  
16 while, give them in any event 15 minutes which  
17 is the amount of time they've told us they need  
18 to tell us how long they will need to respond  
19 to them.

20                   The default time is 5:00 tomorrow  
21 afternoon. If they need longer than that,  
22 we'll be willing to entertain that but that is  
23 the default time that we're going to apply.

24                   So, we'll give them 15 minutes to

1 report back to us. And then we'll reconvene  
2 briefly after we get their assessments of how  
3 much time they need. Then we'll adjourn for  
4 the day and regroup. If 5:00 tomorrow is fine,  
5 we'll regroup at 10:00 on Friday morning.

6 If they need longer time, slightly  
7 longer time, we'll take that into account. And  
8 in any event, before we leave here tonight,  
9 announce the time when we will resume these  
10 processes. 15-minute break.

11  
12 (A recess was taken)

13  
14 COMMISSIONER MCHUGH: Ladies and  
15 gentlemen, we have conferred with the  
16 applicants. On the basis of that conferring,  
17 we are going to set 5:00 on Friday as the  
18 deadline for the responses.

19 We will reconvene this meeting, the  
20 fourth session of this meeting on Monday,  
21 September 15, 2014 at the Boston Teachers Union  
22 Hall, 180 Mount Vernon Street in Dorchester.  
23 We're doing that because this place is full and  
24 there is no room for us on Monday.

1           So, the Teachers Union Hall in  
2           Dorchester is where we will be. We are very  
3           grateful to them for accommodating us.

4           Something I guess wonderful is going  
5           on in the Boston area. There's not a meeting  
6           room in the city that's available. But the  
7           teachers have agreed to help us. So, we'll  
8           meet there on Monday at 11:00.

9           And we will proceed then until we  
10          are at a decision. We will post tonight for  
11          the public to look at the conditions that were  
12          handed to the applicants. And we will post the  
13          responses. They're required to provide us with  
14          written responses. We'll post the responses on  
15          Monday at 11:00 as the meeting commences.

16          We will be available briefly for a  
17          talk with the press this afternoon, as we  
18          mentioned. However, none of the Commissioners  
19          neither myself or any of the Commissioners will  
20          be offering any judgments or thoughts,  
21          predictions about the substance of anything  
22          that we've discussed thus far.

23          We are in the middle of a  
24          deliberative process. We have not come to a

1 place where we have any conclusions, any  
2 judgments, any thoughts about any part of the  
3 process apart from procedural matters to offer  
4 at this point. So, I hope everybody  
5 understands that and understands the importance  
6 of the deliberative process we're in the middle  
7 of.

8           We've had three intensive days of  
9 both reporting to each other the information  
10 that we've gathered, compiled and analyzed in  
11 the course of our reports. Now we've gotten  
12 some feedback that we've dealt with throughout  
13 the day to day in the form of claims of  
14 material error.

15           We'll be thinking about those.  
16 We'll be thinking about what we've heard.  
17 We'll be thinking about the conditions as the  
18 applicants are over the next couple of days.  
19 But it's much too early to offer any judgments  
20 or thoughts about outcomes.

21           Anything else I need to say? I  
22 think I just trumped you. But is there  
23 anything else I need to say?

24           MS. BLUE: No. That's fine. I



1 think you've got it covered.

2 COMMISSIONER MCHUGH: Anything else  
3 from the Commissioners?

4 COMMISSIONER ZUNIGA: So, both  
5 applicants have until Friday at 5:00 to respond  
6 to the conditions.

7 COMMISSIONER MCHUGH: To respond to  
8 the conditions in writing. And General Counsel  
9 Blue and Ombudsman Ziemba set up with them  
10 where the responses should be delivered and  
11 how. And then we will resume at 11:00 on  
12 Monday. Any other thoughts, questions?

13 COMMISSIONER CAMERON: No.

14 COMMISSIONER MCHUGH: I'm not going  
15 to adjourn the meeting. We will just be in  
16 recess. The meeting will continue on Monday at  
17 11:00 at the new destination. Thank you all  
18 very much.

19

20 (A recess was taken)

21

22 (Meeting suspended at 4:31 p.m.)

23

24

1 ATTACHMENTS:

- 2 1. Massachusetts Gaming Commission September  
3 8-17, 2014 Notice of Meeting and Agenda

4  
5 GUEST SPEAKERS:

6 Rob Scarpelli, HLT Advisory

7  
8 MASSACHUSETTS GAMING COMMISSION STAFF:

9 Catherine Blue, General Counsel

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C E R T I F I C A T E

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

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

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

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

WITNESS MY HAND this 15th day of September, 2014.



LAURIE J. JORDAN  
Notary Public

My Commission expires:  
May 11, 2018