



NOTICE OF MEETING AND AGENDA

Pursuant to the Massachusetts Open Meeting Law, G.L. c. 30A, §§ 18-25, and Section 20 of Chapter 20 of the Acts of 2021, notice is hereby given of a meeting of the **Massachusetts Gaming Commission**. The meeting will take place:

Wednesday | January 12, 2022 | 10:00 a.m.
VIA CONFERENCE CALL NUMBER: 1-646-741-5292
MEETING ID/ PARTICIPANT CODE: 112 436 0891

Please note that the Commission will conduct this public meeting remotely utilizing collaboration technology. Use of this technology is intended to ensure an adequate, alternative means of public access to the Commission's deliberations for any interested member of the public. If there is any technical problem with the Commission's remote connection, an alternative conference line will be noticed immediately on www.massgaming.com.

All documents and presentations related to this agenda will be available for your review on the morning of the meeting date by visiting our website and clicking on the News header, under the Meeting Archives drop-down.

PUBLIC MEETING - #367

1. Call to Order
2. Administrative Update - Karen Wells, Executive Director
 - a. On-site Casino Updates –Bruce Band, Assistant Director, Gaming Agents Division Chief
3. Community Affairs Division – Joe Delaney, Chief of Community Affairs
 - a. Encore Boston Harbor Development Update
4. Racing Division - Dr. Alex Lightbown, Director of Racing
 - a. Quarterly Local Aid Payments - Chad Bourque, Financial Analyst **VOTE**
5. Covid-19 Policy
 - a. Office Reopening Update - Karen Wells, Executive Director **VOTE**
 - b. Gaming Agent Schedule - Loretta Lillios, Director of Investigations and Enforcement Bureau; Bruce Band, Assistant Director, Gaming Agents Division Chief
6. Hiring Authority Policy – Karen Wells, Executive Director; Todd Grossman, General Counsel; Eileen O'Brien, Commissioner **VOTE**



Massachusetts Gaming Commission

7. Procurement Process Review - Karen Wells, Executive Director; Todd Grossman, General Counsel; Derek Lennon, Chief Financial and Accounting Officer
8. Legal Division – Todd Grossman, General Counsel
 - a. Table Game Rules: Draft Amendments to Pai Gow Poker – Carrie Torrissi, Associate General Counsel; Bruce Band, Assistant Director, Gaming Agents Division Chief; Burke Cain, Field Manager of Casino Operations and Gaming Agent Assistant Division Chief **VOTE**
9. Commissioner Updates
10. Other Business - Reserved for matters the Chair did not reasonably anticipate at the time of posting.

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

January 6, 2022

Cathy Judd-Stein

Chair

Posted to Website: January 7, 2022 | 1:30 p.m.



Massachusetts Gaming Commission



May 1, 2019

Edward R. Bedrosian Jr.
Executive Director
Massachusetts Gaming Commission
101 Federal Street, 12th Floor
Boston, MA 02110

Re: *Revision to Wynn MA, LLC Gaming Establishment*

Dear Executive Director Bedrosian:

The purpose of this letter is to request approval of an updated gaming establishment boundary to reflect Encore Boston Harbor's final design and include additional outdoor amenities integral to the gaming establishment. As further set forth below, the revised gaming establishment boundary will allow for additional entertainment and other programming opportunities; is consistent with the Gaming Act and otherwise enhances the gaming area by making the gaming establishment a more overall attractive destination.

Background

On May 15, 2014, the Massachusetts Gaming Commission ("Commission") approved a gaming establishment boundary for Encore Boston Harbor that included the gaming area, hotel, meeting and convention spaces, ball room, retail areas, restaurants/food and beverage/lounge areas, nightclub, back of house, underground parking areas, physical plant/facilities maintenance, and all public spaces related to those spaces. *See Decision Regarding the Determination of Premises of the Gaming Establishment for Mohegan Sun MA, LLC and Wynn MA, LLC*, May 15, 2015, attached as Exhibit A hereto.

In evaluating its statutory authority to determine the boundary of a "gaming establishment," the Commission concluded:

"[u]nder G.L. c. 23K, §10(a), hotels are necessarily part of the gaming establishment. Beyond that, though, by use of the term 'may' in the definition of 'gaming establishment,' it is clear that the Legislature intended to provide the Commission great latitude in determining the components of the gaming establishment. The latitude was designed so that the Commission is able to include any element within the gaming establishment that it deems necessary to ensure proper regulation of the gaming licensee."

Id. at. page 4.



In applying its authority to specific elements of gaming establishment, the Commission set out a four part test: (1) the component is a non-gaming structure, (2) the component is related to the gaming area, (3) the component is under common ownership and control of the gaming applicant, and (4) whether the Commission has a regulatory interest in including it as part of the gaming establishment. The fourth component only comes into play where the first three components are satisfied. *Id.* at page 7.

Under this analysis, the Commission found that the gaming area, hotel, meeting and convention spaces, ball room, retail areas, restaurants/food and beverage/lounge areas, nightclub, back of house, underground parking areas, physical plant/facilities maintenance, and all public spaces related to those spaces were within the boundary of the gaming establishment for Encore Boston Harbor. *Id.* at page 10.

Conversely, the Commission found that Horizon Way, internal roadways on the remaining part of the Encore Boston Harbor site, the harbor walk and exterior parking areas were not part of the gaming establishment. *Id.* at page 9. The basis for excluding these areas was that they did not satisfy the first component of the test in that they are not “structures in the traditional sense” and that “the Commission does not have any regulatory interest in overseeing those areas” *Id.*¹ Other parts of the open space amenities were not proposed as part of the gaming establishment and therefore, were not evaluated by the Commission.

Revised Gaming Establishment Proposal

Encore Boston Harbor now proposes to alter its gaming establishment boundary by including certain open space amenities that are integral to the gaming establishment and enhance the gaming area. As depicted in Exhibit B, these include the *portecocho* structure; outdoor terrace areas along the west and south side of the ballroom portion of the property, and other outdoor event space and structures. All of these spaces will be programed for guest experiences, entertainment and other seasonal outdoor events and functions.

These additional amenities meet the Commission’s four part test for inclusion as part of the Encore Boston Harbor gaming establishment. First, all spaces proposed are non-gaming structures. The term “structure” is not defined in the Gaming Act and the Commission has broad discretion in determining what structures are included within the gaming establishment. Turning to the plain meaning of the term “structure,” Webster’s Dictionary defines structure as “something constructed or built”. *Structure*, Webster’s Third New International Dictionary (3rd ed. 2002). All of the

¹ These elements were not proposed for inclusion by Encore Boston Harbor but were raised by the City of Boston in furtherance of its argument that it was a Host Community for Encore Boston Harbor.



outdoor elements and amenities proposed to be included in the gaming establishment are adjacent to the casino and hotel podium and were carefully designed and constructed (in some cases through the use of extensive landscaping) to be used by Encore Boston Harbor's guests. These include finished surface areas, seating, gazebos, significant horticulture improvements, and other edifices – all clearly aspects of the project that were “constructed and built” as part of the gaming establishment. Moreover, these structures are consistent with outdoor amenities approved by the Commission as part of the MGM Springfield Gaming Establishment boundary, including a plaza area, hotel drop off area and surface parking lots. *See April 23, 2018 Memorandum from Staff Recommending Approval of MGM Springfield Gaming Establishment Boundary*, attached hereto as Exhibit C.

Second, these outdoor amenities are related to the gaming area in that they enhance the gaming area by making the gaming establishment a more overall attractive destination. These outdoor amenities and the programing for them will draw visitors to the gaming establishment, including for the unique view of Boston Harbor and the skyline.

As to the third part of the Commission's test, the space is owned by Wynn MA, LLC, the owner of Encore Boston Harbor.

In satisfaction of the fourth part of the Commission's test, the Gaming Commission does have an interest in these amenities being part of the gaming establishment. Encore Boston Harbor will program these areas with entertainment and other events for its guests. In many instances, these spaces will be utilized in conjunction with events in the adjacent ballroom facilities, creating a seamless indoor and outdoor environment. Encore Boston Harbor employees will be responsible for staffing any programing in these areas and will also be responsible for ensuring the safety and security of guest using these spaces. The Commission has an interest in ensuring that its jurisdiction, rules and regulations apply to this important part of Encore Boston Harbor gaming establishment.

Finally, nothing included in Encore Boston Harbor's proposal is inconsistent or seeks to change the Commission's May 15, 2014 decision, specifically as it pertains to its impact on host and surrounding communities. Encore Boston Harbor does not seek to include Horizon Way, internal roadways on the site, the harbor walk or exterior parking areas in its revised boundary. All proposed spaces are clearly within the City of Everett.

Based on the above, Encore Boston Harbor requests that the Commission approve a revised gaming establishment boundary as set forth in Exhibit B.



Thank you for your attention to this matter. Please contact me with any questions or concerns.

Regards,

A handwritten signature in black ink that reads "Jacqui Krum". The signature is written in a fluid, cursive style.

Jacqui Krum
Senior Vice President and General Counsel

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

MASSACHUSETTS GAMING COMMISSION

_____)
In the Matter of:)
)
 The Determination of the Premises of the Gaming)
 Establishment for which Mohegan Sun)
 Massachusetts LLC Seeks Approval in its)
 RFA-2 Application)
)
 The Determination of the Premises of the Gaming)
 Establishment for which Wynn MA LLC Seeks)
 Approval in its RFA-2 Application)
)
)
)
 _____)

**DECISION REGARDING THE DETERMINATION OF PREMISES OF THE GAMING
 ESTABLISHMENT FOR MOHEGAN SUN MA, LLC AND WYNN MA, LLC**

1. Introduction and Background

On December 31, 2013 applicants Mohegan Sun MA, LLC (“Mohegan”) and Wynn MA, LLC (“Wynn”) filed RFA-2 applications¹ with the Massachusetts Gaming Commission (“Commission”). Mohegan and Wynn are competing for the award of the sole Category 1 gaming license to be awarded by the Commission in Region A. Mohegan and Wynn are the only applicants in Region A that entered into host community agreements with Revere and Everett, respectively and were approved by a referendum vote in those communities.

Each applicant listed the City of Boston (“City”) as a surrounding community, as defined in G.L. c. 23K, § 2,² in their RFA-2 application. However, on March 19, 2014, the City filed with the Commission a “Declaration” stating that the City was a host community to the Mohegan application and a Declaration stating that the City was a host community to the Wynn application. On April 3, 2014, in response to those Declarations, the Commission issued a notice of public meeting which included a process whereby the Commission would determine the

¹ RFA-2 applications are portions of an application for a gaming license that focus on the features and economic yield of an applicant’s proposed gaming establishment. See 205 CMR 118 and 119. A separate portion of the application called an RFA-1 focuses on the applicant’s suitability to hold a gaming license. See 205 CMR 111 and 115. Only applicants whom the Commission has found to be suitable may file the RFA-2 application.

² The term “surrounding communities” is defined by G.L. c.23K, §2 as “municipalities in proximity to a host community which the commission determines experience or are likely to experience impacts from the development or operation of a gaming establishment, including municipalities from which the transportation infrastructure provides ready access to an existing or proposed gaming establishment.”

premises of the gaming establishment as defined in G.L. c. 23K, § 2³ for the Mohegan and Wynn applications based upon their respective RFA-2 applications. A copy of the hearing notice is attached as Exhibit A. The Commission took that course because, under the statute, the location of those premises determines whether a municipality is or is not a host community. The Commission set May 1, 2014 as the date of the public meeting for the determinations.

Since its inception, the Commission has routinely offered members of the public an opportunity to comment on matters before the Commission in an effort to help shape the Commission's thinking and to ensure that the Commission reviews issues from a variety of angles. Consistent with that practice, the Commission requested the applicants, the City and any other interested persons to submit briefs and affidavits to the Commission on either or both of the two questions by April 17, 2014; reply briefs were due on April 24, 2014. The Commission requested that public comment be submitted in the form of briefs to ensure that the information was presented in a uniform, concise manner and ultimately in a format that the Commission determined would be most beneficial to it as it endeavored to make the determinations regarding the location of the premises. Briefs and/or reply briefs were submitted by Mohegan, Wynn, the City of Revere and an organization called No Eastie Casino. The City submitted a letter challenging the Commission's jurisdiction over the issue, alleging that the Commission's chairman should recuse himself from the deliberations and stating that the Commission should resolve some issues regarding the land in Everett where Wynn proposed to locate its establishment before resolving gaming establishment questions.

Pursuant to the process outlined in the Commission's notice of hearing, persons submitting a brief/reply brief were allowed to present to the Commission at the public meeting. On April 30, 2014, the Commission also invited the City to appear and present at the May 1 public hearing notwithstanding that the City did not submit a brief or reply brief. On May 1, 2014, the Commission granted the City's request for a one-week continuance of the meeting and moved it to May 8, 2014.

At the public hearing on May 8, 2014, oral presentations were made to the Commission by Mohegan, Wynn, the City of Revere, No Eastie Casino, and the City. At the close of the public hearing, the Commission deliberated and issued a decision in principle determining the premises of the gaming establishment for Mohegan and determining the premises of the gaming establishment for Wynn. It stated an intention to issue this written decision after review at its next public meeting.

2. Issues Presented

There are two issues before the Commission. Those issues are to:

³ The term "gaming establishment" is defined by G.L. c.23K, §2 as "the premises approved under a gaming license which includes a gaming area and any other nongaming structure related to the gaming area and may include, but shall not be limited to, hotels, restaurants or other amenities."

1. Determine the premises of the gaming establishment for which Mohegan Sun Massachusetts LLC seeks approval in its RFA-2 application; and

2. Determine the premises of the gaming establishment for which Wynn MA LLC seeks approval in its RFA-2 application.

Based upon the briefs, reply briefs and public submissions received by the Commission, the presentations made to the Commission at the May 8, 2014 public hearing and the information provided to the Commission in the RFA-2 application submitted by Mohegan and by Wynn, the Commission makes the following findings:

The premises of the gaming establishment for which Mohegan seeks approval in its RFA-2 application consists of the components as shown on the site plan attached to this Determination as Exhibit B and as further discussed below. All of the premises of the gaming establishment for which Mohegan seeks approval in its RFA-2 application are located in the City of Revere.

The premises of the gaming establishment for which Wynn seeks approval in its RFA-2 application consists of the components as shown on the site plan attached to this Determination as Exhibit C and as further discussed below. All of the premises of the gaming establishment for which Wynn seeks approval in its RFA-2 application are located in the City of Everett.

3. Discussion

In accordance with G.L. c. 23K, §1 “the power and authority granted to the commission shall be construed as broadly as necessary for the implementation, administration and enforcement of [G.L. c.23K].” Further, “[t]he commission shall have all powers necessary or convenient to carry out and effectuate its purposes . . .” G.L. c.23K, §4. “The commission may issue not more than 3 category 1 licenses” one each in Region A, Region B and Region C. G.L. c.23K, §19(a).

As part of the award of each gaming license, the Commission must determine what the premises of the gaming establishment are. That is, it must determine which premises will be subject to regulatory oversight by the Commission. The Commission’s determination in this regard is required by G.L. c 23K, §2 which defines the “gaming establishment” as: “the premises approved under a gaming license which includes a gaming area⁴ and any other nongaming structure related to the gaming area and may include, but shall not be limited to, hotels, restaurants or other amenities.”

⁴ The term “gaming area” is defined by G.L. c. 23K, § 2 as “the portion of the premises of the gaming establishment in which or on which gaming is conducted.”

Under G.L. c. 23K, §10(a), hotels are necessarily part of the gaming establishment.⁵ Beyond that, though, by use of the term “may” in the definition of ‘gaming establishment,’ it is clear that the Legislature intended to provide the Commission great latitude in determining the components of the gaming establishment. The latitude was designed so that the Commission is able to include any element within the gaming establishment that it deems necessary to ensure proper regulation of the gaming licensee.

Once the gaming establishment is determined by the Commission, the question of whether a municipality is a host community or a surrounding community and thus entitled to rights pertaining to a host community or a surrounding community provided under G.L. c. 23K becomes clear and flows organically as a matter of law. Chapter 23K, §2 defines a host community as: “a municipality in which a gaming establishment is located or in which an applicant has proposed locating a gaming establishment.” Chapter 23K, §2 defines surrounding communities as: “municipalities in close proximity to a host community which the commission determines experience or are likely to experience impacts from the development or operation of a gaming establishment, including municipalities from which the transportation infrastructure provides ready access to an existing or proposed gaming establishment.” It is clear that the host community determination is a matter of geographic location of the gaming establishment while surrounding community status⁶ is determined based by impacts.

a. Mohegan briefs and presentations

The Commission received briefs and an oral presentation from Mohegan, the City of Revere and No Eastie Casino, and an oral presentation from the City on the definition of the gaming establishment for which Mohegan seeks approval under its RFA-2 application. All of the written material received and reviewed by the Commission is available for public review on the Commission’s website, www.massgaming.com.

The City argued that the gaming establishment for which Mohegan seeks approval includes the horse racing track owned and operated by Suffolk Downs. The City urged that Suffolk Downs, pursuant to an agreement with Mohegan, leases a portion of the Suffolk Downs property in Revere to Mohegan for the development and operation of the gaming establishment and that the track, which sits on a parcel of land located both in East Boston and Revere, is an amenity to the gaming establishment. Moreover, the City contended, the agreement between Mohegan and Suffolk Downs provides that Suffolk Downs will receive rent in the form of basic rent and additional rent based upon gaming revenues generated at the gaming establishment. The City argues that those provisions make Mohegan and Suffolk Downs “joint venturers” in the

⁵ G.L. c.23K, §10(a) states in pertinent part: “a gaming licensee shall make a capital investment of not less than \$500,000,000 into the gaming establishment which shall include, but not be limited to, a gaming area, at least 1 hotel and other amenities as proposed in the application for a category 1 license.” (Emphasis added).

⁶ The Commission promulgated regulations further outlining the process for the determination of a surrounding community. See 205 CMR 125.00.

gaming establishment and that the gaming establishment includes the track as a nongaming structure related to the gaming area.

Mohegan's presentation to the Commission defined the gaming establishment as including the gaming area, two hotels, parking areas, restaurants, nightclubs, bars, spas, retail area, convention/meeting space and internal roadways. Mohegan stated that, unlike with the original proposal forwarded by Suffolk Downs, the gaming establishment in Mohegan's proposal and the track are owned by separate entities; that Mohegan has no control over the track and Suffolk Downs does not have operational control over the proposed gaming establishment; Suffolk Downs is a landlord to Mohegan and receives rent; and the receipt of rent based upon revenues generated is a common feature of a commercial lease. Mohegan acknowledged that the agreement between Mohegan and Suffolk Downs did contain a provision that allowed Suffolk Downs to require, at Suffolk Down's option and at some unnamed future date, to take over the operation of the track. Mohegan and Suffolk Downs stated that by mutual agreement of the parties that provision in the agreement has been deleted. Both Mohegan and Suffolk Downs asserted that even if that provision had remained in place, the gaming establishment and the track would remain owned by separate legal entities and that the provision did not provide for a sale of the track to Mohegan.⁷

Suffolk Down's presentation to the Commission stressed that no property on which the track was located, whether in Revere or East Boston, was part of the real property leased to Mohegan. In addition, there was no marketing agreement between Mohegan and Suffolk Downs to jointly market the track and the gaming establishment. The Commission asked Suffolk Downs whether the track was an amenity to the gaming establishment. Suffolk Downs responded by saying that in its view, to be an amenity, the track has to be located on the same real property as the gaming establishment and must be controlled by the gaming establishment. Neither situation existed here. The Commission further asked Suffolk Downs whether the revenues from the agreement with Mohegan, if used to support track operations, would make the track an amenity. Suffolk Downs responded that profits received do not create an amenity.

The City of Revere argued that the proposed gaming establishment is located entirely in Revere, that Revere will provide all emergency police and fire services, and that all water and sewer connections would be provided by Revere.

No Eastie Casino's supported the City's position. No Eastie Casino stated that Mohegan presented the track as an integral part of its application for a gaming license. It also urged that the impacts from the proposed gaming establishment cannot be separated from East Boston and that this proposal is no different in that respect from the earlier proposal submitted by Suffolk Downs.

⁷ The provision at issue also included language making any such exercise of the option subject to Commission approval and if allowed by law. Where the provision has been removed from the agreement the Commission declines to comment on whether an exercise of the option would have been legal.

b. Wynn briefs and presentations

The Commission received briefs and oral presentations from Wynn, and No Eastie Casino, and an oral presentation from the City on the definition of the gaming establishment for which Wynn seeks approval under its RFA-2 application. All of the written material received and reviewed by the Commission is available for public review on the Commission's website, www.massgaming.com.

The City first argued that the option agreement for the real property on which Wynn proposed to locate the gaming establishment is not valid and without a valid agreement for the land there can be no gaming establishment. The agreement's invalidity, in the City's view, stems from issues regarding FBT Everett Realty LLC, the land's owner, which the Commission explored extensively at hearings it held on December 13 and December 16, 2014. The Commission understands the City's argument to be that if FBT Everett Realty LLC is unsuitable the agreement between FBT Everett Realty LLC therefore violates G.L. c. 23K and that, as a result, there can be no gaming establishment. However, FBT Everett Realty LLC is not a "qualifier" as defined in G.L. c. 23K, §14 or 205 CMR 116.00 and the City's argument is not supported by the Commission's investigation, prior findings or conditions imposed on FBT Everett Realty LLC at the conclusion of the commission's December hearings.

The City further argued to the Commission that if there is in fact a valid agreement for the purchase of the real property, there is still an issue with access to the real property. While Wynn proposed alternate access through a new access point in Everett, the current access is through Horizon Way, which begins in part in the City. Their argument hinged on *Beale v Planning Board of Rockland*, 423 Mass. 690 (1996). The City's assertion based on *Beale* is essentially that if Horizon Way will be used to access a casino and casinos are not permitted in that part of the City then the road cannot be used for casino use so there is no access to the proposed gaming establishment.

The City further argued that Wynn's RFA-2 application listed attractions in the City, such as a marketing agreement with the TD Garden and the Boston Symphony Orchestra, and that the proposed water shuttle from the gaming establishment will take patrons of the gaming establishment to locations in the City. Based upon these activities, it suggested, the gaming establishment includes amenities located in the City.

No Eastie Casino argued in support of the City's position making specific note of the access to the proposed gaming establishment, and the agreements with attractions in the City. No Eastie Casino further supported the City's interpretation of the *Beale* case and its relevance to the access issue.

Wynn's presentation to the Commission defined the gaming establishment as the gaming area, two hotels, parking areas, restaurants, nightclubs, bars, spas, retail area, and

convention/meeting space. Wynn presented the site plan of the proposed gaming establishment and described in detail each aspect and how it was part of the gaming establishment.

Wynn disagreed with the City's interpretation of the *Beale* case, stating that the *Beale* case is a zoning use case and is not relevant to the definition of the gaming establishment under G.L. c. 23K. While Wynn's preferred access is not through Horizon Way, Wynn stated that Horizon Way is an existing public road that runs from Alford Street and is bisected by the Everett border. Wynn cannot own or change Horizon Way. Horizon Way, Wynn urged, provides "ready access" to the proposed gaming establishment. As a result, to the extent that Horizon Way is in the City, the City's "transportation infrastructure provides ready access to [a] . . . proposed gaming establishment," which makes the City a surrounding community within the definition contained in G.L. c. 23K, § 2.

In sum, Wynn stated that physical location defines the host community; access and impacts define the surrounding community. Based upon the definitions in M.G.L. c. 23K, Wynn stated that its proposed gaming establishment is located in Everett.

c. Analysis and determinations

The Commission considered all of the briefs, reply briefs, and oral presentations made at the May 8, 2014 hearing and the information provided in each of Mohegan and Wynn's RFA-2 applications. The Commission considered those materials in light of G.L. c.23K and specifically the definitions of "gaming area," "gaming establishment," "host community," and "surrounding community" found in G.L. c.23K, §2. When viewed as a whole, the law sets out essentially a four part analysis to determine what features proposed by the applicant will be part of a gaming establishment. That is, whether the feature: (1) is a non-gaming structure, (2) is related to the gaming area, (3) is under common ownership and control of the gaming applicant, and (4) the Commission has a regulatory interest in including it as part of the gaming establishment. Part 4 only comes into play though, where the first three parts are satisfied. The control element of part 3 is implicit in the statute's licensing and registration requirement, see G.L. c. 23K, §§30 through 32, the requirement for the licensee to own or control all land on which the gaming establishment is located, G.L. c. 23K, §15(3), and the statute's general structure which places control of the licensee at the heart of the Commission's regulatory authority.

As a result, and for the following reasons, the Commission has determined that the gaming establishment for the Mohegan application is as identified in Exhibit B, and the gaming establishment for the Wynn application is as identified in Exhibit C.

Mohegan's gaming establishment

In the case of Mohegan, the Commission concludes that the gaming area and the nongaming structures related to the gaming area all are located in Revere.

The Commission considered the arguments regarding the track as an amenity to the gaming establishment and determined that it does not satisfy all elements of the 4 part test set forth above and as such, is not an amenity to be included in the gaming establishment. Given the lack of proximity between the entrance to the track from the entrance to the gaming area, no infrastructure connecting the structures, lack of common ownership or control of track operations by Mohegan now, and in the future based upon the parties mutual agreement to delete the provision in the agreement between them that would have allowed Suffolk Downs to require Mohegan to manage the track and lack of any cross marketing plans or agreements between the two entities we find that the track is not related to the gaming area.

On the record presently before the Commission, the Commission concludes that the gaming area, hotels, meeting rooms, spas, ball room, retail areas, restaurants/food and beverage/lounge areas, nightclub, back of the house, underground parking areas, physical plant/facilities maintenance, and all public areas related to those spaces meet the 4 part test and are accordingly part of the gaming establishment. They are all non-gaming structures that are related to the gaming area. They are related in that they are included to support the gaming area by making the entire facility a more attractive destination. They are all owned by Mohegan. In its discretion, the Commission considers them to be amenities to the gaming area because it has an interest in, amongst other things, ensuring that all employees working in those areas are licensed or registered in accordance with 205 CMR 134.00 and having knowledge of the flow of money through these areas. Such control helps ensure the integrity of gaming in the Commonwealth through strict oversight.

For similar reasons the Commission, again in the exercise of its discretion, does not consider the internal roadways on the site, entrance to the property, and exterior parking areas to be part of the gaming establishment. Although they are owned by Mohegan, the Commission does not have any regulatory interest in overseeing those areas. They are all subject to governmental oversight in the ordinary course and there is no additional benefit to including those areas within the gaming establishment. Further, by inclusion of hotels and restaurants as an example of an amenity in the definition of gaming establishment in G.L. c.23K, §2, the Legislature suggested that the term structure be applied in its traditional sense. Here, where those areas would not be structures in the traditional sense, they would not meet part 1 of the analysis and as such cannot be included as part of the gaming establishment.⁸

Wynn's gaming establishment

In the case of Wynn, the Commission found that the concerns raised by the City about FBT Everett Realty LLC are a separate matter and not part of the determination of the premises of the gaming establishment for a number of reasons. First, the members of FBT are not "parties

⁸ It is possible that some parts of the internal roadway could be made part of the gaming establishment for limited purposes in the future. See G.L. c.23K, §6(c).

in interest to the gaming license, including affiliates and close associates and the financial resources of the applicant.” G.L. c.23K, §12(a)(6). Further, they are not individuals who possess “a financial interest in a gaming establishment, or with a financial interest in the business of the gaming licensee or applicant for a gaming license or who is a close associate of a gaming licensee or an applicant for a gaming license.” G.L. c.23K, §14(a). Nor do they fit into a category of individuals whom the Commission has specifically identified as having to be qualified as part of the RFA-1 suitability determination or have the ability to exercise control or provide direction to Wynn. See 205 CMR 116.02. Essentially, once the transfer of the land is complete, FBT Everett Realty LLC will have no further involvement with the gaming licensee. Accordingly, where they are not qualifiers to the Wynn proposal, the Commission has and will continue to deal with them separately.

The primary issue raised by the City was essentially that because Horizon Way is partly in the City, the City is a host community. However, Horizon Way does not satisfy the 4 part analysis and it is not part of the gaming establishment. For the same reason, internal roadways on the site, the harbor walk, and exterior parking areas are not part of the gaming establishment. None of these elements are structures in the traditional sense as discussed above. Accordingly, they do not satisfy part 1 of the analysis and cannot be included as part of the gaming establishment. Further, under part 4, the Commission does not have any regulatory interest in overseeing those areas. Similarly, though it may be considered a structure, the Commission does not have any regulatory interest in overseeing the proposed dock for the water shuttle. They are all subject to governmental oversight in the ordinary course and there is no additional benefit to including those areas within the gaming establishment.⁹ As to the City’s argument about the applicability of the *Beale* case, we do not find *Beale* to be relevant to the determination in this matter. That case was a zoning case and is not applicable here.

On the record presently before the Commission, and as Wynn has agreed, the Commission concludes that the gaming area, hotels, meeting and convention spaces, spas, ball room, retail areas, restaurants/food and beverage/lounge areas, nightclub, back of the house, underground parking areas, physical plant/facilities maintenance, and all public areas related to those spaces meet the 4 part test and are accordingly part of the gaming establishment. They are all non-gaming structures that are related to the gaming area. They are related in that they are included, at least in part, for purposes of enhancing the gaming area by making the entire facility a more attractive destination. They are all owned by Wynn. In its discretion, the Commission considers them to be amenities to the gaming area because it has an interest in, amongst other things, ensuring that all employees working in those areas are licensed or registered in accordance with 205 CMR 134.00 and having knowledge of the flow of money through these areas. Such control helps ensure the integrity of gaming in the Commonwealth through strict oversight.

⁹ It is possible that some parts of the internal roadway could be made part of the gaming establishment for limited purposes in the future. See G.L. c.23K, §6(c).

The Commission further considered the arguments raised by the City and by No Eastie Casino regarding cross marketing agreements with entities, such as the TD Garden and Boston Symphony Orchestra, located in the City and the fact that the City may be an attraction for patrons of the gaming establishment. Cross marketing agreements and encouraging gaming establishment patrons to visit other regional attractions is in fact a goal set forth in G.L. c. 23K. See e.g. G.L. c.23K, §§1(6), 9(a)(13), 9(a)(18), and 18(5). Each applicant for a gaming license is evaluated in part on how the applicant proposes to support other local and regional business and increase tourism. The fact that Wynn has cross marketing agreements and intends to provide water shuttle transportation to parts of the City's waterfront are simply actions by Wynn to comply with the requirements of G.L. c. 23K. Further, none of these attractions is related to the gaming area, Wynn has no ownership or control over their operations, and the Commission does not have an interest in regulatory oversight of these entities.

4. Conclusion

Based upon the briefs and reply briefs submitted and public submissions received by the Commission, the presentations made to the Commission at the May 8, 2014 public meeting, and the information provided to the Commission in the RFA-2 application submitted by Mohegan Sun Massachusetts, LLC seeks approval in its RFA-2 application consists of the gaming area, hotels, meeting rooms, spas, ball room, retail areas, restaurants/food and beverage/lounge areas, nightclub, back of the house, underground parking areas, physical plant/facilities maintenance, and all public areas related to those spaces, and that based upon the definition of gaming establishment found in G.L. c. 23K, §2, the premises of the gaming establishment are located in Revere. The gaming establishment is identified in the attached Exhibit B as the area located within the black marker boundary line.

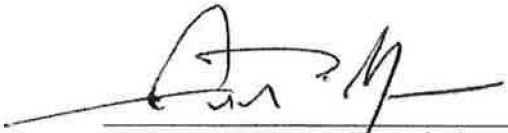
Based upon the briefs and reply briefs submitted and public submissions received by the Commission, the presentations made to the Commission at the May 8, 2014 public meeting, and the information provided to the Commission in the RFA-2 application submitted by Wynn MA, LLC the Commission determines that the premises of the gaming establishment for which Wynn MA, LLC seeks approval in its RFA-2 application consists of the gaming area, hotels, meeting and convention spaces, spas, ball room, retail areas, restaurants/food and beverage/lounge areas, nightclub, back of the house, underground parking areas, physical plant/facilities maintenance, and all public areas related to those spaces, and that based upon the definition of gaming establishment found in G.L. c. 23K, §2, the premises of the gaming establishment are located in Everett. The gaming establishment is identified in the attached Exhibit C as the area located within the black marker boundary line.

A plain review of the definitions of the terms 'host community' and 'surrounding communities' reveals a clear legislative intent that a host community be determined based solely upon matters of geography, and that surrounding communities be determined based upon


impacts. Our findings relative to location of the respective gaming establishments for the Mohegan and Wynn applications are consistent with that intent. The Mohegan gaming establishment is located solely in Revere. Accordingly, by definition, the City of Boston is not a host community to that project. The Wynn gaming establishment is located solely in Everett. Accordingly, by definition, the City of Boston is not a host community to that project. Based upon the proximity and impacts from the respective projects, however, the City of Boston is clearly a surrounding community to both.

SO ORDERED.


MASSACHUSETTS GAMING COMMISSION




James F. McHugh, Commissioner



Gayle Cameron, Commissioner



Bruce Stebbins, Commissioner



Enrique Zuniga, Commissioner

DATED: May 15, 2014



EXHIBIT A

UPDATED

NOTICE OF MEETING and AGENDA

May 1, 2014

Pursuant to the Massachusetts Open Meeting Law, G.L. c. 30A, §§ 18-25, notice is hereby given of a meeting of the Massachusetts Gaming Commission. The meeting will take place:

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

PUBLIC MEETING - #118

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

* * * * *

Massachusetts Gaming Commission

84 State Street, 10th Floor, Boston, Massachusetts 02109 | TEL 617.979.8400 | FAX 617.725.0258 | www.massgaming.com

- The City of Boston and the Region A applicants for a gaming license will be invited to offer an oral presentation to the Commission at the public meeting on May 1, 2014 if they have submitted a brief or reply brief. The Commission may invite any other individual or group that has filed a brief or reply brief to make an oral presentation at the public meeting. No person or group will be permitted to address the Commission relative to agenda items 2 and 3 unless they have submitted a brief. Oral presentations should be confined to the subject areas contained in the brief and/or reply brief submitted by the individual or group.
- Speakers representing a municipality or applicant will be allotted 30 minutes for oral presentation. All other speakers will be allotted 15 minutes. The Commission may allow a speaker more time if helpful to clarify an issue. A group may split its allotted speaking time amongst multiple speakers.
- In reviewing the issues before it, the Commission may ask any question(s) of any individual and review and consider any document or other source of information. For purposes of the record of the meeting, the Commission will take notice of the contents of the RFA-2 applications submitted by Mohegan Sun Massachusetts, LLC and Wynn MA, LLC.
- After discussion by the Commission, the Commission will announce its determination as to whether the City of Boston is a host community for each of the two proposals. After the conclusion of the hearing, the Commission will issue written findings that describe the respective gaming establishments for the projects the applicants have proposed.

4. Approval of Minutes

- a. March 6, 2014
- b. April 17, 2014

5. Administration – Rick Day, Executive Director

- a. General Update
- b. High Performance Project Scope Consideration – Commissioner Cameron
- c. Potential Changes to 23K and Legislation – Chairman Crosby
- d. Request for Comment on Design Excellence

6. Legal Report – Todd Grossman, Deputy General Counsel

- a. New Qualifiers Regulations – Rick Day, Executive Director

7. Information Technology Division – John Glennon, CIO

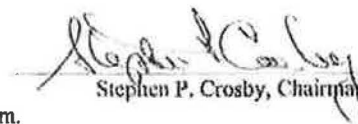
- a. Slots Standards and Approval Process Regulations

8. Other business – reserved for matters the Chair did not reasonably anticipate at the time of posting.

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

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

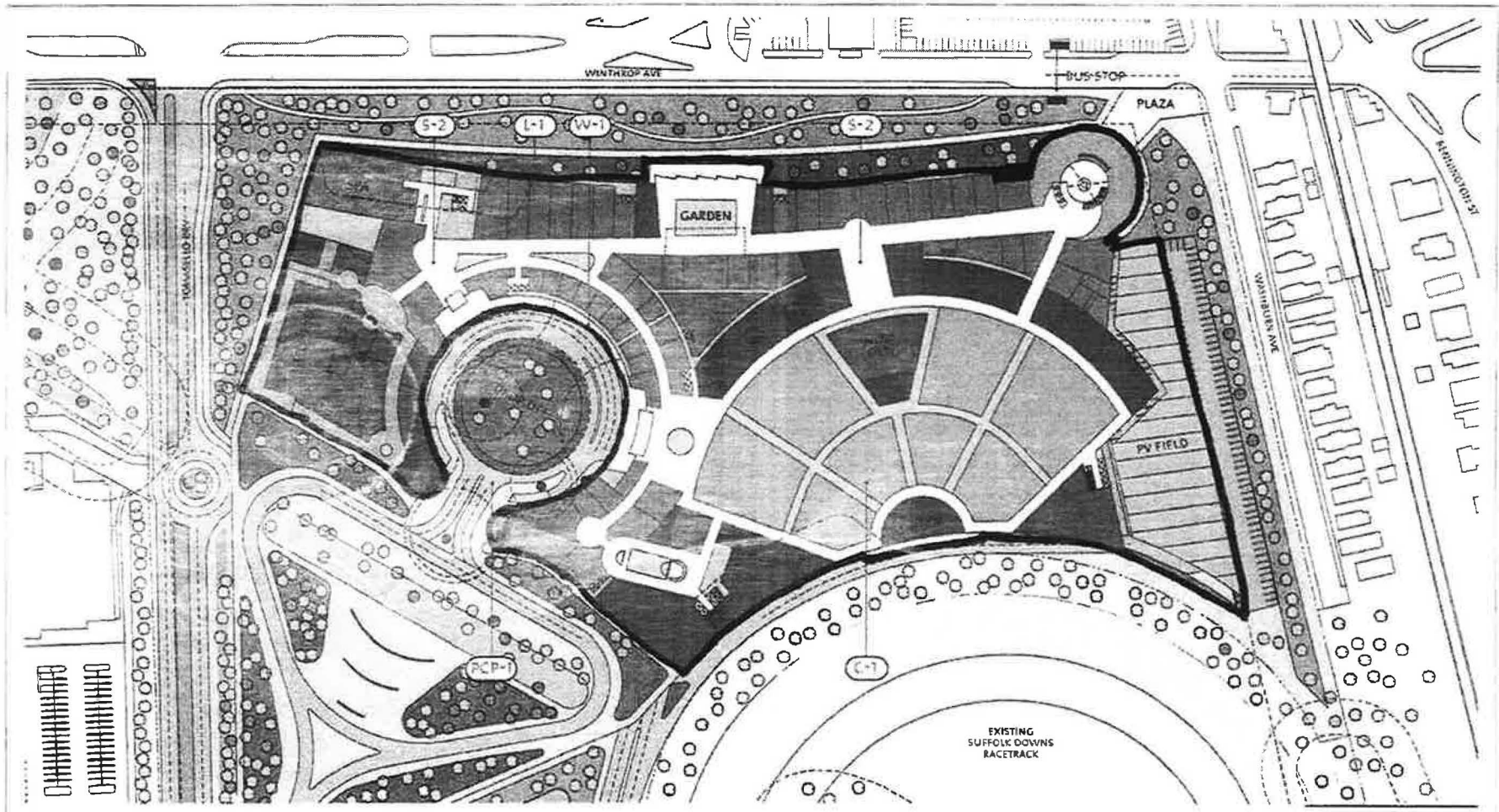
4/28/14
(date)


Stephen P. Crosby, Chairman

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

* * * * *

Massachusetts Gaming Commission



© 2014 KOHN PEDERSEN FOX ASSOCIATES PC. ALL RIGHTS RESERVED.

MAIN FLOOR PLAN ENLARGED

4-5 SCHEMATIC DESIGN



EXHIBIT B

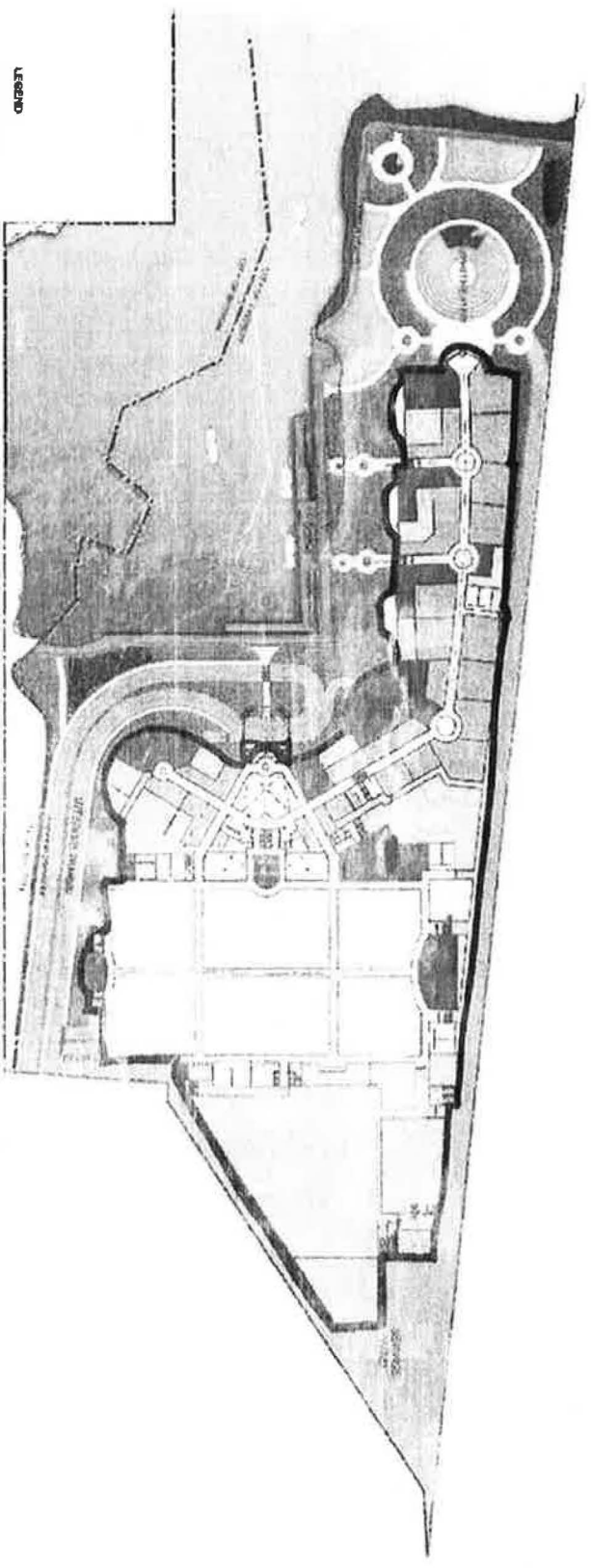
MOHEGAN SUN MASSACHUSETTS, LLC

1/8" = 1'-0" /



= OUTLINE OF GAMING ESTABLISHMENT

- LEGEND
- GAMING
 - RESTAURANT/CLUB
 - HOTEL
 - RENT
 - PAVED AREA



Gaming Establishment Site
Figure B-6



Wynn
EVERETT
Entertainment, Inc.

WYNN MA, LLC

EXHIBIT C



= OUTLINE OF GAMING ESTABLISHMENT



Exhibit B

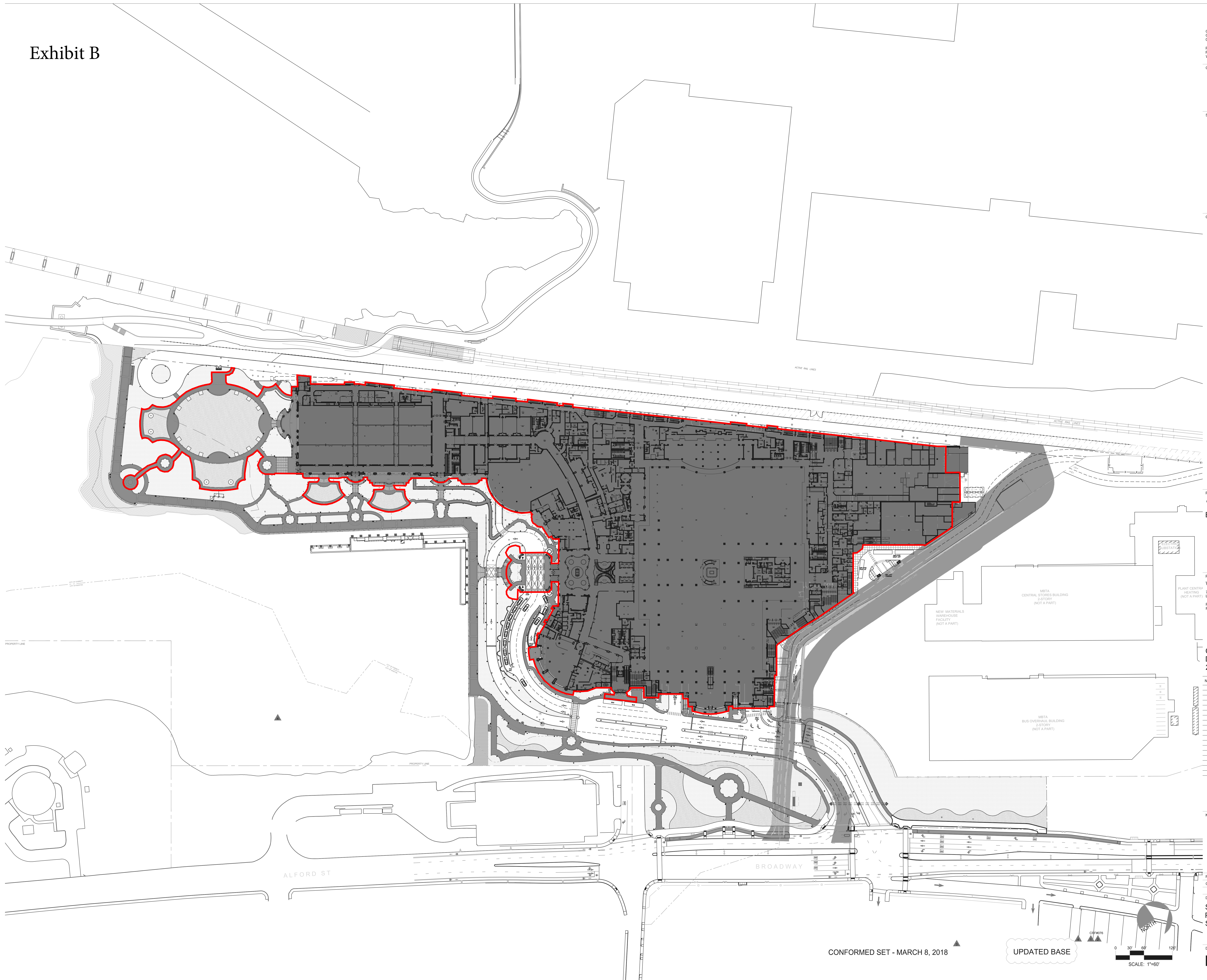
One Broadway
Cambridge, Massachusetts
02142
P 617.491.6450
F 617.491.7104
W www.jacobs.com

Consultants:

LIFESCAPES
International, Inc.
Landscape Architects
4000 Centre Street
P. 00012000 & 00012001

Seals:

General Notes:



Project Title:
Wynn Boston Harbor
Everett, MA



Project Client:
Wynn Design & Development
734 Flamingo Road
Las Vegas, Nevada 89119
P 702.770.5000
F 702.770.5003

CONSTRUCTION DOCUMENTS
2016-09-16

Number	Description	Date
1	BULLETIN 037	2017-07-28
2	BULLETIN 122	2017-08-03
3	CONFORMED SET	2018-03-08
4	BULLETIN 049	2018-06-01

Key Plan:

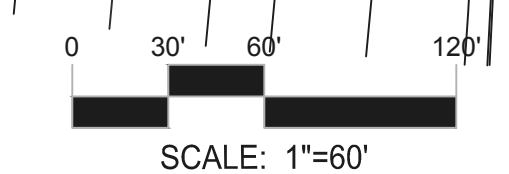
Project No.: 15004
Copyright: Lifescapes International, Inc.

Drawing Sheet Title:
SHEET ORIENTATION
PLAN - 1"=10'-0" SCALE
SHEETS

Drawing Sheet Number:
L-GL-1.02A

CONFORMED SET - MARCH 8, 2018

UPDATED BASE





TO: The MGC Commissioners

FROM: John S. Ziembra
Joe Delaney

CC: Ed Bedrosian

DATE: April 23, 2018

RE: MGM Springfield Gaming Establishment Boundary

At the Commission's March 15th meeting, MGM Springfield requested an update of the current boundary of the MGM Springfield gaming establishment (see [Attachment 1](#)). This boundary has not been updated since it was established when MGM Springfield was issued its Category 1 license in 2014. Since that time, there have been significant changes to the MGM Springfield Project ("Project"), including, but not limited to, the elimination of the hotel tower on State Street, the move of the hotel to Main Street, and a determination that residential units may be placed off-site. Commission staff agree that the gaming establishment boundary should be updated to reflect the current Project. Attached please see a site plan that depicts a proposed new gaming establishment border for the Project (see [Attachment 2](#)). This new proposed boundary resulted from conversations between Commission staff and Project representatives since the March 15th meeting. Commission staff and MGM Springfield representatives recommend that the Commission approve of this new proposed boundary for the gaming establishment, provided that the Commission agrees to review the boundary again within the first two quarters after the Project opens. With the approved opening date of September 5, 2018, Commission staff and MGM Springfield representatives recommend that the Commission again review the proposed gaming establishment boundary no later than the end of the first quarter of 2019 (March 31, 2019).¹ By that date, it is likely that the Commission will have significant new information about MGM Springfield's plans for the facility, including but not limited to, its plans for 101 State Street.

Brief Summary of Statutory Provisions Involving the Gaming Establishment. M.G.L. c. 23K, § 2 defines the "Gaming establishment" as "the premises approved under a gaming license which includes a gaming area and any other nongaming structure related to the gaming area and may include, but shall not be limited to, hotels, restaurants or other amenities." It also sets out the definition of a "Gaming license" as "a license issued by the commission that permits the

¹ As explained in the recent review of the Project's schedule, although the approved opening date of September 5, 2018 was established in 2015, MGM Springfield's actual opening date may occur earlier, provided that MGM Springfield receives the requisite approvals from the Commission. Despite any potential opening prior to September 5, Commission staff and MGM Springfield representatives agree that the March 31, 2019 date for a further review of the boundary should remain.



Massachusetts Gaming Commission

licensee to operate a gaming establishment.” M.G.L. c. 23K also states that “[o]fficers and employees of the gaming enforcement unit of the state police assigned to the commission under section 70 of chapter 22C shall work with employees of the bureau, under the direction of the deputy director, to investigate violations of this chapter by a licensee or to investigate any activity taking place on the premises of a gaming establishment.” M.G.L. c. 23K also has provisions: that “regulate and control the distribution of alcoholic beverages in a gaming establishment,” that limit the types of live entertainment venues that can be operated at a gaming establishment, that prohibit certain tax incentives that could otherwise be used in connection with gaming establishment property, that require a minimum capital investment in a gaming establishment, that guide gaming establishment property transfers, and that specify that community mitigation funds may be used to offset costs related to the construction and operation of a gaming establishment.

In a prior decision the Commission outlined the analysis to determine precisely what is included in the premises of a gaming establishment. It stated that “[u]nder G.L. c. 23K, §10(a), hotels are necessarily part of the gaming establishment. Beyond that, though, by use of the term ‘may’ in the definition of ‘gaming establishment,’ it is clear that the Legislature intended to provide the Commission great latitude in determining the components of the gaming establishment. The latitude was designed so that the Commission is able to include any element within the gaming establishment that it deems necessary to ensure proper regulation of the gaming licensee.” *Decision Regarding the Determination of Premises of the Gaming Establishment for Mohegan Sun MA, LLC and Wynn MA, LLC*, May 15, 2015, at page 4. “When viewed as a whole, the law sets out essentially a four part analysis to determine what features proposed by the applicant [other than the gaming area] will be part of a gaming establishment. That is, whether the feature: (1) is a non-gaming structure, (2) is related to the gaming area, (3) is under common ownership and control of the gaming applicant, and (4) the Commission has a regulatory interest in including it as part of the gaming establishment. Part 4 only comes into play though, where the first three parts are satisfied. The control element of part 3 is implicit in the statute’s licensing and registration requirement, see G.L. c. 23K, §§30 through 32, the requirement for the licensee to own or control all land on which the gaming establishment is located, G.L. c. 23K, §15(3), and the statute’s general structure which places control of the licensee at the heart of the Commission’s regulatory authority.” *Id* at page 7.

It is clear that the application of the gaming establishment boundary has far reaching implications to the Commission’s regulatory authority.

Description of the Proposed Gaming Establishment Boundary. As noted by MGM Springfield in correspondence to the Commission prior to the March 15th meeting, MGM proposes “amending the boundary to include floors two and above of the Main Street portion of the Project that was formerly proposed to be residential apartments, but will now house the new hotel.” Unlike the original gaming establishment boundary which showed a different boundary by floor, with the exception of 101 State Street (see discussion below), the new proposed boundary would apply equally to all levels of the Project “from ground to sky.” As noted by MGM Springfield, “[w]ith these changes, the footprint of the Gaming Establishment could be consistent throughout all levels with no need to distinguish boundaries by floor level as previously required.”



Massachusetts Gaming Commission

Continued Inclusion of First Floor of 101 State Street and Lot Across from MGM Way. As discussed in the March 15th meeting, MGM Springfield continues to determine its plans for the first floor of 101 State Street. This floor has been designated for retail purposes in the City of Springfield's Site Plan approval for the Project and the Commission's subsequent Project design approval in May 2016. However, as noted by MGM Springfield, Focus Springfield's lease of the floor runs through September 2019 with a mutual early termination right effective November 2018. The City of Springfield has expressed that the future use of this space is important to the Project. By March 31, 2019 (the proposed outside date for a further Commission review of the gaming establishment boundary), there is a significant possibility that more will be known about the future plans for this first floor. The remainder of 101 State Street is currently planned to be used by tenants for office space. As noted by MGM Springfield, "[t]he back of house functions originally proposed for 101 State St., including MGM's executive and operations offices, were integrated into 95 State St., leaving only the first floor as part of the Project consisting of retail space the office space for the Commission. The first floor of 101 State St. was connected to the casino podium through the then-proposed Commission offices. As part of the subsequent modifications, the Commission offices were moved and 101 State St. was no longer connected to the casino podium." Because of the importance of the gaming establishment boundary to the Commission's jurisdiction and because more will likely be known relatively soon about the future of 101 State Street, Commission staff recommend that the Commission take no action at this time to remove the first floor of 101 State from the boundary of the gaming establishment. Instead, the Commission could further review the boundary as it relates to 101 State Street by March 31, 2019.

Similarly, Commission staff recommend that the Commission take no action at this time on a proposal to remove a lot across from MGM Way from the gaming establishment. MGM Springfield notes that this lot will be used as a taxi and ride share waiting area. By March 31, 2019, months after the opening of MGM Springfield, it will be much more apparent whether Commission jurisdiction over this parcel would be important.

Removal of Floors 2-8 of 101 State Street from Gaming Establishment. Because floors 2-8 of 101 State Street will no longer be used for gaming related purposes, the need for Commission jurisdiction over such floors becomes more tenuous. As noted previously, the gaming establishment boundary is important to numerous aspects of the Commission's jurisdiction. However, it is not clear that many of these aspects apply here. For example, no gaming or gaming related alcohol sales are planned for these floors. As such, and in recognition of the four factor gaming establishment analysis mentioned above, the newly proposed gaming establishment boundary excludes floors 2-8 of 101 State Street.

99 Union Street.

MGM Springfield also recommends that its property at 99 Union Street in Springfield should not be added to the gaming establishment. It notes that this building has never been part of the Project under the Host Community Agreement with Springfield, is outside the Casino Overlay District and is physically separated from the rest of the Project by Union Street. The intended



use of 99 Union Street is for a facilities/engineering workshop and a kennel for K-9s. 99 Union Street has not been part of the gaming establishment boundary to date.

Applicability of LEED Gold Standard. M.G.L. c. 23K, § 18(8) requires that the Project “be certified as gold or higher under the appropriate certification category in the Leadership in Environmental and Energy Design program created by the United States Green Building Council.” In its letter to MGM Springfield prior to the March 15, 2018 meeting, Commission staff indicated that further Commission action would be necessary on 101 State Street because it will not achieve LEED Gold status by the opening date (as no major reconstruction is anticipated at that building prior to opening). We recommend the Commission make determinations regarding any deadlines or requirements for LEED Gold on the 101 State Street building when it reviews any potential changes to the Commission’s MGM Springfield Section 61 Findings in short order. As such, we recommend that nothing in this gaming establishment boundary approval should be construed to otherwise impact or impair the Commission’s Section 61 Findings issued in relation to the MGM Springfield project. To the degree any impact or impairment becomes apparent, we recommend that the Commission address any such impact or impairment.

Clarification Regarding Residential Units - The Commission’s construction oversight regulation, 205 CMR 135.00 defines “Project” as “[t]he gaming *establishment* as approved by the commission and defined in the gaming license awarded by the commission. For purposes of 205 CMR 135.00, Project may also include such off site infrastructure necessary for the operation of the gaming establishment as required by the commission.” (*Italics* and underlining added) The planned residential units were not included in the original gaming establishment boundary. As such, they were not part of the gaming establishment for the purposes of the construction oversight regulation. The new proposed gaming establishment boundary also does not include the residential units, as they are planned to be off-site, at a location not yet finalized. Although these units have not and will not, under the proposed boundary, be part of the gaming establishment, Commission staff recommend that the Commission clarify that the residential units are considered part of the Project for the purposes of the construction oversight regulation, which, among other items, specifies that the Commission may establish a construction schedule for major portions of the Project. The Commission recently approved a new deadline for construction of such units by March 2020, with a new notification date of March 2019, under which MGM Springfield is required to finalize plans for the location of such units.

Recommendation. We recommend that the Commission approve the attached new boundary for the MGM Springfield gaming establishment and agree to review the boundary again within the first two quarters after the Project opens. We further recommend that the Commission clarify that the residential units are considered part of the Project for the purposes of the construction oversight regulation. Finally, we recommend that nothing in this approval shall be construed to otherwise impact or impair the Commission’s Section 61 Findings issued in relation to the MGM Springfield project.



Massachusetts Gaming Commission



Attachment 1

Blue Tarp reDevelopment (MGM Springfield) gaming establishment

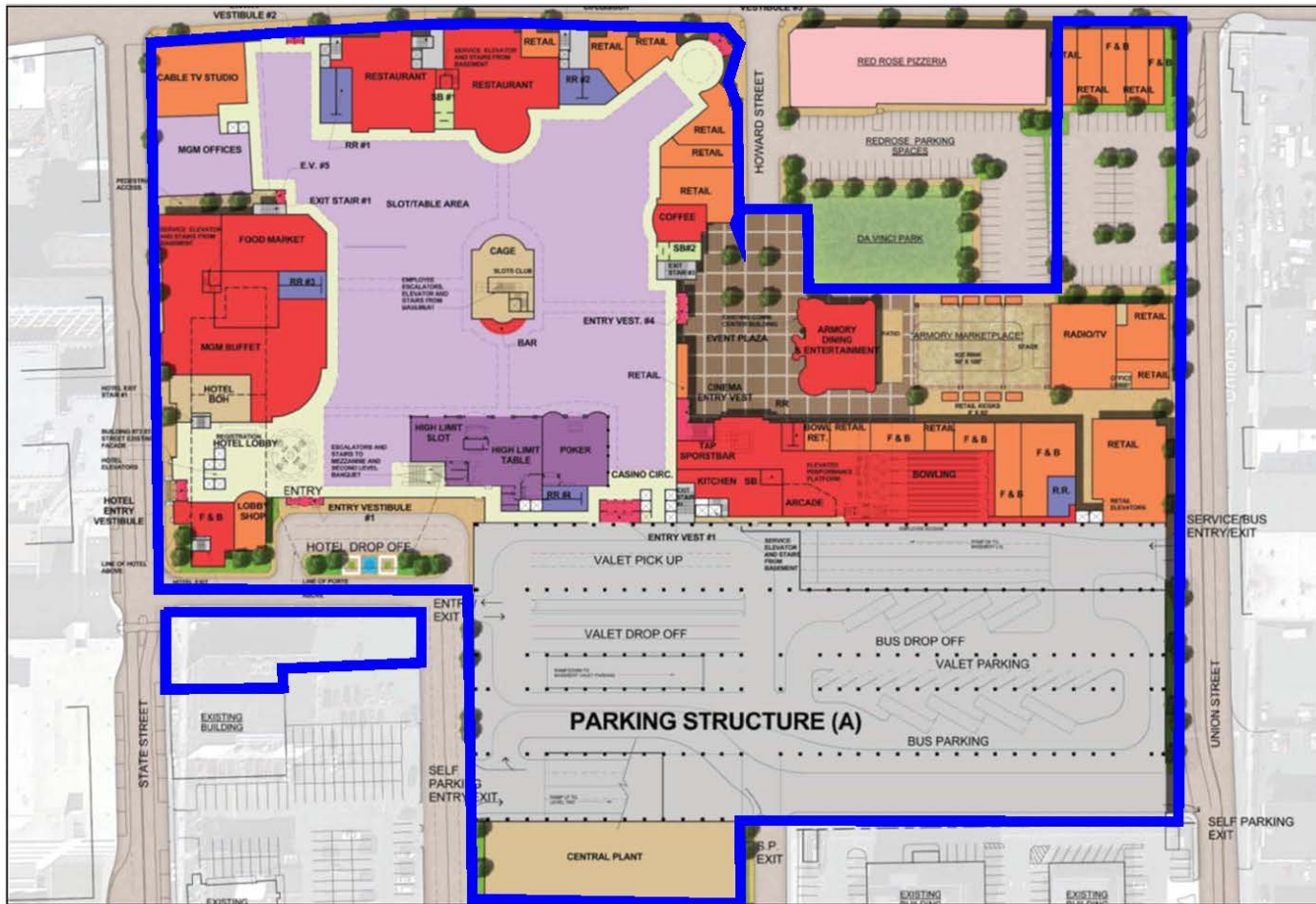


EXHIBIT B

(BOUNDARY INCLUDES ALL VERTICAL SPACE ABOVE AND BELOW)

Blue Tarp reDevelopment (MGM Springfield) gaming establishment

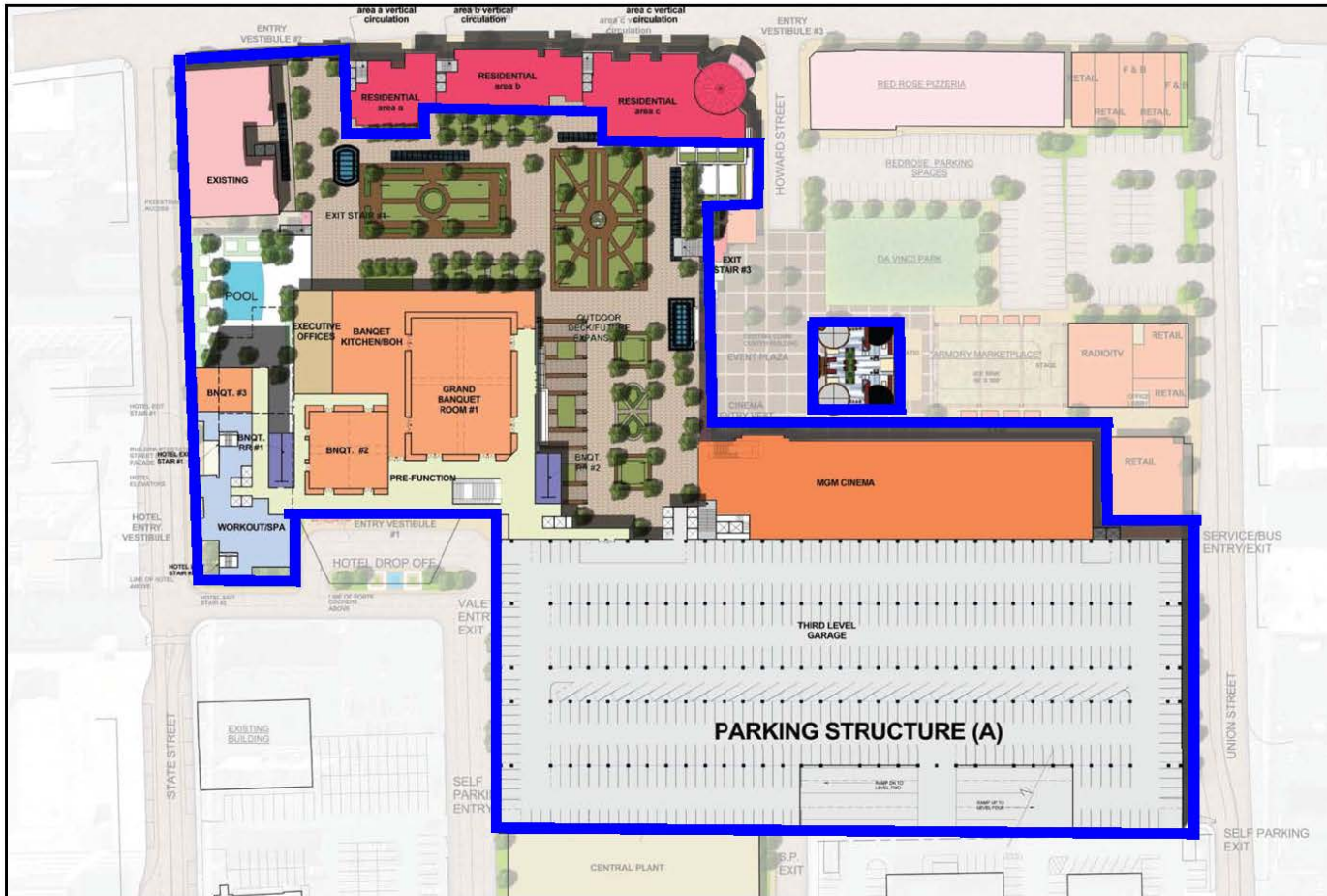
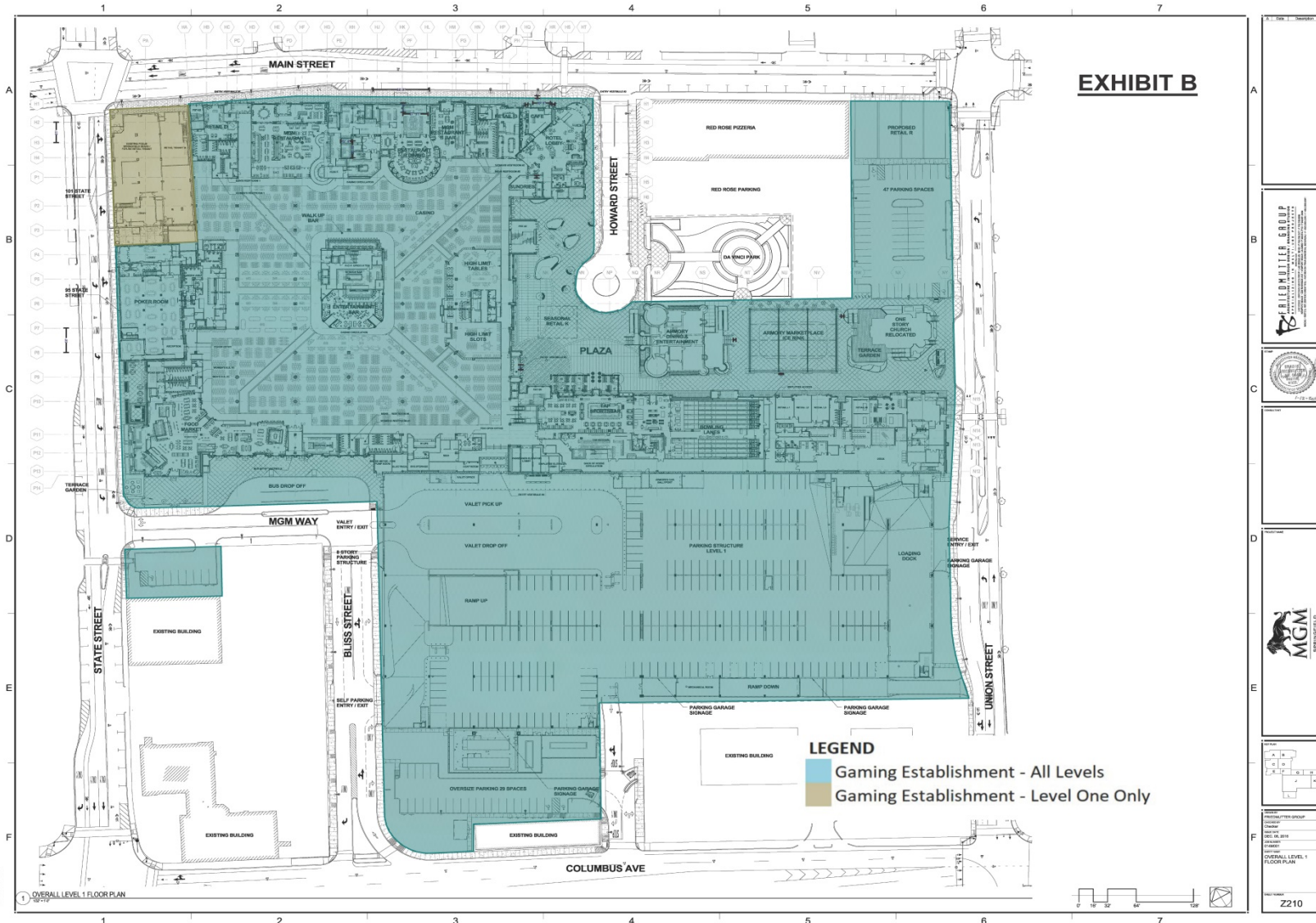


EXHIBIT B
(BOUNDARY INCLUDES ALL VERTICAL SPACE ABOVE AND BELOW)

Attachment 2



IMPACTED LIVE ENTERTAINMENT VENUE AGREEMENT

This Impacted Live Entertainment Venue Agreement (the "Agreement") is entered into as of the 30th day of January, 2013 (the "Effective Date"), by and between the Massachusetts Performing Arts Coalition, Inc., 2 Southbridge Street, Worcester, MA 01608 ("MPAC") and Wynn MA, LLC, 3131 Las Vegas Blvd., South, Las Vegas, NV 89109 ("Wynn"). (MPAC and Wynn are hereinafter referred to from time to time each as a "Party" and collectively as the "Parties.")

RECITALS

WHEREAS, Massachusetts General Laws chapter 23K (the "Gaming Statute") has been enacted in part to protect the cultural activities and institutions operated by municipally-owned and not-for-profit theatres from the adverse impacts of expanded gaming activities in the Commonwealth;

WHEREAS, MPAC represents the interests of certain non-profit and municipally-owned theatres in Massachusetts listed in Exhibit A attached hereto and made a part hereof, each of which may suffer a materially adverse impact from the development of gaming facilities in Massachusetts;

WHEREAS, Wynn has submitted a so-called "Phase 2 Application" with the Massachusetts Gaming Commission (the "Commission") for a gaming license to operate the proposed facility at a site in Everett, Massachusetts as identified in the Phase 2 Application (the "Casino Site");

WHEREAS, Wynn's proposed facility does not now but could in the future include a live entertainment venue whose development and operation may pose the potential for a materially adverse impact on MPAC's members and their sustainability as non-profit or municipally-owned live performance venue;

WHEREAS, the Parties wish to set forth certain terms and conditions governing the relationship between Wynn and MPAC should the Casino obtain a gaming license to operate a facility at the Casino Site;

NOW THEREFORE, in furtherance of the foregoing and in consideration of the agreements set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENTS

1.0 Casino Site Capacity and Performances

1.1 Wynn agrees that it does not currently plan to build, restore, operate or manage an indoor or outdoor, permanent or temporary live entertainment venue on or independent of the Casino Site in the Commonwealth of Massachusetts seating more than 1,000 persons, notwithstanding the fact that the Gaming Statute permits such venues seating more than 3,500 persons. The Parties acknowledge and agree that bars, lounges, common areas, hotel ballroom or other multi-use or meeting space within the gaming establishment or elsewhere at the Casino Site may be used for events, meetings or celebrations that include live entertainment.

1.2 In the event Wynn decides to build a live entertainment venue of the size or type described in 1.1 above at the Casino Site, it will, prior to taking substantial steps toward doing so, notify MPAC in writing describing its planned entertainment venue and promptly engage in good-faith discussions with MPAC and MPAC member venues to ensure compliance with the Gaming Statute.

2.0 Collaborative Efforts by Wynn, MPAC and MPAC Venues.

Wynn and MPAC agree to pursue some or all of the following initiatives with respect to MPAC Venues:

2.1 Wynn and one or more MPAC Venues may collaborate on reasonable "show your ticket stub" promotions, mutual member or patron discounts or other collaborative efforts to encourage visitation by MPAC Venue customers to the Casino Site and visitation by Wynn customers to the MPAC Venue.

2.2 Such other collaborative marketing and cross-promotional efforts as may be determined from time to time by and between Wynn and the MPAC Venue.

3.0 Enforcement.

3.1 The Parties agree that in the event of any uncured material breach of this Agreement by Wynn, MPAC may petition or otherwise communicate to the Commission its good-faith belief that such a material breach has occurred and seek enforcement by the Commission against Wynn under the provisions of the Gaming Statute, including but not limited to sections 23(b), 35 or 36 of the Gaming Statute.

3.2 The provisions of this Article 3 shall survive any termination or expiration of this Agreement.

4.0 Term and Termination.

The term of this Agreement shall commence on the Effective Date and shall continue until the earlier of (i) the mutual written agreement of all of the Parties or (ii) the date on which Wynn ceases gaming operations at the Casino Site.

5.0 Notices.

All notices or other communications required or permitted to be given under or by reason of this Agreement shall be in writing and shall be deemed to have been duly given on the date of personal delivery to or on the date of receipt at the addresses set forth in this Section 5.0 or at such other address that may be specified from time to time in writing the Party to whom notice is to be given. If mailed by first-class, postage prepaid, certified mail, return receipt requested, or if sent by a nationally recognized, overnight, express courier service providing evidence of receipt, such written notices shall be deemed to have been received (i) if sent by certified mail, as of the date set forth on the return receipt, (ii) if sent by overnight courier, as of the date of evidence of receipt. Notices, demands, and communications will, unless another address is specified in writing, be sent to the persons and at the addresses indicated below:

In the case of MPAC, to:

Massachusetts Performing Arts Coalition, Inc.
2 Southbridge Street
Worcester, MA 01608
Attn.: Troy Siebels, President

Copy to:

Peter J. Martin, Esq.
Bowditch & Dewey, LLP
311 Main Street
P. O. Box 15156
Worcester, MA 01615-0156

In the case of Wynn, to:

Wynn MA, LLC
c/o Wynn Resorts, Limited
3131 Las Vegas Blvd. South
Las Vegas, NV 89109

Attn: Kim Sinatra
Senior Vice President and General Counsel

6.0 Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns as permitted hereunder.

7.0 Choice of Law.

This Agreement shall be governed by, and construed according to, the laws of the Commonwealth of Massachusetts, without regard to any choice of law provisions thereof which would require application of the laws of another jurisdiction.

8.0 Execution in Counterparts.

This Agreement may be signed upon any number of counterparts with the same effect as if the signatures on all counterparts are upon the same instrument.

9.0 Severability; Captions.

In the event that any clause or provision of this Agreement should be held to be void, voidable, illegal, or unenforceable, the remaining portions of this Agreement shall remain in full force and effect. Headings or captions in this Agreement are added as a matter of convenience only and in no way define, limit or otherwise affect the construction or interpretation of this Agreement.

10.0 Interpretation.

Whenever a provision of this Agreement uses the term "include" or "including", that term shall not be limiting but shall be construed as illustrative. This Agreement shall be given a fair and reasonable interpretation of the words contained in it without any weight being given to whether a provision was drafted by one party of its counsel.

11.0 Entire Agreement; Amendment.

This Agreement contains all of the terms, promises, conditions and representations, made or entered into by and among the Parties, supersedes all prior discussions, agreements and memos, whether written or oral between and among the Parties, and constitutes the entire understanding of the Parties and shall be subject to modification or change only in writing and signed by all

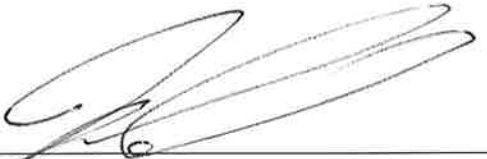
Parties. Notwithstanding the foregoing, in the event Wynn or any Affiliate of Wynn (as defined in the Gaming Statute) expands the existing Casino Site or adds another facility in the Commonwealth of Massachusetts, such expanded or additional site automatically and without further action by any Party shall be construed to be a Casino Site as defined herein and shall be subject to the terms of this Agreement.

13.0 Authority.

Each Party represents and warrants to the other Party that it has full power and authority to make this Agreement and to perform its obligations hereunder and that the person signing this Agreement on its behalf has the authority to sign and to bind that Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first set forth above.

MASSACHUSETTS PERFORMING ARTS COALITION, INC.

By: 
Troy Siebels, President

WYNN MA, LLC

By: 
Its: SVP, Authorized Signer

EXHIBIT A
MPAC VENUES

Symphony Hall, Springfield

The Hanover Theatre, Worcester

Lowell Memorial Auditorium

Cape Cod Melody Tent, Hyannis

South Shore Music Circus, Cohasset

Lynn Auditorium

Zeiterion Theatre, New Bedford



The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Charles D. Baker
GOVERNOR

Karyn E. Polito
LIEUTENANT GOVERNOR

Matthew A. Beaton
SECRETARY

Tel: (617) 626-1000
Fax: (617) 626-1181
<http://www.mass.gov/envir>

April 7, 2017

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
ON THE
NOTICE OF PROJECT CHANGE

PROJECT NAME : Wynn Boston Harbor
PROJECT MUNICIPALITY : Everett
PROJECT WATERSHED : Boston Harbor
EEA NUMBER : 15060
PROJECT PROPONENT : Wynn MA, LLC
DATE NOTICED IN MONITOR : March 8, 2017

As Secretary of Energy and Environmental Affairs, pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62I) and Section 11.10 of the MEPA regulations (301 CMR 11.00), I hereby determine that this project change **does not require** the submission of a supplemental Environmental Impact Report (EIR). Outstanding issues associated with this project change can be addressed during State permitting. The subsequent review, permitting and approval processes will be informed by MEPA review and will provide additional, meaningful opportunities for public review and comment.

Project Change

The Notice of Project Change (NPC) identifies changes to programming and design of the Wynn Boston Harbor project and it includes a remediation plan for a portion of the project site and an adjacent area of the Mystic River. It also identifies acquisition of properties within the project area by the Proponent.

Sediment remediation was identified and addressed conceptually in the previous MEPA review documents; however, sediments in the Mystic River had not yet been characterized which was necessary to develop and analyze remediation alternatives through the Massachusetts Contingency Plan (MCP) process. Proposed remediation will include mechanical dredging and capping of a 7-acre area. Dredging depths are anticipated to be up to 2 feet below the existing mudline or the previously reviewed elevation in the area of navigational dredging, with an anticipated over-dredge allowance of up to one foot.

The NPC also identifies modifications to the building program; an additional level of below-grade parking; changes to the living shoreline design resulting from the permitting process; and changes to docks, piles, and floats to improve access and meet the Americans with Disabilities Act (ADA) requirements for ferry docking.

The NPC provides refinements to the building program which include a total of 3,112,153 square foot (sf) of space, an increase 178,215 sf compared to the previous review. Changes include:

- A gaming facility with 4,421 total gaming positions (a decrease of 159 gaming positions);
- A hotel tower, 386-foot high, with 671-rooms (an increase of 42 rooms);
- Hotel square footage of 663,200 sf (an increase of 41,426 sf);
- Retail space will decrease to 9,177 sf (a decrease of 43,455 sf);
- Food and beverage space will increase to 105,288 sf (an increase of 50,608 sf);
- Lobbies, lounge, and an atrium garden (front-of-house) will increase to 83,889 sf (an increase of 25,341 sf);
- Back-of-House will increase to 630,447 sf (an increase of 219,389 sf);
- A spa and gym will increase to 26,368 sf (an increase of 10,963 sf);
- Convention/meeting rooms will increase to 60,166 sf (an increase of 23,098 sf);
- 2,914 parking spaces on-site and 800 parking spaces off-site for employee parking (a decrease of 22 on-site parking spaces); and,
- 1,323,023 sf parking garage (a decrease of 153,438 sf).

Original Project Description

As described in the Second Supplemental Final EIR (SSFEIR), the project consists of the redevelopment of a 33.9-acre site in Everett as a destination resort casino. The site is located on Horizon Way and Lower Broadway (Rt. 99) in Everett. Chapter 194 of the Acts of 2011: An Act Establishing Expanded Gaming in the Commonwealth and M.G.L. Chapter 23K, Section 19, as amended by Section 16 of the Expanded Gaming Act, authorizes the Massachusetts Gaming Commission (MGC) to license three casinos. The Act identifies three regions of the state - Region A (Suffolk, Middlesex, Essex, Norfolk and Worcester counties), Region B (Hampshire, Hampden, Franklin and Berkshire counties) and Region C (Bristol, Plymouth, Nantucket, Dukes and Barnstable counties) – and authorizes MGC to permit one casino in each region. This project is located in Region A.

The Proponent began remediation and construction in August, 2016 and has made significant progress. The building is under construction and the initial work on the foundation of the parking garage has begun.

Procedural History

On May 31 2013, the Proponent filed an Expanded Environmental Notification Form (EENF) for the project. A Certificate on the EENF was issued on July 26, 2013. The Proponent filed a Draft Environmental Impact Report (DEIR) on December 16, 2013. A Certificate on the DEIR was issued on February 21, 2014 which included a scope for the Final Environmental Impact Report (FEIR).

On June 30, 2014, the Proponent filed a FEIR. The Certificate on the FEIR, issued on August 15, 2014, required the Proponent to file a Supplemental FEIR (SFEIR). The Scope was limited to traffic and transportation issues, Responses to Comments and revised Section 61 Findings. The Certificate on the FEIR indicated that other issues had been adequately addressed in the FEIR or could be addressed through subsequent review, approval and permitting processes.

Prior to filing the SFEIR, the Proponent revised its design based on direction from the MGC. On February 17, 2015, the Proponent filed the SFEIR which identified changes to the project and associated changes in environmental impacts. The primary changes were the addition of 58,005 square feet (sf) to the size of the building, the addition of 125 hotel rooms (from 504 to 629) and the addition of 420 gaming positions (from 4,160 to 4,580).

The SFEIR provided a revised and updated traffic impact assessment (TIA) which reflected the consultation between MassDOT and the Proponent. It included updated traffic counts, improved modeling, and better defined mitigation. It included a revised analysis of the project's impacts on the Orange Line and existing bus service and changes to the private shuttle system to complement existing transit service.

A Certificate on the SFEIR was issued on April 3, 2015 specifying a limited scope for a Second Supplemental Final Environmental Impact Report (SSFEIR). The SSFEIR was required to address outstanding traffic and transportation issues, including the violation of the MEPA statute associated with the conveyance of land by the Massachusetts Department of Transportation (MassDOT)/Massachusetts Bay Transportation Authority (MBTA) to the Proponent. This transfer occurred prior to completion of MEPA review. None of the documents associated with the Land Transfer, including the deed, contained any terms, such as a condition or restriction, to provide that the land transfer would be deemed not to have taken place until MEPA review was complete and that the MBTA would reconsider and confirm or modify the Agency Action and any conditions thereof to ensure consistency with MEPA.

On July 15, 2015, the Proponent filed the SSFEIR. A Certificate was issued on August 28, 2015 indicating that the project adequately and properly complied with MEPA and with its implementing regulations. Subsequent to issuance of the Certificate on the SSFEIR, a Public

Benefits Determination (PBD) was issued on September 25, 2015 finding that the project would have a public benefit.

Project Site

The site is located on Horizon Way and Lower Broadway (Rt. 99) in Everett. The 33.9-acre site is located adjacent to the Mystic River. Approximately 25.6 acres are upland, surrounded by shoreline and the remnants of marine structures, and approximately 8.3 acres are located below mean high water (MHW) on the Mystic River. The site includes approximately 1,600 lf of shoreline along flowed tidelands. Historic uses include the Monsanto chemical manufacturing facility. The site is classified as a disposal site subject to Massachusetts General Law Chapter 21E (MGL c.21E) and the MCP. It is contaminated and contains very high levels of arsenic and lead, both in soil and groundwater. Contaminated sediments have also been identified in the area of the site within the Mystic River.

Proximate uses include Boston Water and Sewer Commission (BWSC) and Massachusetts Water Resources Authority (MWRA) properties, the MBTA's maintenance facility (Everett Shops) to the north, and the Gateway Center and Gateway Park to the west. The Department of Conservation and Recreation (DCR) owns and operates parkways in the vicinity of the site, including Revere Beach Parkway, the Fellsway and Mystic Valley Parkway. In addition, DCR owns and operates the Mystic River Reservation and the Amelia Earhart dam, a flood control structure located on the Mystic River in the vicinity of the site.

The site is bordered by the Mystic River to the south and an embayment to the east. The embayment is approximately 350 to 500 feet wide from shoreline to shoreline and includes expansive areas of tidal flats on the easterly side. The site is comprised of flowed tidelands, filled (formerly flowed) tidelands, and non-jurisdictional upland within Everett. Of the approximately 33.9 acre site, approximately 8.3 acres are flowed tidelands (below MHW), 10.63 acres are filled tidelands, and 14.97 acres are non-jurisdictional upland. A small portion of the south side of the site is located within flowed Commonwealth tidelands. On July 29, 2013, the Massachusetts Department of Transportation (MassDEP) issued a determination concluding that approximately half of the upland areas of the site are private tidelands and half is non-jurisdictional uplands.

Several diadromous fish species are known to utilize the Mystic River, including alewife (*Alosa pseudoharengus*), blueback herring (*A. aestivalis*), white perch (*Marone americana*), American eel (*Anguilla rastrata*) and American shad (*A. sapidissima*). Winter flounder (*Pseudopleuronectes americanus*) has also been observed to be present and potentially spawning in the Mystic River.

The Remediation Area identified in the NPC is located in the lower reaches of the Mystic River, 1,000 feet downgradient of the Amelia Earhart Dam and approximately 8,400 feet upstream of where the Mystic River empties into Inner Boston Harbor. The Remediation Area lies primarily within the embayment of the Mystic River and a small area extends into a shallow portion of the channel. It includes a portion of Mystic River below MHW. The tidal flats on the easterly side of the project site are bounded by Coastal Bank to the east and southeast.

Permits and Jurisdiction

The project is subject to MEPA review and required the preparation of a Mandatory EIR pursuant to 301 CMR 11.03(1)(a)(2), 11.03(3)(a)(5), 11.03(6)(a)(6) and 11.03(6)(a)(7) because it requires State Agency Actions and it will create 10 or more acres of impervious area, create a New non-water dependent use occupying one or more acres of waterways or tidelands, generate 3,000 or more New adt on roadways providing access to a single location, and provide 1,000 or more New parking spaces at a single location

The project received a Category 1 Gaming License from the MGC, the Land Transfer from the MBTA has been completed, and the Massachusetts Aeronautics Commission (MAC) completed an Airspace Review. MassDEP issued a Chapter 91 (c.91) License and a 401 Water Quality Certification (WQC). Coastal Zone Management (CZM) completed the Federal Consistency Review.

The project still requires a Vehicular Access Permit from the Massachusetts Department of Transportation (MassDOT), a Construction and Access Permit from DCR, or a Sewer Use Discharge Permit (or waiver) and a 8(M) Permit from MWRA.

The project received multiple permits and approvals from the City of Everett, including an Order of Conditions from the Everett Conservation Commission for on-site work which was not appealed. It continues to require approvals from the Boston Transportation Department (BTD) and the Public Improvements Commission (PIC) for off-site roadway improvements.

The project received a Section 404 Clean Water Act Permit and a Section 10 Permit from the United States Army Corps of Engineers (ACOE) and a National Pollutant Discharge Elimination System (NPDES) Construction General Permit (CGP) from the United States Environmental Protection Agency (EPA) for stormwater discharges from a construction site of over one acre. The project may require approval from the Federal Highway Administration (FHWA) for modifications to the highway system (I-93) and/or for work on the National Highway System (NHS). As a result, the project may be subject to review pursuant to the National Environmental Policy Act (NEPA) and review pursuant to Section 106 of the National Historic Preservation Act (NHPA). The project received a Determination of No Hazard in a Part 77 Airspace Review from the Federal Aviation Administration (FAA).

The project change requires additional Permits including a c. 91 Dredge Permit and 401 Dredge WQC from MassDEP. It will require an additional Federal Consistency Review by CZM. In addition, it will require an Order of Conditions from the Boston Conservation Commission and the Everett Conservation Commission (or a Superseding Order of Conditions (SOC) from MassDEP if a local Order is appealed).

MEPA jurisdiction is limited to the subject matter of required or potentially required permits; however, the subject matter of the Gaming License confers broad scope jurisdiction and extends to all aspects of the project that may cause Damage to the Environment, as defined in the MEPA regulations. The project change does not affect MEPA jurisdiction.

Environmental Impacts and Mitigation

Potential environmental impacts are associated with the creation of 19.42 acres of impervious surfaces; alteration of wetland resource areas; water demand of 346,114 gallons per day (gpd); and, generation of 314,649 gpd of wastewater. The project change will increase wastewater generation by 31,167 gpd and increase water use by 34,284 gpd. When adjusted for mode share, the project will generate approximately 17,550 new adt on a Friday and 20,566 new adt on a Saturday. The project change results in 2,580 fewer adt on Friday and 3,416 fewer adt on a Saturday than previously reviewed. As noted above, parking has been decreased by 22 spaces to 2,914 on-site spaces. The project will include 800 off-site spaces for employee parking. Refinements to the building program have increased the project by 178,215 sf for a total of 3,112,153 sf of space.

The waterside work and remediation activities will impact 7.0 acres of intertidal and subtidal estuarine resources including Land Under the Ocean (LUO), Coastal Beach and Tidal Flats, Land Containing Shellfish, and Salt Marsh. This work will include removal of debris and barges; dredging of 53,365 cy of impacted sediment (an increase of approximately 36,030 cy from the SSFEIR); management and disposal of dredged material; backfill of material for capping; restoration of benthic habitat; and post-dredge monitoring.

Measures to avoid, minimize and mitigate impacts include redevelopment and remediation of a brownfield site located in proximity to transit, provision of 7.42 acres of open space, access to and along the Mystic River including a connection to Gateway Park, salt marsh restoration and replication of shellfish beds, installation of a stormwater management system, roadway improvements, and improvements to transit, bike and pedestrian access. The building will be designed to be certifiable by the US Green Building Council's Leadership in Environmental and Energy Design (LEED) at the Gold level, or higher. The project incorporates measures to improve energy efficiency including use of a Combined Heat and Power (CHP) system. In addition, it includes a commitment to install a PV system and/or purchase Green Power from local service providers (equal to 10% of the project's annual electrical consumption).

Review of the NPC

The NPC included a description of the original project, the project change, associated project plans, and discussed the significance of the project changes. It identified changes in environmental impacts and proposed measures to minimize and mitigate these impacts.

Segmentation

The MEPA regulations contain anti-segmentation provisions to ensure that projects are not segmented to evade, curtail or defer MEPA review. The Proponent and/or its subsidiaries have acquired additional property in Everett including the site of the Rivergreen Technology Park (EEA# 14478). A NPC for Rivergreen was filed in December 2016 and a Certificate on the NPC was issued on January 20, 2017. Acquisition or development of other parcels acquired by Wynn Resorts or its subsidiaries in the project area, could be subject to MEPA review, including

a NPC to the Wynn Boston Harbor Casino Resort. This determination will depend on a number of factors including location, proposed uses and required State Permits. Wynn Resorts should consult with the MEPA Office regarding additional acquisition and development in the project area and potential MEPA review to ensure that projects are not improperly segmented.

Alternative Analysis

The purpose of the remediation is to eliminate or mitigate risks so that a condition of No Significant Risk is reached and a Permanent Solution, as defined by the MCP, is achieved. The NPC included analysis of the four alternatives for the waterside remediation. Criteria for evaluation included effectiveness, short and long-term reliability, implementability, cost, risks, benefits, timeliness, non-pecuniary interests and greener cleanups. The alternatives include:

- Dredging and Capping of the Entire Area (Alternative 1) would include dredging of the entire Remediation Area followed by capping with two feet of clean material.
- Partial Dredging and Capping of the Entire Area (Alternative 2) which consists of dredging and capping the majority of the Remediation Area.
- Dredging and Capping of Portions of the Area and Implementation of Monitored Natural Recovery (MNR) in Other Portions (Alternative 3) includes dredging and capping of the eastern portion of the Remediation Area and the isolated tidal flat area with MNR for the remainder. MNR is an approach for contaminated sediment that uses ongoing, naturally occurring processes to contain, destroy, or reduce the toxicity of contaminants in sediment. This technique that has been used in Massachusetts.
- No Further Action (Alternative 4) would not remediate the area or monitor impacts.

All remediation alternatives include sediment removal via mechanical dredging. An excavator or crane equipped with an environmental clam shell bucket will be used. All alternatives include the use of turbidity barriers around the dredge area established by MassDEP during the 401 WQC; monitoring and mitigation of dust and odor; dewatering within the site boundaries (or at an off-site facility) via decanting and/or Geotubes, followed by the addition of stabilizing agents if necessary; transportation of dewatered dredged material via barge to an offloading facility; disposal of the dredged material at a suitable licensed/permitted facility; backfilling of the dredge area with clean material; and, monitoring of the thickness of the cap to ensure that changes in site conditions which could result in a risk to benthic organisms do not go undetected.

The NPC presented the relative areas and volumes of dredging and capping for Alternatives 1, 2 and 3. Alternative 1 would dredge and cap the entire 7.0 acres resulting in a dredge volume of 36,030 cy. Alternative 2 would dredge 5.2 acres, resulting in a dredge volume of 27,300 cy, and would cap the entire 7.0 acres. Alternative 3 would dredge 4.0 acres, resulting in a dredge volume of 21,300 cy, and cap 3.0 acres. The impacts associated with Alternative 1 are identified in the NPC as the maximum level of impacts. Dredging will be a maximum of 2 feet below the existing mudline, or the previously reviewed elevation in the area of navigational dredging, with an anticipated over-dredge allowance of up to one foot. Previous MEPA review identified 17,335 cubic yards (cy) of navigational dredging. The NPC estimated that in-water

remediation will include a maximum of 36,030 cy of dredging for a total of 53,365 cy of dredging.

The NPC assumes that the cap will be constructed without a physical barrier because the cap thickness will be sufficient to minimize burrowing through the cap to the sediment below. A study by the U.S. Army Corps of Engineers' (ACOE) Dredging Operations and Environmental Research Program provides guidance for cap thickness below subaqueous caps. For sand caps in coastal marine waters, the ACOE recommends total cap thicknesses of 0.65 to 1.5 feet. MassDEP concurs with the ACOE's findings and recommends that a clean sediment cap at least 1.5 feet (18 inches) thick should be used.

During review of the NPC, the Proponent consulted further with MassDEP and, as a result, has identified Alternative 2 as the Preferred Alternative. The Preferred Alternative will include partial dredging and capping of the entire area with at least an 18-inch clean sediment cap. This is identified in an email, dated April 6, 2017, from the Proponent's consultant, Fort Point Associates. MassDEP comments indicate that the Preferred Alternative can be designed to achieve a level of No Significant Risk under the MCP.

The alternatives will be reviewed in more detail through the MCP process. The project requires the submittal of a Phase III Remedial Action Plan and Phase IV Remedy Implementation Plan. Because the clean-up includes a Public Involvement Plan (PIP), these documents will be subject to public review and comment. In addition, the 401WQC permitting process will require review of the alternatives analysis.

MassDEP comments have not requested additional analysis prior to permitting. Comments from the Mayor of Everett, Boston Harbor Now, and CZM are supportive of the proposed remediation. I note that comments from Mystic River Watershed Association (MyRWA) request further analysis of the remediation in a Supplemental EIR to engage the public in the evaluation of the environmental risks. The subsequent review, permitting and approval processes will provide additional, meaningful opportunities for public review and comment and MassDEP has sufficient regulatory authority to address outstanding issues.

Wetlands and Waterways

As noted previously, the remediation requires a c. 91 Dredge Permit and 401 Dredge WQC. All dredging activities must be performed under the supervision of a Licensed Site Professional and meet the performance standards of the MCP. The Proponent may file a Combined Application for Chapter 91 Dredge Permit and 401 Dredge WQC. The Proponent will be required to demonstrate compliance with all applicable regulatory standards as part of these permitting processes.

The 401WQC issued by MassDEP on January 21, 2016 authorizes navigational dredging of the Mystic River in the City of Everett. Based on discussions with the Proponent, MassDEP expects the approved navigational dredging and the remedial dredging will be conducted at the same time.

The Mystic River embayment, including the Remediation Area, was assessed for various aquatic biological resources that might be present in this type of marine setting, and which could affect the sediment remediation design and/or implementation. The NPC concluded that the seafloor was primarily composed of unconsolidated, soft mud (silt) over an essentially flat harbor bottom, with the fine grain size of the sediment typically indicative of low current and wave activity in the area. Benthic habitat for shellfish in the embayment is considered degraded due to chemical contamination and oxygen-poor sediments.

The Proponent anticipates that the sediment removal from the Remediation Area could be completed in one season, depending on the construction start date and seasonal conditions. However, it may be necessary for the work to be completed over two construction seasons between 2017 and 2019. The Proponent has indicated that it will observe Time of Year (TOY) restrictions for in-water work recommended by the Massachusetts Division of Marine Fisheries (DMF). DMF has recommended that silt-generating in-water activities only be conducted between September 30 and February 15.

I have considered whether the project change would require issuance of an amended PBD and have determined that it does not. The proposed changes will not affect the public benefits of the project and the remediation will improve conditions in the Mystic River.

Water and Wastewater

The NPC indicates that the project will use 346,114 gpd of water and generate an estimated 346,114 gpd of wastewater flows. The Proponent will provide funding to the City of Everett to support infiltration/inflow (I/I) removal requirements. The City is implementing an I/I investigation program which is expected to identify specific projects to rehabilitate existing infrastructure and remove I/I from the City's sewer system. MassDEP will continue to monitor the progress of the I/I abatement program in Everett, and the funding commitments of the Wynn project to fulfill the requirements for 4:1 removal for this project.

Construction

All activities should be managed in accordance with applicable MassDEP Solid Waste and Air Pollution Control regulations pursuant to M.G.L. c.40, §54. I encourage the Proponent and its contractors to comply with MassDEP's Diesel Retrofit Program and restrict on and off-road idling to the maximum extent practicable. All activities should be undertaken in compliance with the conditions of all State and local permits.

Mitigation and Section 61 Findings

The NPC identified mitigation commitments included in the SSFEIR and proposed additional commitments in conjunction with the project change. Mitigation measures are expected to be identified and refined as permitting proceeds for the sediment remediation. Measures to avoid, minimize and mitigate impacts associated with the remediation include:

- Avoidance of impacts to the two remnant patches of salt marsh within Boston;

- If salt marsh is inadvertently impacted during the dredging/capping operations, *Spartina species* will be planted in the same general location as the existing patches;
- Turbidity barriers and floating oil booms will be installed during dredging and capping to protect water quality; and
- Water quality monitoring will be conducted during remediation to identify impacts and support early intervention and mitigation.

The draft Section 61 Findings identified in the SSFEIR for the entire project include:

Transportation

Annual Operating Subsidy to support additional passenger capacity on the Orange Line

- Assuming a 2018 opening, the subsidy would be \$410,188 in that starting year and \$579,584 in 2032, fifteen years later (inflated each year by a fixed factor of 2.5%, consistent with historical Cost of Living Adjustments). The total subsidy over that fifteen-year period would be approximately \$7,355,455.

MBTA Everett Shops

- New Entrance;
- New Loading Dock; and,
- Easement on Surface Road.

MBTA Stations

- Improvements to MBTA's Wellington Station to accommodate Wynn patron shuttle service at curbside;
- Improvements to MBTA's Malden Center Station to accommodate Wynn patron shuttle service at curbside; and,
- Improvements to MBTA's Sullivan Square Bus Station to accommodate new traffic patterns and road alignments.

Offsite Improvements – Everett

1. Revere Beach Parkway (Route 16)/Mystic View Road/Santilli Highway/Route 99 Connector Improvements (Santilli Circle): Modify the approach from Frontage Road into the rotary to allow for two formal lanes; Widen circle at Santilli Highway approach to allow for three travel lanes; Provide improved pedestrian and bicycle connection from Frontage Road to Mystic View Road; Reconfigure channelizing island on south side of rotary near Mystic View Road; Provide traffic signal improvements at the signalized locations around the traffic circle; Provide landscaping improvements to the center of the circle; Provide new guide signage and pavement markings; and, perform RSA into final design, where feasible; Coordinate with MassDOT to identify funding source of RSA recommendations. Work will be completed prior to opening.

2. Route 16/Broadway/Main Street (Sweetser Circle): Reconstruct circle and approaches to function as a two-lane modern roundabout; Reconfigure the existing Broadway (Route 99) northbound approach to allow for three travel lanes providing free flow access to Route 16 eastbound; Provide shared use path on northwest side of rotary to improve bicycle access; Install new signing to provide direction to bicyclists on how to navigate the rotary safely; Provide landscaping and improvements on the north side of the circle; and, maintain pedestrian signal across Route 16 eastbound exit from rotary. Work will be completed prior to opening.

At the following locations (3-11) the Proponent has committed to: Reconstruct Lower Broadway as a 4-lane boulevard with turn lanes at major intersections; Upgrade/replace/install traffic control signals; Reconstruct sidewalks and bicycle lanes where required; Install street trees and lighting; Improve MBTA bus stops along Lower Broadway; Installation of technology along Broadway/Alford Street (Route 99), near project entrance, to allow for signal prioritization for buses.

3. Broadway/ Beacham Street

4. Broadway/ Horizon Way

5. Broadway/ Lynde Street

6. Broadway/ Thorndike Street

7. Bow Street/Mystic Street

8. Bow Street/Lynde Street

9. Bow Street/ Thorndike Street

10. Beacham Street/Robin Street

11. Broadway/ Bowdoin Street

12. Broadway/ Norwood Street/Chelsea Street: The Proponent will optimize traffic signal timing, phasing and coordination.

13. Lower Broadway Truck Route: – Upgrade Robin Street and Dexter Street to serve as a truck route; Provide full depth reconstruction of the existing roadway to accommodate heavy vehicles; Reconstruction of Robin Street and Dexter Street to include heavy-duty pavement, corner radii improvements, sidewalk reconstruction (where present), drainage system modifications (minor), signs and pavement markings.

14. Ferry Street/ Broadway (Route 99): Traffic signal retiming and optimization.

Offsite Improvements – Medford

1. Mystic Valley Parkway (Route 16)/Fellsway (Route 28)/Middlesex Avenue (Wellington Circle): Upgrade/replace traffic signal equipment/signs/pavement markings; Optimize traffic signal timing, phasing and coordination; Widen Route 28 northbound to provide an additional left turn lane; Widen Route 16 westbound to provide an additional through lane in the middle of the intersection; Reconstruct noncompliant sidewalks and accessible ramps around the intersection to improve pedestrian access; Provide landscape improvements.

2. Mystic Valley Parkway (Route 16)/Route 16 Connector: Traffic signal retiming and optimization.

3. Mystic Valley Parkway (Route 16)/Mystic Avenue: Traffic signal retiming and optimization.

The Proponent has committed to contribute \$1.5 million to a study of long-term improvements for Wellington Circle.

Offsite Improvements – Boston

1. Alford Street/Main Street/Sever Street/Cambridge Street (Sullivan Square) and at

2. Cambridge Street/I-93 northbound off-ramp: The Proponent has committed to: Optimize signal timing for Maffa Way/Cambridge Street; interconnect and coordinate traffic signals, widen the Main Street approach to provide two lanes; Reconstruct busway between Cambridge Street and Maffa Way; Reconstruct the southbound approach of Alford Street at Cambridge Street; Install new traffic signals at Cambridge Street/Spice Street/MBTA Busway and Maffa Way/Busway; Upgrade/replace traffic signal equipment/signs/ pavement markings; Optimize traffic signal timing, phasing and coordination; Reconstruct Spice Street and D Street; Reconstruct sidewalks on west side of rotary between Sullivan Square station and Alford Street Bridge; Reconstruct sidewalks and upgrade lighting and streetscape in rotary between Cambridge Street and Main Street (east); Provide bicycle lanes on Cambridge Street; Reconstruct MBTA lower busway and parking area at Sullivan Square station, including new traffic signal at Maffa Way/station entrance; Construct BUS ONLY left-turn lane from Main Street into Sullivan Square Station.

3. Traffic Signal Interconnect Conduit from Sullivan Square to Austin Street: Install conduit, pullboxes, and wiring.

4. Dexter Street/Alford Street (Route 99): Upgrade/replace traffic signal equipment/signs/pavement markings; and, Optimize traffic signal timing, phasing, and coordination.

5. Rutherford Avenue (Route 99)/Route 1 Ramps: Optimize traffic signal timing and phasing.

6. Sullivan Square Landscaping: Improve landscaping within the rotary at Sullivan Square and immediately north of the rotary adjacent to Rutherford Avenue

Long-term Commitment to Sullivan Square: Provide payments of \$2.5 million per year into the Sullivan Square mitigation fund (\$25 million over 10 years); Provide payments to the City of Boston for each vehicle above Friday afternoon and evening period projections \$20,000 per additional vehicle trip, not to exceed \$20,000,000 over 10 years; Monitor and Report no later than 30 days after the first anniversary of Project opening and for 10 years.

Offsite Improvements – Revere:

1. Route 16/Route 1A/Route 60 (Bell Circle): Upgrade/replace traffic signal equipment/signs/pavement markings; and, Optimize traffic signal timing, phasing and coordination.

Offsite Improvements – Chelsea:

1. Route 16/Washington Avenue: Upgrade/replace traffic signal equipment/signs/pavement markings; optimize traffic signal timing, phasing and coordination.

2. Route 16/Everett Avenue and 3. Route 16/Webster Avenue: The Proponent has committed to optimize traffic signal timing, phasing and coordination.

Transportation Demand Management

- Membership Fee with a Transportation Management Association
- Employ a designated Transportation Coordinator for the Project to coordinate efforts, monitor success rates, and manage strategic implementation of traffic reduction programs;
- Schedule employee shift beginnings and endings outside specified peak traffic periods;
- Carpool/vanpool matching programs;
- Dissemination of promotional materials, including newsletters about TDM program in print at the Project's onsite Transportation Resource Center, and online;
- Orange Line Shuttle Service to Wellington and Malden Center stations and associated improvements to support curbside shuttle service at Wellington Station and Malden Center Station;
- Neighborhood Shuttle Buses;
- Employee Shuttle Buses;
- Premium Park & Ride Shuttle Buses;
- Neighborhood Shuttle Buses;
- Water shuttle service to the Project Site- customized ferry vessels to support passenger transport between the project site and key Boston Harbor sites;
- On-site Full Service MBTA Fare Vending Machine;
- Participation in the MBTA Corporate Pass Program to the extent practical and as allowable pursuant to commercial tenant lease requirements;
- Electric vehicle charging stations within the proposed parking garage;
- Car sharing services in the garage at the Project Site;
- Preferential parking for car/vanpools and alternatively fueled vehicles;
- Offering a "Guaranteed-Ride-Home" in case of emergency to employees that commute to the Project by means other than private automobile;
- Monitoring and reporting program for post-development traffic and parking monitoring and employee survey program for \$30,000 annually; and,
- Monitoring of post-development motor vehicle traffic counts at Sullivan Square as well as additional locations to determine where Project related trips through Sullivan Square

exceed projects during the Friday afternoon peak hour at a cost of \$20,000 per year for 10 years.

Wastewater

- Financial contribution to remove Infiltration and Inflow (I/I) equivalent to 4 gallons removed for every gallon of new wastewater generated;
- Install grease traps and gas/oil separators.

Water Use

- Incorporates water conservation measures consistent with LEED requirements, including efficient plumbing fixtures, low-flow lavatory faucets and showerheads.
- Rainwater harvesting, grey water reuse and landscaping alternatives;
- Use timers, soil moisture indicators and rainfall sensors to reduce potable water use on landscaping;

Wetlands, Waterways and Water Quality

- Create public access and amenities, including a water transportation dock and continuous harborwalk;
- Remediation, revegetation and enhancement of 550 linear feet of existing shoreline with enhanced living shoreline;
- Removal of invasive vegetation and planting of native herbaceous and shrub vegetation along part of existing Coastal Bank and Riverfront Area;
- Consultation with MassDEP to develop specifications for the living shoreline and bank restoration.
- Transformation of 10,900 +/- SF of disturbed Coastal Beach/Tidal Flats, Coastal Bank, and Riverfront Area to Salt Marsh;
- Dredging to remove contaminated sediments from the harbor bottom and to provide ample draft for water transportation, recreational vessels and a proposed floating dock;
- Debris clean up within LUO, Coastal Beach and Coastal Bank resource areas;
- Replacement of existing bulkhead and construction of new bulkheads within areas of existing degraded Coastal Beach and Coastal Bank areas;
- 100% of the ground floor will be FPAs;
- Extension of the harborwalk off-site to the DCR Gateway Park and to Broadway including construction of a multi-use path, benches, signage, bicycle racks, plantings and lighting; and,
- Contribution of \$250,000 to DCR for planning and engineering of a potential pedestrian bridge linking Somerville and Everett over the Mystic River.

Stormwater

- Best Management Practices (BMPs) such as pavement sweeping, deep sump catch basins, tree box filters, filtering bioretention areas, four (4) proprietary stormwater

separators, and stormwater media filters will be constructed. These BMPs will be designed to remove at least 80 percent of the average annual load of Total Suspended Solids (TSS)

- Catch basins, silt fences, hay bales and crushed stone will be used during construction to prevent sediment removal from entering runoff
- Offsite mitigation measures associated with transportation improvements may include bioretention or subsurface infiltration chambers, deep sump catch basins or proprietary stormwater separators.

GHG Emissions

- Buildings designed to be LEED-certifiable at the Gold level or higher;
- Energy Efficiency Measures (EEM) estimated to reduce CO₂ emissions from stationary sources for the building by 18.4% relative to ASHRAE 90.1-2010, or for the entire Project Site (including buildings, garage ventilation, and lighting, exterior lighting and water/wastewater utilities) by 27.4% relative to ASHRAE 90.0-2010 standards, which will include:
 - Cool roofs;
 - Central chiller plant with better efficiency than Code;
 - Demand Control Ventilation (DCV) for the casino, public entertainment, and retail areas;
 - Energy Recovery Ventilation (ERV) to reduce chiller energy use;
 - Building envelopes with roof and window insulation better than Code;
 - Skylights over the entry atrium and along the retail promenade (daylighting controls will be tied to this extensive system of skylights);
 - Lower light power density 20% better than Code;
 - At least 80% of the total to be Low-energy Electronic Gaming Machines (EGMs);
 - Metal halide lighting for all parking structures;
 - High efficiency elevators with regenerative VVVF drives and LED lights;
 - Demand Control Exhaust Ventilation (DCEV) with variable frequency drive (VFD) fans for enclosed parking structures and metal halide lighting for all parking structures;
 - Kitchen and restaurant refrigeration energy efficiency design to reduce energy use;
 - Energy-STAR appliances;
 - Enhanced building commissioning; and
 - Occupancy controls for non-occupied or infrequently occupied spaces.
- PV system on the podium building roof or other locations, and/or purchase from local service providers of Green Power of annual electric consumption equaling 10% of the Project's annual electrical consumption;
- Cogeneration plant using a nominal 1- MW microturbine, providing approximately 20% of the Project's annual electrical consumption (the cogeneration plant is capable of providing 6,307 MWhr/year of on-site electrical generation, supporting 780 tons of absorption cooling, and providing up to 50 percent of the Project's annual heating and hot water needs); and,

- Intersection improvements to reduce vehicle idling and TDM measures to reduce trips will reduce Project-related motor vehicle CO₂ emissions by 13.0%.

Climate Change Adaptation and Resiliency

- Elevate proposed structures the proposed structures non-service and garage floor elevations to 15 to 16 feet above the 100-year flood level.
- Parking garages entrances and other openings into below grade spaces will be elevated, as noted above, or incorporate sufficient flood-proofing to avoid damage from coastal storms; and
- Critical infrastructure and HVAC equipment will be elevated above projected flood levels.
- The Proponent will consider additional measures during subsequent design including, but not limited to: rain gardens and swales; protection for service equipment (HVAC, electrical, fuel, water, sewage); installation of back-water flow valves and sump pumps; protection of entrances from snow and ice; enhanced building insulation; cool/green roofing; resilient back-up power and systems; backup power sources for elevators; insulation of refrigeration equipment; and, elevation of utility hook-ups, mechanical devices, electrical service panel, water heaters, and IT services above potential flood levels.

Air Quality

- Commitment to a robust and comprehensive TDM program supported by the TMP (described in TDM section above).
- Commitment to consult with MassDEP regarding the CHP system prior to filing a permitting application.

Several Agencies have issued Section 61 Findings for the project including the following:

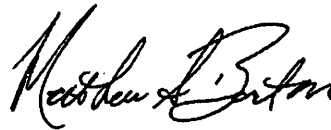
- Massachusetts Department of Transportation (MassDOT) published draft Section 61 Findings in the Environmental Monitor on February 10, 2016 and February 24, 2016. MassDOT issued final Section 61 Findings on March 31, 2016, which were published in the Environmental Monitor on April 6, 2016.
- Massachusetts Port Authority (Massport) published draft Section 61 Findings in the Environmental Monitor on February 10, 2016. Final Section 61 Findings were adopted by Massport on January 21, 2016, and published in the Environmental Monitor on February 24, 2016.
- Massachusetts Water Resources Authority (MWRA) issued Section 61 Findings on January 12, 2016, which were published in the Environmental Monitor on January 20, 2016.

- The MGC published draft Section 61 Findings in the Environmental Monitor on April 6, 2016, held a public hearing on March 29, 2016 to hear additional comments on the draft Section 61 Findings. Final Section 61 Findings were adopted by the MGC on April 25, 2016, and published in the Environmental Monitor on May 11, 2016.
- MassDEP issued a Written Determination pursuant to c. 91/Section 61 Finding and Combined Water Quality Certification/Section 61 Finding on January 22, 2016. The Findings were noticed in the Environmental Monitor on February 10, 2016.

Conclusion

As noted previously, use and development of the parcels acquired by Wynn Resorts or its subsidiaries in the project area, could be subject to MEPA review, including a NPC to the Wynn Boston Harbor Casino Resort project. The Proponent should consult with the MEPA Office regarding additional acquisition and development in the project area to ensure that projects are not improperly segmented.

The NPC has sufficiently defined the nature and elements of the project and proposed mitigation for the purpose of MEPA review. Additional and more specific mitigation associated with remediation of marine sediments will be developed during the c. 91 and 401 WQC permitting with MassDEP. State Agencies did not request additional MEPA review. State Agencies have sufficient regulatory authority to address outstanding issues. Section 61 Findings presented in the NPC should be updated, as necessary, to incorporate additional or modified mitigation measures that may be identified during the State permitting process.



April 7, 2017

Date

Matthew A. Beaton

Comments Received:

03/09/2017	Everett United, signed by 33 citizens
03/22/2017	Massachusetts Water Resources Authority
03/27/2017	Office of Coastal Zone Management
03/27/2017	Massachusetts Department of Environmental Protection – Northeastern Regional Office (MassDEP – NERO)
03/27/2017	Mayor Carlo DeMaria, City of Everett
03/28/2017	Department of Conservation and Recreation
03/28/2017	Mystic River Watershed Association
03/28/2017	Boston Harbor Now
03/31/2017	MassDEP – NERO, 2 nd letter

MAB/ACC/acc

Terry Baldwin-Williams

323 Main Street
Everett, MA 02149
TerryB323@gmail.com

March 9, 2017

RECEIVED

MAR 13 2017

MEPA


Mr. Matthew Beaton
Executive Office of Energy & Environmental Affairs
Attn: MEPA Office / MEPA Reviewer
100 Cambridge Street - Suite 900
Boston, MA 02114

RE: Wynn Boston Harbor
Notice of Project Change
EEA #15060

Dear Mr. Beaton:

On behalf of *Everett United*, you will find enclosed our comments concerning the Notice of Project Change regarding the Wynn Boston Harbor project in Everett. You will see that we strongly support the proposed changes to this development within our community.

Sincerely,


Terry Baldwin-Williams

Enclosure

cc: Judith T. Kohn, Vice President *[w/ Enclosure]*
Fort Point Associates, Inc.
31 State Street - 3rd Floor
Boston, MA 02109

TO: Massachusetts Dept. of Environmental Protection
One Winter Street
Boston, MA 02108

FROM: Members of Everett United

RE: Wynn Boston Harbor Project
One Horizon Way
Everett, MA 02149

DATE: March 8, 2017

We, the members of Everett United, wholly support the continued efforts of the Wynn Boston Harbor project in Everett in their clean-up of the highly contaminated former Monsanto Chemical site and the adjacent Mystic River environs. Wynn's incredible soil remediation work has already resulted in vastly improved air quality—no more noxious fumes! We truly look forward to enhanced water purity from the proposed sediment dredging and reconstruction of the river's embankments. These processes will bring about the reclamation of the riverfront area for public use.

Furthermore, Wynn's commitment to the proposed connection to the Gateway Park area will undoubtedly complement Everett's connection with the Mystic River and Mother Nature in general. The lavish landscaping plan that Wynn has designed is beautiful and inviting. We truly look forward to the day when we can enjoy strolling along the Mystic River in our own hometown of Everett, with the majestic Wynn facility standing sentinel in the background.

In addition, we are keenly aware of the pending changes to the original Wynn development plan and we likewise applaud these improvements. The local area has long been in need of quality meeting areas, function facilities and ballroom space, and these enhancements to the planned project are a major advantage to Everett and our neighboring cities. Likewise, the addition of more hotel rooms is extremely beneficial to our hometown and surrounding communities. Having a greater number of 5-star rooms available truly increases the value of this project to our residents, as it is indicative of Wynn's commitment to our city and bestows upon Everett the reputation as a world class destination.

We sincerely urge you to approve the changes proposed by the Wynn Boston Harbor project for the good of Everett and its citizens. Thank you.

SIGNED:

Name	Address
<u>Jim Massone</u>	<u>Malden A/B 87 Bowdoin Way Everett MA</u>
<u>Eddie Lucas</u>	<u>21 Thorough St Everett MA 02149</u>
<u>Mary Napulitano</u>	<u>60 Windsor St. Everett, MA</u>
<u>Alison C. McLeod</u>	<u>1 Bowdoin St #1206, Everett, MA 02149</u>

Name

Address

Linda Shadden	15 Berwick Court, Everett
Marie Jozzi	15 KK Terr. Everett
Charles DiPerrì	66 Main St Everett
Giuseppe Jozzi	15 KK Terr Everett
Archie J. Episcopi Sr	78 Sycamore St Everett
Cliff J. Rogers Jr.	74 Clark St Everett
Christine Bowen	74 Clark St Everett
Malcolm G. G.	252 Main St Everett
Rosalie Eliseo	78 Sycamore St Evr.
Gene Lepere	274 Chelsea St. Everett
Ed Elz Jr.	78 Sycamore St Everett
James Hanlon	173 Main St
John T. Hanlon	173 Main St. Everett
Cliff Wagner	104 Walnut St Everett
Anthony DiPina	51 Sycamore St, Everett MA
Murphy R. Laine	24 Walnut St Evr
Louise A. Zawodny	39 Parlin St #603 Everett
Theresa A. Carabisi	39 PARLIN ST #206 Everett
Gene Tomaso	153 A Belmont St Everett
Catherine Lubiano	106 Cleveland Ave Everett
Karen Anderson	17 Webster St. #23, Everett
Rosemarie Clamper	30 Chelsea St Everett #302
Joe Marino	53 MALDEN ST EVERETT
Valerie Esposito	32 DUNCAN RD EVERETT

Name

Jody Taylor
~~Gregg Edwin Williams~~
~~Paul D. Holtz~~
Daniel Napolitano

Address

32 Duncan Rd 02149
323 Main St., Everett, MA 02149

19 OVERLOOK RIDGE TR #308
REVERE

60 Windsor St. Everett



MASSACHUSETTS WATER RESOURCES AUTHORITY

Charlestown Navy Yard
100 First Avenue, Building 39
Boston, MA 02129

Frederick A. Laskey
Executive Director

Telephone: (617) 242-6000
Fax: (617) 788-4899
TTY: (617) 788-4971

March 22, 2017

Matthew Beaton, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge St, Suite 900
Attn: MEPA Office, Anne Canaday
Boston, MA 02114

Subject: Notice of Project Change - EOEEA #15060
Wynn Boston Harbor (FKA WynnResort in Everett), Everett, MA

Dear Secretary Beaton:

The Massachusetts Water Resources Authority (MWRA) is pleased to submit the following comments in response to the Notice of Project Change (NPC) submitted by Wynn MA, LLC ("the Proponent") for Wynn Boston Harbor Project in Everett (the "Project"). The NPC reports that its primary purpose is to provide additional information regarding marine sediments remediation. While the need for the work is described in the FEIR and SFEIR, there was insufficient sediment testing and analysis at the time to fully describe the impacts and volume of dredge and cap required. Wynn MA, LLC (the "Proponent") is proceeding with plans to complete remedial actions within the portion of the Project Site and an adjacent off-site property on the Mystic River, in order to comply with the Massachusetts Contingency Plan (MCP).

The NPC also reports that as the Project evolved through the design phase, the DEIR, FEIR, SFEIR, and Second Supplemental FEIR ("SSFEIR") each included refinements to the Project program as originally described in the EENF. While the core elements of the program (e.g., gaming, hotel, retail, meeting and event space, food and beverage, etc.) have not changed since the issuance of the SSFEIR Certificate, the Proponent states that it has continued to refine the program and interior layout of the building to reflect current market conditions, as they have changed since the filing of the EENF in 2013. Program changes include a reduction in retail space, a reduction of hotel suites to provide for additional rooms, an increase in food and beverage space, and the addition of a larger luxury ballroom space and an increase in "back of house" support space. The square footage of each of the project components has been further defined and finalized as part of the design process, as can be expected in a project of this size and complexity. These changes are within the footprint of the original proposal and add 6% in gross square feet.

MWRA is using this NPC as an opportunity to comment on the proposed changes, but also to reiterate our previous comments on issues related to wastewater flows, permitting from the Toxic Reduction and Control (TRAC) Department, and the likely need for 8 (M) Permit/s from the Water and Wastewater Permitting Field Operations Group.

Wastewater

The NPC reports that the Project change will increase wastewater flow from the site by 31,167 gallons per day (gpd) to 314,649 gpd, an 11% increase over the previously reviewed Project flow of 283,482 gpd. In its August 14, 2015, comment letter on the SSFEIR, MWRA stated that reconnection of a related City of Everett mainline sewer and its flows from MWRA's interceptor Section 24 to MWRA's interceptor Section 193 would provide benefit in terms of improved system performance that can help reduce sewer system surcharging and overflows in large storms. MWRA strongly recommended that the Proponent consider this mitigation improvement along with complying with the Massachusetts Department of Environmental Protection's regulation requiring 4:1 infiltration/inflow ("I/I") removal to ensure that the Project's wastewater flow impacts are offset. MWRA believes that this system reconfiguration also has potential for improving city sewer performance in serving the Wynn project and the Lower Broadway district.

In response to the comment, the NPC reports that the Project will provide funding to the City of Everett for city sewer system improvements to remove I/I equivalent to 4 gallons removed for every gallon of new wastewater generated. In the NPC, the Proponent does not present information related to reconnection of Everett flows from Section 24 to Section 193.

MWRA remains available to the Proponent and the City of Everett to provide assistance in their development of I/I removal plans or other sewer system improvements that can contribute to avoiding adverse environmental impacts from the proposed casino complex's wastewater flows. We look forward to continuing to work with the City, the Proponent and MassDEP to help achieve this objective.

TRAC Discharge Permitting

The discharge of contaminated groundwater from the Project site into the MWRA sanitary sewer system generated solely for remediation purposes is prohibited pursuant to 360 C.M.R. 10.093(9). The MWRA also prohibits the discharge of groundwater to the sanitary sewer system, pursuant to 360 C.M.R. 10.023(1) except in a combined sewer area when permitted by the Authority and the municipality. The proposed Project has access to a storm drain and is not located in a combined sewer area; therefore, the discharge of groundwater to the sanitary sewer system is prohibited. The Proponent must secure a USEPA-NPDES General Permit for Storm Water Discharges from its construction activities.

Once the luxury hotel is completed and if the Proponent intends to operate a laundry on the premises, a Sewer Use Discharge Permit is required from the MWRA for the discharge of laundry effluent into the sanitary sewer system. For assistance in obtaining this permit, a representative from the hotel should contact Erika Samuels, Industrial Coordinator in the TRAC Department at (617) 305-5666, TRAC. The Proponent must have an MWRA Sewer Use Discharge Permit prior to discharging wastewater from its laundry operations into the MWRA sanitary sewer system.

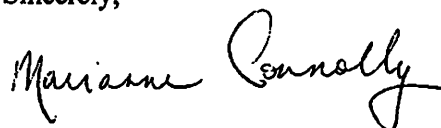
Lastly, the Proponent must also comply with 360 C.M.R. 10.016, if it intends to install gas/oil separator(s) in the proposed parking garages. In addition to complying with 360 C.M.R. 10.000, Wynn Boston Harbor, shall conform to the regulations of the Board of State Examiners of Plumbers and Gas Fitters, 248 C.M.R. 2.00 (State Plumbing Code), and all other applicable laws. The installation of the proposed gas/oil separator(s) will require MWRA approval and may not be back filled until inspected

and approved by the MWRA and the Local Plumbing Inspector. For assistance in arranging an inspection the Proponent should contact Stephen Howard, Regional Manager in the TRAC Department at (617) 305-5675.

Section 8 (m) Permitting

Section 8 (m) of Chapter 372 of the Acts of 1984, MWRA's Enabling Legislation, enables the MWRA to issue permits to build, construct, excavate, or cross within or near an easement or other property interest held by the MWRA, with the goal of protecting Authority-owned infrastructure. The Proponent may need to apply for MWRA 8(m) permit/s for future utility, potential new connections to the MWRA sewer system, or roadway improvement work. The Proponent acknowledges in the SFEIR that they will contact MWRA staff (Mr. Kevin McKenna within MWRA's Wastewater Permitting Group at (617) 350-5956 and Mr. Ralph Francesconi in the Water Permitting Group at (617) 350-5827) for permitting assistance early in the process. MWRA continues to encourage the Proponent to contact the 8 (m) permitting staff.

Sincerely,



Marianne Connolly
Senior Program Manager
Environmental Review and Compliance

- cc: David Kubiak, MWRA Engineering and Construction
Kattia Thomas, MWRA TRAC
Peter Yarossi, MWRA TRAC
Kevin McKenna, MWRA Permitting, Wastewater Operations
Ralph Francesconi, MWRA Permitting, Water Operations
Carl Leone, Planning
John McLaughlin, Planning
Kevin Brander, DEP
Eric Worrall, DEP
James Errickson, Exec. Director, Planning and Development, Everett
Jamie Fay, Fort Point Associates

C:\MEPA\15060WynnBostonHarborEverettNPC.doc



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
OFFICE OF COASTAL ZONE MANAGEMENT
251 Causeway Street, Suite 800, Boston, MA 02114-2136
(617) 626-1200 FAX: (617) 626-1240

MEMORANDUM

TO: Matthew A. Beaton, Secretary, EEA
ATTN: Anne Canaday, MEPA Unit
FROM: Bruce Carlisle, Director, CZM
DATE: March 27, 2017
RE: EEA 15060, Wynn Boston Harbor, Everett

The Massachusetts Office of Coastal Zone Management (CZM) has completed its review of the above-referenced Notice of Project Change (NPC), noticed in the *Environmental Monitor* dated March 8, 2017, and offers the following comments.

Project Description

The Secretary's Certificate on the SSFEIR for the proposed Wynn Boston Harbor (formerly known as Wynn Resort in Everett) was issued on August 28, 2015. CZM provided comments on the proposed project throughout the MEPA review process as well as during permitting with the Army Corps and MassDEP. The proposed project includes the construction of a resort casino on the 32-acre former Monsanto Chemical site along the Mystic River in the City of Everett. The project includes a luxury hotel, a gaming area, retail space, food and beverage outlets, convention and meeting space, a spa and gym, a parking garage, and other complementary amenities.

Changes proposed with this NPC filing include modifications to the living shoreline design as discussed and approved in the permitting process; refinements to the building program; changes to the shoreline infrastructure docks, piles, and floats to facilitate more effective and ADA compliant ferry docking; inclusion of an additional level of below-grade parking; and a sediment remediation plan for the contaminated marine sediments in the Remediation Area (7.0 acres of sub-tidal and intertidal area).

Project Comments

CZM supports the remediation of marine sediments as proposed in the NPC. At the time of the previous MEPA filing, the water-side portion of the project site had not been tested and characterized with respect to potential contamination levels. Upon additional sampling and testing, remediation requirements were clarified. As outlined in the NPC, remediation activities will impact 7.0 acres of intertidal and subtidal estuarine resources including Land Under the Ocean, Coastal Beach and Tidal Flats, Land Containing Shellfish, and Salt Marsh. This work will include removal of debris and barges, dredging of impacted sediment, management and disposal of dredged material, backfill of material for capping, restoration of benthic habitat, and post-dredge monitoring. This work will be completed according to the Massachusetts Contingency Plan for the site. In order to ensure the sub-tidal and intertidal habitat is adequately restored, the proponent will need to coordinate post-remediation mitigation and monitoring requirements with the Division of Marine Fisheries and the National Marine Fisheries Service



CZM also supports the proposed changes to the living shoreline design which will minimize potential public exposure to contamination. The overall goal of the living shoreline area, to facilitate opportunities for the public to engage with estuarine habitats, will be maintained despite the proposed changes. Through permitting, CZM recommends the proponent develop a management plan for the living shoreline and other areas of the Harborwalk which will ensure public access and engagement as the living shoreline habitats grow and mature over time and in the face of sea level rise. The management plan should be reviewed by the relevant permitting agencies.

Federal Consistency

The proposed project may be subject to CZM federal consistency review. For further information on this process, please contact, Robert Boeri, Project Review Coordinator, at 617-626-1050 or visit the CZM web site at www.state.ma.us/czm/fcr.htm.

BKC/bw/lbe

cc: Ed Reiner, EPA
Lealdon Langley, MassDEP
Mike Johnson, NMFS
Jillian Carr, DMF



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Northeast Regional Office • 205B Lowell Street, Wilmington MA 01887 • 978-694-3200

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Matthew A. Beaton
Secretary

Martin Suuberg
Commissioner

March 27, 2017

Matthew A. Beaton, Secretary
Executive Office of
Energy & Environmental Affairs
100 Cambridge Street
Boston MA, 02114

RE: Everett
Wynn Boston Harbor
1 Horizon Way
EEA #15060

Attn: MEPA Unit

Dear Secretary Beaton:

The Department of Environmental Protection (MassDEP) has reviewed the Notice of Project Change (NPC) submitted by Wynn MA LLC, to remove contaminated sediments from the Mystic River in Everett as part of a modification for Wynn Boston Harbor (EEA #15060). The Department submits the following comments.

Wastewater

The NPC indicates that project will generate an estimated 314,649 gallons per day of new wastewater flows, which is 31,167 gpd more than the design flow identified in the Supplemental FEIR. The NPC confirms Wynn Everett's commitment to meet the four to one removal requirement for infiltration and inflow (I/I), though no specific I/I removal projects have been identified. MassDEP notes that the City of Everett has recently completed a Draft Integrated Plan, and an I/I Flow Metering Report, which have identified excessive I/I in the sewer system.

Accordingly, Wynn should work with the City to optimize the timing and scope for the I/I mitigation work. Additionally, in MWRA's comment letter dated March 22, 2017, MWRA once again emphasizes the benefits of Wynn designing a connection to the City's sewer system such that the risk of sewer surcharging will be further minimized under wet weather conditions. While this work would involve redirection of one of the City's mainline sewers, it would afford improvement

of the sewer capacity in serving the Wynn project and more generally in the Lower Broadway district of the City. Wynn should undertake this work or otherwise work together with the City in pursuing this alternative sewer connection point, so that the risk of surcharging or sewer overflow events is minimized.

Chapter 91/Dredging

The Department expects a Chapter 91 and 401 combined application for the remedial dredging and will resolve any issues during the permitting process.

Waste Site Cleanup

The NPC provides a summary of the past MEPA filings for the project and a description of changes in the project since the Supplemental Final Environmental Impact Report (SFEIR), submitted in February 2015. The only significant change identified in the NPC was relative to sediment remediation work, which requires the project proponent to obtain new permits and approvals in order to proceed.

The MassDEP Bureau of Waste Site Cleanup (BWSC) has completed a review of the sections of the NPC that discuss sediment remediation work. Due to the fact that the final remedial alternative for sediment had not been selected at the time the NPC was submitted, three alternatives were presented as likely approaches. The remedial alternatives identified for the area where sediment contamination poses a significant risk to benthic invertebrates included dredging and capping of the entire area, partial dredging and capping of the entire area, and dredging and capping of portions of the area and implementing monitored natural recovery in other portions. MassDEP BWSC continues to discuss the selection of a final remedial alternative with the project proponent. Based on recent discussions with the project proponent, it is anticipated that the final remedial alternative will consist of dredging a portion of the area posing a significant risk and capping the entire area, resulting in a clean sediment cap at least 18 inches thick. Conceptually, MassDEP agrees that this approach may achieve a level of No Significant Risk under the Massachusetts Contingency Plan (MCP). MassDEP BWSC will continue to discuss remedial alternatives with the project proponent, in order to ensure compliance with the MCP and achievement of the desired project endpoints.

Please contact Kevin Brander at kevin.brander@state.ma.us or (978) 694-3236 for information about wastewater issues. In addition, please contact Andrew Clark at Andrew.Clark@state.ma.us or (978) 694-3213 for information about brownfields. If you have any general questions regarding these comments, please contact me at John.D.Viola@state.ma.us or at (978) 694-3304.

Sincerely,

This final document copy is being provided to you electronically by the Department of Environmental Protection. A signed copy of this document is on file at the DEP office listed on the letterhead.

John D. Viola
Deputy Regional Director

cc: Brona Simon, Massachusetts Historical Commission
Eric Worrall, Kevin Brander, Andrew Clark, MassDEP-NERO

City of Everett Office of the Mayor

Carlo DeMaria, Jr.
MAYOR



Everett City Hall
484 Broadway
Everett, MA 02149-3694
Phone: (617) 394-2270
Fax: (617) 381-1150

March 27, 2017

Secretary Matthew Beaton
Executive Office of Energy and Environmental Affairs
Attn: MEPA Office/ MEPA Reviewer
100 Cambridge Street, Suite 900
Boston, MA 02114

Re: Wynn Boston Harbor Notice of Project Change comments

Dear Secretary Beaton:

The City of Everett has received and reviewed the Notice of Project Change (NPC), Executive Office of Energy and Environmental Affairs #15060, for the Wynn Boston Harbor development project. The NPC describes additional sediment testing to be done to supplement previous testing and analysis. Sediment remediation will be done within the Mystic River in the vicinity of the Wynn project site and will include dredging and capping over an area of approximately 7 acres, with dredging depth of about 2 feet.

The NPC also includes critically important off-site improvements to include transportation infrastructure upgrades and a multi-use path and harborwalk which will promote and increase active transportation and recreation for our residents. The improvements support Everett's Lower Broadway Master Plan and the Everett Central Waterfront Municipal Harbor Plan. These plans are important to the City as we work towards improving resident and visitor access to the valuable riverfront areas that the City has to offer.

The Wynn Boston Harbor project remains at the forefront of our riverfront revitalization and our ability to return our residents to their waterfront, an amazing natural resource that had been inaccessible for decades previously.

Specifically, the City of Everett would like to offer the following comments for consideration to accompany the NPC:

- Approval of the NPC will allow for the continuation of cleanup on the resort site. Land-based remediation is nearly complete and with the approval of the Notice of Project Change, cleanup of contaminated sediments in the Mystic River will move forward.
- Design refinements have been made to best serve the needs of the region. Refinements include increased hotel rooms, less retail, more food and beverage, and expanded convention and meeting space. These design modifications will bring more visitors and associated tax revenue to Everett, and will create even more job opportunities for our residents.
- Upon approval of the Notice of Project Change, Wynn will be able to complete the connection between the Wynn Harborwalk and the nearby waterfront Gateway Park, creating contiguous open space and walking paths for the Everett community. Once again, we believe that the creation of this type of waterfront access will be a game-changer for our community and eagerly anticipate its completion.

As we continue to move forward with the Wynn Boston Harbor development, and improve Everett's waterfront areas, we welcome you to reach out with any further questions or comments. We appreciate the work that you do on behalf of our community and the strong collaboration between the state, city, and Wynn to appropriately advance this project.

Please feel free to have your staff contact me at 617-394-2270 if I may provide any additional information. Thank you for your consideration.

Sincerely,



Carlo DeMaria
Mayor



March 28, 2017

Secretary Matthew A. Beaton
Executive Office of Energy and Environmental Affairs
Attn: Anne Canaday, MEPA Office
100 Cambridge Street, Suite 900
Boston, Massachusetts 02114

Re: EOEEA #15060 Wynn Boston Harbor NPC

Dear Secretary Beaton:

The Department of Conservation and Recreation ("DCR" or "Department") has reviewed the Notice of Project Change ("NPC") submitted by Wynn MA LLC (the "Proponent") for its Wynn Boston Harbor project (the "Project").

As stated in the NPC, the Project has been modified since the development proposal that completed MEPA review in August, 2015. Specifically, the Proponent has developed additional details on its proposal to remediate soil within the Mystic River; articulated specific wetland impacts related to its recreational trail connection to the DCR Gateway Park; and modified its building program including a small increase in hotel rooms on the site, and a large reduction (85%) in retail space. The Project Site, consisting of 33.9 acres in Everett, contained a former chemical manufacturing plant.

DCR owns and operates transportation infrastructure near the Project Site, including Mystic Valley Parkway (including Wellington Circle), Revere Beach Parkway (including Sweetser and Santilli Circles), and the Fellsway. MassDOT is serving as the lead agency on transportation issues and has worked directly with the Proponent on mitigation proposals for the DCR parkways. A Construction and Access Permit ("CAP") will be required from DCR for work performed on DCR roadways, parkland, or any other DCR property. DCR also owns a portion of Gateway Park, located to the west of the Project site, across from the MBTA Newburyport/Rockport Commuter Rail tracks.

DCR submits the following comments relative to transportation and impacts to the recreational trail connection to Gateway Park:

Transportation

As noted in the NPC, the Proponent indicates that the reduced building program will decrease the PM Peak Hour traffic estimates by 11% and 18% for Fridays and Saturdays, respectively, compared to traffic estimates from the Second Supplemental Final Environmental Impact Report ("SSFEIR"). The mitigation program has not changed, however. The travel mode estimates appear to anticipate similar decreases between Single Occupancy Vehicle ("SOV") and non-SOV traffic. DCR has been involved in the transportation improvement review process with MassDOT and the Proponent, and will continue to participate.

COMMONWEALTH OF MASSACHUSETTS · EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS

Department of Conservation and Recreation
251 Causeway Street, Suite 600
Boston MA 02114-2119
617-626-1250 617-626-1351 Fax
www.mass.gov/dcr



Charles D. Baker
Governor

Karyn E. Pollito
Lt. Governor

Matthew A. Beaton, Secretary, Executive
Office of Energy & Environmental Affairs

Leo Roy, Commissioner
Department of Conservation & Recreation

DCR Gateway Park

Joint Section 61 Findings by MassDOT and DCR for the Project were issued in April 2016, and include a requirement that the Proponent provide a direct pedestrian and bicycle connection via DCR's Gateway Park, as well as improvements to the park including benches, signage, bicycle rack, plantings and lighting. The connection will use an existing access point beneath the MBTA tracks. DCR notes that all signage should be designed in conformance with DCR sign standards, and pathways should be designed to meet ADA / AAB standards. DCR requests that the Proponent, in its permit application to DCR, provide details on the roles and responsibilities for long-term maintenance of these improvements. DCR further requests that it be included in any communications related to a proposed connection to the Northern Strand rail trail, if applicable.

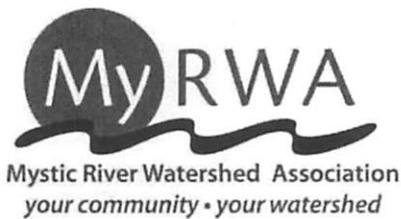
Thank you for the opportunity to comment on the ENF. If you have questions regarding the DCR Permitting process, please contact Sean Casey at 617-626-1444 or sean.casey@state.ma.us. If you have questions regarding pathway design, please contact Dan Driscoll at 617-626-1438 or dan.driscoll@state.ma.us.

Sincerely,



Nick Gove
Deputy Commissioner on behalf of Leo Roy, Commissioner

cc: Rob Lowell, Norman Orrall, Nat Tipton (DCR)



March 28, 2017

By Email: Anne.Canaday@state.ma.us

Matthew A. Beaton, Secretary
Executive Office of Energy and Environmental Affairs (EEA)
Attn: MEPA Office / MEPA Reviewer
100 Cambridge Street, Suite 900
Boston, MA 02114

Re: Wynn Boston Harbor Notice of Project Change, EEA #15060

Dear Secretary Beaton:

I am writing to you on behalf of the Mystic River Watershed Association ("MyRWA") regarding the Notice of Project Change ("NPC") submitted by Wynn MA, LLC (the "Proponent") on February 28, 2017 for the Wynn Boston Harbor project at 1 Horizon Way, Everett, Massachusetts.

MyRWA is a 501(c)(3) nonprofit organization dedicated to the preservation and enhancement of the Mystic River, its tributaries and watershed lands for the benefit of present and future generations. MyRWA seeks to protect and restore clean water and the natural environment and to promote responsible stewardship of our natural resources. In addition, MyRWA works to improve public access to water bodies and shorelines throughout the watershed, and especially for environmental justice populations whose recreational opportunities have been limited by the concentration of industrial and commercial development along the edges of the river.

MyRWA has submitted comments to the Secretary on previous filings by the Proponent under the Massachusetts Environmental Policy Act ("MEPA"). See our letters dated August 21, 2015 (SSFEIR), March 27, 2015 (SFEIR), August 7, 2014 (FEIR), and February 11, 2014 (DEIR). MyRWA has emphasized throughout the MEPA process that, given the scale and scope of the proposed resort casino and its location on the bank of the Mystic River, the Proponent has an extraordinary opportunity to make a significant contribution to the revitalization of the Mystic River waterfront and the restoration of natural habitat and water quality conditions in the river. To the credit of Wynn Boston Harbor, they have consistently communicated their commitment to this shared goal.

We commend the Proponent for having embraced this opportunity in regard to the landside portion of the project site. We encourage the Proponent to extend its commitment to environmental restoration by applying best practices to the necessary sediment remediation work ahead.

Serving Twenty-Two Communities

*Arlington Belmont Burlington Cambridge Charlestown Chelsea East Boston Everett Lexington Malden Medford
Melrose Reading Revere Somerville Stoneham Wakefield Watertown Wilmington Winchester Winthrop Woburn*

20 Academy Street, Suite 306 • Arlington, MA • 02476-6401 • (781) 316-3438 • www.MysticRiver.org

EEA will note that both the right to walk along the subtidal river bottom and the right to fish and pass freely along the intertidal zone for that purpose are water-related public rights guaranteed under M.G.L. c. 91. Additional rights of pedestrian access have been, and are likely to be, included in licenses issued by the Waterways Regulation Program under c. 91. The whole purpose of the public access facilities planned for the site (and adjacent areas) is to encourage and facilitate increased public use of the shoreline. We at MyRWA envision a time, in the not-too-distant future, when the greenways bordering the Mystic River will be heavily frequented by neighborhood residents and other visitors. Under these conditions, it can be anticipated that many individuals will come into direct contact with tidelands sediment (e.g., by wading, or by transfer from pets) and that many more will engage in fishing from the banks. It can also be expected that kayakers and other boat users will stand and walk on tidal flats and river bed, and that this activity will increase in both frequency and intensity as the Wynn Boston Harbor and nearby greenways projects come to fruition, and the lower Mystic becomes more attractive to recreational boaters and fishermen. All of these individuals will be lawful users of our natural resources, not trespassers. We think it inappropriate to base human exposure analysis on a "trespasser" paradigm and question whether the agencies with responsibility under the MCP are sufficiently attuned to water-related public rights and their future enjoyment under more congenial conditions.

In addition, the Proponent's evaluation of both the exposure pathways associated with fishing and the potential for disruption of a remedial cap on contaminated sediments (e.g., by benthic organisms) and escape of hazardous materials is premised on the observation that elements of the local environment are currently in a "degraded" condition. *See, e.g.,* Revised Assessment, pp. 25, 26, and 30 and Appendix G, p. 8; *see also* NPC, p. 3-4 and 3-9. Water quality and other indicia of ecological health are improving in the Mystic, and it is entirely reasonable to expect that both fishing activity and benthic fauna will increase over time. Moreover, the assessment fails to consider the increasing likelihood of mechanical disruption of cap and other sediments by transportation and other commercial vessels, small craft propellers and propeller wash, keels, paddles, and foot traffic, not to mention potential erosion by tidal action, storm surge, and other sources of current and turbulence. No evaluation of environmental risk or conclusion that a state of "No Significant Risk" can be achieved should be based on the assumption that current environmental conditions will persist indefinitely, when it is foreseeable that the health of the river will recover, human interaction will increase, natural conditions will change, and exposure pathways will multiply.

Although it is possible to raise such concerns through public participation under the MCP, we would prefer to see these and other potential areas of inconsistency identified and resolved through the MEPA process. MyRWA looks forward to participating in robust MEPA and agency processes to help ensure that the Proponent and participating agencies properly evaluate the risk of environmental damage and other impacts, select the best sediment remediation alternative, facilitate habitat restoration, and promote public enjoyment of the river's abundant natural resources.

Other Project Modifications and Mitigation

We believe that the remaining project modifications described in the NPC can be adequately addressed by appropriate agency action without further MEPA review.

Serving Twenty-Two Communities

Arlington Belmont Burlington Cambridge Charlestown Chelsea East Boston Everett Lexington Malden Medford
Melrose Reading Revere Somerville Stoneham Wakefield Watertown Wilmington Winchester Winthrop Woburn

20 Academy Street, Suite 306 • Arlington, MA • 02476-6401 • (781) 316-3438 • www.MysticRiver.org

Regarding certain off-site improvements related to the Proponent's mitigation commitments, we note that the Proponent has identified certain impacts to wetlands resources that must be addressed in planning for the DCR Harborwalk Connector. We believe that these issues can be managed, with appropriate public engagement, by the agencies with permitting authority. We support the Proponent's attention coastal bank restoration in the planning for pedestrian improvements.

More broadly, MyRWA commends the proponent for mitigation that will improve active transportation connections in the area. We are pleased that a feasibility study will be undertaken to explore a pedestrian/bicycle bridge over the Mystic River, a critical link that will tie into the Mystic Greenway path network and complete a regional link between downtown Boston and north shore communities. We encourage Wynn to work with MassDEP and CZM to go beyond the conceptual phase and identify the funding needed to full design and construct the bridge.

Conclusion

The current NPC filing lacks the necessary detail to adequately evaluate the extent of the remediation, the proposed final conditions, and a plan for monitoring the sediments before, during, and after. Therefore, we recommend further MEPA review of sediment remediation so that proper attention may be given to the coordination of agency actions, which otherwise may exhibit inconsistencies and produce suboptimal environmental outcomes. Additional MEPA review will also facilitate public participation and input on a variety of environmental concerns related to sediment remediation.

In particular, we call for revised standards for identifying and evaluating remediation alternatives, so that decisions under the MCP will take into account the future expanded public use and vitality of the river, its shoreline and river bottom, and not merely existing conditions that are unlikely to persist (all parties expect an increase of public use at this site given planned investment). There is likely a need for coordination among participating agencies with respect to other environmental issues pertaining to sediment remediation as well.

As an interested party and concerned stakeholder, we ask that we be updated throughout the remediation decision-making and permitting processes. Thank you for this opportunity to comment on the recently proposed changes to this important project. If you have any questions or require additional information, please contact me at (781) 316-3438 or Patrick@mysticriver.org.

Sincerely,



Patrick Herron
Executive Director

Serving Twenty-Two Communities

Arlington Belmont Burlington Cambridge Charlestown Chelsea East Boston Everett Lexington Malden Medford
Melrose Reading Revere Somerville Stoneham Wakefield Watertown Wilmington Winchester Winthrop Woburn

20 Academy Street, Suite 306 • Arlington, MA • 02476-6401 • (781) 316-3438 • www.MysticRiver.org



Are you on board?

15 State Street, Suite 1100
Boston, MA 02109
617.223.8671
bostonharbornow.org

March 28, 2017

Via email to: Anne.Canaday@state.ma.us

Secretary Matthew A. Beaton
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Ste 900 (9th Floor)
Boston, MA 02114

Attn: Anne Canaday, MEPA

Re: Wynn Boston Harbor Notice of Project Change, EOEEA #15060

Dear Secretary Beaton,

On behalf of Boston Harbor Now, thank you for the opportunity to comment on the Notice of Project Change for Wynn Boston Harbor. Boston Harbor Now has commented extensively on the original project, Expanded Environmental Notification Form, Supplemental FEIR, and Second Supplemental FEIR.

Background & Proposed Changes

The purpose of the MEPA process is to provide meaningful opportunities for public review of a project's potential environmental impacts. Through its analysis, MEPA requires project developers to use the necessary means to avoid damage to the environment or, if the damage cannot be avoided, to minimize and mitigate.

Secretary Beaton identified the need for sediment remediation work in the August 28, 2015, Second Supplemental Final Environmental Impact Report Certificate. As stated on Page 22 of the Certificate, "the proponent is responsible for dredging to remove contaminated sediments from the harbor bottom." At the time, the developer acknowledged that the sediment testing and analysis was insufficient to determine the extent of dredge and cap needed and additional MEPA filings and permits would be required in the future. The proposed remediation plan is the proponent's response to soil testing conducted after the SSFEIR Certificate.

Before the proposed sediment remediation plan is approved and work begins, we anticipate several environmental licenses and reviews will be completed, including a Federal Consistency Review with CZM, Chapter 91 permit, and Order of Conditions from the Boston Conservation Commission.

As presented in the NPC, on-site testing revealed concentrations of certain metals over approximately seven acres. The remediation proposal includes:

- A debris survey of the remediation area with removal of old piles and miscellaneous debris,
- Removal of four sunken barges,
- Dredging of contaminated sediment, and
- Additional navigational dredging activities.

We hope the sediment remediation project is successful. The current filing lacks the necessary detail to adequately evaluate the extent of the remediation, the proposed final conditions, and a plan for monitoring the sediments before, during, and after. While we are glad to see information from the Division of Marine Fisheries (DMF), we would also like to see other stakeholders such as the Mystic River Watershed Association (MyRWA) be involved throughout the remediation decision-making process.

We understand there may be temporary construction-related impacts to adjacent salt marsh habitat. In the event there are adverse impacts to the existing salt marsh, the proponent plans to plant *Spartina spp.* within the general location of the salt marsh habitat. To ensure a successful remediation and minimal damage to the salt marsh, the proponent should work closely with CZM, DMF, MassDEP and related agencies to ensure the final remediation plan for this site is appropriate, detailed and implemented. Long-term monitoring should be required as an essential part of the remediation plan.

Although page 3-2 of the NPC includes depth information for the channel, it does not address hydraulic conditions at the site (e.g., current waves, storm surges, flood flow rates, vessel movement and prop wash) that could significantly influence the stability of the cap. As a result, the likelihood of successfully dredging and capping the contaminated sediment without resuspension and transport of toxic sediments is unknown. We ask that more work be done, including analysis of hydraulic conditions and monitoring of the cap stability during and after the project construction. Copies of monitoring results should be provided to interested stakeholders.

Change in Program

The primary purpose of the NPC is to address the sediment remediation project. The filing also includes the following minor changes and updates:

- Reduction of retail space to the project program,
- Modification to living shoreline planting elevation,
- Updates to the docking system,
- Addition of below-grade level to the garage,
- Identification of wetland resource areas along the DCR Harborwalk, and
- Transportation improvements.

With the exception of the sediment remediation proposal, the remaining changes to the project are minor and will require amendments but no new permits or licenses.

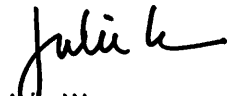
We support the additional square footage proposed for food/beverage areas, event/meeting space, spa, and front-of-house facilities and see these as providing benefits to the general public.

Pedestrian/Bicycle Bridge Crossing

Boston Harbor Now strongly supports the creation of additional waterfront pathways along this section of the Mystic River. We commend Wynn Boston Harbor for agreeing to provide \$250,000 to the Department of Conservation and Recreation for planning and engineering services for a proposed pedestrian/bicycle bridge over the Mystic River. The bridge is a critical link that will tie into the recently proposed Charlestown Bus Facility multi-use pathway and eventually connect this path to bike routes through Everett to Revere, Somerville and Medford.

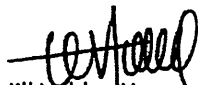
Our understanding is that funding is limited to the planning and design of the bridge. For the bridge to be a true public benefit, we encourage the proponent to work with MassDEP and CZM to complete the funding required to construct and complete the bridge.

Sincerely,



Julie Wormser

VP of Policy and Planning



Jill Valdes Horwood

Director of Waterfront Policy

Chapter 91/401 Water Quality Certification

As noted in the comments from MassDEP's NERO, the Proponent is proceeding with plans to complete remedial actions to comply with the MCP. The Remediation Area includes a portion of Mystic River below Mean High Water in both Everett and Boston. Because the proposed remediation, including dredging activities, are proposed within jurisdictional areas, a Chapter 91 Dredge Permit and 401 dredge Water Quality Certificate will be required. Representatives of MassDEP's Chapter 91 and 401 WQC programs held a pre-application meeting with the proponent to discuss the proposed changes in the NPC, including remedial dredging plans. All dredging activities must be performed under the supervision of a Licensed Site Professional and meet the performance standards of the MCP.

MassDEP expects that an application for a combined Chapter 91 permit and 401 WQC will be submitted to the Department in the near future. The Department had issued a 401 dredging and fill WQC to Wynn Resort on January 21, 2016 authorizing navigation dredging of a basin in the City of Everett. Based on discussions with the proponent, MassDEP expects the approved navigational dredging and the remedial dredging will be conducted at a same time.

Until submission and approval of the combined Chapter 91/401 permit for the remedial portion of the dredging, Wynn will not be able to concurrently conduct the navigational and remedial dredging. .

**MASSACHUSETTS GAMING COMMISSION
SECOND AMENDED SECTION 61 FINDINGS ISSUED
PURSUANT TO M.G.L. c. 23K AND M.G.L. c. 30, § 61**

PROJECT NAME: Encore Boston Harbor (f/k/a Wynn Everett and Wynn Boston Harbor)
PROJECT LOCATION: 1 Broadway in Everett, Massachusetts
PROJECT PROPONENT: Wynn MA, LLC
EOEEA NUMBER: 15060
APPROVAL SOUGHT: Category 1 Gaming License

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	PROJECT SITE	2
III.	PROJECT DESCRIPTION	3
	A. The Building Program	3
	B. Site and Sediment Remediation.....	6
	1. Remediation Area	6
	2. Alternatives Analysis.....	6
	3. The Preferred Alternative and the Remediation Work	7
IV.	MEPA HISTORY	8
V.	PROJECT IMPACTS	10
VI.	REQUIRED GOVERNMENTAL PERMITS AND APPROVALS.....	12
VII.	EXECUTED MITIGATION AGREEMENTS	13
VIII.	MEPA SECTION 61 FINDINGS AND CONDITIONS	15
	A. Scope of Commission Section 61 Findings.....	15
	B. Enhanced Public Participation in Commission Section 61 Findings.....	15
	C. Mitigation Measures in Section 61 Findings of Other State Agencies.....	16
	D. Limitations Regarding MEPA Section 61 Conditions.....	17
	E. Mitigation Measures for the Project under the FEIR, SFEIR, SSFEIR, and NPC 17	
	F. Project-Specific Mitigation Measures and Off-Site Improvements	19
	1. EVERETT MITIGATION.....	20
	2. MEDFORD MITIGATION.....	24
	3. MALDEN MITIGATION	27
	4. BOSTON MITIGATION	28
	5. REVERE MITIGATION.....	33
	6. CHELSEA MITIGATION	33
	7. SOMERVILLE MITIGATION	35
	8. CAMBRIDGE MITIGATION	40
	9. TRANSPORTATION DEMAND MANAGEMENT STRATEGIES	40
	10. MBTA FACILITY IMPROVEMENTS & LAND TRANSFER MITIGATION	41

11.	OTHER TRANSPORTATION MEASURES	44
12.	WASTEWATER, WATER USE, AND WETLANDS AND WATERWAYS MEASURES	47
13.	GREENHOUSE GAS AND AIR QUALITY IMPACTS	50
14.	HAZARDOUS WASTE.....	53
15.	CONSTRUCTION MITIGATION	54
IX.	SEGMENTATION	61
X.	REGIONAL WORKING GROUP	61
XI.	FINDINGS.....	63

**MASSACHUSETTS GAMING COMMISSION
SECOND AMENDED SECTION 61 FINDINGS ISSUED
PURSUANT TO M.G.L. c. 23K AND M.G.L. c. 30, § 61**

PROJECT NAME: Encore Boston Harbor (f/k/a Wynn Everett and Wynn Boston Harbor)
PROJECT LOCATION: 1 Broadway in Everett, Massachusetts
PROJECT PROPONENT: Wynn MA, LLC
EOEEA NUMBER: 15060
APPROVAL SOUGHT: Category 1 Gaming License

I. INTRODUCTION

On April 25, 2016, the Massachusetts Gaming Commission (the “Commission”) issued Section 61 Findings for the Project (the “2016 Section 61 Findings”) pursuant to the Massachusetts Environmental Policy Act, G.L. c. 30, §§ 61-62I, G.L. c. 23K, § 15(12), 301 CMR 11.12, and 205 CMR 120.02. The Commission found that, with the implementation of the measures identified in the Project Proponent Wynn, MA, LLC’s (“Wynn’s”) Final Environmental Impact Report (“FEIR”) submitted to the Executive Office of Energy and Environmental Affairs (“EOEEA”) on June 30, 2014, the Secretary of EOEEA’s (the “Secretary’s”) Certificate regarding the FEIR dated August 15, 2014 (the “FEIR Certificate”), the Supplemental Final Environmental Impact Report submitted February 17, 2015 (“SFEIR”), the Secretary’s Certificate regarding the SFEIR dated April 3, 2015 (the “SFEIR Certificate”), the Second Supplemental Final Environmental Impact Report (“SSFEIR”) dated July 15, 2015 (the “SSFEIR”), the Secretary’s Certificate dated August 28, 2015 regarding the SSFEIR (the “SSFEIR Certificate”), and including, without limitation those measures summarized in the 2016 Section 61 Findings, that all practicable and feasible means and measures will have been taken to avoid or minimize potential damage to the environment from Wynn’s proposed category 1 gaming establishment as defined in G.L. c. 23K, § 2 (the “Project” or the “Gaming Establishment”). The 2016 Section 61 Findings were published in the Environmental Monitor on May 11, 2016.

On February 28, 2017, Wynn filed a Notice of Project Change (the “NPC”) regarding a sediment remediation plan for a portion of the Project site and an adjacent area of the Mystic River, and proposed modifications and refinements to the Project’s building program. The NPC also identified the acquisition of properties within the vicinity of the Project by affiliates of the Proponent. Notice of the NPC was published in the Environmental Monitor on March 8, 2017. During the public comment period which ended on March 28, 2017, public comments on the NPC were submitted by the Massachusetts Department of Environmental Protection (“MassDEP” or “DEP”), the Massachusetts Water Resources Authority (“MWRA”), the Massachusetts Office of Coastal Zone Management (“CZM”), the Massachusetts Department of Conservation and Recreation (“DCR”), the City of Everett, Everett United, the Mystic River Watershed Association, and Boston Harbor Now.

On April 7, 2017, the Secretary issued a Certificate on the NPC (the “NPC Certificate”) in which the Secretary determined that “the project change **does not require** the submission of a supplemental Environmental Impact Report (EIR)” and that “[o]utstanding issues associated with

this project change can be addressed during State permitting” (emphasis in original). The NPC Certificate was published in the Environmental Monitor on April 19, 2017.

Shortly thereafter, Wynn requested that the Commission approve a minor modification to one condition in the 2016 Section 61 Findings with respect to the Mystic River Pedestrian-Bicycle Bridge Feasibility Study (the “Feasibility Study”). Under the 2016 Section 61 Findings (at page 42), Wynn was required to “provide \$250,000 to DCR [the Department of Conservation and Recreation] for planning and engineering services for a possible pedestrian bridge crossing of the Mystic River linking Somerville and Everett.” Wynn requested that it be permitted to either make this payment or “retain and pay for a qualified design, planning and engineering firm to conduct and complete the [Feasibility Study] with a scope of work reasonably acceptable to DCR.” The Commission approved a minor modification of the 2016 Section 61 Findings to this effect on July 13, 2017 (the “First Amended Section 61 Findings”).

Since that time, Wynn has continued to revise and refine the design of the Project and the methods by which it would implement the mitigation measures identified in the 2016 Section 61 Findings and the First Amended Section 61 Findings. Accordingly, Wynn has requested that the Commission revise and restate the 2016 Section 61 Findings and the First Amended Section 61 Findings to reflect the NPC, NPC Certificate, and the refinements in the Project’s design and the mitigation measures associated with the Project. Wynn also consulted with the MEPA Office of the EOEEA regarding the revisions made since the NPC Certificate was issued and has been advised by EOEEA that no further filings are required under MEPA.

The Commission has reviewed the NPC, NPC Certificate, and Wynn’s refinements to the Project on a regular basis since issuing the 2016 Section 61 Findings. It has also reviewed the proposed revisions to Wynn’s mitigation commitments (as described below). Based on this review, the Commission now issues these Seconded Amended Section 61 Findings (the “Second Amended Section 61 Findings”) pursuant to G.L. c. 30, §§ 61-62I, G.L. c. 23K, § 15(12), 301 CMR 11.12, and 205 CMR 120.02, to continue to ensure that all practicable and feasible means and measures have been and will be taken to avoid or minimize potential damage to the environment from the Project. These Second Amended Section 61 Findings restate and replace, but do not abrogate, the 2016 Section 61 Findings and the First Amended Section 61 Findings.

II. PROJECT SITE

According to the NPC Certificate, the project site known as 1 Horizon Way in Everett, Massachusetts (“Project Site”) is a waterfront parcel totaling approximately 33.9 acres located in Everett adjacent to the Mystic River. Approximately 25.6 acres are upland, surrounded by shoreline and the remnants of marine structures, and approximately 8.3 acres are below the mean high water mark on the Mystic River. The Project Site includes approximately 1,600 linear feet (“lf”) of shoreline along flowed tidelands.

Historic uses of the Project Site include a Monsanto chemical manufacturing facility. The Project Site was previously contaminated and contained high levels of arsenic and lead in soils and groundwater, and was classified as a disposal site subject to G.L. c. 21E and the Massachusetts Contingency Plan (“MCP”). Contaminated sediments were also identified in the area of the Project Site within the Mystic River.

The Project Site is bordered to the west by the tracks of the Massachusetts Bay Transportation Authority (“MBTA”) Newburyport commuter rail line. The upland portions of the Project Site are bounded by Horizon Way (which intersects with Route 99), and commercial and institutional properties. Most of the soils on the Project Site have been disturbed and comprised of fill material. Along the shoreline of the Mystic River is a mix of deteriorated stone seawalls, loose gravel and boulders, and rotted timber piers and pilings. The shallower portions of the shoreline also contain debris and remnants of timber structures.

Access to the Project Site was formerly via Horizon Way, which formed an unsignalized intersection with Broadway (Route 99) in Everett. The Project Site is located in an urban, commercial/industrial area that has suffered from economic disinvestment during the latter part of the twentieth century when manufacturing, import, and fishery activities declined. Surrounding land uses were primarily commercial/retail, with local businesses (e.g., an auto dealership, chain restaurants, and an auto repair shop) and infill residential structures nearby. Proximate uses include Boston Water and Sewer Commission (“BWSC”) and MWRA properties, the MBTA’s Everett Shops maintenance facility (“Everett Shops”) to the north, and the Gateway Center and Gateway Park to the west. The DCR owns and operates parkways in the vicinity of the Project Site, including Revere Beach Parkway, the Fellsway, and Mystic Valley Parkway. In addition, DCR owns and operates the Mystic River Reservation and the Amelia Earhart dam, a flood control structure located on the Mystic River in the vicinity of the Project Site.

The Project Site is bordered by the Mystic River to the south and an embayment to the east. The embayment is approximately 350 to 500 feet wide from shoreline to shoreline (from the Project Site to the upland east of the embayment containing operations of the MWRA and BWSC). The embayment contains a former channel, reportedly constructed in the mid-1800s. Records indicate the channel to be about 1,000 feet long with a width of 100 feet, and an original draft of 20 feet below the mean low water mark. The channel flares out at the northern end to about 250 feet wide. The channel has since shoaled and the present depth does not exceed 13 feet below the mean low water mark. Waters adjacent to the channel banks are shallower than the central portion of the channel. The eastern side of the embayment is a mud flat with surface grades from the mean low water mark to about three above it. The mud flat previously contained a variety of debris, including several abandoned timber barges. Much of that debris was removed as part of the Project.

III. PROJECT DESCRIPTION

A. The Building Program

The Project consists of the redevelopment of the 33.9 acre Project Site as a destination resort casino. The NPC identifies modifications and refinements to the building program from the program described in the SSFEIR, but within the footprint of the original proposal. NPC page 6-7.

As described in the NPC, the building program now includes a total of 3,112,153 square feet (sf), an increase of 178,215 sf compared to the Project as previously reviewed and approved during the MEPA process.

As set forth in the NPC (Table 1-1) and in the Secretary’s NPC Certificate (at page 2), the modifications and refinements to the program include the following, some of which involve increases and others of which involve decreases to the building program:

Changes in the Project Program since the SSFEIR

Feature	SSFEIR Program	NPC Program	Change (Quantity)	Change (Square Feet)
Program Increases				
Hotel Rooms	629	671	+42	
Hotel Tower	621,774	663,200		41,426 ¹
Gaming	190,461	206,474		16,013
Food/Beverage	54,680	105,288		50,608
Event/Meeting	37,068	60,166		23,098
Spa/Gym	15,405	26,368		10,963
Back-of-House (includes MEP)	411,058	630,447		219,389
Front-of-House Support (restrooms, lobbies, etc.)	58,548	83,889		25,341
Sub-Total	1,388,994	1,775,832	+ 42 Rooms	+386,838 sf
Program Decreases				
Total Gaming Positions (GP)	4,580	4,421	-159	
Retail (includes hotel and gaming areas)	52,632	9,177		-43,455
Lobby Lounge	841	0		-841
Indoor Pool Deck	10,485	0		-10,485
Indoor Garden	4,525	4,121		-404
Parking Garage	1,476,461	1,323,023		-153,438
Sub-Total	1,544,944	1,336,321	- 159 GP	-208,623 sf
Overall Gross Floor Area	2,933,938	3,112,153		+178,215 sf
Parking Spaces				
Parking Spaces on-site	2,936	2,914	-22	
Parking Spaces off-site	800	800	0	
Total Parking Spaces	3,736	3,714	-22 Spaces	

In public comments dated March 27, 2017 and submitted to the Secretary of EOEEA on the NPC, the Mayor of the City of Everett (the Host Community) expressed support for these changes, stating that these “[d]esign refinements have been made to best serve the needs of the region. Refinements include increased hotel rooms, less retail, more food and beverage, and

¹ The NPC makes no change to the maximum height of the tower. NPC at page 5.

expanded convention and meeting space. These design modifications will bring more visitors and associated tax revenue to Everett, and will create even more job opportunities for our residents.”

These refinements to the building program associated with the project change will increase wastewater generation by 31,167 gallons per day (“gpd”) and increase water use by 34,284 gpd. See NPC at page 5. At the same time, when adjusted for mode share, the project change will result in 2,580 fewer vehicle trips per day (“vpd”) on Friday (a reduction of 12.8%) and 3,416 fewer vpd on a Saturday (a reduction of 14.2%) than previously reviewed. NPC at page 5 and page 1-11. In turn, the Friday PM Peak Hour traffic is reduced by 156 vehicle trips per hour (“vph”) (a reduction of 11.5%), and the Saturday PM Peak Hour traffic is reduced by 336 vph (a reduction of 18.6%). *Id.* at page 1-11. While parking has been decreased by 22 spaces to 2,914 on-site spaces, the Project will continue to include 800 off-site spaces for employee parking. Significantly, despite the reduced traffic resulting from the NPC, the “Proponent is not proposing any changes to its previously committed mitigation.” NPC at page 1-10.²

The NPC (at § 1.3.3) also identifies an additional level of below-grade parking,³ changes to the living shoreline design resulting from the permitting process, and changes to docks, piles, and floats to improve access and meet the Americans with Disabilities Act (“ADA”) requirements for ferry docking.

Access to the Project Site is via a new boulevard-type driveway located approximately 150 feet north of Horizon Way. It will intersect the west side of Lower Broadway (Route 99) just north of Horizon Way opposite Mystic Street. This access required the acquisition of land (approximately 1.758 acres) from the MBTA consisting of three non-contiguous parcels that were part of the Everett Shops as shown on SSFEIR Figure 1-8. Wynn relocated the current unsignalized entrance driveway to the MBTA maintenance facility to the north on Lower Broadway to the signalized intersection at Beacham Street. A secondary access for deliveries and employees is provided via a service road that follows the periphery of the Everett Shops property and connects with Route 99 across from Beacham Street in Everett.

² Due to the reductions in traffic impacts described in the NPC, and the fact that Wynn did not propose any changes to its previously committed traffic mitigation (which addressed greater traffic impacts associated with a higher number of gaming positions and larger retail square footage presented in the SSFEIR), Wynn may have the ability to increase somewhat the actual number of gaming positions in the Gaming Establishment, without creating adverse traffic impacts not already mitigated by the previously committed and implemented mitigation program. As such, the Commission may specify in the License or Operation Certificate for the Gaming Establishment such an increased number of gaming positions approved for opening. However, the Commission also expressly reserves the right to further limit the number of gaming positions, require additional study of environmental impacts, or require additional mitigation measures, if the actual impacts associated with the Gaming Establishment upon opening or in the future differ from those described in these Second Amended Section 61 Findings, Wynn’s MEPA filings, the Secretary’s Certificate for each of those filings, or if another agency with jurisdiction (e.g. MassDOT) or the Secretary so requires. Nothing in the preceding sentence shall prevent the Commission’s authority to reopen any mitigation measure pursuant to 205 CMR 127 or otherwise.

³ The NPC added an additional below-grade level and reduced footprint of parking garage, to reduce volume of material to be removed from the Project Site, with no material reduction of parking spaces. NPC § 1.3.3.

The proposed Project includes extensive outdoor landscape and open space amenities including a 20 foot wide harborwalk with connections to the extensive public open space network along the Mystic River; overlooks to view restored coastal bank vegetation and salt marsh; a public gathering area with an outdoor park; a pavilion, waterfront features, water transportation and transient vessel docking facilities. Off-site improvements include the construction of a pedestrian connection to the DCR Gateway Park, as well as transportation, pedestrian, and bicycle accommodations.

B. Site and Sediment Remediation

As noted above, the site was classified as a disposal site subject to G.L. c. 21E and the MCP. It was, at the time Wynn began the Project, contaminated and contained very high levels of arsenic and lead, both in soil and groundwater. Contaminated sediments associated with the site had also been identified within the Mystic River.

Accordingly, the Project included remediation and restoration of the Project Site. The proposed shoreline work included the installation of a vertical steel pile bulkhead, the placement of stone revetments and the installation of pile-supported walkways, the removal of abandoned and deteriorated structures and remnants, salt marsh restoration and re-vegetation of the shoreline. Waterside work included sediment dredging to provide an adequate water depth of six feet below the mean low water mark to accommodate water transportation vessels. Coastal bank and salt marsh restoration were proposed within the area landward of high tide at the southwestern edge of the Project Site.

1. Remediation Area

The MEPA review leading up to the SSFEIR Certificate addressed sediment remediation conceptually; however, sediments in the Mystic River had not yet been characterized as necessary to develop and analyze remediation alternatives under the MCP. The NPC identified proposed remediation to include mechanical dredging and capping of a 7-acre area (“the “Remediation Area”). Dredging depths are anticipated to be up to two feet below the existing mudline or the previously reviewed elevation in the area of navigational dredging, with an anticipated over-dredge allowance of up to one foot.

The Remediation Area identified in the NPC was located in the lower reaches of the Mystic River, 1,000 feet downgradient of the Amelia Earhart Dam and approximately 8,400 feet upstream of where the Mystic River empties into Inner Boston Harbor. The Remediation Area is located primarily within the embayment of the Mystic River and a small area extends into a shallow portion of the channel. The Remediation Area included a portion of Mystic River below mean high water. The tidal flats on the easterly side of the Project site are bounded by Coastal Bank to the east and southeast.

2. Alternatives Analysis

The purpose of the remediation was to eliminate or mitigate risks so that a condition of No Significant Risk is reached and a Permanent Solution, as defined by the MCP, is achieved. The NPC analyzed four alternatives for the waterside remediation using criteria including

effectiveness, short and long-term reliability, implementability, cost, risks, benefits, timeliness, non-pecuniary interests and greener cleanups. NPC Certificate at pages 7-8.

These alternatives also included the use of turbidity barriers around the dredge area established by MassDEP during the Section 401 Water Quality Certification (“WQC”); monitoring and mitigation of dust and odor; dewatering within the site boundaries (or at an off-site facility) via decanting and/or Geotubes, followed by the addition of stabilizing agents if necessary; transportation of dewatered dredged material via barge to an offloading facility; disposal of the dredged material at a suitable licensed/permitted facility; backfilling of the dredge area with clean material; and, monitoring of the thickness of the cap to ensure that changes in site conditions which could result in a risk to benthic organisms do not go undetected.

The NPC assumed that the cap would be constructed without a physical barrier because the cap thickness would be sufficient to minimize burrowing through the cap to the sediment below. According to the Secretary’s NPC Certificate (at page 8), a study by the U.S. Army Corps of Engineers’ (“ACOE”) Dredging Operations and Environmental Research Program provides guidance for cap thickness below subaqueous caps. For sand caps in coastal marine waters, the ACOE recommended total cap thicknesses of 0.65 to 1.5 feet. According to the Secretary’s NPC Certificate (at page 8), MassDEP concurred with the ACOE’s findings and recommended that a clean sediment cap at least 1.5 feet (18 inches) thick should be used.

In public comments dated March 27, 2017 (at page 1) to the Secretary of EOEEA on the NPC, CZM confirmed that it “supports the remediation of marine sediments as proposed in the NPC.” In public comments dated March 27, 2017, submitted to the Secretary of EOEEA on the NPC, the Mayor of the City of Everett (the Host Community) stated that “[a]pproval of the NPC will allow for the continuation of cleanup on the resort site. Land based remediation is nearly complete and with the approval of the Notice of Project Change, cleanup of contaminated sediments in the Mystic River will move forward.” In addition, the Mayor commented, “Upon approval of the Notice of Project Change, Wynn will be able to complete the connection between the Wynn Harborwalk and the nearby waterfront Gateway Park, creating contiguous open space and walking paths for the Everett community. Once again, we believe that the creation of this type of waterfront access will be a game changer for our community and eagerly anticipate its completion.”

3. The Preferred Alternative and the Remediation Work

According to the Secretary’s NPC Certificate (at page 8), the Project Proponent consulted with MassDEP during review of the NPC, and, as a result, identified the Preferred Alternative. The Preferred Alternative included partial dredging and capping of the entire area with at least an 18-inch clean sediment cap. MassDEP comments indicate that the Preferred Alternative would be designed to achieve a level of No Significant Risk under the MCP. The alternatives were reviewed in more detail through the MCP process.

On June 21, 2017, Wynn filed a combined Phase III Remedial Action Plan/Phase IV Remedial Implementation Plan under the MCP that addressed the construction and implementation of the Comprehensive Remedial Action for the Project Site. A public meeting was held on June 29, 2017 and the public comment period ended July 11, 2017 in accordance with the Public

Involvement Plan (“PIP”) process regarding that submittal. Work proceeded on the Project Site remedy thereafter. On December 6, 2018, Wynn filed a Phase IV As-Built Construction and Final Inspection Report, Partial Permanent Solution Statement and two Activity Use Limitations (“AULs”) as part of the sediment remediation closure documents. A public meeting was held on December 17, 2018 and the public comment period ended on January 9, 2019 regarding the remediation work under the Project.

IV. MEPA HISTORY

Wynn filed an Expanded Environmental Notification Form for the Project on May 31, 2013 and a Draft Environmental Impact Report (“DEIR”) on December 16, 2013. The Secretary issued a certificate approving the DEIR on February 21, 2014. Wynn submitted the FEIR on June 30, 2014. On August 15, 2014, the Secretary issued the FEIR Certificate requiring Wynn to submit an SFEIR limited to traffic and transportation issues and a Response to Comments, but otherwise approving the description of environmental impacts and mitigation measures in the FEIR. Wynn submitted the SFEIR on February 17, 2015.

On April, 3, 2015, the Secretary issued the SFEIR Certificate requiring Wynn to submit the SSFEIR limited to the following scope:

1. An explanation of and remedy for the premature conveyance of land from MassDOT/MBTA and its acceptance by Wynn prior to the completion of MEPA review.
2. Wynn’s commitment to a specific dollar amount for an annual operating subsidy to the MBTA to support service and capacity improvements on the MBTA Orange Line.
3. Clarification of the SFEIR’s Traffic Impact Assessment and supplemental data and analysis.
4. Revised draft Section 61 Findings that incorporate commitments associated with the three requirements listed above.
5. Responses to Comments that provide clear specific responses to the issues raised.

The SFEIR Certificate otherwise approved of the description of environmental impacts and mitigation measures in the SFEIR. It also noted that the Commission had issued a Category 1 gaming license to Wynn, effective November 18, 2014 (the “License”) pursuant to Chapter 194 of the Acts of 2011 and G.L. c. 23K (the “Gaming Act”) and that this License was conditional on completion of the MEPA review process. This conditional License did not constitute Agency Action under MEPA or its implementing regulation (301 CMR 11.02, Agency Action (c)). See SSFEIR Certificate, at pages .7-8.

According to the SSFEIR (§ 1.3.6 and Appendix B), on April 15, 2015, Wynn and its affiliate, Everett Property, LLC (collectively, the “Wynn Parties”), entered into an escrow agreement with the MBTA (the “Escrow Agreement”) pursuant to which Wynn executed a quitclaim deed to return the portions of the Everett Shops the Secretary had deemed were prematurely conveyed by

MassDOT/MBTA. The Wynn Parties and MBTA also executed an agreement terminating an Easement Agreement conveyed by MassDOT/MBTA at that time. The MBTA placed the purchase price paid by the Wynn Parties for the portion of Everett Shops in question (\$6,000,000) in escrow. Specifically, the SSFEIR (§ 1.3.6) provided as follows:

The escrow agreement provides, in pertinent part, that the conveyance of the property shall be deemed to have not taken place unless and until the Secretary of Energy and Environmental Affairs has determined that, for the Project located on the Proponent's adjacent land that includes work or activities on the MBTA Everett Shops property: (1) no Environmental Impact Report is required; or (2) a single or final Environmental Impact Report is adequate and sixty (60) days have elapsed following publication of notice of the availability of the single or final Environmental Impact Report in the Environmental Monitor in accordance with 301 CMR 11.15(2), provided that the MBTA shall reconsider and confirm or modify the conveyance of the property pursuant to the Deed and any conditions following MEPA review.

Pursuant to the terms of the Escrow Agreement, in the event the MBTA determines that the transaction requires no modifications or conditions or other mitigation, the escrow agent will return the Quitclaim Deed and Termination of Easement Agreement to the Proponent and the money to the MBTA. In the event the MBTA determines that the transaction requires modifications or conditions or other mitigation, the parties are obligated to work in good faith to document such required modifications, conditions or mitigation commitments after which the escrow agreement will return the Quitclaim Deed and Termination of Easement Agreement to Proponent and the money to the MBTA and record any such modifications. In the event that the parties cannot agree to any required modifications, conditions or other mitigation, the escrow agreement will file the Quitclaim Deed and Termination of Easement Agreement and return the money to Proponent.

Pursuant to the terms of the Escrow Agreement, the Proponent has agreed that it shall not commence any pre-construction or construction activities on the MBTA Everett Shops property until such time as the escrow is dissolved.

On June 1, 2015, Wynn met with representatives from MassDOT, the MEPA Office, EOEEA, the Commission, the City of Everett and the City of Somerville regarding long-term improvements to the Rutherford Avenue corridor. The City of Boston declined to attend this meeting. However, representatives from Wynn and the City of Boston later met on June 10 and June 18, 2015 to discuss improvements to the Rutherford Avenue corridor.

On July 15, 2015, Wynn submitted its SSFEIR for the Project addressing the issues required by the SFEIR Certificate. The SSFEIR included an updated Project description and associated plans, an updated Transportation Impact Analysis, revised mitigation based on additional analysis and comment letters, and provided conceptual plans for proposed improvements. The SSFEIR included a separate chapter summarizing proposed mitigation measures and included draft Section 61 Findings for each State Agency that will issue permits for the Project.

On August 28, 2015, the Secretary issued the SSFEIR Certificate which concluded that the SSFEIR "submitted on this project **adequately and properly complies** with the Massachusetts

Environmental Policy Act (G. L. c. 30, ss. 61-62I) and with its implementing regulations (301 CMR 11.00).” SSFEIR Certificate, p.1, emphasis in original. The Secretary determined that Wynn adequately addressed the issues required by the SFEIR Certificate and that “[o]utstanding aspects of the Project that require additional analysis can be addressed during local, State and federal permitting, review and approval processes.” *Id.*

In the SSFEIR Certificate, the Secretary noted the measures taken by Wynn and MassDOT/MBTA to “remedy the premature conveyance of the land” under MEPA and that, “[a]s directed [by the Secretary in the SFEIR Certificate], the Proponent has provided separate draft Section 61 Findings for MassDOT (i.e. Vehicular Access Permit) and the MBTA (i.e. Land Transfer).” *Id.*, pp. 12-13. The SSFEIR Certificate concluded that the MassDOT and MBTA Section 61 Findings “will be finalized during permitting, any associated modifications to the sale will be recorded, and copies of the Section 61 Findings will be filed with the MEPA Office.” *Id.* p. 13.

The SSFEIR Certificate also noted that Wynn had “made significant commitments to minimize and mitigate traffic impacts,” including “an unprecedented commitment” to mitigate impacts on the MBTA’s Orange Line operations in the form of an approximately \$7.4 million subsidy over a 15-year period. As also noted in the SSFEIR Certificate, both MassDOT and the Metropolitan Area Planning Council (“MAPC”) reviewed Wynn’s traffic analysis and mitigation plans and determined, consistent with their review protocols, that those plans would be effective to mitigate the Project’s impacts on existing transportation infrastructure. The Secretary also found the methodology for the transportation analysis in Wynn’s EIR submittals was “consistent with that which was required of each of the Casino proposals [in the Commonwealth], including MGM Springfield (EEA #15033); Project First Light (EEA #15159), and the proposed Mohegan Sun project in Revere (EEA #15006).” SSFEIR Certificate, p. 7.

On February 28, 2017, Wynn filed an NPC identifying changes to programming and design of the Project and a remediation plan for a portion of the Project Site and an adjacent area of the Mystic River. It also identified the acquisition of properties within the Project area by affiliates of Wynn. On April 7, 2017, the Secretary issued the NPC Certificate which concluded that the “project change **does not require** the submission of a supplemental Environment Impact Report (EIR)” and that “[o]utstanding issues associated with this project change can be addressed during State permitting.” NPC Certificate, p. 1, emphasis in original.

In addition, as noted above, Wynn requested a minor modification to the 2016 Section Findings to clarify Wynn’s obligations with respect to the Feasibility Study. The Commission issued the First Amended Section 61 Findings on July 13, 2017 to address the Feasibility Study.

V. PROJECT IMPACTS

The Project’s potential environmental impacts are associated with the creation of 19.42 acres of impervious surfaces, alteration of wetland resource areas, 346,114 gpd of water use, generation of 316,649 gpd of wastewater, and dredging of 53,365 cy of sediments. When adjusted for mode share, the Project is estimated to generate approximately 17,550 average daily trips (“adt”) on a Friday and 20,566 adt on a Saturday.

Wynn's acquisition of portions of the Everett Shops property from the MBTA for the Project and the construction of the Project's access required the relocation of the Everett Shops' main gatehouse to the north opposite Beacham Street. As shown on SSFEIR Figure 1-15, Wynn constructed a 10-foot wide, 60-foot long layover area to the Everett Shops driveway's eastbound approach to allow a larger vehicle to wait while another enters Everett Shops as part of this relocation. Wynn also constructed new loading docks to the Everett Shops as part of the relocation. As explained in the SSFEIR, the relocation of the main access did not negatively affect maneuverability for MBTA vehicles at Everett Shops.

According to the SSFEIR, the MBTA obtained an independent appraisal of the impact of Wynn's proposed purchase on the value of the three Everett Shops parcels. That appraisal concluded that "the sale of these parcels will not have a negative impact on the use of the larger property by the MBTA. In fact, the sale of the parcels will facilitate construction of a new traffic light controlled intersection with Broadway which will facilitate better access to the remaining MBTA property." SSFEIR, pp. 1-7.

According to the SSFEIR, the amount of additional ridership the Project is expected to add to the MBTA's Orange Line would not, on its own, cause the Orange Line to operate beyond the MBTA's Service Delivery Policy capacity standards for most time periods and locations. Assuming no further improvements to Orange Line service and operations prior to 2023, if the Project is built and becomes operational, Orange Line service is expected to be beyond the MBTA's Service Delivery Policy capacity standards for four hours a week, including three weekday non-peak hours in which the Orange Line service is currently not in compliance with the Service Delivery Policy and a fourth hour on Saturday (12-1 p.m.) in which service would be in non-compliance with the Service Delivery Policy by less than one additional passenger per train.

The Project was subject to MEPA review and required the preparation of a Mandatory EIR pursuant to 301 CMR 11.03(1)(a)(2), 11.03(3)(a)(5), 11.03(6)(a)(6) and 11.03(6)(a)(7) because it requires State Agency Actions and it will create 10 or more acres of impervious area, create a new non-water dependent use occupying one or more acres of waterways or tidelands, generate 3,000 or more new adt on roadways providing access to a single location, and provide 1,000 or more new parking spaces at a single location. The Project is also subject to the EOEEA Greenhouse Gas ("GHG") Emissions Policy and Protocol dated May 5, 2010.

As described in the FEIR Certificate, Wynn analyzed potential historic and archaeological resources as part of the FEIR and determined that the Project will not adversely impact any historic resources on or in the vicinity of the Project Site. There are also no archaeological resources that will be impacted by the Project due to the fact that the majority of the land portion of the Project Site is fill and has been substantially disturbed. In its comment letter on the DEIR, the Massachusetts Historical Commission determined that the Project would have "no adverse effect" on historic resources in the vicinity of the project.

The Project is not subject to the enhanced analysis provisions of the EOEEA Environmental Justice Policy, as amended in 2017 (the "EJ Policy"). Although the Project is located in and adjacent to communities with designated environmental justice populations, it does not exceed the MEPA thresholds for air quality, solid waste or hazardous waste that trigger a requirement

for enhanced analysis under the EJ Policy. The EOEEA has also not required Wynn to conduct any further analysis under Executive Order No. 552 on Environmental Justice (November 20, 2014). Nonetheless, the Commission finds that the proposed Project will make significant positive environmental justice contributions to the host community of Everett and the surrounding area that are consistent with EOEEA’s goals of increasing investments in economically disadvantaged areas. *See EJ Policy* at 12-13. These positive contributions include without limitation the rehabilitation and revitalization of a contaminated former chemical manufacturing site and its abutting riverfront, the creation of open space amenities including a 20 foot wide harborwalk with connections to the extensive public open space network along the Mystic River, the use of environmentally-sensitive design in all aspects of the Project as described below, and the creation of significant numbers of new jobs arising out of and related to the construction and operation of the proposed facility. The Commission finds that these jobs will directly and substantially benefit disadvantaged persons in the local community.

VI. REQUIRED GOVERNMENTAL PERMITS AND APPROVALS

According to the SSFEIR Certificate, and as updated by the NPC and the NPC Certificate (Page 5), the Project has received or requires the following permits and approvals from, or review by, the following federal, state, and local agencies:⁴

Agency	Issued or Completed	Required or Pending
Gaming Commission	Category 1 Gaming License ⁵	
MassDOT		Vehicular Access Permit (Category III); Non-vehicular Access Permit; Traffic Signal Regulation
MassDOT, Rail and Transit Division/MBTA	Land Disposition and Easement Agreements	Agreements and approvals necessary to: <ul style="list-style-type: none"> • Construct improvements and operate within MBTA transit stations; • Relocate bus stops; • Fund support of Orange Line capacity; and • Make improvements to MBTA stations.
DCR		Construction and Access Permit

⁴ The 2016 Section 61 Findings noted that the Project may have also required approval for modification to I-93 and other portions of the National Highway System from the Federal Highway Administration. However, modifications to I-93 were not ultimately required. The Project also requires review by the Massachusetts Port Authority (“Massport”) for certain mitigation measures proposed on Massport property. Finally, the Project may require additional local licenses to operate, such as review of plans by the Everett Fire Department and licensing for food establishments within the Gaming Establishment by various City of Everett departments. *See NPC* at pp. 1-20.

⁵ After completion of the MEPA review, issuance of the Secretary’s SSFEIR Certificate, and issuance of the Commission’s 2016 Section 61 Findings, the Commission voted to issue the final Category 1 Gaming License to Wynn on April 25, 2016, and notice of the Commission’s vote on the final License was published in the *Environmental Monitor* on May 11, 2016.

Agency	Issued or Completed	Required or Pending
MWRA	Sewer Use Discharge Permit (or waiver) and an 8(M) Permit	
MassDEP	Chapter 91 Waterways License; Section 401 Water Quality Certification (“WQC”); Chapter 91 Dredging Permit; Notification of Construction/Demolition	Air Plan Approval or Environmental Results Program Certification and Asbestos Removal Permit (if required).
EOEEA	Municipal Harbor Plan Approval	
CZM	Federal Consistency Review	
Department of Housing and Community Development	Approval of urban renewal plan	
City of Everett Conservation Commission	Order of Conditions for on-site work	
City of Boston Transportation Department & Public Improvements Commission	Approval for Off-Site Roadway Improvements	
U.S. Army Corps of Engineers (“ACOE”)	Section 404 Clean Water Act Permit and Section 10 Permit	
Federal Aviation Administration	Determination of No Hazard to Air Navigation	
Massachusetts Aeronautics Commission	Airspace Review	
U.S. Environmental Protection Agency	National Pollutant Discharge Elimination System (“NPDES”) Construction General Permit and Remediation General Permit	

VII. EXECUTED MITIGATION AGREEMENTS

Pursuant to G.L. c. 23K §§ 15(8) - (10), Wynn entered into the following mitigation agreements (each individually a “Mitigation Agreement” and collectively the “Mitigation Agreements”):

1. The Host Community Agreement with the City of Everett dated April 19, 2013 (approved by local referendum pursuant to G.L. c. 23K, § 15(13), on June 22, 2013);

2. Surrounding Community Agreements with the following municipalities:
 - a. The City of Boston (“Boston”), dated January 27, 2016;⁶
 - b. The City of Cambridge (“Cambridge”), dated April 22, 2014;
 - c. The City of Chelsea (“Chelsea”), dated June 9, 2014;⁷
 - d. The City of Malden (“Malden”), dated November 12, 2013;
 - e. The City of Medford (Medford”), dated April 11, 2014; and
 - f. The City of Somerville (“Somerville”), dated June 12, 2014.⁸
3. Neighboring Communities Agreements with the following municipalities:
 - a. The City of Lynn (“Lynn”), dated January 28, 2014; and
 - b. The City of Melrose (“Melrose”), dated January 28, 2014;
4. The Impacted Live Entertainment Venues Agreement including with the Massachusetts Performing Arts Coalition, dated January 20, 2014; and
5. The Massachusetts State Lottery effective as of September 5, 2014.

Subject to the caveats listed below regarding the MEPA Section 61 Conditions, the Commission incorporates by reference the provisions of each of the above Mitigation Agreements into these Second Amended Section 61 Findings as conditions to be included in the License for the Gaming

⁶ By written decision dated May 15, 2014, the Commission determined that the “Wynn gaming establishment is located solely in Everett. Accordingly, by definition, the City of Boston is not a host community to that project.” On May 15, 2014, the Commission voted to formally deem the City of Boston a surrounding community to the Wynn Project (May 15, 2014 Tr. pp. 123-124). After Boston declined to participate in the Commission’s binding arbitration process under 205 CMR 125.01, the Commission voted on August 7, 2014, to “deem the city of Boston to have waived its surrounding community status with respect to the application for a Category 1 casino license filed by Wynn MA, LLC.” (August 7, 2014 Tr. pp. 195-96). Subsequently, Boston and Wynn executed and submitted to the Commission the Surrounding Community Agreement dated as of January 27, 2016. On February 4, 2016, the Commission voted to accept the Surrounding Community Agreement, to reinstate Boston as a surrounding community to Wynn’s proposed Category 1 Gaming Establishment in Everett, and to determine that the terms of the Surrounding Community Agreement will replace Sections 3 and 4 of the conditions in Wynn’s conditional License related to Boston. *See* Vote Regarding Litigation Release and Surrounding Community Agreement dated February 4, 2016.

⁷ Pursuant to 205 CMR 125.01(6)(c), Wynn participated in binding arbitration with Chelsea. The Arbitrator issued a Report and Final Arbitration Award dated June 9, 2014, selecting Wynn’s Best and Final Offer (“BAFO”) to Chelsea and thereby specifying its terms as the surrounding community agreement between Wynn and Chelsea. The provisions of Wynn’s BAFO to Chelsea attached to the Report and Final Arbitration Award dated June 9, 2014, were incorporated by reference as conditions in the conditional License.

⁸ Pursuant to 205 CMR 125.01(6)(c), Wynn also participated in binding arbitration with Somerville. An Arbitration panel issued a Report and Final Arbitration Award dated June 9, 2014, selecting Wynn’s BAFO and thereby specifying its terms as the surrounding community agreement between Wynn and Somerville. Wynn and Somerville subsequently executed the Surrounding Community Agreement referenced in the text.

Establishment issued pursuant to 205 CMR 120.02. Nothing in these Second Amended Section 61 Findings shall prevent the reopening of any Mitigation Agreement pursuant to its terms or pursuant to 205 CMR 127.00; provided, however, that in the event any Mitigation Agreement is reopened, the Commission in its discretion expressly reserves the right to modify or amend these Second Amended Section 61 Findings and the conditions set forth in the License to continue to ensure that all feasible measures are taken to avoid or minimize impacts of the Project and damage to the environment.

VIII. MEPA SECTION 61 FINDINGS AND CONDITIONS

A. Scope of Commission Section 61 Findings

In the SSFEIR Certificate, the Secretary noted that “the subject matter of the [the Commission’s] Agency Action is sufficiently broad ... such that it is functionally equivalent to broad scope jurisdiction” because “the Gaming License ... addresses a broad range of environmental issues - sustainability, energy efficiency, renewable energy, and traffic- and extends to mitigation of environmental impacts on host and surrounding communities.” The Secretary also concluded that while MEPA jurisdiction is limited to the subject matter of required or potentially required permits “the subject matter of the Gaming License confers broad scope jurisdiction and extends to all aspects of the project that may cause Damage to the Environment, as defined in the MEPA regulations.”

As a result, these Second Amended Section 61 Findings include detailed conditions to mitigate this broad range of environmental issues, incorporate the Mitigation Agreements to further mitigate environmental impacts on host and surrounding communities, and incorporate Section 61 Findings of other State Agencies to comprehensively address these issues as set forth below.

B. Enhanced Public Participation in Commission Section 61 Findings

In the SSFEIR Certificate (pp. 3-4), the Secretary required “enhanced public review during ... development of [the Commission] 61 Findings.” The Commission has complied and will comply with these enhanced requirements as follows:

1. In these Second Amended Section 61 Findings, the Commission has considered and revised as appropriate, the draft Section 61 Findings included in the SSFEIR and NPC.
2. In these Second Amended Section 61 Findings, the Commission has included and incorporated by reference the Section 61 Findings from all other State Agencies including, but not limited to, MassDOT’s Section 61 Findings. See below.
3. In preparing the 2016 Section 61 Findings, the Commission engaged Green International and City Point Partners as consultants, whose representative made a public presentation at the Commission’s open meeting on March 22, 2016 at 1:00 PM and who have provided recommendations regarding additional conditions that should be added to the Commission’s draft and final 2016 Section 61 Findings (as restated in these Second Amended Section 61 Findings).

4. The Commission posted a March 17, 2016 preview draft of the 2016 Section 61 Findings and the consultants' report on the MGC website on March 18, 2016; posted the Commission's draft of the 2016 Section 61 Findings on the MGC website after the meeting on March 22, 2016; and solicited written comments on the draft 2016 Section 61 Findings on or before April 11, 2016 at 4:00 PM.
5. On March 29, 2016, at 5:00 PM the Commission held a public hearing on the draft 2016 Section 61 Findings at the Boston Convention and Exhibition Center, 415 Summer Street, Boston.
6. The 2016 Section 61 Findings incorporated consideration of public comments received at the Commission's public hearing on March 29, 2016, and prior to the close of public comments on April 11, 2016.
7. Upon the completion of the above process, the Commission incorporated its final 2016 Section 61 Findings into the Gaming License and filed the final 2016 Section 61 Findings with the MEPA Office.
8. The Commission has since then conducted regular quarterly review concerning compliance with the Commission's final 2016 Section 61 Findings and the conditions of the Gaming License.

C. Mitigation Measures in Section 61 Findings of Other State Agencies

In the SSFEIR Certificate, the Secretary instructed that the Commission's "Section 61 Findings shall include or include by reference the Section 61 Findings from all other State Agencies including, but not limited to, MassDOT's Section 61 Findings." To date, the following State Agencies have issued draft or final Section 61 Findings for the Project:

Agency	Date	Env. Monitor
MWRA	1/12/16	1/20/16
Massport	1/21/16	2/24/16
MassDEP	1/22/16	2/10/16
MassDOT, MBTA and DCR	4/5/16 ⁹	4/6/16

Subject to the limitations listed below regarding the MEPA Section 61 Conditions, the Commission incorporates these Section 61 Findings by other State Agencies (and any final Section 61 Findings by these other State Agencies pursuant thereto) into the Commission's Second Amended Section 61 Findings. Wynn shall comply with the detailed mitigation measures provided by the final Section 61 Findings issued by each other State Agency with jurisdiction to take Agency Action with respect to the Project including, without limitation, MassDEP, MassDOT, MBTA, MassDCR, Massport and MWRA. Wynn shall also comply with

⁹ The combined MassDOT/MBTA/DCR Section 61 Findings were dated March 31, 2016, and executed by DCR on March 31, by MBTA on April 4, and by MassDOT on April 5, 2016.

all applicable and lawful terms and conditions of any final federal, state, or local permit or approval required for the Project.¹⁰

D. Limitations Regarding MEPA Section 61 Conditions

The Commission in its discretion expressly reserves the right to take, and nothing herein shall prevent the Commission from taking, further action with respect to these Second Amended Section 61 Findings, the License for the Gaming Establishment, and/or any conditions contained in these Second Amended Section 61 Findings or the License for the Gaming Establishment, pursuant to 205 CMR 127 or otherwise. Without limitation, to continue to ensure that all feasible measures are taken to avoid or minimize impacts of the Project and damage to the environment, the Commission, in its discretion, expressly reserves the right to modify or amend its Second Amended Section 61 Findings as a result of any Section 61 Findings or final Agency Action issued or finalized by other Agencies after the Commission's 2016 Section 61 Findings. If the terms of (a) any other Agency's Section 61 Findings or final Agency Action, (b) any other governmental permit or approval, (c) any denial of any other governmental permit or approval, (d) any process required to obtain such permit or approval, or (e) any provision of any of the Mitigation Agreements listed above, conflict with the Commission's Second Amended Section 61 Findings or the mitigation measures set forth below, or render such mitigation measures infeasible or impossible, Wynn shall notify the Commission of that conflict for resolution by the Commission pursuant to G.L. c. 23K and 205 CMR 120.01 and 120.02. Pursuant to G.L. c. 23K, § 10(c), the Commission reserves its rights to determine which infrastructure improvements onsite and around the vicinity of the Gaming Establishment, including projects to account for traffic mitigation as determined by the Commission, shall be completed before the Gaming Establishment shall be approved for opening.

E. Mitigation Measures for the Project under the FEIR, SFEIR, SSFEIR, and NPC

Wynn shall comply with the following detailed measures to mitigate the Project's impacts specified in (a) the FEIR and the FEIR Certificate, (b) the SFEIR and the SFEIR Certificate, (c) the SSFEIR and the SSFEIR Certificate, and (d) the NPC and the NPC Certificate including, without limitation, the mitigation measures described in the following sections of the FEIR, SFEIR, SSFEIR, and NPC:

- (1) Measures described in SFEIR Chapter 3, and SFEIR Tables 3-2: Proposed DEP Mitigation Measures by Wynn MA, LLC, 3-3: Proposed DCR Mitigation Measures by Wynn MA, LLC, and 3-4: Summary of Proposed Mitigation Measures by Wynn MA, LLC;

¹⁰ By complying with the Secretary's SSFEIR Certificate and NPC Certificate and by incorporating and requiring compliance with the final Section 61 Findings by other State Agencies (and their resulting final permits and approvals), the Commission neither assumes control over nor takes responsibility for matters that, by statute and regulations, are committed to the jurisdiction, control and expertise of other State Agencies. However, the Commission does exercise its own discretion and authority under the Gaming Act and MEPA and their respective regulations to issue its own Section 61 Findings and to incorporate its final Second Amended Section 61 Findings into the Gaming License.

- (2) Measures to mitigate impacts on wetlands, waterways and water quality set forth in FEIR Chapter 3, FEIR Section 13.4.1, and FEIR Tables 13-1 and 13-3, Proposed Wetlands, Waterways and Water Quality Mitigation Measures;
- (3) Measures to mitigate air quality impacts set forth in FEIR Chapter 5, FEIR Section 13.4.5, and FEIR Tables 13-1 and 13-3;
- (4) The transportation demand management (“TDM”) program strategies for patrons and employees as noted in FEIR Chapter 4;
- (5) Measures to mitigate greenhouse gas impacts and promote sustainable development set forth in FEIR Chapter 6, FEIR Section 13.4.6, and FEIR Tables 13-1 and 13-3, Greenhouse Gas Emission Mitigation Measures;
- (6) Measures to mitigate storm water impacts set forth in FEIR Chapter 7, FEIR Section 13.4.4, and FEIR Tables 13-1 and 13-3, Stormwater Mitigation Measures;
- (7) Measures to mitigate impacts on water supply set forth in FEIR Chapter 8, FEIR Section 13.4.2, and FEIR Table 13-1, Proposed Water Use Mitigation Measures;
- (8) Measures to mitigate wastewater impacts set forth in FEIR Chapter 9, FEIR Section 13.4.3, and FEIR Tables 13-1 and 13-3, Proposed Wastewater and Sewer Mitigation Measures;
- (9) Measures to mitigate solid and hazardous wastes impacts set forth in FEIR Chapter 10 and FEIR Section 13.4.7 (Brownfields Remediation);
- (10) Measures to mitigate impacts on historic and archaeological resources set forth in FEIR Chapter 11;
- (11) Measures to mitigate construction-related impacts set forth in FEIR Chapters 12 and 13;
- (12) Measures to mitigate impacts on open space set forth in FEIR Chapter 2.3.8 and FEIR Section Table 13-4;
- (13) Measures identified in SSFEIR Chapter 4;
- (14) Measures to mitigate impacts identified in NPC Chapter 4.6; and
- (15) Measures to mitigate impacts identified in NPC Chapter 5.

In addition, Wynn shall comply with all measures to mitigate transportation impacts set forth in FEIR Chapter 4, FEIR Section 13.3, FEIR Tables 13-2 and 13-4, Table of Proposed Transportation Mitigation Measures, SFEIR Chapter 3 and SFEIR Table 3-1: Proposed

Transportation Mitigation Measures by Wynn MA, LLC, and SSFEIR Chapter 4 as supplemented and amended in the SFEIR, SSFEIR and FEIR, SFEIR, SSFEIR, and NPC Certificates, and shall comply with any additional conditions that the Commission imposes in the License pursuant to 205 CMR 120.02(1)(a).

With respect to the foregoing requirements, in the event of a conflict regarding a particular mitigation measure described in the FEIR, the Secretary's FEIR Certificate, the SFEIR, the Secretary's SFEIR Certificate, the SSFEIR, the Secretary's SSFEIR Certificate, the NPC, and/or the Secretary's NPC Certificate, the mitigation measure described in the later document in the MEPA process shall control.

F. Project-Specific Mitigation Measures and Off-Site Improvements

The environmental review process culminating in the NPC and the NPC Certificate, and the Section 61 Findings issued by the other State Agencies listed above require detailed and specific mitigation measures and off-site improvements to avoid or minimize the impacts of the Project and damage to the environment within the scope of MEPA and its implementing regulations.¹¹ The Commission incorporates by reference the mitigation measures specified by the Section 61 Findings of these State Agencies having expertise in their respective areas of subject matter jurisdiction. The Commission also incorporates by reference Mitigation Agreements listed above which mitigate other impacts on the host and surrounding communities from the development and operation of a gaming establishment within the scope of the Gaming Act and its implementing regulations. Without limitation, the Commission incorporates by reference the acknowledgement and agreement of the City of Boston in § 1.2 of the Boston Surrounding Community Agreement ("Boston SCA") regarding mitigation of the transportation impacts of the Project.¹² The Commission finds pursuant to G.L. c. 30, § 61 and 301 CMR 11.12(5), and based on the results of the MEPA process that, subject to the mitigation measures imposed as conditions by the Commission's Second Amended Section 61 Findings herein, all feasible measures have been taken to avoid or minimize impacts of the Project and damage to the environment.

Specifically and without limitation, as conditions of the Commission's Second Amended Section 61 Findings, the Commission hereby requires that Wynn shall implement, and shall be fully responsible for the costs of implementing, the following mitigation measures according to the following schedule:

¹¹ See, e.g., MassDOT/MBTA/DCR Section 61 Findings (§§ V and VII), MWRA Section 61 Findings (at page 5), Massport Section 61 Findings (¶ B), and DEP Section 61 Findings (DEP's Written Determination and Draft Special Conditions on Waterways Application, page 7, and Combined 401 Water Quality Certification, page 5).

¹² Section 1.2 of the Boston SCA stipulates that, while the Project will result in additional vehicular traffic that may burden the transportation infrastructure in Boston, particularly in the Sullivan Square area in the neighborhood of Charlestown, Boston acknowledges and agrees that "Wynn's mitigation under the Massachusetts Environmental Policy Act ("MEPA") and its payments to Boston under this [Surrounding Community] Agreement will mitigate any transportation impacts of the Project" and that "such mitigation will adequately mitigate all such impacts."

SUBJECT MATTER	MITIGATION OR IMPROVEMENT MEASURE	SCHEDULE
1. EVERETT MITIGATION		
	<p>In accordance with the Secretary’s applicable Certificates as more particularly specified and conditioned in Section V of the MassDOT/MBTA/DCR Section 61 Findings, Wynn shall:</p>	
<p>Revere Beach Parkway (Route 16)/Mystic View Road/Santilli Highway/Route 99 Connector Improvements (Santilli Circle)</p>	<ul style="list-style-type: none"> • Modify the approach from Frontage Road into the rotary to allow for two formal lanes. • Widen circle at Santilli Highway approach to allow for three travel lanes. • Provide improved pedestrian and bicycle connection from Frontage Road to Mystic View Road. • Reconfigure channelizing island on south side of rotary near Mystic View Road. • Provide traffic signal improvements at the signalized locations around the traffic circle. • Provide landscaping improvements to the center of the circle. • Provide new guide signage and pavement markings.¹³ <p>These geometric and traffic signal improvements shall be substantially as described in the MassDOT/MBTA/DCR Section 61 Findings and as set forth in the conceptual plan entitled “Santilli Circle Conceptual Improvement Plan (Figure 2-24A, B, C, and D)” included in the SFEIR, as revised in accordance with the revised conceptual plans entitled, “Proposed Modifications to SSFEIR 2023 Build Condition at Santilli Circle & Santilli Highway (Figure 1 & 2)” included in a Technical Memorandum dated March 3, 2016 to be reviewed and approved by MassDOT, with such refinements thereto as are approved by MassDOT through the 100 percent design submission.</p>	<p>Prior to opening.</p>

¹³ The SSFEIR Certificate indicated that Wynn will perform a Road Safety Audit (“RSA”) during 25% design to identify safety improvements to be implemented as mitigation where feasible, incorporate RSA recommendations into final design where feasible, and coordinate with MassDOT to identify funding source for implementation of RSA recommendations. Since that time, as set forth below, Wynn has conducted the RSA and recommendations were summarized in the RSA Report dated March 10, 2016 submitted to MassDOT by AECOM on behalf of Wynn. These Second Amended Section 61 Findings require that Wynn fund the approved road safety improvements resulting from the RSA recommendations as and to the extent set forth in MassDOT/MBTA/DCR Section 61 Findings. See below.

SUBJECT MATTER	MITIGATION OR IMPROVEMENT MEASURE	SCHEDULE
<p>Revere Beach Parkway (Route 16)/Broadway/Main Street (Sweetser Circle)</p>	<p>In addition, as set forth in the MassDOT/MBTA/DCR Section 61 Findings, the Proponent (Wynn) has conducted a Road Safety Audit (“RSA”) at Santilli Circle due to its inclusion in a Highway Safety Improvement Plan (HSIP) cluster. The RSA has identified a list of recommended safety improvements to address both existing and future conditions. These recommendations were summarized in the RSA Report dated March 10, 2016 submitted to MassDOT by AECOM on behalf of the Proponent. To improve safety conditions and mitigate the Project’s impacts at Santilli Circle, the Proponent shall incorporate in the conceptual design plans for Santilli Circle all the potential safety enhancements with “low” and/or “medium” costs and with “short-term” and/or “mid-term” timeframes as listed in the RSA Report in Table 3: Potential Safety Enhancement Summary--Santilli Circle.</p> <ul style="list-style-type: none"> • Reconstruct circle and approaches to function as a two-lane modern roundabout. • Reconfigure the existing Broadway (Route 99) northbound approach to allow for three travel lanes providing free flow access to Route 16 eastbound. • Provide shared use path on northwest side of rotary to improve bicycle access. • Provide landscaping and improvements on the north side of the circle. • Maintain pedestrian signal across Route 16 eastbound exit from rotary. <p>These improvements shall be substantially as described in the MassDOT/MBTA/DCR Section 61 Findings and as set forth in the conceptual plan entitled “Sweetser Circle Conceptual Improvement Plan (Figure 2-25A, B, and C)” included in the SFEIR, with such refinements thereto as are approved by MassDOT through the 100 percent design submission.</p> <p>In addition, as set forth in the MassDOT/MBTA/DCR Section 61 Findings, the Proponent (Wynn) has conducted a Road Safety Audit (RSA) at Sweetser Circle due to its inclusion in a Highway Safety Improvement Plan (HSIP) cluster. The RSA has identified a list of recommended safety improvements to address both existing and future conditions. These recommendations were summarized in the RSA Report dated March 10, 2016 submitted to MassDOT by AECOM on behalf of the Proponent. To improve safety conditions and mitigate the Project’s impacts at Sweetser Circle, the Proponent shall incorporate in the conceptual design plans for Sweetser Circle all the potential safety enhancements with “low” and/or</p>	<p>Prior to opening.</p>

SUBJECT MATTER	MITIGATION OR IMPROVEMENT MEASURE	SCHEDULE
<ul style="list-style-type: none"> • Route 99 (Broadway)/ Horizon Way (Site Driveway) • Route 99 (Broadway)/ Lynde Street • Route 99 (Broadway)/ Thorndike Street • Bow Street/Mystic Street • Bow Street/Lynde Street • Bow Street/Thorndike Street • Beacham Street/Robin Street • Route 99 (Broadway)/ Bowdoin Street • Route 99 (Broadway)/ Beacham Street intersection (service driveway) 	<p>“medium” costs and with “short-term” and/or “mid-term” timeframes as listed in the RSA Report in Table 4: Potential Safety Enhancement Summary--Sweetser Circle.</p> <ul style="list-style-type: none"> • Construction of the site driveway and signalization of the Route 99 (Broadway)/Horizon Way intersection. • Reconstruct Lower Broadway as a 4-lane boulevard with turn lanes at major intersections. • Upgrade/replace/install traffic control signals. • Reconstruct or construct sidewalks and bicycle lanes where required. • Install street trees and lighting. • Improve and provide access MBTA bus stops along Lower Broadway. • Installation of technology along Broadway/Alford Street (Route 99), near project entrance, to allow for signal prioritization for buses. <p>Without limitation, these improvements shall be substantially as described in the MassDOT/MBTA/DCR Section 61 Findings and as set forth in the conceptual plan entitled “Lower Broadway/ Alford Street (Route 99) Improvement Plan (Figures 2-12A, B, and C)” and refinements thereto through the 100 percent design.¹⁴</p> <p>In addition, as set forth in the MassDOT/MBTA/DCR Section 61 Findings, the Proponent (Wynn) has conducted a Road Safety Audit (“RSA”) along this corridor due to its inclusion in a Highway Safety Improvement Plan (HSIP) cluster. The RSA has identified a list of recommended safety improvements to address both existing and future conditions. These recommendations were summarized in the RSA Report dated March 10, 2016 submitted to MassDOT by AECOM on behalf of the Proponent. To improve safety conditions and mitigate the Project’s impacts at the intersections along this corridor, the Proponent shall incorporate in the conceptual design plans for the corridor all the potential safety enhancements with “low” and/or “medium” costs and with “short-term” and/or “mid-term” timeframes as listed in the RSA Report in Table 3: Potential Safety Enhancement Summary-</p>	<p>Prior to opening.</p>

¹⁴ As these various intersections are not under MassDOT jurisdiction, the determination of appropriate mitigation measures (if necessary) and the determination appropriate design and construction details will be made between Wynn and Everett as stated in the MassDOT/MBTA/DCR Section 61 Findings.

SUBJECT MATTER	MITIGATION OR IMPROVEMENT MEASURE	SCHEDULE
	Lower Broadway.	
Broadway/Norwood Street/Chelsea Street ¹⁵	<p>Optimize traffic signal timing, phasing and coordination.</p> <p>This intersection is not under MassDOT jurisdiction. The determination of appropriate design and construction details at this intersection should be made between Wynn and the City of Everett.</p>	Prior to opening.
Lower Broadway Truck Route	<ul style="list-style-type: none"> • Upgrade Robin Street and Dexter Street to serve as a truck route. • Provide full depth reconstruction of the existing roadway to accommodate heavy vehicles. • Reconstruct Robin Street and Dexter Street to include heavy-duty pavement, corner radii improvements, sidewalk reconstruction (where present), drainage system modifications (minor), signs and pavement markings. 	Prior to opening.
Ferry Street/Broadway (Route 99) ¹⁶	Retime and optimize traffic signal.	Prior to opening.
Intersections not under MassDOT jurisdiction	<p>As stated in the MassDOT/MBTA/DCR Section 61 Findings, the following intersections are not under MassDOT jurisdiction. If necessary, the determination of any appropriate mitigation measures and/or design and construction details at these intersections should be made between Wynn and Everett.</p> <ul style="list-style-type: none"> • Route 99 (Broadway)/2nd Street/Corey Street Intersection • Route 99 (Broadway)/Mansfield Street/Church Street Intersection • Route 99 (Broadway)/High Street/Hancock Street Intersection • Route 99 (Broadway)/McKinley Street/Cameron Street/Lynn Street Intersection • Tileston Street/Oakes Street/Main Street Intersection • Waters Avenue/Linden Street/Main Street Intersection • Peirce Avenue/Bellingham Avenue/Main Street Intersection 	Prior to opening.
Other Intersections	As stated in the MassDOT/MBTA/DCR Section 61 Findings, there are no feasible	N/A

¹⁵ See prior footnote.

¹⁶ See prior footnote.

SUBJECT MATTER	MITIGATION OR IMPROVEMENT MEASURE	SCHEDULE
	<p>means to avoid or minimize the project's traffic impacts at the following locations that Wynn could be required to implement:</p> <ul style="list-style-type: none"> • Route 16 (Revere Beach Parkway)/Garvey Street/2nd Street Intersection • Route 16 (Revere Beach Parkway)/Spring Street Intersection • Route 16 (Revere Beach Parkway)/South Ferry Street Intersection • Route 16 (Revere Beach Parkway)/Vine Street Intersection • Route 16 (Revere Beach Parkway)/Vale Street Intersection • Route 16 (Revere Beach Parkway)/Everett Avenue Intersection 	
2. MEDFORD MITIGATION		
	<p>In accordance with the Secretary's applicable Certificates as more particularly specified and conditioned in Section V of the MassDOT/MBTA/DCR Section 61 Findings, Wynn shall:</p>	
<p>Mystic Valley Parkway (Route 16)/Fellsway (Route 28)/Middlesex Avenue (Wellington Circle)</p>	<ul style="list-style-type: none"> • Upgrade/replace traffic signal equipment/signs/pavement markings. • Optimize traffic signal timing, phasing and coordination. • Widen Route 28 northbound to provide an additional left turn lane. • Widen Route 16 westbound to provide an additional through lane in the middle of the intersection. • Reconstruct non-compliant sidewalks and accessible ramps around the intersection to improve pedestrian access. • Provide landscape improvements. <p>Without limitation, these improvements shall be substantially as described in the MassDOT/MBTA/DCR Section 61 Findings and as set forth in the conceptual plan entitled "Wellington Circle Conceptual Improvement Plan (Figure 2-67A, B, and C)" included in the SFEIR, with such refinements thereto as are approved by MassDOT through the 100 percent design submission.</p> <p>In addition, as set forth in the MassDOT/MBTA/DCR Section 61 Findings, the Proponent (Wynn) has conducted a Road Safety Audit (RSA) at this intersection due to its inclusion in a Highway Safety Improvement Plan (HSIP) cluster. The</p>	<p>Prior to opening.</p>

SUBJECT MATTER	MITIGATION OR IMPROVEMENT MEASURE	SCHEDULE
Mystic Valley Parkway (Route 16)/Mystic Avenue (Route 38)	<p>RSA has identified a list of recommended safety improvements to address both existing and future conditions. These recommendations were summarized in the RSA Report dated March 10, 2016 submitted to MassDOT by AECOM on behalf of the Proponent. To improve safety conditions and mitigate the Project's impacts at this intersection the Proponent shall incorporate in the conceptual design plans for this intersection all the potential safety enhancements with "low" and/or "medium" costs and with "short-term" and/or "mid-term" timeframes as listed in Table 4: Potential Safety Enhancement Summary- Wellington Circle.</p> <ul style="list-style-type: none"> • Implement traffic Signal retiming and optimization. • Implement ADA Improvements. <p>As set forth in the MassDOT/MBTA/DCR Section 61 Findings, prior to any site occupancy, the Proponent (Wynn) will implement these improvements at this intersection in accordance to conceptual and 100 percent plans to be submitted to and approved by MassDOT and DCR. This plan will be refined as the design progresses to the 100 percent level.</p> <p>In addition, as set forth in the MassDOT/MBTA/DCR Section 61 Findings, the Proponent has conducted a Road Safety Audit (RSA) at this intersection due to its inclusion in a Highway Safety Improvement Plan (HSIP) cluster. The RSA has identified a list of recommended safety improvements to address both existing and future conditions. These recommendations were summarized in the RSA Report dated March 10, 2016 submitted to MassDOT by AECOM on behalf of the Proponent. To improve safety conditions and mitigate the Project's impacts at this intersection, the Proponent shall incorporate in the conceptual design plans for this intersection all the potential safety enhancements as listed in the RSA Report in Table 4: Potential Safety Enhancement Summary-Mystic Valley Parkway/Route 16/Connector Road and Mystic Valley Parkway/Route 38/Harvard Street.¹⁷</p>	Prior to opening.

¹⁷ The Commission's Second Amended Section 61 Findings incorporate MassDOT/MBTA/DCR Section 61 Findings with respect to the RSA recommendations for this intersection. If the intent of the MassDOT/MBTA/DCR Section 61 Findings is to describe the safety enhancements for this intersection as those with "low" and/or "medium" costs and with "short-term" and/or "mid-term" timeframes, the Commission's Second Amended Section 61 Findings would similarly track that requirement.

SCHEDULE	MITIGATION OR IMPROVEMENT MEASURE	SUBJECT MATTER
Prior to opening.	<ul style="list-style-type: none"> Implement traffic Signal retiming and optimization. Implement ADA Improvements. <p>As set forth in the MassDOT/MBTA/DCR Section 61 Findings, prior to any site occupancy, the Proponent (Wynn) will implement these improvements at this intersection in accordance with conceptual and 100 percent plans to be submitted to and approved by MassDOT and DCR. This plan will be refined as the design progresses to the 100 percent level.</p> <p>In addition, as set forth in the MassDOT/MBTA/DCR Section 61 Findings, the Proponent has conducted a Road Safety Audit (RSA) at this intersection due to its inclusion in a Highway Safety Improvement Plan (HSIP) cluster. The RSA has identified a list of recommended safety improvements to address both existing and future conditions. These recommendations were summarized in the RSA Report dated March 10, 2016 submitted to MassDOT by AECOM on behalf of the Proponent. To improve safety conditions and mitigate the Project's impacts at this intersection, the Proponent shall incorporate in the conceptual design plans for this intersection all the potential safety enhancements as listed in the RSA Report in Table 4: Potential Safety Enhancement Summary – Mystic Valley Parkway/Route 38/Harvard Street.¹⁸</p>	Mystic Valley Parkway (Route 16)/Route 16 Southbound Connector
Prior to opening.	Provide \$1.5 million to MassDOT toward a transportation study to develop alternatives for a long-term fix of Wellington Circle. ¹⁹	Wellington Circle Study
Prior to opening.	<p>As stated in the MassDOT/MBTA/DCR Section 61 Findings, there are no additional feasible means to avoid or minimize the project's traffic impacts at the following locations that the Proponent (Wynn) could be required to implement:</p> <ul style="list-style-type: none"> Route 28 (Fellsway West)/Fulton Street Intersection Route 28 (Fellsway West)/Route 60 (Salem Street) Intersection Route 28 (Fellsway)/Central Avenue/Medford Street Intersection 	Intersections not under MassDOT jurisdiction

¹⁸ See prior footnote.

¹⁹ This measure is the same as the study referred to in § 5.3 of the Somerville SCA as described below.

SUBJECT MATTER	MITIGATION OR IMPROVEMENT MEASURE	SCHEDULE
	<ul style="list-style-type: none"> Route 28 (Fellsway)/Riverside Avenue Intersection 	
Other Intersections	<p>As stated in the MassDOT/MBTA/DCR Section 61 Findings, there are no feasible means to avoid or minimize the project's traffic impacts at this location that Wynn could be required to implement:</p> <ul style="list-style-type: none"> Route 16 (Mystic Valley Parkway)/Locust Street Intersection Route 16 (Mystic Valley Parkway)/Commercial Street Intersection 	N/A
Other Mitigation under Surrounding Community Agreement	<p>In addition to the MEPA mitigation measures described above, Wynn shall comply with the requirements of the Medford Surrounding Community Agreement ("Medford SCA"). Without limitation, subject to the terms and conditions thereof, Wynn shall pay to Medford the Transportation Hub Payment under Section 1.2 and the annual Public Safety Payment under Section 2.2 thereof.</p>	Ongoing pursuant to schedule set forth in the Medford SCA.
3. MALDEN MITIGATION		
	<p>In accordance with the Secretary's applicable Certificates as more particularly specified and conditioned in Section V of the MassDOT/MBTA/DCR Section 61 Findings, Wynn shall:</p>	
Other Mitigation under Surrounding Community Agreement	<p>In addition to the multimodal improvements to MBTA's Malden Center Station and other MBTA property described below pursuant to MEPA, Wynn shall comply with the requirements of the Malden Surrounding Community Agreement ("Malden SCA"). Without limitation, subject to the terms and conditions thereof, Wynn shall pay to Malden the Transportation Hub Payment under Section 1.2, the Transitional Roads Payment under Section 2.2, and the Public Safety Payment under Section 3.2 thereof.</p>	Ongoing pursuant to schedule set forth in the Malden SCA

SUBJECT MATTER	MITIGATION OR IMPROVEMENT MEASURE	SCHEDULE
4. BOSTON MITIGATION		
	<p>In accordance with the Secretary’s applicable Certificates as more particularly specified and conditioned in Section V of the MassDOT/MBTA/DCR Section 61 Findings and in the Boston SCA, Wynn shall:</p>	
<p>Sullivan Square Mitigation Program</p> <p>Main Street/Maffa Way/Cambridge Street/Alford Street Intersection (Sullivan Square)</p> <p>Alford Street/Main Street/Sever Street/Cambridge Street (Sullivan Square)</p>	<ul style="list-style-type: none"> • Optimize signal timing for Maffa Way/Cambridge Street; interconnect and coordinate traffic signals, modify the Main Street approach.²⁰ • Install a traffic signal interconnection conduit system and associated equipment (pull boxes and wiring) from Sullivan Square to Austin Street. • Reconstruct busway between Cambridge Street and Maffa Way. • Reconstruct the southbound approach of Alford Street at Cambridge Street. • Install new traffic signals at Cambridge Street/Spice Street/MBTA Busway and Maffa Way/Busway.²¹ • Upgrade/replace traffic signal equipment/signs/pavement markings.²² • Optimize traffic signal timing, phasing and coordination. • Reconstruct Spice Street. • Reconstruct D Street.²³ 	<p>Prior to opening, except for Regional Working Group which shall be ongoing.</p>

²⁰ The SSFEIR Certificate and NPC Certificate indicate that Wynn will “widen the Main Street approach to provide two lanes.” The Boston SCA indicates that Wynn will “modify the Main Street approach.” These Second Amended Section 61 Findings anticipate that Wynn and Boston will finalize the modification of the Main Street approach during review by the Boston Transportation Department & Public Improvements Commission.

²¹ The Boston SCA further specifies that this mitigation measure also includes “new traffic signals at ... Maffa Way/Beacham Street Extension, and Main Street (west)/Beacham Street.”

²² The Boston SCA further specifies that this mitigation measure also includes “new signal controllers with adaptive signal control capabilities and new Pan-Tilt-Zoom (PTZ) cameras,” and requires that Wynn “[i]nstall necessary additional loop detection to ensure adaptive signal control capabilities.” For the Cambridge Street/I-93 northbound off-ramp, the Boston SCA specifically requires Wynn to “[u]pgrade traffic signals, including new controller with adaptive signal control capabilities and new PTZ camera.”

²³ According to the SSFEIR Certificate, “The railroad right-of-way (ROW) referred to in the SSFEIR as D Street is owned by Massport. Comments from Massport indicate that this ROW is not a public way and proposed improvements would require approval by Massport.” The MassDOT/MBTA/DCR Section 61 Findings state that, “Prior to the issuance of the Vehicular Access Permit for the project, the Proponent will submit to the MassDOT District 4, and District 6 Offices satisfactory documentation to demonstrate that all necessary ROW along D Street has been acquired from the Massachusetts Port Authority (Massport) for the implementation of the mitigation measures detailed in this finding....” In Massport’s Section 61 Findings, Massport has concluded that, subject to its

SUBJECT MATTER	MITIGATION OR IMPROVEMENT MEASURE	SCHEDULE
<p>Cambridge Street/Spice Street/Sullivan Square Drive Intersection</p> <p>Maffa Way/Beacham Street Extension Intersection</p> <p>Cambridge Street/I-93 northbound off-ramp</p> <p>And Related Intersections</p>	<ul style="list-style-type: none"> • Reconstruct sidewalks on west side of rotary between Sullivan Square station and Alford Street Bridge. • Reconstruct sidewalks and upgrade lighting and streetscape in rotary between Cambridge Street and Main Street (east). • Provide bicycle lanes on Cambridge Street. • Reconstruct MBTA lower busway and parking area at Sullivan Square station, including new traffic signal at Maffa Way/station entrance. • Construct BUS ONLY left-turn lane from Main Street into Sullivan Square Station. <p>Without limitation, these improvements shall be substantially as described in the MassDOT/MBTA/DCR Section 61 Findings and as set forth in the conceptual plan entitled “Sullivan Square Conceptual Improvement Plan (Figure 2-91)” included in the SFEIR and approved by MassDOT. This plan will be refined as the design progresses to the 100 percent level.</p> <p>As set forth in the MassDOT/MBTA/DCR Section 61 Findings, Sullivan Square, the Maffa Way/Beacham Street Extension Intersection, the Maffa Way/MBTA Bus Lane Intersection, the D Street/Rutherford Avenue Intersection, and the Spice Street/D Street Intersection are not under MassDOT jurisdiction. However, because traffic operations at these locations may affect traffic operations at the I-93 Northbound off-Ramp and/or the MBTA bus operations or Sullivan Square Station driveways, Wynn will prepare and submit conceptual and 100 percent plans to MassDOT and MBTA for review and approval (as specified in the MassDOT/MBTA/DCR Section 61 Findings), in consultation with the City of Boston, prior to the construction of these intersections or improvements.</p> <p>Moreover, enhanced transportation planning for long-term transportation</p>	

review and approval of detailed plans and specifications to support the request for a license for the construction of the transportation mitigation improvements on Massport's D Street property, "the Project's proposed transportation improvements on Massport's D Street Property are expected to result in no adverse environmental impacts."

SUBJECT MATTER	MITIGATION OR IMPROVEMENT MEASURE	SCHEDULE
	<p>improvements that can support sustainable redevelopment and economic growth in and around Sullivan Square will occur through the Regional Working Group required by the SSFEIR Certificate and discussed separately below.</p> <ul style="list-style-type: none"> • Upgrade/replace traffic signal equipment/signs/pavement markings.²⁴ • Optimize traffic signal timing, phasing, and coordination. <p>Without limitation, these improvements shall be substantially as described in the MassDOT/MBTA/DCR Section 61 Findings and as set forth in the conceptual plan entitled “Lower Broadway/ Alford Street (Route 99) Improvement Plan (Figure 2-12)” and refinements thereto as the design progresses to the 100 percent level.</p>	Prior to opening.
Rutherford Avenue (Route 99)/Route 1 Ramps	<p>Optimize traffic signal timing and phasing.</p> <p>As stated in the MassDOT/MBTA/DCR Section 61 Findings, the traffic signal plans are to be submitted to and approved by MassDOT. This plan will be refined as the design progresses to the 100 percent level.</p>	Prior to opening.
Other Intersection not under MassDOT jurisdiction	<p>As stated in the MassDOT/MBTA/DCR Section 61 Findings, the following intersection is not under MassDOT jurisdiction:</p> <ul style="list-style-type: none"> • Main Street/Beacham Street Intersection. <p>The determination of appropriate design and construction details of this intersection should be made between the proponent and the City of Boston.</p>	Prior to opening.
Other Intersections	<p>As stated in the MassDOT/MBTA/DCR Section 61 Findings, there are no feasible means to avoid or minimize the project’s traffic impacts at the following locations that Wynn could be required to implement at this time:</p> <ul style="list-style-type: none"> • Rutherford Avenue/ Austin Street Intersection. • I-93 ramps/Rutherford Avenue/Chelsea Street Intersection (City Square). 	Per results of Regional Working Group.

²⁴ The Boston SCA further specifies that this mitigation measures includes “PTZ camera.”

SUBJECT MATTER	MITIGATION OR IMPROVEMENT MEASURE	SCHEDULE
	Rather, enhanced transportation planning will occur through the Regional Working Group required by the SSFEIR Certificate and discussed separately below.	
Sullivan Square Landscaping	Improve landscaping in Sullivan Square in accordance with the 100% design plans as approved by MassDOT and the City of Boston.	Prior to opening.
Cooperation and Outreach	<ul style="list-style-type: none"> • Continue to work with MassDOT and Boston to refine geometric improvements and optimize traffic operations. • Continue discussions with affected property owners impacted by improvements regarding necessary grants of right of way. 	Prior to opening and ongoing.
	In accordance with the Secretary’s applicable Certificates²⁵ as more particularly specified and conditioned in the Boston SCA, Wynn shall comply with the following conditions:	
Long-term Financial Commitment to Transportation Mitigation for Sullivan Square	<p>Pursuant to and subject to §§ 7.3, 7.4 and 7.5 of the Boston SCA, Wynn shall provide payments of \$2.5 million per year for 10 years into the SSIP Fund toward the Sullivan Square Infrastructure Project, as defined therein.</p> <p>Prior to the Opening Date, pursuant to and subject to § 7.5 of the Boston SCA, Wynn shall negotiate with Boston in good faith an escrow agreement pertaining to the SSIP Fund. If Wynn and Boston do not reach an escrow agreement prior to the Opening Date, Wynn shall report to the Commission on or within 30 days after the Opening Date for action by the Commission as may be necessary with respect thereto.</p>	Annually for 10 years beginning on the first anniversary of the Opening Date.
Long-term Commitment Transportation Demand	Pursuant to and subject to § 7.1.B of the Boston SCA, Wynn shall monitor traffic and, if there are operational deficiencies at the monitored locations and either (1)	Commences prior to the initial occupancy of

²⁵ In the SSFEIR Certificate, the Secretary noted that under the Reopener Provision of the conditional Gaming License (Section 2 condition 32), “the City of Boston can reopen negotiations for Surrounding Community Status any time prior to opening of the gaming establishment and the MGC has the authority to amend and modify mitigation as appropriate.” Wynn and the City have done so. See Commission’s Vote Regarding Litigation Release and Surrounding Community Agreement dated February 4, 2016.

SUBJECT MATTER	MITIGATION OR IMPROVEMENT MEASURE	SCHEDULE
Management relative to Sullivan Square and Boston	<p>the measured traffic volumes for the Project exceed 110% of the projected values; or (2) the distribution of Project-related traffic from the Project Site entrance to the roadway network varies by more than 10% of the trip assignment assumed for the Project, then Wynn shall be responsible for the costs of implementing additional mitigation measures including but not limited to those measures listed in § 7.1.B of the Boston SCA.²⁶</p> <p>Pursuant to and subject to § 7.1.B of the Boston SCA, Wynn shall engage and pay for an independent organization approved by the Commission to complete the monitoring program.</p> <p>Consistent with the MassDOT/MBTA/DCR Section 61 Findings, at least annually on the anniversary of the Opening Date, or on such other schedule as Wynn and Boston may agree, Wynn shall report to the Commission and Boston the results of the monitoring program, any operational deficiencies at the monitored locations related to metrics (1) and (2) above, and the plan for, schedule for and status of implementing any additional mitigation measures with respect thereto.</p> <p>See also Transportation Monitoring Program, in § VIII.F.11 below.</p>	the Project and continues for a period of 10 years.
Community Outreach	Pursuant to and subject to § 8.8 of the Boston SCA, Wynn shall engage in community outreach to the Charlestown neighborhood and consult with the neighborhood regarding the progress of the Project including any transportation mitigation or changes in transportation mitigation plans.	Ongoing.
Community Impact Fee ²⁷	Pursuant to and subject to § 2.1 of the Boston SCA, following the Opening Date	Annually on or before

²⁶ The terms “projected values” and “measured traffic values” in the first condition should be measured based on Friday and Saturday peak hour trip volumes; and the phrase “more than 10% of the trip assignment assumed for the Project” in the second condition should be understood to mean more than 80.3% of Gaming Establishment traffic travels through Sullivan Square (which represents a variation of 10% from the projected traffic through Sullivan Square).

²⁷ Pursuant to and subject to §§ 2.1-2.3 of the Boston SCA, the Community Impact Fee may be used by the City for transportation mitigation or other purposes. Reference to this Community Impact Fee is included in this section because its potential uses include without limitation funding relative to transportation infrastructure impacts and the Sullivan Square Infrastructure Project (as defined in Section 7.4 of the Boston SCA) related to the Project.

SUBJECT MATTER	MITIGATION OR IMPROVEMENT MEASURE	SCHEDULE
	<p>and throughout the term of the License for as long as Wynn, or any parent, subsidiary or related entity, owns, controls, or operates a commercial gaming facility at the Project Site, Wynn shall make an annual payment of \$2 million to Boston (the "Community Impact Fee"), subject to escalation pursuant to § 10.16 of the Boston SCA, for the purposes set forth therein.</p> <p>Pursuant to and subject to § 2.2 of the Boston SCA, the Commission has released to Boston at Wynn's request Wynn's check in the amount of \$1 million. If that check does not clear because of the passage of time since it was cut, Wynn shall promptly provide a replacement check in that amount to Boston.</p> <p>Pursuant to and subject to § 2.3 of the Boston SCA, the Community Impact Fee shall remain in the exclusive custody and control of Boston, and shall be used and applied at Boston's sole discretion and determination toward any impact, infrastructure, improvement and/or mitigation measures related to the Project that Boston deems necessary and suitable.</p>	<p>the ninetieth (90th) day following the Opening Date.</p>
5. REVERE MITIGATION		
<p>Beach Street/Everett Street/Route 1A/Route 16/Route 60 Intersection (Bell Circle)</p>	<p>In accordance with the Secretary's applicable Certificates as more particularly specified and conditioned in Section V of the MassDOT/MBTA/DCR Section 61 Findings, Wynn shall:</p> <ul style="list-style-type: none"> • Upgrade/replace traffic signal equipment/signs/pavement markings. • Optimize traffic signal timing, phasing and coordination. <p>As and to the extent set forth in the MassDOT/MBTA/DCR Section 61 Findings, Wynn will implement the improvements at this intersection in accordance with conceptual and 100 percent plans to be submitted to and approved by MassDOT and DCR. This plan will be refined as the design progresses to the 100 percent level.</p>	<p>Prior to opening.</p>
6. CHELSEA MITIGATION		

SUBJECT MATTER	MITIGATION OR IMPROVEMENT MEASURE	SCHEDULE
	<p>In accordance with the Secretary’s applicable Certificates as more particularly specified and conditioned in Section V of the MassDOT/MBTA/DCR Section 61 Findings, Wynn shall:</p>	
Route 16 (Revere Beach Parkway)/Washington Avenue	<ul style="list-style-type: none"> • Replace traffic signal equipment. • Furnish new signs/pavement markings. • Optimize traffic signal timing, phasing and coordination. <p>As set forth in the MassDOT/MBTA/DCR Section 61 Findings, Wynn will implement the improvements at this intersection in accordance with conceptual and 100 percent plans to be submitted to and approved by MassDOT and DCR. This plan will be refined as the design progresses to the 100 percent level.</p>	Prior to opening.
Route 16 (Revere Beach Parkway)/Everett Avenue ²⁸	Optimize traffic signal timing, phasing and coordination.	Prior to opening.
Route 16 (Revere Beach Parkway)/Webster Avenue /Garfield Avenue	<p>Optimize traffic signal timing, phasing and coordination.</p> <p>As set forth in the MassDOT/MBTA/DCR Section 61 Findings, Wynn will implement the improvements at this intersection as applicable in accordance with conceptual and 100 percent plans to be submitted to and approved by MassDOT and DCR. This plan will be refined as the design progresses to the 100 percent level.</p>	Prior to opening.
Intersections not under	As stated in the MassDOT/MBTA/DCR Section 61 Findings, the following	Ongoing.

²⁸ The SSFEIR Certificate refers to this intersection in Chelsea and indicates that Wynn has committed to optimize traffic signal timing, phasing and coordination at this intersection. The MassDOT/MBTA/DCR Section 61 Findings (at pages 5-6) refer to this intersection in Chelsea and that Wynn will apply to MassDOT for a Vehicular Access Permit to implement improvements for modifications at this location; however, those Findings (at pages 4 and 16) list this intersection in Everett and indicate that “there are no feasible means to avoid or minimize the project’s traffic impacts at this location that the Proponent could be required to implement.” In public comments dated March 22, 2016, on the Commission’s draft Section 61 Findings, the Chelsea City Manager asked “that Wynn be required, as part of its traffic mitigation, to improve the Route 16/Everett Avenue intersection by means of replacing traffic signal equipment, installing new signage and pavement markings and optimizing traffic signal timing phasing and coordination.” These Second Amended Section 61 Findings require that Wynn optimize traffic signal timing, phasing and coordination at this intersection as and to the extent authorized or required by MassDOT.

SUBJECT MATTER	MITIGATION OR IMPROVEMENT MEASURE	SCHEDULE
MassDOT jurisdiction	<p>intersection is not under MassDOT jurisdiction:</p> <ul style="list-style-type: none"> ▪ Williams Street/Chestnut Street Intersection. <p>If necessary, the determination of appropriate mitigation measures at this intersection should be made between the Proponent and the City of Chelsea.</p> <p>As an adjunct to the ongoing monitoring required under these Second Amended Section 61 Findings, the Commission requests that Wynn investigate whether this location becomes the subject of significant additional cut-through traffic between Logan Airport and the gaming establishment. If it does, the Commission reserves the right to impose additional mitigation requirements on Wynn to address such significant additional cut-through traffic, including, without limitation, replacing traffic signal equipment; installing new signage and pavement markings; and/or optimizing traffic signal timing, phasing and coordination. The implementation of any such measures at this intersection should be coordinated between Wynn and the City of Chelsea.</p>	
Other Intersections	<p>As stated in the MassDOT/MBTA/DCR Section 61 Findings, there are no feasible means to avoid or minimize the project's traffic impacts at this location that Wynn could be required to implement:</p> <ul style="list-style-type: none"> • Route 16 (Revere Beach Parkway)/Union Street Intersection. 	N/A
Other Mitigation under Surrounding Community Agreement Arbitration Award	<p>In addition to the MEPA mitigation measures described above, Wynn shall comply with the conditions in Chelsea Surrounding Community Agreement Arbitration Award in the form of Wynn's BAFO to Chelsea attached to the Report and Final Arbitration Award dated June 9, 2014 (the "BAFO"), including, without limitation the requirements of Section 5 regarding Transportation Impacts. Without limitation, subject to the terms and conditions thereof, Wynn shall make to Chelsea the Transitional Roads Payment pursuant to Section 5.2 thereof and the additional annual mitigation payment under Section 5.3 thereof.</p>	Ongoing pursuant to schedule set forth in the BAFO.
7. SOMERVILLE MITIGATION		

SUBJECT MATTER	MITIGATION OR IMPROVEMENT MEASURE	SCHEDULE
	<p>In accordance with the Secretary’s applicable Certificates and (as applicable) as more particularly specified and conditioned in the Somerville Surrounding Community Agreement (“Somerville SCA”), Wynn shall comply without limitation with the following conditions:²⁹</p>	
Orange Line Subsidy	<p>Wynn will provide an annual Orange Line operating subsidy to the MBTA to support additional passenger capacity on the Orange Line, discussed below, which will directly benefit (without limitation) the residents, commuters and visitors to and from Assembly Station in Somerville.³⁰</p>	See below.
Roadways	<p>In accordance with the SSFEIR Certificate as more particularly specified and conditioned in Section V of the MassDOT/MBTA/DCR Section 61 Findings, there are no feasible means to avoid or minimize the Project’s traffic impacts that the Project Proponent (Wynn) could be required to implement at the following locations:</p> <ul style="list-style-type: none"> • I-93 Ramps/Route 38 (Mystic Avenue) Intersection. • I-93 NB Off-ramp/Route 28 (McGrath Highway) Intersection. • Route 38 (Mystic Avenue)/ Route 28 (McGrath Highway) Intersection. • Broadway/ Route 28 (McGrath Highway) Intersection.³¹ 	N/A.
Sullivan Square ³²	<p>Wynn will fund and undertake improvements to Sullivan Square in accordance with</p>	Prior to opening.

²⁹ In Section 1.2 of the Somerville SCA, “The Parties acknowledge and agree that the proximity of the Project to the Assembly Row and Assembly Square developments may result in additional pedestrian and vehicular traffic in Somerville. The projects identified in the provisions in this Agreement regarding infrastructure improvements are intended to mitigate such impacts.”

³⁰ The Orange Line Subsidy also mitigates impacts relating to other Orange Line stations, such as Sullivan Square, in addition to Assembly Square.

³¹ In § 1.2 of the Somerville SCA, Wynn agreed to complete any necessary improvements as determined in accordance with the MEPA process with respect to these intersections. However, as stated in Wynn’s Response in the SSFEIR (at page 5-46) to Somerville’s Comment 4 on the SFEIR, “[b]ased on the trip generation of the SFEIR, which was developed in consultation with and approved by MassDOT as outlined in their comment letter on the SFEIR, the impacts of the Project at Somerville intersections will be minimal. As determined in the FEIR, mitigation was not required at those intersections.”

³² Sullivan Square is located in Boston, not in Somerville. However, the Somerville SCA discusses mitigation with respect to Sullivan Square. As a result, this table briefly summarizes such mitigation, without in any way suggesting that Somerville has any jurisdiction over or standing with respect to such mitigation.

SUBJECT MATTER	MITIGATION OR IMPROVEMENT MEASURE	SCHEDULE
	<p>the SSFEIR Certificate and these Second Amended Section 61 Findings.</p> <p>Wynn will comply § 5.2 of the Somerville SCA and these Second Amended Section 61 Findings relative to developing a comprehensive traffic solution for Sullivan Square. See provisions regarding the Regional Working Group required by the SSFEIR Certificate and discussed below in these Second Amended Section 61 Findings.</p> <p>As an adjunct to the ongoing monitoring required under § 7.1.B of the Boston SCA, the independent organization approved by the Commission should monitor traffic at the following intersection and, if there are material operational deficiencies at the monitored location caused by the two new signalized intersections associated with the Project's mitigation measures, should recommend feasible mitigation measures, if any, to mitigate those deficiencies: Intersection of Broadway / Mt. Vernon Street / Alfred A. Lombardi Way.</p>	<p>Ongoing.</p> <p>Ongoing.</p>
Wellington Circle ³³	<p>Wynn will fund and undertake improvements to Wellington Circle in accordance with the SSFEIR Certificate and these Second Amended Section 61 Findings.</p> <p>Wynn will comply § 5.3 of the Somerville SCA and these Second Amended Section 61 Findings relative to funding a study concerning permanent improvements to Wellington Circle, funding up to 25% or \$1.5 million of the concept design following the study, and cooperating with efforts by the relevant community or communities to seek future funding from the Transportation Infrastructure and Development Fund relative to Wellington Circle.</p>	<p>Prior to opening.</p> <p>Ongoing.</p>
Public Safety Mitigation Payment	<p>Pursuant to § 5.4 of the Somerville SCA, and contingent upon the receipt of a non-appealable License, Wynn will pay to Somerville an annual payment of \$250,000 (plus escalation per Exhibit B of the Somerville SCA) "to enable Somerville to fund staffing and other public safety initiatives related to increased pedestrian and</p>	<p>Annually per the requirements of the Somerville SCA.</p>

³³ Wellington Circle is located in Medford, not in Somerville. However, the Somerville SCA discusses mitigation with respect to Wellington Circle. As a result, this table briefly summarizes such mitigation, without in any way suggesting that Somerville has any jurisdiction over or standing with respect to such mitigation.

SUBJECT MATTER	MITIGATION OR IMPROVEMENT MEASURE	SCHEDULE
	<p>vehicular traffic in Somerville and additional costs, if any, incurred in mutual aid responses to the Project.”</p> <p>Pursuant to § 5.4 of the Somerville SCA and with the specific conditions of these Second Amended Section 61 Findings, Wynn will take steps to facilitate pedestrian and bicycle access along the Mystic River and Broadway.</p> <p>Pursuant to § 5.4 of the Somerville SCA and with the specific conditions of these Second Amended Section 61 Findings, Wynn will coordinate signage on the Project to create continuity for pedestrian and bicycle use of such pathways and will participate in regional efforts to enhance and develop such path ways.</p>	<p>Ongoing.</p> <p>Ongoing.</p>
<p>Water Transportation and Related Measures</p>	<p>Pursuant to § 5.5 of the Somerville SCA and the specific conditions of these Second Amended Section 61 Findings, and contingent upon the receipt of a non-appealable License, Wynn will pay Somerville an annual payment of \$150,000 (plus escalation per Exhibit B of the Somerville SCA) “to make certain improvements to facilitate water transportation and to fund staffing and other public safety initiatives related to increased use of water transportation.”</p> <p>Pursuant to § 5.5 of the Somerville SCA, Wynn will participate in regional discussions regarding a walk/bike connection across the Mystic River to be built on or in the direct vicinity of the dam structure and will consider, in good faith, contributing, with other neighboring communities and businesses, to the design and construction of a connection.</p>	<p>Annually per the requirements of the Somerville SCA.</p> <p>Ongoing.</p>
<p>Limitation on Satellite Pickup/Drop-off Sites</p>	<p>Pursuant to § 5.6 of the Somerville SCA, except with Somerville’s express permission, Wynn will not use any location in Somerville as a satellite pickup/drop-off site to and from the Project for its employees generally; provided, however, Wynn, in coordination with Somerville, may provide transportation for employees who are residents of Somerville. In addition, Wynn will not have stops for so-called “line-runs,” or regularly scheduled bus or shuttle routes, in Somerville, provided that, subject to meeting legal requirements, Wynn will be able to provide transportation to patrons which whom it has established a relationship and will be able to provide transportation home to any patron residing in Somerville.</p>	<p>Ongoing.</p>

SUBJECT MATTER	MITIGATION OR IMPROVEMENT MEASURE	SCHEDULE
Remote Parking	Pursuant to § 5.7 of the Somerville SCA, except with Somerville's express permission, neither Wynn nor any of its affiliates, successors or assigns shall construct a satellite parking or other facility associated with the Project within Somerville.	Ongoing.
TIPS Program	Pursuant to § 5.8 of the Somerville SCA, Wynn will incorporate a training program (e.g., TIPS (Training Intervention Procedures and Services Program)) for alcohol servers and other employees.	Ongoing.

SUBJECT MATTER	MITIGATION OR IMPROVEMENT MEASURE	SCHEDULE
8. CAMBRIDGE MITIGATION		
Intersections	<p>In accordance with the SSFEIR Certificate as more particularly specified and conditioned in Section V of the MassDOT/MBTA/DCR Section 61 Findings, there are no feasible means to avoid or minimize the project's traffic impacts at this location that the Project Proponent (Wynn) could be required to implement:</p> <ul style="list-style-type: none"> • Route 28 (Monsignor O'Brien Highway)/Edwin H. Land Boulevard/Charlestown Avenue Intersection. <p>Notwithstanding this finding, Wynn shall comply with the conditions in the Cambridge Surrounding Community Agreement ("Cambridge SCA"), including, without limitation the requirements of § 4 regarding Transportation Impacts. Specifically, to address any adverse impacts with respect to this intersection and contingent upon the acceptance by Wynn of a non-appealable License, Wynn has agreed to pay to Cambridge a onetime payment of \$200,000 to enable Cambridge to study and/or make certain improvements to the identified intersection to address any adverse impacts resulting from the development or operation of the Project.</p>	One time, due (per the requirements of the Cambridge SCA) on or before the ninetieth (90th) day following the acceptance by Wynn of a non-appealable License for the Project.
9. TRANSPORTATION DEMAND MANAGEMENT STRATEGIES		
Transportation Demand Management Program	<p>In accordance with the Secretary's applicable Certificates as more particularly specified and conditioned in Section VIII of the MassDOT/MBTA/DCR Section 61 Findings, Wynn shall:</p> <p>In addition to the Long-term Commitment for Transportation Demand Management relative to Sullivan Square and Boston referenced above, Wynn shall implement the following Transportation Demand Management Program:</p> <ul style="list-style-type: none"> • Pay Membership Fee with a Transportation Management Association. • Employ a designated Transportation Coordinator for the Project to coordinate efforts, monitor success rates, and manage strategic implementation of traffic reduction programs. • Provide on-site sale of MBTA passes for employees and for guests of the Project, including on-site Full Service MBTA Fare Vending Machine when such 	At opening and ongoing.

	<p>machines are available.</p> <ul style="list-style-type: none"> • Schedule employee shift beginnings and endings outside specified peak traffic periods. • Implement carpool/vanpool matching programs. • Disseminate promotional materials, including newsletters about TDM program in print at the Project's on-site Transportation Resource Center, and online. • Provide patron Orange Line Shuttle Service to Wellington and Malden Center stations, 2 locations, 20 Minute Headways, 20 Hrs./day, 30-60 passenger vehicles. • Provide Employee Shuttle Buses 2 Locations, 20 Minute Headways, 24 Hrs./day. • Improve and provide access to MBTA bus stops along Lower Broadway. • Implement improvements to Wellington and Malden Center Stations to accommodate Wynn patron shuttle service at curbside. • Premium Park & Ride Shuttle buses 3 Locations, 90 Minute Headways, 12 Hrs./day. • Provide Neighborhood Shuttle Continuous Loop, 20 Minute Headways, 24 Hrs./day. • Provide for potential future expansion of shuttle service to include service to Logan International Airport, North Station, and South Station and other major transportation hubs through coordination with Everett and the MBTA. • Provide water shuttle service to the Project Site, including associated docks and facilities and the use of customized ferry vessels to support passenger transport between the Project Site and key Boston Harbor sites. • Participate in the MBTA Corporate Pass Program to the extent practical and as allowable pursuant to commercial tenant lease requirements. • Furnish electric vehicle charging stations within the proposed parking garage. • Furnish car sharing services in the garage at the Project Site. • Provide preferential parking for car/vanpools and alternatively fueled vehicles. • Provide a "Guaranteed-Ride-Home" in case of emergency to employees that commute to the Project by means other than private automobile.
10. MBTA FACILITY IMPROVEMENTS & LAND TRANSFER MITIGATION	
	In accordance with the Secretary's applicable Certificates as more particularly

	<p>specified and conditioned in Section VII of the MassDOT/MBTA/DCR Section 61 Findings, Wynn shall comply with the following conditions:</p>	
<p>Wellington Station Improvements</p>	<p>Wynn shall make multimodal improvements to MBTA’s Wellington Station including dedicated curb space for the patron shuttles, reconfiguration of the existing parking lot to support the construction of a fourth curb cut north of the existing/taxi/auto pick-up/drop-off area, and reconfiguration of the existing MBTA parking lot to create additional parking spaces.</p> <p>These improvements shall be substantially as described in the MassDOT/MBTA/DCR Section 61 Findings and as set forth in the conceptual plan entitled “Wellington Station Curbside Reconfiguration (Figure 2-13)” included in the SSFEIR, with such refinements thereto as are approved by the MBTA through the 100 percent design submission.</p>	<p>Prior to opening.</p>
<p>Malden Center Station Improvements</p>	<p>Wynn shall make multimodal improvements to MBTA’s Malden Center Station to accommodate shuttle bus service at curbside, associated bus layover space, and construction of a passenger shelter on MBTA property near the corner of the busway and Centre Street.</p> <p>These improvements shall be substantially as described in the MassDOT/MBTA/DCR Section 61 Findings and as set forth in the conceptual plan entitled “Malden Center Station Curbside Reconfiguration (Figure 2-14)” included in the SSFEIR, with such refinements thereto as are approved by the MBTA through the 100 percent design submission.</p>	<p>Prior to opening.</p>
<p>Sullivan Square Bus Station Improvements</p>	<p>Wynn shall make multimodal improvements to and adjacent to MBTA’s Sullivan Square Station. These improvements include creation of a new circulation pattern including the alteration and reconstruction of the existing busways and the reconfiguration of the parking field in front of the bus station; provision of a new signalized busway exit to accommodate right-turn movements, opposite the I-93 northbound off-ramp on Cambridge Street; construction of a new signalized entrance to allow buses to circulate into the station from Beacham Street Extension and Main Street; and provision of new bus shelters at the bus berths on the lower busway.</p> <p>These improvements shall be substantially as described in the</p>	<p>Prior to opening.</p>

	<p>MassDOT/MBTA/DCR Section 61 Findings and as set forth in the conceptual plan entitled “Sullivan Square Bus Station and Parking Reconfiguration (Figure 2-15)” included in the SSFEIR, with such refinements thereto as are approved by the MBTA through the 100 percent design submission.</p>	<p>Prior to opening.</p>
<p>Route 99 (Broadway) Transit Corridor Upgrades</p>	<p>Wynn shall make multimodal circulation and accessibility upgrades to the Route 99 Corridor, substantially as described in the MassDOT/MBTA/DCR Section 61 Findings and as set forth in the conceptual plan entitled “Lower Broadway/ Alford Street (Route 99) Improvement Plan (Figure 2-12A, B, and C)” included the SFEIR, with such refinements thereto as are approved by the MBTA in consultation with the City of Everett through the 100 percent design submission.</p> <p>In connection with these upgrades, Wynn shall provide all necessary equipment for the traffic signals and the MBTA buses that travel this route to support a bus priority system along the Route 99 corridor.</p> <p>In addition, as set forth in the MassDOT/MBTA/DCR Section 61 Findings, the Proponent (Wynn) has conducted a Road Safety Audit (“RSA”) along this corridor due to its inclusion in a Highway Safety Improvement Plan (HSIP) cluster. The RSA has identified a list of recommended safety improvements to address both existing and future conditions. These recommendations were summarized in the RSA Report dated March 10, 2016 submitted to MassDOT by AECOM on behalf of the Proponent. To improve safety conditions and mitigate the Project’s impacts along this corridor, the Proponent shall incorporate in the conceptual design plans for the corridor all the potential safety enhancements with “low” and/or “medium” costs and with “short-term” and/or “mid-term” timeframes as listed in the RSA Report in Table 3: Potential Safety Enhancement Summary- Lower Broadway.</p>	<p>Prior to opening.</p>
<p>MBTA Everett Shops Improvements</p>	<p>Subject to the mitigation regarding the conveyance stated below, and subject to review and approval by the MBTA, Wynn shall make improvements to access, construct a new gatehouse, grant an access easement to MBTA for 365 days a year/24 hours a day access, and construct new loading docks at MBTA’s Everett Shops.</p>	<p>Escrow to remain in place until issuance of</p>
<p>Mitigation regarding Conveyance of certain</p>	<p>In accordance with the SSFEIR Certificate, and as stated in the MassDOT/MBTA/DCR Section 61 Findings, Wynn has worked with the MBTA to</p>	

<p>of MBTA Everett Shops Land</p>	<p>place into escrow a quitclaim deed to Wynn and payment for 1.758 acres of the MBTA Shops property as shown on an ANR Plan prepared by Feldman Land Surveyors dated January 7, 2014; and, upon issuance of the MassDOT/MBTA/DCR Section 61 Findings, the escrow agent will return the original Quitclaim Deed and Termination of Easement agreement to Wynn, the money to the MBTA; and any modifications will be subsequently recorded.</p>	<p>the final MassDOT/MBTA/DCR Section 61 Findings.</p>
<p>Orange Line Subsidy</p>	<p>Wynn shall provide to the MBTA an annual Orange Line operating subsidy to support additional passenger capacity on the Orange Line. The annual operating subsidy shall be calculated and paid in accordance with the MassDOT/MBTA/DCR Section 61 Findings regarding the MBTA Orange Line. The total subsidy is currently estimated at \$7.4 million, including escalation, over the 15 year term of the License.</p>	<p>Annually beginning after opening.</p>
<p>SUBJECT MATTER</p>	<p>MITIGATION OR IMPROVEMENT MEASURE</p>	
<p>11. OTHER TRANSPORTATION MEASURES</p>		
<p>Transportation Monitoring Program</p>	<p>In accordance with the Secretary's applicable Certificates as more particularly specified and conditioned in the MassDOT/MBTA/DCR Section 61 Findings, Wynn shall comply with the following conditions:</p> <p>Wynn shall engage and pay for an independent organization approved by MassDOT to undertake a comprehensive transportation monitoring program. Monitoring shall commence prior to the initial occupancy of either hotel or gaming components of the Project, whichever occurs first, to establish a baseline, and will continue for a period of 10 years. At least annually, Wynn shall provide a report on the Transportation Monitoring Program to the Commission (with a copy to MassDOT), which will include without limitation a report on the implementation of the TDM program described herein. Wynn shall provide more frequent reports as may be required from time to time by the Commission or MassDOT.</p> <p>The scope, locations, methodology, timing and frequency of the transportation monitoring program shall comply with the requirements of the</p>	<p>Prior to the initial occupancy (to establish a baseline), and continuing for a period of 10 years.</p>

MassDOT/MBTA/DCR Section 61 Findings, and may be adjusted by MassDOT as necessary to ensure that the geographic extent of the data collected is sufficient to measure the impact of the Project and to reflect changes in the transportation system that may occur after the completion of the Project. The transportation monitoring program shall include Roadway Data Collection, Capacity Analyses, Parking Data Collection, Public Transportation Data Collection, and a Travel Mode Analysis, all as specified by the MassDOT/MBTA/DCR Section 61 Findings and adjusted from time to time by MassDOT as necessary.

Without limitation, this monitoring shall be done at the locations, for the time periods and in accordance with the requirements and methodology specified by MassDOT and the MassDOT/MBTA/DCR Section 61 Findings, and will include the following additional intersections:

- Broadway / Mt. Vernon Street / Alfred A. Lombardi Way (Somerville)
- Williams Street / Chestnut Street (Chelsea)

At these additional intersections, Wynn shall conduct peak period manual turning movement counts, vehicle classification, and pedestrian/bicycle counts on a Thursday and Friday between 4:00 PM-6:00 PM and on a Saturday between 2:00 PM-5:00 PM. The Commission may require additional data to be collected if the Commission determines that the submitted data are insufficient.

Wynn shall comply with the requirements for both the transportation monitoring program required by the MassDOT/MBTA/DCR Section 61 Findings and with the transportation monitoring program required by § 7.1.B of the Boston SCA as incorporated above in the Commission's Second Amended Section 61 Findings and in the License; provided, however, that Wynn shall work cooperatively with MassDOT, DCR, the City of Boston and the Commission to avoid unnecessary duplication of effort or any conflicting requirements.

The Commission will review the monitoring results to determine whether the mitigation triggers listed in § 7.1.B of the Boston SCA have been exceeded and whether additional data should be collected; and the Commission reserves the right to determine the appropriate mitigation in the event there are any such operational deficiencies or imminent traffic problems associated with traffic to and from the

	<p>Gaming Establishment, including but not limited to those additional mitigation measures listed in § 7.1.B of the Boston SCA. If the additional mitigation measures involve changes to roadways, intersections, or traffic signals under the jurisdiction of the City of Boston, Wynn shall cooperate with Boston concerning the permitting and implementation of the additional mitigation measures, pursuant to the Boston SCA.</p> <p>See also Long-term Commitment Transportation Demand Management relative to Sullivan Square and Boston, in § VIII.F.4 above.</p>	
<p>Mystic River Pedestrian-Bicycle Bridge Feasibility Study</p>	<p>Wynn shall either (a) provide \$250,000 to DCR for planning and engineering services for a possible pedestrian bridge crossing of the Mystic River linking Somerville and Everett, or (b) retain and pay for a qualified design, planning and engineering firm to conduct and complete the Mystic River Pedestrian-Bicycle Bridge Feasibility Study with a scope of work reasonably acceptable to DCR.</p>	<p>Prior to opening.</p>
<p>Water Transportation Vessels</p>	<p>Wynn shall:</p> <ul style="list-style-type: none"> • Provide dock facilities and customized ferry vessels to support passenger water transportation service between the Project Site and key Boston Harbor landing sites; • Provide a touch and go dock for transient boat access to the Project Site; • Consistent with Section 4.5.1.1 of the FEIR, provide water transportation level of service that provides sufficient seating and headways to accommodate the expected passenger levels identified in the FEIR (2,908 passengers on Friday, 3,634 passengers on Saturday and 2,713 passengers average day, except when impracticable due to weather conditions). Current plans call for three custom-built 35 passenger vessels to be available at the project opening with a fourth 35 passenger vessel to be available within 90 days of the project opening. These requirements are subject to adjustment based on customer demand to support Wynn's overall mode share; • Ensure that customized passenger vessels supporting water transportation service to and from the Gaming Establishment are designed and built to be able to pass safely under the Alford Street (Rt-99) Draw Bridge across the Mystic River, mile 1.4, between Boston and Everett, at high tide in the closed position; • Implement reasonable restrictions to prohibit or discourage patrons arriving to or 	<p>At opening.</p> <p>At opening and Ongoing.</p>

	departing from the Gaming Establishment in private vessels that would cause the Alford Street (Rt-99) Draw Bridge to open during or affecting peak vehicular transportation hours on Alford Street and in Sullivan Square.	
Annual Monitoring and Reporting Program	Without limiting the transportation monitoring programs required by the MassDOT/MBTA/DCR Section 61 Findings and by § 7.1.B of the Boston SCA Wynn shall also conduct a post-development traffic monitoring and employee survey program (including without limitation vehicular, public transit, and ferry service) in order to evaluate the adequacy of transportation mitigation measures including the TDM program for \$30,000 annually.	At opening and Ongoing.
12. WASTEWATER, WATER USE, AND WETLANDS AND WATERWAYS MEASURES		
	In accordance with the Secretary's applicable Certificates and MWRA's, DEP's and MassDOT/MBTA/DCR's respective Section 61 Findings, Wynn shall comply with all of the following mitigation measures and conditions:	
Wastewater	<ul style="list-style-type: none"> • Implement or fund sewer system improvements that remove Infiltration and Inflow ("I/I") equivalent to 4 gallons removed for every gallon of new wastewater generated (currently estimated at 314,649 GPD); • Assist in modifications to regional wastewater infrastructure modifications that will reduce the incidence of combined sewer overflows ("CSOs") into the Mystic River associated with the Cambridge Sewer Branch, including the installation of grease traps and gas/oil separators. 	Prior to opening as to I/I and ongoing as to CSOs.
Water use	<ul style="list-style-type: none"> • Follow Leadership in Energy and Environmental Design ("LEED") standards of Gold or higher, and incorporate water conservation measures that are intended to reduce the potable water demand on the MWRA water supply system; • Utilize water-efficient plumbing fixtures, low-flow lavatory faucets and shower heads; • Through rainwater harvesting and the installation of alternatives to natural turf landscaping, the Project will further reduce water demand and use; • Include extensive indoor and outdoor landscaping; • Utilize timers, soil moisture indicators and rainfall sensors to reduce potable water use on landscaping. 	During construction.
Wetlands, waterways, and	<ul style="list-style-type: none"> • Remediate, revegetate and enhance 550 linear feet of existing shoreline with 	During construction

<p>water quality certification</p>	<p>enhanced “living shoreline;”</p> <ul style="list-style-type: none"> Remove invasive vegetation and planting of native herbaceous and shrub vegetation along part of existing Coastal Bank and Riverfront Area;³⁴ Consult with MassDEP to develop specifications for the living shoreline and bank restoration; Transform 10,900 +/- SF of disturbed Coastal Beach/Tidal Flats, Coastal Bank, and Riverfront Area to Salt Marsh; Clean up debris within the Land Under the Ocean, Coastal Beach and Coastal Bank resource areas; Dredge to remove contaminated sediments from the harbor bottom to provide ample draft for water transportation, recreational vessels and a proposed floating dock; Replace existing bulkhead and construction of new bulkheads within areas of existing degraded Coastal Beach and Coastal Bank areas; Ensure that 100% of the ground floor of the Gaming Establishment will be a facility for public accommodation; Construct high quality landscaped open space along the edge of the Mystic River and the existing degraded Coastal Bank, Buffer Zone and Riverfront Area, including a harborwalk with high-quality amenities along the edge of the Mystic opening this site to public access and connecting it to Lower Broadway to the east; Create a Gateway Park Connector multi-use path with benches, lighting, signage, plantings, and other amenities, linking the harborwalk on the Project Site under the MBTA rail line through to the DCR’s Gateway Park to the west along the Mystic River, including bicycle and pedestrian connections;³⁵ Provide a pile-supported pier/walkway, a gangway, and Americans with Disabilities Act-compliant floating water transportation dock designed to 	<p>and prior to opening.</p>
------------------------------------	---	------------------------------

³⁴ The terms “Land Under the Ocean,” “Coastal Beach and Tidal Flats,” “Coastal Bank,” “Land Containing Shellfish,” Salt Marsh,” “Riverfront Area,” and “Land Subject to Coastal Storm Flowage” have the meaning given to them in the Massachusetts Wetlands Protection Act and its regulations, 310 CMR 10.21-10.37. See FEIR § 3.1.1.

³⁵ According to the MassDOT/MBTA/DCR Section 61 Findings, “DCR understands the value of the improvements to DCR’s Gateway Park will total \$2,000,000 and will be provided prior to site occupancy.”

	<p>support future water transportation service to Downtown Boston and other regional water transportation destinations, as well as transient vessels;</p> <ul style="list-style-type: none"> • Develop an attractive public destination for water dependent uses along the waterfront, including significant open space, outdoor seating, viewing areas, a gazebo and public docks; • Further consider opportunities to improve shellfish resources at appropriate locations in consultation with the Division of Marine Fisheries (“DMF”).³⁶ 	
Public Access	<ul style="list-style-type: none"> • As stated above regarding Other Transportation Measures, either (a) provide \$250,000 to DCR for planning and engineering services for a possible pedestrian bridge crossing of the Mystic River linking Somerville and Everett, or (b) retain and pay for a qualified design, planning and engineering firm to conduct and complete the Mystic River Pedestrian-Bicycle Bridge Feasibility Study with a scope of work reasonably acceptable to DCR. • Participate in a process to study the feasibility of extending the Northern Strand Community Trail to Everett. • Provide over 190,000 sq. ft. of facilities for public accommodation to provide destinations and activation of the Project Site. • Provide 2 acres more open space than required by G.L. c. 91. 	<p>Prior to opening.</p> <p>During construction/prior to opening, and ongoing.</p>
Re-purpose Adjacent Waterfront Real Property	<p>Pursuant to and subject to § 8.6 of the Boston SCA, Wynn shall pay to Boston \$250,000 for the purpose of covering Boston’s legal, engineering and other professional services to be incurred by Boston under said § 8.6 in an effort to re-purpose the waterfront real property adjacent to and within the vicinity of the Project Site [i.e. the Boston Water and Sewer Commission’s Material Handling Facility] and to return such waterfront real property to public access.</p>	<p>One-time payment prior to opening.</p>
Stormwater	<ul style="list-style-type: none"> • Implement a stormwater management system that will improve the quality of runoff on-site. These measures include: <ul style="list-style-type: none"> ○ On-site mitigation measures: <ul style="list-style-type: none"> ▪ Two new outfalls will discharge treated stormwater into the Mystic River; 	<p>Prior to opening.</p>

³⁶ The Commission notes that this measure is encouraged, but not required by SPEIR Certificate.

	<ul style="list-style-type: none"> ▪ Green Roof installation; ▪ Best Management Practices (“BMPs”) such as pavement sweeping, deep sump catch basins, tree box filters, filtering bioretention areas, four (4) proprietary stormwater separators, and stormwater media filters. These BMPs will be designed to remove at least 80% of the average annual load of Total Suspended Solids; and ▪ Catch basins, silt fences, hay bales and crushed stone will be used during construction to prevent sediment removal from entering runoff; ○ Offsite mitigation measure associated with transportation improvements will include bioretention or subsurface infiltration chambers, deep sump catch basins or proprietary stormwater separators. • Prepare a Stormwater Pollution Prevention Plan (SWPPP) in support of a Notice of Intent (NOI) filing with the EPA for coverage under NPDES Construction General Permit (CGP); • Incorporate new stormwater management systems in compliance with applicable requirements of State and City of Everett Stormwater Management Standards. The SWPPP and long-term stormwater improvements will provide stormwater mitigation measures to be implemented both during and after construction to improve water quality; and • Portions of the Project Site which currently drain into the MBTA 36-inch storm drain under existing conditions will be re-directed to the Project’s stormwater management system. 	
13. GREENHOUSE GAS AND AIR QUALITY IMPACTS		
MassDEP Air Plan Approval or Environmental Results	<ul style="list-style-type: none"> • Design the Project buildings to be certifiable under a LEED rating of Gold or higher; 	During construction and post occupancy.

<p>Program/Greenhouse Gas Reductions</p>	<ul style="list-style-type: none"> • Operate utilizing a series of best operating practices consistent with LEED principles to maintain the energy use, water efficiency, atmospheric, materials and resources use, and indoor air quality goals; • Comply with the Energy Stretch Code adopted by the City of Everett pursuant to the Green Communities Act of 2008; • Provide a self-certification to the MEPA Office regarding compliance with GHG reductions upon completion of construction;³⁷ • Provide a lighting plan, approved by the City of Everett, for the Commission’s review, and demonstrate to the Commission that the plan is reasonably consistent with the proposed LEED certification; • Commit to a comprehensive list of Energy Efficiency Measures (EEM) that are predicted to reduce CO2 emissions 27.4%.³⁸ These proposed EEM include: <ul style="list-style-type: none"> ○ Installing street trees and lighting; ○ Cool roofs; ○ Central chiller plant with better efficiency than Code; ○ Demand Control Ventilation (DCV) for the casino, public entertainment, and retail areas; ○ Energy Recovery Ventilation (ERV) to reduce chiller energy use; ○ Building envelopes with roof and window insulation better than Code; ○ Lower light power density 20% better than Code; ○ Low-energy Electronic Gaming Machines (where feasible)³⁹; ○ LED lighting for all parking structures; ○ High efficiency elevators with regenerative VVVF drives and LED lights; ○ Demand Control Exhaust Ventilation (DCEV) with variable frequency drive (VFD) fans for enclosed parking structures;
--	--

³⁷ The MassDOT/MBTA/DCR Section 61 Findings, incorporated herein by reference, provide that the Self Certification shall be (a) signed by an appropriate professional (e.g. engineer, architect, general contractor); (b) attest that Wynn has incorporated into the project all the GHG mitigation measures, or their equivalent, that were committed to in the EIRs to achieve the proposed stationary GHG emission reduction; (c) supported by as-built plans and shall include an update with respect to those measures that are operational in nature (i.e. TDM program, recycling, Energy Star-rated equipment, etc.); and (d) include any changes to these measures from those identified in the EIRs, the schedule for implementation of all measures, and how progress toward achieving these measures will be advanced, if not currently implemented. The Self Certification and all supporting plans and documents shall be provided to the MEPA office (with a copy to the Commission) within three (3) months of the completion of the Project.

³⁸ The SSFEIR lists two different reduction goals depending on which ASHRAE standards are used. The higher standard is listed here.

³⁹ Provided that this commitment will not limit gaming machine selection based primarily on customer preference.

	<ul style="list-style-type: none"> ○ Kitchen and restaurant refrigeration energy efficiency design to reduce energy use; ○ Energy-STAR appliances; ○ Enhanced building commissioning; and ○ Occupancy controls for non-occupied or infrequently occupied spaces. • Install a photo-voltaic system on the podium building roof or other location, and/or purchase from local service providers of green power of annual electric consumption equaling 10% or more of the Project's annual electric consumption; • Improve intersections to reduce vehicle idling and TDM measures to reduce trips will reduce Project-related motor vehicle CO2 emissions by 13.0%. When combined, (stationary source plus transportation), the Project's total CO2 emissions reductions are 25.7% percent compared to the Base Case; • Install cogeneration plant using a nominal 1-MW microturbine, providing approximately 20% of the Project's annual electrical consumption and significant amounts of absorption cooling, heat and hot water. Wynn will consult with MassDEP regarding the system prior to filing a permitting application. • Consider additional improvements in energy efficient design and expansion of commitment to renewable energy;⁴⁰ • Consider electronic gaming machine energy use and provide information to EOEAA and the Commission regarding same;⁴¹ • Plan for and account for the effects of Sea Level Rise by elevating the proposed structures non-service and garage floor elevations to 15 to 16 feet above the 100-year flood level. The Project will also incorporate the following design criteria: <ul style="list-style-type: none"> • Parking garages entrances and other openings into below grade spaces will be elevated a minimum of 3.35 feet above the 100-year flood level, or will be sufficiently flood proofed to avoid damage from coastal storms; • Critical infrastructure and HVAC equipment will be elevated above projected flood levels; • Consider additional measures during subsequent design phases, including, but
--	---

⁴⁰ The Commission notes that this measure is encouraged, but not required by SFEIR Certificate.

⁴¹ The Commission notes that this measure is encouraged, but not required by SFEIR Certificate.

	<p>not limited to: rain gardens and swales; protection for service equipment (HV AC, electrical, fuel, water, sewage), installation of back-water flow valves and sump pumps; protection of entrances from snow and ice; enhanced building insulation; cool/green roofing; resilient back-up power and systems; backup power sources for elevators; insulation of refrigeration equipment and elevation of utility hook-ups, mechanical devices, electrical service panel, water heaters, and IT services above potential flood levels.</p>	
<p>14. HAZARDOUS WASTE</p>		
<p>Hazardous Waste Remediation</p>	<ul style="list-style-type: none"> • Remediation of areas of significant soil contamination, including soil removal and soil stabilization, will be initiated by Wynn at the commencement of Project construction and will be substantially completed in the first phase of Site construction (approximately 6 months); • During subsequent construction of the Project elements (casino, hotel, and retail buildings, site roadways and utilities, and waterfront improvements), additional contaminated soil will be removed, and Wynn will manage additional soil excavation and groundwater dewatering in accordance with the MCP; • All Project facilities, including the public harbor walk and other waterfront open space amenities, will be fully suitable for planned recreational and visitor uses; • Any hazardous materials excavated during construction will be managed in accordance with MassDEP guidelines, addressed, and disposed of accordingly, including treatment where applicable; • The parking garage will be waterproofed and designed to resist hydrostatic uplift pressures so that permanent, long term dewatering is not required. Dewatering will be required during construction and will be conducted pursuant to a Remediation General Discharge Permit under the NPDES program; and • Comply with G.L. c. 21E and the MCP in all areas of the Project including construction of the service road and shared entrances. 	<p>Prior to opening/as permitted under MCP.</p>
<p>Sediment Remediation</p>	<p>In accordance with the Secretary’s applicable Certificates and DEP’s Section 61 Findings, Wynn shall comply with all of the following mitigation measures and conditions, as well as all requirements set forth in the Chapter 91 Dredge Permit and 401 Dredge Water Quality Certificate from DEP, the additional Federal Consistency Review by CZM triggered by the NPC; all conditions and mitigation measures set forth in any additional Orders of Conditions from the Boston</p>	<p>Prior to Opening</p>

	<p>Conservation Commission and from the Everett Conservation Commission (or a Superseding Order of Conditions (SOC) from DEP if a local Order is appealed), the specific requirements of Chapter 21E and the MCP.</p> <p>In addition, Wynn shall:</p> <ul style="list-style-type: none"> ● Perform all dredging activities under the supervision of a Licensed Site Professional and meet the performance standards of the MCP. ● Avoid impacts to the two remnant patches of salt marsh within Boston. ● If salt marsh is inadvertently impacted during the dredging/capping operations, plant <i>Spartina</i> species in the same general location as the existing patches, and in an area encompassing a larger area than was impacted, to enhance the intertidal habitat value of the area. ● Install turbidity barriers and floating oil booms during dredging and capping to protect water quality. ● Conduct water quality monitoring during remediation to identify impacts and support early intervention and mitigation. ● Perform all dredging activities under the supervision of a Licensed Site Professional and meet the performance standards of the MCP. ● Observe Time of Year (TOY) restrictions for in-water work recommended by the DMF. Without limitation, silt-generating in-water activities must only be conducted between September 30 and February 15. ● Coordinate post-remediation monitoring with the DMF and the National Marine Fisheries Service to ensure that the sub-tidal and intertidal habitat is adequately restored. ● Develop a management plan for the living shoreline and other areas of the Harborwalk which will ensure public access and engagement as the living shoreline habitats grow and mature over time. 	
15. CONSTRUCTION MITIGATION		

<p>Traffic and Transportation</p>	<ul style="list-style-type: none"> • Implement phased starting of trades to off-peak hours, 7:00 a.m. and earlier starts; • Utilize lean building practices to maximize off-site prefabrication; • Develop separate construction staging and traffic management plans for these improvements as part of their respective construction bid documents; • The relocation of utilities to Gateway Center, which include water, electrical and communications, will be coordinated with the foundations of the Project garage; • On-site parking by construction workers will be minimized. Most personal vehicles will be restricted from parking at or around the construction site so as to reduce the impact to traffic; • Worker parking shall not be allowed on site except for company vehicles required to perform the work; • Off-site locations at which construction workers can park will be provided with shuttle bus services for worker transportation to and from the Project Site; • Due to the proximity of public transit systems, employees will be encouraged to use the MBTA. In addition, Wynn will offer carpooling incentives; • The Project will provide an off-site area at which trucks may be staged. Truck routes will be coordinated before the start of construction, and the Construction Manager will routinely check truck routes to ensure compliance with the approved plan; • The Construction Manager will establish and maintain designated material staging and delivery areas; • Given the existing traffic patterns, right-turns onto and off of the Project Site through the main site entrance are anticipated; • Wheel wash stations will be installed and maintained at construction site exits by the Construction Manager as needed. Street sweeping/vacuuming of all impacted City streets and sidewalks shall be performed by the Construction Manager on an as needed basis; • As set forth in FEIR § 12.2.12, and subject to the reasonable direction of the Police Chief, there will be full-time police detail at the site entrance to facilitate the safe delivery of materials to and from the site with as little disruption to the traffic on Lower Broadway as possible. As needed, police details will control the traffic signals along Lower Broadway to facilitate traffic movements near the Project Site; • Secured fencing and barricades will be used to isolate construction areas on the 	<p>During construction.</p>
-----------------------------------	---	-----------------------------

	Project Site from pedestrian and vehicle traffic.	
Utilities	<ul style="list-style-type: none"> • Existing utility tunnels under the MBTA Commuter Rail are anticipated to be reused to minimize disruption to rail service and operation. The construction of utilities servicing the Project primarily will take place on-site; • Connections to the water main and sanitary sewer in Broadway will occur during off peak hours; and • The stormwater management system will be functional prior to installing binder course in the service area or entry drive. 	During construction.
Air quality	<ul style="list-style-type: none"> • The contractors will implement dust control measures during active construction. The selection of specific dust control measures will be activity dependent, but the following types of control measures will be implemented: <ul style="list-style-type: none"> ○ Road and construction area watering; ○ Chemical stabilization; ○ Sand fencing ; ○ Wind speed control; ○ Perimeter sprinklers; ○ Tire washing stations; ○ On-site speed controls; ○ Covered stockpiles; and ○ Street sweeping. • Additional air quality measures to reduce air emissions will include low-sulfur diesel in construction equipment, retrofit equipment as needed, and prohibiting excessive idling (per 310 CMR 7.11); and • If on-site material crushing activities will take place, appropriate notifications will be made at least 30 days prior to the commencement of such activities to local officials and to MassDEP in accordance with 310 CMR 16.05(3)(e)(6). 	During construction.
Noise and vibration	<ul style="list-style-type: none"> • Instituting a program that includes allowable construction timeframes to ensure compliance with the local requirements; • Locating stationary noise sources, including staging areas, as far a possible from noise-sensitive receptors; • Constructing artificial or using natural barriers to shield construction noise; • Combining noisy operations to occur in the same time period (the total noise level produced will not be substantially greater than the level produced if the 	During construction.

	<p>operations were performed separately);</p> <ul style="list-style-type: none"> • Using properly maintained equipment mufflers and providing enclosures on equipment operating continuously; • Turning off idling equipment; • Using quieter alternatives for equipment where feasible; • Selecting a quieter construction operation and technique where feasible; • Monitoring noise levels during the construction period to demonstrate compliance; • Conducting baseline noise level monitoring prior to construction and periodic monitoring of noise levels during construction. Noise monitoring shall be conducted at the site perimeter locations and locations near adjacent buildings; • Work activities that generate unavoidable excessive noise will be included in the two-week look-ahead schedule submitted by the construction managers; • Project specifications will include vibration limits to avoid potential damage to nearby utilities, buildings, and the adjacent rail line; and • If necessary to reduce vibration levels, pile locations proximate to sensitive structures will be pre-augured. 	
<p>Stormwater and Erosion and Sediment Control</p>	<ul style="list-style-type: none"> • Storm water pollution prevention measures will include good housekeeping such as properly storing materials, spill prevention and response plans, and proper storage and disposal of solid wastes; • The Construction Manager will be responsible for preventing the tracking of sediments beyond the construction site and for controlling dust by using stabilized construction exits, street sweeping, and watering if necessary; • Temporary construction dewatering discharges will be appropriately controlled and discharged in accordance with the NPDES, state, and local dewatering standards; • Erosion and sediment risks will be reduced by avoiding prolonged exposure of bare soil, providing temporary and permanent stabilization as soon as practical, controlling storm water runoff, installing sediment and erosion controls, and providing frequent inspections and maintenance; • Erosion and sediment controls will be installed prior to any earth disturbing activities; • BMPs must be employed to control storm water flows through the Project Site and avoid the transport of sediments off site and towards surface waters or onto 	<p>Prior to and during construction.</p>

	<p>local roads. These may include silt fencing, hay bales, compost filter berms, sediment traps, check dams, diversion swales, sediment basins and/or settling tanks, and drain inlet protections;</p> <ul style="list-style-type: none"> • Stockpile area(s) will be designated on-site. Stockpiles of off-site fill will be stabilized with temporary seeding and mulching, or provided with a tarp to prevent blowing dust, if the soil will not be used within a 14-day period; • Stockpiles of on-site fill will be covered with polyethylene sheeting to prevent dust migration, and hay bales or silt fence may be placed around the perimeter of the stockpiles to prevent the migration of soils during rain events; • Soil stabilization will be initiated immediately after earth-disturbing activities have permanently or temporarily ceased. Temporary stabilization will be provided as soon as possible, but no later than 14 days after construction activity ceases on any particular area; • Areas at final grade will be provided with permanent plantings or seeding prior to the opening of the Project; • These control measures will be specific to the contractor’s equipment, construction activity, and seasonal variability; and • Inspections will be performed in accordance with the SWPPP to be prepared for the Project. This includes inspection by a qualified individual of storm water controls, stabilization measures, disturbed areas, storage areas, and points of discharge at least every 7 days and within 24 hours of a storm event of ½ inches or greater. 	
<p>Infrastructure Protection</p>	<ul style="list-style-type: none"> • Existing public and private infrastructure located within the public right-of-way will be protected during construction; • Existing infrastructure within easements on the Project Site will be protected or relocated with the coordination of the utility companies prior to the start of construction; • The Construction Manager will notify utility companies and call “Dig Safe” prior to excavation; • The Construction Manager will be required to coordinate all protection measures, temporary supports, and temporary shutdowns of all utilities with the appropriate utility owners and/or agencies; • The Construction Manager will be required to provide adequate notification to the utility owner prior to any work commencing on their utility; 	<p>Prior to, during and after construction.</p>

	<ul style="list-style-type: none"> • Wynn shall prepare and submit for review by MWRA a construction plan, calculations and an analysis of the MWRA’s pipeline (prepared by a professional engineer licensed in the State of Massachusetts), which shall take into consideration the contractor’s equipment, including vibration machines that would be used over MWRA’s pipeline in instances where the existing roadway surface will be completely excavated away removing the protection of the HS-20 surface loading barrier; and Wynn will be required to upgrade existing water or sewer infrastructure to protect these facilities during and after construction. See MWRA Section 61 Findings (pp. 4-5); • Wynn will conduct additional survey work, test pits and vacuum excavation to precisely identify the locations of utilities and construction monitoring and post construction surveys to ensure the integrity of MWRA infrastructure. See MWRA Section 61 Findings (p. 6); • In the event a utility cannot be maintained in service during switch over to a temporary or permanent system, the Construction Manager will be required to coordinate the shutdown with the utility owners and project abutters to minimize impacts and inconveniences; • Measures for proposed dredging and waterfront infrastructure installations will include providing floating debris barriers and turbidity curtains for water work; and • Measures for dredging would include the use of an environmental style bucket to minimize turbidity, and monitoring turbidity in accordance with federal, state, and local permit approvals. 	
<p>Recycling program</p>	<ul style="list-style-type: none"> • Construction waste material from demolition and new construction will be recycled when possible; • The disposal contract will include specific requirements that will ensure that construction procedures allow for the sufficient space for the necessary segregation, reprocessing, reuse, and recycling of materials; and • For those materials that cannot be recycled, solid waste will be transported in covered trucks to an approved solid waste facility, per MassDEP’s Regulations for Solid Waste Facilities, 310 CMR 16.00. This requirement will be specified in the disposal contract. 	<p>During construction.</p>
<p>Pest Control and Wildlife</p>	<ul style="list-style-type: none"> • The extermination of rodents will be required prior to demolition, excavation, and foundation installation; • Proposed work within the tidal zone and below MLW will be subject to time of 	<p>Prior to and during construction.</p>

	<p>year restrictions from the Massachusetts Division of Marine Fisheries, which are intended to protect migratory fish as they travel up and down river and to protect winter flounder spawning and nursery habitat; and</p> <ul style="list-style-type: none"> • Channel dredging operations will be conducted only during those times of the year permitted by state and federal agencies, so as to reduce possible adverse impacts to ecological populations within the dredged area. 	
Laundry Effluent	<ul style="list-style-type: none"> • If required, obtain and comply with the conditions of a sewer discharge permit prior to and while discharging laundry wastewater into the MWRA sewer system. See MWRA Section 61 Findings (pp. 6-7). 	Prior to discharging laundry wastewater into the MWRA sewer system.

IX. SEGMENTATION

The NPC Certificate notes that the MEPA regulations contain anti-segmentation provisions to ensure that projects are not segmented to evade, curtail or defer MEPA review. In addition to having acquired the Site of the Gaming Establishment, the Proponent and/or its subsidiaries or affiliates have reportedly acquired additional properties in Everett including, without limitation: (a) the 37.5 acre Rivergreen Technology Park located approximately one mile from the Site of the Gaming Establishment; (b) the 3.5 acre Lynde Playground located on Route 99; and (c) the 1.5-acre site Boston Freightliner facility located on Bow and Mystic Streets. *See* the Secretary's Certificate dated January 20, 2017, concerning the Rivergreen Notice of Project Change (EEA # 14478) (the "Rivergreen NPC Certificate").⁴²

The NPC Certificate (at page 7) concludes that Wynn "should consult with the MEPA Office regarding additional acquisition and development in the project area and potential MEPA review to ensure that projects are not improperly segmented." The Rivergreen NPC Certificate (at page 6) "strongly encourage[s] the Proponents to consult with the MEPA Office regarding the applicability of MEPA review if and when long-term uses are developed for the Lynde Playground and the Boston Freightliner site, and if additional property is acquired and/or new development is proposed."

Wynn shall keep the Commission timely and fully informed with respect to all such matters, including without limitation the results of any such consultations with the MEPA Office, any such notice(s) of project change, and any such MEPA review. The Commission fully reserves its rights to evaluate, regulate, condition, and/or require mitigation with respect to any such matters as they relate to the Commission's jurisdiction and/or the Gaming Establishment, and to further amend the Commission's Section 61 Findings, and all amendments thereto, and/or the License for the Gaming Establishment as appropriate with respect thereto.

X. REGIONAL WORKING GROUP

The SSFEIR Certificate required Wynn to participate in and provide a proportionate share of funding for a Regional Working Group⁴³ with MassDOT to assess and develop long-term transportation improvements to support sustainable redevelopment and economic growth in and

⁴² Lynde Playground and the Boston Freightliner facility are located within the area included in the Everett Redevelopment Authority's ("ERA") Lower Broadway District Urban Renewal Plan ("URP"), which has been subject to MEPA review (EEA# 15414). *See* the Secretary's Rivergreen NPC Certificate (at page 4). On November 15, 2018, the ERA submitted a notice of project change proposing a temporary change in use of a site within the URP that included part of the Lynde Playground for a municipal parking facility, including parking for the Gaming Establishment. The Commission and MassDOT submitted comments to the Secretary that urged the ERA to consider the transportation mitigation measures developed in connection with the Project as the ERA considered the temporary use of this parcel. On December 21, 2018, the Secretary issued a certificate on the ERA's notice of project change finding that the ERA's project did not require preparation of an Environmental Impact Report, but noting that the ERA should work with the Regional Working Group (described below) to make sure the ERA's parcel is developed consistent with the Regional Working Group's proposal.

⁴³ As the Attorney General notes in her public comments dated April 11, 2016, the Regional Working Group was originally named the Sullivan Square Working Group. It changed its name to the Lower Mystic Valley Working Group; however, its primary focus largely remains on Sullivan Square. These Second Amended Section 61 Findings refer to the group as the Regional Working Group.

around Sullivan Square.⁴⁴ The Regional Working Group was led by MassDOT and included, among others, the Executive Office of Housing and Economic Development, MAPC, DCR, Wynn, and the cities of Boston, Everett, and Somerville. See Section VIII of the MassDOT/MBTA/DCR Section 61 Findings entitled “Sullivan Square and Rutherford Avenue Planning Process.” The Commission required Wynn to participate in the Regional Working Group process as a condition of its 2016 Section 61 Findings and of the License. However, as the Secretary concluded in the SSFEIR Certificate, “the practical, rational and effective approach to addressing broader regional transportation impacts for this project is through enhanced transportation planning processes, not through the prism of this single project.” As a result, the Commission did not require completion of long-term infrastructure improvements implemented as a result of the Regional Working Group process prior to opening of the Gaming Establishment pursuant to G.L. c. 23K.

The Regional Working Group released a report of its findings on March 11, 2019 (the “Regional Working Group Report”). The Regional Working Group Report (at p. 5) notes that “[w]hile the gaming facility will generate substantial new traffic in the area, there are numerous other developments that have been recently built, permitted, or planned, all of which will add more travel demand in the area.” The Regional Working Group Report recommends a “a systematic and holistic approach to transportation” in the area in and around Sullivan Square, including transit service improvements such as increased investment in the Orange line and local bus service, enacting new transportation demand management policies to limit single occupant vehicle trips in the area, additional roadway improvements such as bicycle lanes and pedestrian paths and bridges, and continued regional coordination. *Id.* at p. 8. Further, the Regional Working Group Report recognized that the MEPA process that led to the creation of the Working Group “required only study of issues and did not require or mandate implementation actions or funding mechanisms.” *Id.* at p. 13.

As noted in the Regional Working Group Report (at p. 18), “[w]hile the Working Group was in the early stages of its process, the City of Boston, after a thorough public engagement process separate from the Working Group, selected a preferred design for the Rutherford Avenue/Sullivan Square Project. This design seeks to accommodate both local and regional interests; improve access and safety for bicyclists and pedestrians; creates dedicated bus lanes; and allow for the redevelopment of Sullivan Square.” These infrastructure improvements remain at an early stage in design. In addition to the infrastructure improvements, as referenced earlier in these Second Amended Section 61 Findings, the Regional Working Group also made a number of recommendations for transit service improvements and new transportation demand management measures.⁴⁵

⁴⁴ Pursuant to § 7.3 of the Boston SCA, Wynn has committed to provide \$250,000 in funding to support the Regional Working Group. As the SSFEIR Certificate requires Wynn to provide a proportionate share of funding for the Regional Working Group, this \$250,000 contribution shall not be deemed to be a cap on Wynn’s contribution if its proportionate share is determined to exceed this amount. Rather, as a condition of these Second Amended Section 61 Findings, to be incorporated as a condition of the License, Wynn shall contribute \$250,000 or (if larger) its overall proportionate share consistent with the SSFEIR Certificate to the Regional Working Group regardless of whether that overall proportionate share exceeds \$250,000. Any amount due in excess of \$250,000 will be calculated and paid annually unless otherwise specified by the Commission in a reopener pursuant to 205 CMR 120.

⁴⁵ Pursuant to §§ 7.1A of the Boston SCA, Wynn shall be fully responsible for the costs of implementing the Mitigation Improvements, defined therein, which are currently estimated to cost Fifteen Million, Eight Hundred and

These Second Amended Section 61 Findings and the License will continue to require that the License include a reopener pursuant to 205 CMR 120 if it is necessary for the Commission to adjust Wynn's contribution to either the proportionate share of funding for a Regional Working Group, or the long-term infrastructure improvements to be implemented as a result of the Regional Working Group process, or both.

Finally, Wynn shall use its best efforts to work with the MBTA, MassDOT, and DCR on any future plans to create mass transit opportunities that serve the Gaming Establishment, including without limitation working with the MBTA, MassDOT and DCR on right of way issues. Wynn shall consider making a reasonable contribution as may be determined by the Commission to the cost of implementation of such mass transit opportunities.

XI. FINDINGS

Pursuant to G.L. c. 30, § 61, and 301 CMR 11.12(5), the Commission finds that all feasible measures have been taken to avoid or minimize impacts of the Project and damage to the environment. Specifically, the Commission finds that:

1. Environmental impacts resulting from the proposed Project within the scope of MEPA are those impacts described in the FEIR, SFEIR, SSFEIR, and NPC and the corresponding Secretary's Certificates regarding each.
2. Wynn shall comply with and implement (a) all conditions in the Commission's conditional License for the Project (except those conditions that have been expressly modified and amended by the Commission's action on the Boston SCA), (b) the terms and conditions of the Mitigation Agreements, (c) the mitigation measures described in these Second Amended Section 61 Findings, and the applicable provisions of the FEIR, the SFEIR, the SSFEIR, the NPC and the Secretary's corresponding Certificates regarding the same, (d) the final Second Amended Section 61 Findings and conditions issued by other State Agencies in their respective final Agency Action on the Project, and (e) all conditions imposed by the Commission in its final Agency Action and final License for the Project pursuant to 205 CMR 120.02(1)(a).
3. Appropriate conditions will be included in any final License issued for the Project pursuant to 301 CMR 11.12(5)(b) and 205 CMR 120 to ensure implementation of the conditions and mitigation measures identified herein.

Fifty Thousand, Two Hundred and Twenty Nine Dollars (\$15,850,229). In addition, pursuant to and subject to Section VIII.F.4 of these Second Amended Section 61 Findings and §§ 7.3, 7.4 and 7.5 of the Boston SCA, Wynn is required to make substantial payments toward the Sullivan Square Infrastructure Project and toward the Boston Community Impact Fee. To the extent those payments toward the Mitigation Improvements, Sullivan Square Infrastructure Project and Boston Community Impact Fee are made and used toward long-term transportation mitigation and infrastructure improvements in and around Sullivan Square, those payments shall be counted toward Wynn's fair proportionate share of the capital costs of the long-term infrastructure improvements to be implemented as a result of the Regional Working Group process.

4. The Commission will establish a schedule for and conduct a regular quarterly review of compliance with the Second Amended Section 61 Findings and the conditions of the Gaming License.

Cathy Judd-Stein
Cathy Judd-Stein, Massachusetts Gaming Commission

5-29-19
Date

Gayle Cameron
Gayle Cameron, Massachusetts Gaming Commission

5-29-19
Date

Eileen M O'Brien
Eileen O'Brien, Massachusetts Gaming Commission

5/29/19
Date

Bruce Stebbins
Bruce Stebbins, Massachusetts Gaming Commission

5/29/19
Date

Enrique Zuniga
Enrique Zuniga, Massachusetts Gaming Commission

5/29/19
Date

Massachusetts Gaming Commission
Vote to Adopt Second Amended Section 61 Findings and
Incorporate into Region A Category 1 Gaming License

PROJECT NAME: Encore Boston Harbor (f/k/a Wynn Everett and Wynn Boston Harbor)
PROJECT LOCATION: 1 Broadway, Everett, Massachusetts
PROJECT PROPONENT: Wynn MA, LLC (“Wynn”)
EOEEA NUMBER: 15060
FINAL AGENCY ACTION: Category 1 Gaming License

WHEREAS on April 25, 2016, the Massachusetts Gaming Commission (the “Commission”) voted to adopt the Commission’s Section 61 Findings (the “2016 Section 61 Findings”) with respect to the Encore Boston Harbor Project (the “Project”), to grant to Wynn the final Region A Category 1 Gaming License, to incorporate by reference the 2016 Section 61 Findings into Wynn’s License for the Project, and to require, as a condition of the License, that Wynn comply with the terms, conditions, mitigation measures and other requirements identified in the 2016 Section 61 Findings;

WHEREAS the Commission expressly reserved the right to take further action with respect to the 2016 Section 61 Findings, the License for the Gaming Establishment, and any conditions contained in the 2016 Section 61 Findings or the License for the Gaming Establishment.

WHEREAS on or about February 28, 2017, Wynn filed a Notice of Project Change (“NPC”) regarding a sediment remediation plan for a portion of the Project site and an adjacent area of the Mystic River with the Executive Office of Energy and Environmental Affairs’ (“EOEEA’s”) Massachusetts Environmental Policy Act (“MEPA”) Office;

WHEREAS on April 7, 2017, the Secretary of EOEEA issued a Certificate on the NPC in which the Secretary determined that Wynn’s proposed project changes did not require the submission of additional filings under MEPA (the “NPC Certificate”);

WHEREAS, on July 13, 2017, the Commission approved an amendment to the 2016 Section 61 findings to address a minor modification of one condition in the 2016 Section 61 Findings with respect to the Mystic River Pedestrian-Bicycle Bridge Feasibility Study, but without otherwise addressing the findings in the NPC or the NPC Certificate (the “First Amended Section 61 Findings”);

WHEREAS Wynn has proposed these Second Amended Section 61 Findings, attached hereto, to reaffirm Wynn’s commitment to avoid or minimize impacts to the environment of the Project and to update the 2016 Section 61 Findings and the First Amended Section 61 Findings;

NOW THEREFORE, I move that the Massachusetts Gaming Commission:

1. Approve the proposed modifications and refinements to the Project described in the NPC, the NPC Certificate, the First Amended Section 61 Findings, and the Second Amended Section 61 Findings attached hereto;
2. Adopt the Second Amended Section 61 Findings regarding the Project in the form attached hereto pursuant to the Massachusetts Environmental Policy Act G.L. c. 30, §§ 61-62I, G.L. c. 23K, § 15(12), 301 CMR 11.12, and 205 CMR 120.02, to update and restate the 2016 Section 61 Findings and the First Amended Section 61 Findings;
3. Find, pursuant to G.L. c. 30, § 61 and 301 CMR 11.12(5), that all feasible measures have been taken to avoid or minimize impacts to the environment of the Project, for the reasons stated in the Commission's Second Amended Section 61 Findings attached hereto, and all other documents, approvals, and certifications incorporated by reference therein;
4. Incorporate by reference, pursuant to G.L. c. 30, §§ 61-62I, G.L. c. 23K, §§ 4(15), 15(12), and 21(c), 301 CMR 11.12(5)(b) and 205 CMR 120, the Commission's Second Amended Section 61 Findings attached hereto into Wynn's License for the Project and require, as a condition of the License, that Wynn comply with the terms, conditions, mitigation measures and other requirements identified in the Commission's Second Amended Section 61 Findings;
5. Authorize the Commission to execute the Commission's Second Amended Section 61 Findings in the form attached hereto;
6. Authorize the Commission's General Counsel to take all necessary procedural actions to effectuate the Commission's Second Amended Section 61 Findings in accordance with the Massachusetts Environmental Policy Act, the Massachusetts Gaming Act, and the regulations implementing each statute; and
7. Require as a condition of the License a regular quarterly review by the Commission of Wynn's compliance with the Commission's Second Amended Section 61 Findings and the terms and conditions of the License.

DATED:

May 29, 2019

MOVED BY:

Commissioner *O'Brien*

SECONDED BY:

Commissioner *Cameron*

RECORD OF VOTE:

Commissioner	In Favor	Opposed	Abstained	Recused	Absent
Cathy Judd-Stein	✓				
Gayle Cameron	✓				
Bruce Stebbins	✓				
Enrique Zuniga	✓				
Eileen O'Brien	✓				

Attest:


Catherine Blue, Assistant Secretary



Division of Racing

MEMORANDUM

TO:	Massachusetts Gaming Commission
FROM:	Chad Bourque, Financial Analyst
SUBJECT:	Local Aid Quarterly Distribution for Q4 CY 2021
DATE:	January 01, 2022

In accordance with the Commonwealth of Massachusetts Budget and appropriation 1050-0140, local aid is payable to each city and town within which racing activities are conducted. Amounts are computed at .35 percent times amounts wagered during the quarter ended six months prior to the payment.

- | | |
|----------------------|--------------|
| • City of Boston | \$159,073.69 |
| • Town of Plainville | \$46,894.49 |
| • Town of Raynham | \$22,326.04 |
| • City of Revere | \$79,535.64 |

Total local aid quarterly payment Dec 31, 2021	\$307,829.86
--	--------------

With the Commission's authorization payments will be made to the appropriate cities and towns.

Encl. localaid_q4_cy_2021

Cdb



Massachusetts Gaming Commission

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

Computation of Local Aid Distributions Quarter End 12/31/2021

	<u>Apr, May, June</u>	<u>Local Aid .0035</u>	<u>Payable to City / Town</u>
Plainridge	5,509,032		
Exports	6,496,311		
Hollywood Bets	1,393,079		
Total	<u>13,398,422</u>	\$46,894.49	Plainville
Raynham	6,378,869	\$22,326.04	Raynham
Suffolk Downs	7,405,549		
TVG	31,883,076		
Twin Spires	14,517,701		
Xpress Bets	7,420,476		
NYRA Bets	6,912,861		
Total	<u>68,139,663</u>	\$238,488.85	Boston 2/3 Revere 1/3
Wonderland	34,422	\$120.48	Boston 2/3 Revere 1/3
Grand Total	<u><u>87,951,376</u></u>	<u><u>\$307,829.86</u></u>	

Distributions:		
Town of Plainville	On Plainridge	\$46,894.49
Town of Raynham	On Raynham	\$22,326.04
City of Boston (line 1)	On Suffolk	\$158,993.36
City of Revere (line 1)	On Suffolk	\$79,495.49
City of Boston (line 2)	On Wonderland	\$80.33
City of Revere (line 2)	On Wonderland	\$40.15
Total		<u>\$307,829.86</u>
Payments should be made to the above communities for the amounts indicated.		



Massachusetts Gaming Commission

Q2 2021 HANDLES	APR	MAY	JUNE	TOTALS
PLAINRIDGE	1,695,002	2,124,985	1,689,045	5,509,032
EXPORTS	1,890,887	2,633,687	1,971,737	6,496,311
WINLINE	473,698	503,929	415,452	1,393,079
TOTALS	4,059,587	5,262,601	4,076,234	13,398,422
RAYNHAM	2,047,621	2,481,666	1,849,582	6,378,869
SUFFOLK	2,298,529	2,917,077	2,189,943	7,405,549
TVG	9,856,889	12,827,327	9,198,860	31,883,076
TWS	3,954,274	6,644,242	3,919,185	14,517,701
XPRESS BETS	2,834,865	2,721,819	1,863,792	7,420,476
NYRA	2,041,674	2,836,877	2,034,310	6,912,861
TOTALS	20,986,231	27,947,342	19,206,090	68,139,663
WONDERLAND	12,036	13,695	8,691	34,422
TOTALS	27,105,475	35,705,304	25,140,597	87,951,376

Amounts are computed at .35 percent times amounts wagered during the quarter ended six months prior to the payment.



Massachusetts Gaming Commission

1.03.01 Hiring authority

Introduction

This policy relative to hiring authority is intended to be read in conjunction with section 1.03: *Hiring of the Commission's Human Resources Policy Manual* and intended to clarify the authority of the Executive Director to make certain hiring decisions. This policy shall also be read in harmony with the statutory hiring provisions contained in G.L. c. 23K, and not interpreted so as to create a conflict therewith. To the extent any conflict does arise, the relevant statutory provision shall govern.

Statutory authority

The hiring authority granted the Commission, and the executive director is described in G.L. c. 23K, § 3. The following provisions relate to hiring authority:

- “The commission shall appoint an executive director. The executive director shall serve at the pleasure of the commission” G.L. c. 23K, § 3(i).
- “The executive director shall appoint and employ a chief financial and accounting officer and may, *subject to the approval of the commission*, employ other employees, consultants, agents and advisors, including legal counsel,” G.L. c. 23K, § 3(i) (emphasis added).
- “The executive director may, from time to time and *subject to the approval of the commission*, establish within the commission such administrative units as may be necessary for the efficient and economical administration of the commission and, when necessary for such purpose, may abolish any such administrative unit or may merge any 2 or more units.” G.L. c. 23K, § 3(j) (emphasis added).
- “The executive director may appoint such persons as the executive director shall consider necessary to perform the functions of the commission;” G.L. c. 23K, § 3(k).

Process

According to section 3, the Commission has exclusive authority to appoint the executive director. Similarly, according to section 3, the executive director has the exclusive authority to appoint the chief financial and accounting officer (“CFAO”). Whereas the employment of every other employee, consultant, agent, and advisor of the Commission is subject to the approval of the Commission, they shall be appointed as follows:

Employees who are designated as holding a major policymaking position

The term ‘major policymaking position’ is defined in G.L. c. 268B, § 1 as:

the executive or administrative head of a governmental body, all members of the judiciary, any person whose salary equals or exceeds that of a state employee classified in step 1 of job group XXV of the general salary schedule contained in section 46 of chapter 30 and who reports directly to said executive or administrative head, the head of each division, bureau or other major administrative unit within such governmental body and persons exercising similar authority.

Employees of the Commission who meet this definition and are so designated for purposes of chapter 268B, shall be considered as such for purposes of this policy. These positions typically include those at the 'director' or 'chief' levels. If there is a vacancy in a position that has been designated as a major policymaking position, or other reason why a need arises to fill such a position, the Commission shall determine its level of involvement in the hiring process at a public meeting. Such involvement may include, but not be limited to, designation of one or two commissioners to participate in the hiring process, notification and/or review of the job posting, implementation of notification requirements at key points of the hiring process, and/or delegation of the hiring process to the executive director under any conditions it deems prudent.

Employees who are not designated as holding a major policymaking position

All employees, consultants, agents, and advisors of the Commission, other than the executive director and CFAO, who are not designated as holding a major policymaking position may be appointed at the sole discretion of the executive director that is consistent with the approved number of available positions determined by the Commission through the annual budget process or a supplemental public meeting.

PAI GOW POKER

Rules

1. Definitions

The following words and terms, when used in this section, shall have the following meaning unless the context clearly indicates otherwise.

Bank - shall mean the player who elects to have the other players and dealer play against him or her and accepts the responsibility to pay all winning wagers.

Bonus wager - shall mean an optional wager that the player's seven cards will form a qualifying poker hand, regardless of the manner in which the player set the high hand and the low hand. All bonus wagers shall be banked by the house.

Co-banking - is defined in Section 10.

Copy hand - shall mean either a two card hand or a five card hand of a player which is identical in rank to the corresponding two card hand or five card hand of the dealer or bank.

EZ Pai gow poker- A variation of pai gow poker in which vigorish is not collected.

Envy bonus - shall mean an additional fixed sum payoff made to a player who placed a bonus wager of at least \$5.00 when another player at the pai gow poker table is the holder of a premium qualifying poker hand. A player is entitled to multiple envy bonuses if more than one other player is the holder of a premium qualifying poker hand; provided, however, that a player is not entitled to an envy bonus for their own cards or the cards of the dealer.

Envy bonus qualifying hand - A player's pai gow poker hand with a rank of a four-of-a-kind or better formed from the seven cards dealt to a player.

High hand - shall mean the five-card hand which is formed from the seven cards dealt at the game of pai gow poker so as to rank equal to or higher than the two card low hand.

Low hand - The two-card hand that is formed from the seven cards dealt so as to rank equal to or lower than the five-card high hand.

Marker - shall mean an object or objects used to designate the bank and the co-bank, as approved by the Commission.

Pai gow insurance wager - shall mean an optional wager as authorized by Section 15, that the player's seven cards will form a seven card hand with a rank of ace or lower (a "pai gow"), for which a payout will be awarded pursuant to Section 16(c), regardless of the manner in which the

player sets the high hand and the low hand and regardless of the outcome of the player's pai gow poker wager.

Premium qualifying poker hand - shall mean a five-card or seven-card poker hand with a rank of four-of-a-kind or higher formed from the seven cards dealt to a player.

Push - is a tie as defined in Section 9(h).

Qualifying poker hand - shall mean a five-card or seven-card poker hand with a rank of straight or higher formed from the seven cards dealt to a player.

Qualifying Wager - An Emperor's Treasure Wager, Fortune Bonus Wager or a Dynasty Bonus Wager of at least \$5 which may entitle a player to an Envy Bonus.

Queen's Dragon - The dealer's seven cards of different ranks which do not form a straight, a flush, a straight flush or a royal flush but contain a queen high card.

Rank or ranking - shall mean the relative position of a card or group of cards as set forth in Section 3.

Second highest or low hand - shall mean the two-card hand which is formed from the seven cards dealt at the game of pai gow poker so as to rank equal to or lower than the five-card high hand.

Set or setting the hands - shall mean the process of forming a high hand and low hand from the seven cards dealt.

Seven-card bonus wager - shall mean an optional wager, as authorized by Section 17, that the player's seven card hand will form a five-card poker hand (best five cards out of seven cards) for which a payout is awarded pursuant to Section 18, regardless of the manner in which the player sets the high hand and the low hand and regardless of the outcome of the player's pai gow poker wager.

Suit - shall mean one of the four categories of cards, i.e., diamond, spade, club or heart.

Three-card bonus wager - shall mean an optional wager, as authorized by Section 17, that the player's first three cards will form a three-card poker hand that contains a straight flush with no joker, three-of-a-kind, a straight flush, a straight, a flush or one pair.

2. Cards; number of decks

- (a) Except as provided in (b) below, pai gow poker shall be played with one deck of cards with backs of the same color and design, on additional cutting card and one additional cover card to be used in accordance with the procedures set forth in Section 6. The cut card and cover card shall be opaque and in a solid color readily distinguishable from the color of the backs and edges of the playing cards, as approved by the Commission. The deck of cards used to

play pai gow poker shall meet the requirements of 205 CMR 146.48 and shall include one joker. Nothing in this section shall prohibit a gaming licensee from using decks which are manufactured with two jokers provided that only one joker is used for gaming at pai gow poker.

- (b) If an automated card shuffling device is used for pai gow poker, a gaming licensee shall be permitted to use a second deck of cards to play the game, provided that:
 - (1) Each deck of cards complies with the requirements of (a) above;
 - (2) The backs of the cards in the two decks are of a different color;
 - (3) One deck is being shuffled by the automated card shuffling device while the other deck is being dealt or used to play the game;
 - (4) Both decks are continuously alternated in and out of play, with each deck being used for every other round of play; and
 - (5) The cards from one deck only shall be placed in the discard rack at any given time.

3. Pai gow poker rankings; cards; poker hands

- (a) The rank of the cards used in pai gow poker, in order of highest to lowest rank, shall be: ace, king, queen, jack, ten, nine, eight, seven, six, five, four, three, and two. Notwithstanding the foregoing, an ace may be used to complete a "straight flush" or a "straight" formed with a 2, 3, 4 and 5. Except as otherwise provided in (c) below, the joker shall be used and ranked as an ace.
- (b) The permissible poker hands at the game of pai gow poker, in order of highest to lowest rank, shall be:
 - (1) "Five aces" is a high hand consisting of four aces and a joker;
 - (2) "Royal flush" is a high hand consisting of an ace, king, queen, jack and ten of the same suit; however, for purposes of the progressive payout wager, a "natural royal flush" is a royal flush which does not use a joker;
 - (3) "Straight flush" is a high hand consisting of five cards of the same suit in consecutive ranking, with ace, 2, 3, 4 and 5 being the highest ranking straight flush; king, queen, jack, 10, and 9 being the second highest ranking straight flush, and 6, 5, 4, 3 and 2 being the lowest ranking straight flush;
 - (4) "Four-of-a-kind" is a high hand consisting of four cards of the same rank regardless of suit, with four aces being the highest ranking four-of-a-kind and four twos being the lowest ranking four-of-a-kind;
 - (5) "Full house" is a high hand consisting of a "three-of-a-kind" and a "pair," with three aces and two kings being the highest ranking full house and three twos and two threes being the lowest ranking full house;
 - (6) "Flush" is a high hand consisting of five cards of the same suit. When comparing two flushes the provisions of (e) below shall be applied;
 - (7) "Straight" is a high hand consisting of five cards of consecutive rank, regardless of suit, with an ace, king, queen, jack and 10 being the highest ranking straight; an ace, 2, 3, 4 and 5 being the second highest ranking straight, and a 6, 5, 4, 3 and 2 being the lowest ranking straight;

- (8) "Three-of-a-kind" is a high hand containing three cards of the same rank regardless of suit, with three aces being the highest ranking three-of-a-kind and three twos being the lowest ranking three-of-a-kind;
 - (9) "Two pairs" is a high hand containing two "pairs," with two aces and two kings being the highest ranking two pair hand and two threes and two twos being the lowest ranking two pair hand; and
 - (10) "Pair" is either a high hand or a low hand consisting of two cards of the same rank, regardless of suit, with two aces being the highest-ranking pair and two twos being the lowest ranking pair.
- (c) For purposes of setting the hands, a joker may be used as any card to complete a "straight," a "flush," a "straight flush" or a "royal flush."
- (d) Notwithstanding the provisions of (b) above, a gaming licensee may, in its discretion, determine that a straight flush formed with an ace, 2, 3, 4 and 5 of the same suit shall be the lowest ranking straight flush and that a straight formed with an ace, 2, 3, 4 and 5, regardless of suit, shall be the lowest ranking straight. If a gaming licensee chooses to exercise this option, it shall so indicate in its Rules of the Games Submission.
- (e) When comparing two high hands or two low hands which are of identical poker hand rank pursuant to the provisions of this section, or which contain none of the poker hands authorized herein, the hand which contains the highest ranking card as provided in (a) above which is not contained in the other hand shall be considered the higher ranking hand. If the two hands are of identical rank after the application of this subsection, the hands shall be considered a copy hand.
- (f) If a gaming licensee offers the optional bonus wager authorized by Section 15, the following seven card hands, each of which shall have a rank higher than a five-card poker hand of five aces, shall be used to determine the amount of the bonus wager payout or envy bonus payment to which a winning patron is entitled pursuant to Section 16:
- (1) "Seven-card straight flush with no joker" is a seven-card hand consisting of seven cards of the same suit in consecutive ranking, with no joker being used to complete the straight flush;
 - (2) "Royal flush plus royal match" is a seven card hand consisting of an ace, a king, a queen, a jack and a ten of the same suit, with or without a joker, with one of the following pre-selected by the gaming licensee:
 - (i) An additional king and queen of a same suit; or
 - (ii) An additional ace and king of the same suit, without a joker (natural); and
 - (3) "Seven-card straight flush with joker" is a seven-card hand consisting of seven cards of the same suit in consecutive ranking with a joker being used to complete the straight flush.
- (g) For purposes of pay table "B" for the seven-card bonus wager at Section 18(c), a "straight flush with joker" is a hand consisting of five cards of the same suit in consecutive ranking, one of which is the joker, and a "straight flush without joker" is a hand consisting of five cards of the same suit in consecutive ranking, none of which is the joker.

- (h) If a gaming licensee offers the insurance wager authorized by Section 15, a joker is ranked as an ace for purposes of determining this wager.
- (i) If the licensee offers the optional Emperor's Treasure Wager under Section 7(e)(2), the following seven-card hands shall have a rank higher than a hand of five aces, as described in (b)(1) above, and shall be used to determine the amount of the Emperor's Treasure Wager payout or Envy Bonus payout to a winning player:
 - (1) A seven-card straight flush with no joker, which is a hand consisting of seven cards of the same suit in consecutive ranking, with no joker used to complete the straight flush.
 - (2) A royal flush plus ace and king suited, which is a seven-card hand consisting of an ace, king, queen, jack and a 10 of the same suit, with or without a joker, and an additional ace and king of the same suit without a joker.
 - (3) A seven-card straight flush with joker, which is a hand consisting of seven cards of the same suit in consecutive ranking with a joker being used to complete the straight flush.
- (j) If a licensee offers the optional Progressive Payout Wager under Section 7(e)(4), the following seven-card hands shall be used to determine the amount of the progressive payout to a winning player:
 - (1) Seven-card straight flush is a hand consisting of seven cards of the same suit in consecutive ranking, with or without a joker.
 - (2) Five aces, which is a hand consisting of four aces and a joker.
 - (3) A royal flush, which is a hand consisting of an ace, king, queen, jack and 10 of the same suit or a king, queen, jack and 10 of the same suit and a joker.
 - (4) A straight flush, which is a hand consisting of five cards of the same suit in consecutive ranking.
 - (5) A four-of-a-kind, which is a hand consisting of four cards of the same rank.
 - (6) A full house, which is a hand consisting of a three-of-a-kind and a pair.
- (k) If the licensee offers the optional Dynasty Bonus Wager under Section 7(e)(5)(ii), in addition to the hands described in (b) above, the following hands shall also be used to determine the amount of the Dynasty Bonus or Envy Bonus payout to a winning player:
 - (1) An ace/five natural straight flush and a natural ace/queen suited, which is a hand consisting of an ace, 2, 3, 4 and 5, without a joker, and an additional ace and queen of the same suit without a joker.
 - (2) A seven-card natural straight flush, which is a hand consisting of seven cards of the same suit in consecutive ranking, without a joker used to complete the straight flush.
 - (3) A natural royal flush and a natural ace/king suited, which is a hand consisting of an ace, king, queen, jack and a 10 of the same suit, without a joker, and an additional ace and queen of the same suit without a joker.
 - (4) A seven-card straight flush, which is a hand consisting of seven cards of the same suit in consecutive ranking, with a joker used to complete the straight flush.
 - (5) An ace/five natural straight flush, which is a hand consisting of an ace, 2, 3, 4 and 5, without a joker.

(l) The licensee may choose to offer the optional Fortune Pai Gow Wager under Section 7(c)(1), which is more fully described in Section 20.

~~(f) The licensee has the option to allow for the Fortune Pai Gow wager on their pai gow poker tables.~~

Commented [TC1]: This section has been moved to Section 20

- ~~(1) A Fortune Pai Gow poker wager may be an amount no less than \$5 to no more than \$200. The Player determines the amount he wishes to wager.~~
- ~~(2) A Fortune Pai Gow poker wager of \$5.00 automatically qualifies as an ENVY BONUS wager. When a Player qualifies for the Envy Bonus they will be entitled to receive an additional bonus on any Player's hand of four of a kind or higher.~~
- ~~(3) The BANKER'S HAND NEVER qualifies for an ENVY BONUS PAYOUT.~~
- ~~(4) A Fortune Pai Gow Poker wager must be placed prior to commencement of that round of play. The Player will place their BONUS wager in the designated area of the layout for BONUS wager.~~
- ~~(5) The Dealer will place a specially designed ENVY BUTTON on top of any bonus wager of \$5.00 or more.~~
- ~~(6) All (7) seven cards qualify for all bonuses.~~
- ~~(7) Due to the ENVY BONUS FEATURE of this game, ALL HANDS MUST BE EXPOSED.~~

Pay table:

Hand	FORTUNE BONUS PAYOUTS	
	FORTUNE BONUS	ENVY BONUS
7-Card Straight Flush (NO JOKER)	8000 to 1	\$5,000
Royal Flush Plus Royal Match*	2000 to 1	\$1,000
7-Card Straight Flush (WITH JOKER)	1000 to 1	\$500
Five Aces	400 to 1	\$250
Royal Flush	150 to 1	\$50
Straight Flush	50 to 1	\$20
Four of a Kind	25 to 1	\$5
Full House	5 to 1	
Flush	4 to 1	
Three of a Kind	3 to 1	
Straight	2 to 1	

~~* Royal Flush (with or without joker) with an additional two cards of a suited King and Queen~~

4. Pai gow poker shaker and dice; computerized random number generator; button

- (a) Unless a gaming licensee offers the optional bonus wagers authorized by Section 17 and follows the dealing procedures set forth therein, the starting position for the deal or delivery of cards in pai gow poker shall be determined by using one of the following methods:
 - (1) Three dice and a pai gow poker shaker, which shall meet the requirements of 205 CMR 146.45 and 205 CMR 146.21, respectively, and be used in accordance with 205 CMR 146.21 and Section 8b(b).
 - (i) The three dice shall be maintained at all times within the pai gow poker shaker.
 - (ii) The pai gow poker shaker and the dice contained therein shall be the responsibility of the dealer and shall never be left unattended while at the table.

- (iii) No dice that have been placed in a pai gow poker shaker for use in gaming shall remain on a table for more than 24 hours.
- (2) A computerized random number generator that, in accordance with 205 CMR 146.21 and Section 8c(c), shall automatically select and display a number from 1 through 7 inclusive.
- (3) If an automated card shuffling device and dealing shoe is used pursuant to Sections 8b and 8c(d), a button that is moved by the dealer clockwise around the table as each round of play is completed.

5. Opening of the table for gaming

- (a) After receiving a deck of cards at the table in accordance with 205 CMR 146.49, the dealer shall, as applicable, comply with the requirements of 205 CMR 146.49 and (b) through (d) below.
- (b) If the deck of cards used by the gaming licensee contains two jokers, the dealer and a casino supervisor shall ensure that only one joker is utilized, and that the other joker is removed from play. Following the inspection of the cards by the dealer and the verification by the floorperson assigned to the table, the cards shall be spread out face up on the table for visual inspection by the first player to arrive at the table. The cards shall be spread out according to suit and in sequence and shall include one joker.
- (c) After the first player is afforded an opportunity to visually inspect the cards, the cards shall be turned face down on the table, mixed thoroughly by a "washing" or "chemmy shuffle" of the cards and stacked. Once the cards have been stacked, they shall be shuffled in accordance with Section 6.
- (d) If a gaming licensee uses an automated card shuffling device to play the game of pai gow poker and two decks of cards are received at the table pursuant to 205 CMR 146.49 and Section 2, each deck of cards shall be separately sorted, inspected, verified, spread, inspected, mixed, stacked and shuffled in accordance with the provisions of (a) through (c) above immediately prior to the commencement of play.

6. Shuffle and cut of the cards

- (a) Immediately prior to the commencement of play, and after each round of play has been completed, the dealer shall shuffle the cards by use of an automated card shuffling device so that the cards are randomly intermixed. Upon completion of the shuffle, the dealer or device shall place the deck of cards in a single stack; provided, however, that nothing herein shall be deemed to prohibit an automated card shuffling device which, upon completion of the shuffling of the cards, inserts the cards directly into an automated or manual dealing shoe. The automated shuffler may also be advanced and programmed to deal the appropriate number of cards during each round of play to each gaming position.
- (b) After the cards have been shuffled and stacked, the dealer shall use an automated card shuffling device, deal or deliver the cards in accordance with the procedures set forth in

Sections 8 or 8a.

- (c) If a cut of the cards is offered it will be done so in the following order:
 - (1) The first player to the table, if the game is just beginning;
 - (2) The player who accepts the bank pursuant to Section 10; provided, however, if the bank refuses the cut, the cards shall be offered to each player moving counterclockwise around the table from the bank until a player accepts the cut; or
 - (3) The player at the farthest position to the right of the dealer, if there is no bank during a round of play; provided, however, if there are two or more consecutive rounds of play where there is no bank, the offer to cut the cards shall rotate in a counterclockwise manner after the player to the far right of the dealer has been offered the cut.
- (d) The player or dealer making the cut shall place the cutting card in the stack at least 10 cards in from either end. Once the cutting card has been inserted, the dealer shall take the cutting card and all the cards on top of the cutting card and place them on the bottom of the stack. The dealer shall then remove the cover card and place it on the bottom of the stack. Thereafter, the dealer shall remove the cutting card and, at the discretion of the gaming licensee, either place it in the discard rack or use it as an additional cutting card to be inserted four cards from the bottom of the deck. The dealer shall then deal or deliver the cards in accordance with the procedures set forth in Sections 8 or 8a.
- (e) After the cards have been cut and before any cards have been dealt, a casino supervisor may require the cards to be recut if he or she determines that the cut was performed improperly or in any way that might affect the integrity or fairness of the game. If a recut is required, the cards shall be recut, at the gaming licensee's option, by the player who last cut the cards, or by the next person entitled to cut the cards, as determined by sections (c) and (d) above.
- (f) Whenever there is no gaming activity at a pai gow poker table which is open for gaming, the cards shall be spread out on the table. After the first player is afforded an opportunity to visually inspect the cards, the procedures outlined in Section 5(c) shall be completed.

7. Wagers

- (a) All wagers at pai gow poker shall be made by placing gaming chips or plaques and, if applicable, a match play coupon on the appropriate betting area of the pai gow poker layout. A verbal wager accompanied by cash shall not be accepted at the game of pai gow poker.
- (b) Only players who are seated at the pai gow poker table may place a wager at the game. Once a player has placed a wager and received cards, that player must remain seated until the completion of the round of play.
- (c) All wagers at pai gow poker shall be placed prior to the dealer announcing "No more bets" in accordance with the dealing procedures set forth in Sections 8 or 8a. No wager at pai gow poker shall be made, increased or withdrawn after the dealer has announced "No more bets."
- (d) Upon placing a pai gow poker wager, a player may, if a progressive payout wager is offered

by the gaming licensee pursuant to the provisions of Section 14, place a progressive payout wager by depositing a gaming chip into the acceptor device designated for that player or by redeeming a progressive payout wager coupon in accordance with the provisions of 205 CMR 146.09. Each player shall be responsible for verifying that the acceptor light for their betting position has been properly illuminated upon placement of the progressive payout wager.

- (e) A licensee may, if specified in its Rules submission, offer to each player who placed a pai gow poker wager, in accordance with (d) above, the option of placing the following additional wagers:
- (1) A Fortune Bonus Wager that the seven cards dealt to the player will form a seven-card poker hand with a rank of a straight or better as described in Section ~~3(f) 20~~ (relating to pai gow poker rankings).
 - (2) An Emperor's Treasure Wager that the seven cards dealt to the player will form a seven-card poker hand with a rank of a straight or better as described in Section 3(e).
 - (3) A pai gow insurance wager that the seven cards dealt to the player will form a seven-card poker hand that does not contain a pair or better, as described in Section 3(b), but will contain a card ranked a nine-high or better.
 - (4) A Progressive Payout Wager that the seven cards dealt to the player will form a seven-card poker hand with a rank of a full house or better as described in Section 3(f).
 - (5) If EZ Pai Gow poker is being played, a licensee may offer the following additional wagers:
 - (i) The Queen's Dragon Wager that the dealer's hand will create a Queen's Dragon.
 - (ii) The Dynasty Bonus Wager that the seven cards dealt to the player will form a hand with a rank of a three-of-a-kind or better as described in Section 3(b) and (g).
 - (iii) The Protection Wager that the seven cards dealt to the player will form a hand that does not contain a pair or better, as described in Section 3(b), but contain a high card of a 9, 10, jack, queen, king or ace.
 - (iv) The Red/Black Wager that four or more of the cards in the player's hand will be of the player's chosen color.
- (f) If a gaming licensee offers the optional bonus wagers authorized by Section 17, upon placing a pai gow poker wager and prior to any cards being dealt for the round of play, a player may place a three-card bonus wager and/or a seven-card bonus wager.

8. Procedures for dealing the cards from a manual dealing shoe

- (a) If a gaming licensee chooses to have the cards dealt from a manual dealing shoe, the dealing shoe shall meet the requirements of 205 CMR 146.51. Once the procedures required by Section 6 have been completed, the cards shall be placed in the manual dealing shoe and the dealer shall announce "No more bets."
- (b) The dealer shall then, using one of the procedures authorized by Section 8a, determine the starting position for dealing the cards. If the gaming licensee offers the additional wager

authorized by Section 13, all such additional wagers shall be determined and paid and the procedures in Section 13 shall be completed, before any card is dealt to any player at the table.

- (c) After the starting position for dealing the cards has been determined, each card shall be removed from the dealing shoe with the left hand of the dealer and placed face down on the appropriate area of the layout with the right hand of the dealer. The dealer shall deal the first card to the starting position as determined in (b) above and, moving clockwise around the table, deal a card to all other positions, including the dealer, regardless of whether there is a wager at the position. The dealer shall then return to the starting position and deal a second card in a clockwise rotation and shall continue dealing until each position, including the dealer, has seven cards.
- (d) After seven cards have been dealt to each position, including the dealer, the dealer shall remove the remaining cards from the shoe and determine whether exactly four cards are left.
 - (1) If four cards remain, the four cards shall not be exposed to anyone and shall be placed in the discard rack. The dealer shall then collect any cards dealt to a position where there is no wager and place them in the discard rack without exposing the cards.
 - (2) If more or less than four cards remain, the dealer shall determine if the cards were misdealt. If the cards were misdealt and a player or the dealer has more or less than seven cards, all hands shall be void pursuant to Section 11. If the cards have not been misdealt, all hands shall be considered void and the entire deck of cards shall be removed from the table pursuant to 205 CMR 146.49.

8a. Procedures for dealing the cards from an automated dealing shoe

- (a) Notwithstanding any other provision of 205 CMR 146 or this section, a gaming licensee may, in its discretion, choose to have the cards used to play pai gow poker dealt from an automated dealing shoe which dispenses cards in stacks of seven cards, provided that the shoe, its location and the procedures for its use are approved by the Commission.
- (b) If a gaming licensee chooses to have the cards dealt from an automated dealing shoe, the following requirements shall be observed.
 - (1) Once the procedures required by Section 6 have been completed, the cards shall be placed in the automated dealing shoe.
 - (2) The dealer shall then announce "No more bets" prior to the shoe dispensing any stacks of cards.
- (c) The dealer shall then, using one of the procedures authorized by Section 8b, determine the starting position for delivering the stacks of cards. If the gaming licensee offers the additional wager authorized by Section 13, all such additional wagers shall be determined and paid and the procedures in Section 13 shall be completed, before any stack of cards is dealt to any player at the table.
- (d) Once the starting position has been determined in accordance with (c) above, the dealer shall

deliver the first stack of cards dispensed by the automated dealing shoe to that position. As the remaining stacks are dispensed to the dealer by the automated dealing shoe/machine, the dealer shall deliver a stack in turn to each of the other positions, including the dealer, moving clockwise around the table, whether or not there is a wager at the position. The dealer shall deliver each stack face down.

- (e) After the seven stacks of seven cards have been dispensed and delivered to each position, including the dealer, the dealer shall remove the remaining cards from the shoe/machine and determine whether exactly four cards are left by spreading them face down on the layout.
 - (1) If four cards remain, the cards shall not be exposed to anyone at the table and shall be placed in the discard rack.
 - (2) If more or less than four cards remain, the dealer shall determine if the cards were misdealt. If the cards were misdealt and a stack has more or less than seven cards, the round of play shall be void and the cards reshuffled. If the cards have not been misdealt, the round of play shall be considered void and the entire deck of cards shall be removed from the table pursuant to 205 CMR 146.49.
- (f) If the dealer determines the cards were dealt properly, the dealer shall then collect any stacks dealt to a position where there is no wager and place them in the discard rack without exposing the cards.

8b. Procedure for determining the starting position for dealing cards or delivering stacks of cards

- (a) In order to determine the starting position for the dealing of cards or the delivery of stacks of cards for the game of pai gow poker, a gaming licensee may, in its discretion, use the procedure authorized in (b), (c) or (d) below.
- (b) The dealer shall shake the pai gow poker shaker and dice described in Section 4 at least three times so as to cause a random mixture of the dice.
 - (1) The dealer shall then remove the lid covering the pai gow poker shaker, total the dice and announce the total.
 - (2) To determine the starting position, the dealer shall count counterclockwise around the table, with the position of the dealer considered number one, and continuing around the table with each betting position counted in order, including the dealer, regardless of whether there is a wager at the position, until the count matches the total of the three dice.
 - (3) Examples are as follows:
 - (i) If the dice total 8, the dealer would receive the first card or stack of cards; or
 - (ii) If the dice total 14, the sixth betting position would receive the first card or stack of cards.
 - (4) After the dealing or delivery of the cards has been completed in accordance with the procedures set forth in Section 8 or 8a, the dealer shall place the cover on the pai gow poker shaker and shake the shaker once. The pai gow poker shaker shall then be placed to the right of the dealer.
- (c) The dealer may use a computerized random number generator approved by the Commission

to select and display a number from 1 through 7 inclusive, and verbally announce the number. To determine the starting position, the dealer shall count counterclockwise around the table, with the position of the dealer considered number one, and continuing around the table with each betting position counted in order, including the dealer, regardless of whether there is a wager at the position, until the count matches the number displayed by the random number generator.

- (d) If an automated card shuffling device and dealing shoe/machine is used pursuant to Section 8a, the dealer may use a flat disk button approved by the Commission to indicate the starting position. At the commencement of play, the button shall be placed in front of the dealer. Thereafter, the button shall rotate around the table in a clockwise manner after each round of play.
- (e) After the starting position for a round of play has been determined, a gaming licensee may, in its discretion, mark that position by the use of an additional cut card or similar object.

9.Procedures for completion of each round of play; setting of hands; payment and collection of wagers; payout odds; vigorish

- (a) After the dealing of the cards has been completed, each player shall set their hands by arranging the cards into a high hand and low hand. When setting the two hands, the five-card high hand must be equal to or higher in rank than the two card low hand. For example, if the two-card hand contains a pair of sevens, the five card hand must contain at least a pair of sevens and the three remaining cards.
- (b) Each player at the table shall be responsible for setting their own hands and no other person except the dealer may touch the cards of that player. Notwithstanding the foregoing, if a player requests assistance in the setting of their hands, the dealer may inform the requesting player of the manner in which the gaming licensee requires the hands of the dealer to be set in its Rules of the Games submission. Each player shall be required to keep the seven cards in full view of the dealer at all times. Once each player has set a high and low hand and placed the two hands face down on the appropriate area of the layout, the player shall not touch the cards again.
- (c) After all players have set their hands and placed the cards on the table, the seven cards of the dealer shall be turned over and the dealer shall set their hands by arranging the cards into a high and low hand. The dealer shall then place the two hands face up on the appropriate area of the layout. If banking or co-banking is in effect pursuant to Section 10, after all players have set their hands and placed the cards on the table, the player banking the game shall turn over their seven cards and shall set the two hands by arranging the cards in a high and low hand on the appropriate area of the layout.
- (d) Each gaming licensee shall submit to the Commission in its Rules of the Games submission the manner in which it will require the hands of the dealer to be set.
- (e) Unless a player has placed a progressive payout wager pursuant to Section (1)(4) or a seven-

card bonus wager pursuant to Section 17, a player may announce that he or she wishes to surrender their wager prior to the dealer exposing either of the two hands of that player pursuant to (f) below. Once the player has announced their intention to surrender, the dealer shall:

- (1) Immediately collect the wager from that player; and
 - (2) Collect the seven cards dealt to that player without exposing the cards to anyone at the table. The dealer shall verify that seven cards were collected by counting them face down on the layout prior to placing them in the discard rack.
- (f) Once the dealer has set a high hand and a low hand, the dealer shall expose both hands of each player, starting from the right and proceeding counterclockwise around the table. The dealer shall compare the high and low hand of each player to the high and low hand of the dealer and shall announce if the pai gow poker wager of that player shall win, lose or be considered a tie (“push”). If the player has placed a progressive payout wager pursuant to Section 14, the dealer shall also examine the seven cards of the player and announce if the progressive payout wager of that player shall win or lose. If the player has placed a seven-card bonus wager pursuant to Section 17, the dealer shall also examine the seven cards of the player and announce if the seven-card bonus wager of that player shall win or lose.
- (g) All losing pai gow poker wagers, seven-card bonus wagers and progressive payout wagers shall be immediately collected by the dealer and put in the table inventory container. Unless the player has a winning progressive payout wager or winning seven-card bonus wager, all losing pai gow poker hands shall also be collected. A pai gow poker wager will:
- (1) Lose and will immediately be collected if:
 - (i) The high hand of the player is lower in rank than the high hand of the dealer and the low hand of the player is lower in rank than the low hand of the dealer.
 - (ii) The high hand of the player is identical in rank to the high hand of the dealer or the low hand of the player is identical in rank to the low hand of the dealer and the other hand of the player is identical in rank or lower in rank than the other hand of the dealer.
 - (iii) The high hand of the player was not set so as to rank equal to or higher than the low hand of that player.
 - (iv) The two hands of the player were not otherwise set correctly in accordance with this chapter.
 - (v) Notwithstanding subparagraphs (i)—(iv) above, if the table is designated for play as an EZ Pai Gow poker table in which vigorish is not collected and if the dealer has a Queen's Dragon, the player's pai gow poker wager shall push and be returned to the player.
 - (2) Tie and will be returned to the player if:
 - (i) The high hand of the player is higher in rank than the high hand of the dealer, but the low hand of the player is identical in rank to the low hand of the dealer or lower in rank than the low hand of the dealer.
 - (ii) The high hand of the player is identical in rank to the high hand of the dealer or lower in rank than the high hand of the dealer, but the low hand of the player is higher in rank than the low hand of the dealer.
 - (iii) The dealer has a Queen's Dragon and the table is designated for play as an EZ Pai

Gow poker table in which vigorish is not collected.

(3) Win if the high hand of the player is higher in rank than the high hand of the dealer and the low hand of the player is higher in rank than the low hand of the dealer provided that if the table is designated for play as an EZ Pai Gow poker table and the dealer has a Queen's Dragon, the player's pai gow poker wager shall push and be returned to the player. The dealer shall pay the winning pai gow poker wager in accordance with the payout odds in Section 16(a) (relating to payout odds; Envy Bonus; rate of progression; payout limitation).

(h) All cards collected by the dealer shall be picked up in order and placed in the discard rack in such a way that they can be readily arranged to reconstruct each hand in case of a question or dispute.

(i) If a player has won a progressive payout wager that is not being paid from the table inventory container, the cards of that player shall remain on the table until the necessary documentation has been completed pursuant to 205 CMR 138.62. If any player at the table has placed a Qualifying Wager, the dealer shall rearrange the cards of all players regardless of whether the player placed a Fortune Bonus, Emperor's Treasure or Dynasty Bonus Wager. After rearranging the player's seven cards, the dealer shall:

(1) Settle the player's Fortune Bonus Wager as follows:

(i) If a player:

- a. Does not have a straight or higher, as described in Section ~~3(d)~~ 20 (relating to pai gow poker rankings), the dealer shall collect the Fortune Bonus Wager and place the cards of the player in the discard rack.
- b. Has a straight or higher, the dealer shall pay the winning Fortune Bonus Wager in accordance with Section 16(b) and shall place the cards of the player in the discard rack. If the player has an Envy bonus qualifying hand and any player at the table placed a Qualifying Wager, the dealer shall verbally acknowledge the Envy bonus qualifying hand and leave the cards of the player face up on the table.
- c. Did not place a Fortune Bonus Wager but has an envy bonus qualifying hand, and another player at the table placed a qualifying wager, the dealer shall verbally acknowledge the envy bonus qualifying hand and leave the cards of the player face up on the table.

(ii) After all Fortune Bonus Wagers have been settled, if any player is the holder of an envy bonus qualifying hand, the dealer shall pay an envy bonus in accordance with Section 16(b) to each player who has an envy lammer at the player's betting position. Players are entitled to multiple envy bonuses when another player at the same pai gow poker table is the holder of an envy bonus qualifying hand. A player is not entitled to an envy bonus for his own hand or the hand of the dealer.

(iii) After all envy bonuses have been paid, the dealer shall collect all remaining cards and place them in the discard rack.

(2) Settle the player's Emperor's Treasure Wager as follows:

(i) If a player:

- a. Does not have a straight or higher as described in Section 3(e), the dealer shall collect the Emperor's Treasure Wager and place the cards of the player in the discard rack.

- b. Has a straight or higher, the dealer shall pay the winning Emperor's Treasure Wager in accordance with Section 16(c) and place the cards of the player in the discard rack. If the player has an Envy bonus qualifying hand and any player at the table placed a qualifying wager, the dealer shall verbally acknowledge the Envy bonus qualifying hand and leave the cards of the player face up on the table.
 - c. Did not place an Emperor's Treasure Wager but has an Envy bonus qualifying hand and another player at the table placed a qualifying wager, the dealer shall verbally acknowledge the envy bonus qualifying hand and leave the cards of the player face up on the table.
- (ii) After all Emperor's Treasure Wagers have been settled, if any player is the holder of an envy bonus qualifying hand, the dealer shall pay an envy bonus in accordance with Section 16(c) to each player who has an envy lammer at the player's betting position. players are entitled to multiple envy bonuses when another player at the same pai gow poker table is the holder of an envy bonus qualifying hand. A player is not entitled to an envy bonus for his own hand or the hand of the dealer.
 - (iii) After all envy bonuses have been paid, the dealer shall collect all remaining cards and place them in the discard rack.
- (3) Settle the player's pai gow insurance wager. If a player:
- (i) Has a pair or better as described in Section 3(ii), the dealer shall collect the pai gow insurance wager and place the cards of the player in the discard rack.
 - (ii) Does not have a pair or better, but has a card ranked a nine-high or better, the dealer shall pay the winning pai gow insurance wager in accordance with Section 16(d). The dealer shall then place the cards of the player in the discard rack.
- (4) Settle the player's Progressive Payout Wager. If a player:
- (i) Does not have a full house or better, as described in Section 3(f), the dealer shall collect the Progressive Payout Wager and place the cards of the player in the discard rack.
 - (ii) Has a full house or better, the dealer shall:
 - a. Verify that the hand is a winning hand.
 - b. Verify that the appropriate light on the progressive table game system has been illuminated.
 - c. Have a floorperson or above validate the progressive payout in accordance with the licensee's approved internal control procedures.
 - d. Pay the winning Progressive Payout Wager in accordance with the payout odds in Section 16(e). If a player has won a progressive payout that is a percentage of the progressive meter, the progressive payout may not be paid from the table inventory container. If a player has won a progressive payout that is not being paid from the table inventory, the cards of that player shall remain on the table until the necessary documentation has been completed.
- (5) Settle the player's Queen's Dragon Wager. If the dealer does not have Queen's Dragon, the dealer shall collect the Queen's Dragon Wager and place the cards of the player in the discard rack. If the dealer has a Queen's Dragon, the dealer shall pay the winning wager in accordance with Section 16(f).
- (6) Settle the player's Dynasty Bonus Wager as follows:
- (i) If a player:
 - a. Does not have a three-of-a-kind or better as described in Section 3(b) and (g), the

- dealer shall collect the Dynasty Wager and place the cards of the player in the discard rack.
- b. Has a three-of-a-kind or better, the dealer shall pay the winning Dynasty Wager in accordance with Section 16(g). If the player has an envy bonus qualifying hand and any player at the table placed a qualifying wager, the dealer shall verbally acknowledge the Envy bonus qualifying hand and leave the cards of the player face up on the table.
 - c. Did not place a Dynasty Wager but has an envy bonus qualifying hand and another player at the table placed a qualifying wager, the dealer shall verbally acknowledge the envy bonus qualifying hand and leave the cards of the player face up on the table.
- (ii) After all Dynasty Bonus Wagers have been settled, if any player is the holder of an Envy bonus qualifying hand, the dealer shall pay an Envy Bonus in accordance with Section 16(g) to each player who has an envy lammer at the player's betting position. Players are entitled to multiple envy bonuses when another player at the same pai gow poker table is the holder of an envy bonus qualifying hand. A player is not entitled to an envy bonus for his own hand or the hand of the dealer.
- (7) Settle the player's Protection Wager. If the player's hand does not contain a high card of a 9, 10, jack, queen, king or ace, or the hand contains a pair or better, as described in Section 3(b), the dealer shall collect the Protection Wager and place the cards of the player in the discard rack. If the player's hand does not contain a pair or better but contains a high card of a 9, 10, jack, queen, king or ace, the dealer shall pay the winning wager in accordance with Section 16(h).
- (8) Settle the player's Red/Black Wager. If the player wagered on red and the player's hand does not contain four or more red cards, or if the player wagered on black and the player's hand does not contain four or more black cards, the dealer shall collect the Red/Black Wager and place the cards of the player in the discard rack. If a player's hand does contain four or more of the cards of the player's chosen color, the dealer shall pay the winning Red/Black Wager in accordance with Section 16(i).
- (i) Notwithstanding the requirements in subsection (h) above, if the licensee offers more than one optional wager, the dealer shall settle all of the player's optional wagers before placing the player's cards in the discard rack.

10. Player bank; co-banking; selection of bank; procedures for dealing

- (a) A gaming licensee may, in its discretion, offer to all players at a pai gow poker table the opportunity to bank the game. If the gaming licensee elects this option, all the other provisions of this section shall apply except to the extent that they conflict with the provisions of this section, in which case the provisions of this section shall control for any round of play in which a player is the bank.
- (b) A player may not be the bank at the start of the game. For the purposes of this section, the start of the game shall mean the first round of play after the dealer is required to shuffle the cards in accordance with the procedures set forth in Section 5(c).

- (c) After the first round of play pursuant to (b) above, each player at the table shall have the option to either be the bank or pass the bank to the next player. The dealer shall, starting with the player farthest to the right of the dealer, offer the bank to each player in a counterclockwise rotation around the table until a player accepts the bank. The dealer shall place a marker designating the bank in front of the player who accepts the bank. If the first player offered the bank accepts, the player seated to the right of that player shall first be offered the bank on the next round of play. The initial offer to be the bank shall rotate counterclockwise around the table until it returns to the dealer. In no event may any player bank two consecutive rounds of play. If no player wishes to be the bank, the round of play shall proceed in accordance with the rules of play provided in this section.
- (d) Before a player may be permitted to bank a round of play, the dealer shall determine that:
 - (1) The player placed a wager against the dealer during the last round of play in which there was no player banking the game; and
 - (2) The player has sufficient gaming chips on the table to cover all of the wagers placed by other players at the table for that round of play.
- (e) A gaming licensee may, in its discretion, offer the bank the option of having the casino cover 50 percent of the wagers made during a round of play. If the gaming licensee offers this option, it shall make it available to all players at the table. If the bank wishes to use this option, the bank must specifically request the dealer to accept responsibility for the payment of one-half of all winning wagers. When the bank covers 50 percent and the casino covers 50 percent of the winning wagers, it shall be known as "co-banking" and the dealer shall place a marker designating the co-bank in front of that player. When the dealer is co-banking, the dealer shall be responsible for setting the hand of the bank in the manner submitted to the Commission pursuant to Section 9. When co-banking is in effect, the dealer may not place a wager against the bank.
- (f) If a player is the bank, the player may only wager on one betting area.
- (g) Once the dealer has determined that a player may be the bank pursuant to (d) above and after the cards have been shuffled, the dealer shall remove gaming chips from the table inventory container in an amount equal to the last wager made by that player against the dealer or in an amount, the calculation of which has been approved by the Commission. This amount shall be the amount the dealer wagers against the bank. The bank may direct that the sum wagered by the dealer be a lesser amount or that the dealer place no wager during that round of play. Any amount wagered by the dealer shall be placed in front of the table inventory container.
- (h) If the cards are to be dealt from a manual dealing shoe, the procedures set forth in Sections 8 and 8c shall apply, except as follows:
 - (1) If a pai gow poker shaker and dice are being used to determine the starting position for the dealing of the cards, the bank shall shake the pai gow poker shaker three times pursuant to Section 8c(b) instead of the dealer. It shall be the responsibility of the dealer to ensure that the bank shakes the pai gow poker shaker at least three times so as to cause a random mixture of the dice. Once the bank has completed shaking the pai gow poker shaker, the dealer shall remove the lid covering the pai gow poker shaker, total the dice

and announce the total. The dealer shall always remove the lid from the pai gow poker shaker and if the bank inadvertently removes the lid, the dealer shall require the pai gow poker shaker to be covered and reshaken by the bank.

- (2) If a computerized random number generator is used to determine the starting position for the dealing of the cards, the device shall be operated in accordance with procedures approved by the Commission.
 - (3) When counting the betting positions, including the dealer, to determine the starting position for dealing the cards, the position of the banker, instead of the dealer, shall be considered number one.
- (i) If the cards are to be dealt from the hand, the procedures set forth in Section 8a and 8c shall apply, except as follows:
- (1) Once the dealer has completed dealing the seven stacks and placed the four remaining cards in the discard rack pursuant to Section 8a, the bank shall select the first stack to be delivered by the dealer. This stack shall be designated as the first stack by the dealer moving it toward the players.
 - (2) If a pai gow poker shaker and dice are being used to determine the starting position for the delivery of the first stack, the bank shall shake the pai gow poker shaker three times pursuant to Section 8c(b) instead of the dealer. It shall be the responsibility of the dealer to ensure that the bank shakes the pai gow poker shaker at least three times so as to cause a random mixture of the dice. Once the bank has completed shaking the pai gow poker shaker, the dealer shall remove the lid covering the pai gow poker shaker, total the dice and announce the total. The dealer shall always remove the lid from the pai gow poker shaker and if the bank inadvertently removes the lid, the dealer shall require the pai gow poker shaker to be covered and reshaken by the bank.
 - (3) If a computerized random number generator is used to determine the starting position for the delivery of the first stack, the device shall be operated in accordance with procedures approved by the Commission.
 - (4) When counting the betting positions, including the dealer, to determine the starting position for delivering the seven stacks of cards, the position of the bank, instead of the dealer, shall be considered number one.
 - (5) The dealer shall deliver the first stack as determined in (i)(1) above to the starting position as determined in Section 8b and (i)(2) through (4) above. Thereafter, the dealer shall deliver the remaining stacks in a clockwise rotation beginning with the stack closest to the right of the first stack and proceeding until all stacks to the right of the first stack have been dealt and then moving to the stack farthest to the left of the dealer and proceeding left to right. If there are no stacks to the right of the first stack, the dealer will begin with the stack farthest to the left and proceed to the right. The dealer shall deliver each stack face down to each position, including the dealer, regardless of whether there is a wager at the position.
- (j) If the cards are to be dealt from an automated dealing shoe, the procedures set forth in Sections 8a and 8b shall apply, except as follows:
- (1) If a pai gow poker shaker and dice are being used to determine the starting position for the delivery of the first stack of cards dispensed by the automated dealing shoe, the bank shall shake the pai gow poker shaker three times pursuant to Section 8b(b) instead of the

dealer. It shall be the responsibility of the dealer to ensure that the bank shakes the pai gow poker shaker at least three times so as to cause a random mixture of the dice. Once the bank has completed shaking the pai gow poker shaker, the dealer shall remove the lid covering the pai gow poker shaker, total the dice and announce the total. The dealer shall always remove the lid from the pai gow poker shaker and if the bank inadvertently removes the lid, the dealer shall require the pai gow poker shaker to be covered and reshaken by the bank.

- (2) If a computerized random number generator is used to determine the starting position, the device shall be operated in accordance with procedures approved by the Commission.
 - (3) When counting the betting positions, including the dealer, to determine the starting position for delivering the stacks of cards as they are dispensed by the shoe, the position of the bank, instead of the dealer shall be considered number one.
- (k) If the cards dealt to the dealer have not been previously collected, after each player has set their two hands and placed them on the appropriate area of the layout, the two hands of the dealer shall then be set. Once the dealer has formed a high and low hand, the dealer shall expose the hands of the bank and determine if the hands of the dealer are higher in rank than the hands of the bank. If the dealer wins, the cards of the dealer shall be stacked face up to the right of the table inventory container with the amount wagered by the dealer against the bank placed on top. If the dealer pushes, the dealer shall return the amount wagered by the dealer against the bank to the table inventory container. If the dealer loses, the amount wagered by the dealer against the bank shall be moved to the center of the layout.
- (l) If banking is in effect, once the dealer has determined the outcome of the wager of the dealer against the bank, if any, the dealer shall expose the hands of each player starting with the player farthest to the right of the dealer and proceeding counterclockwise around the table. The dealer shall compare the high and low hand of each player to the high and low hand of the bank and shall announce if the wager shall win, lose or be considered a push against the bank. All losing wagers shall be immediately collected and placed in the center of the table. After all hands have been exposed, all winning wagers, including the dealer's wager, shall be paid by the dealer with the gaming chips located in the center of the table. If this amount becomes exhausted before all winning wagers have been paid, the dealer shall collect from the bank, an amount equal to the remaining winning wagers and place that amount in the center of the layout. The remaining winning wagers shall be paid from the amount in the center of the layout. If, after collecting all losing wagers and paying all winning wagers, there is a surplus in the center of the table, this amount shall be charged a 5 percent vigorish in accordance with Section 9. Once the vigorish has been paid, the remaining amount shall be given to the bank.
- (m) If co-banking is in effect, once the dealer has set the co-bank hand pursuant to paragraph (e) above, the dealer shall expose the hands of each player starting with the player farthest to the right of the dealer and proceeding counterclockwise around the table. The dealer shall compare the high and low hand of each player to the high and low hand of the bank and shall announce if the wager shall win, lose or be considered a push against the bank. All losing wagers shall be immediately collected and placed in the center of the table. After all hands have been exposed, all winning wagers shall be paid by the dealer with the gaming chips

located in the center of the table. If this amount becomes exhausted before all winning wagers have been paid, the dealer shall collect from the co-bank, an amount equal to one-half of the remaining winning wagers and place that amount in the center of the layout. The dealer shall remove an amount equal to one-half of the remaining winning wagers from the table inventory container and place that amount in the center of the layout. The remaining winning wagers shall be paid from the total amount in the center of the layout. If, after collecting all losing wagers and paying all winning wagers, there is a surplus in the center of the table, this amount will be counted and the dealer shall place half of this amount into the table inventory container. The dealer shall collect a 5 percent vigorish in accordance with Section 9 on the remaining amount and place the vigorish amount in the table inventory container. The remaining amount shall then be given to the co-bank.

- (n) Immediately after a winning wager of the dealer is paid, this amount and the original wager shall be returned to the table inventory container.
- (o) Each player who has a winning wager against the bank shall pay a five percent vigorish on the amount won to the dealer, in accordance with Section 9.
- (p) If a gaming licensee offers the progressive payout wager pursuant to Section 14 or the optional bonus wagers pursuant to Section 17, the processing and resolution of such wagers shall be governed by the rules applicable to such wagers throughout this section.

11. Irregularities; invalid roll of dice

- (a) If the dealer uncovers the pai gow poker shaker and all three dice do not land flat on the bottom of the shaker, the dealer shall call a "No roll" and reshake the dice.
- (b) If the dealer uncovers the pai gow poker shaker and a die or dice fall out of the shaker, the dealer shall call a "No roll" and reshake the dice.
- (c) If the dealer incorrectly totals the dice and deals the first card or delivers the first stack to the wrong position, all hands shall be called dead and the dealer shall reshuffle the cards.
- (d) If the dealer exposes any of the cards dealt to a player, the player has the option of voiding the hand. Without looking at the unexposed cards, the player shall make the decision either to play out the hand or to void the hand.
- (e) If a card or cards in the hand of the dealer or bank is exposed, all hands shall be void and the cards shall be reshuffled.
- (f) A card found turned face up in the shoe shall not be used in the game and shall be placed in the discard rack. If more than one card is found turned face up in the shoe, all hands shall be void and the cards shall be reshuffled.
- (g) A card drawn in error without its face being exposed shall be used as though it was the next card from the shoe.

- (h) If any player or the dealer is dealt an incorrect number of cards, all hands shall be void and the cards reshuffled.
- (i) If the dealer does not set their hands in the manner submitted to the Commission pursuant to Section 9, the hands must be reset in accordance with this submission and the round of play completed.
- (j) If the bank does not set their own hands correctly, the wager shall not be lost pursuant to Section 9, and the dealer shall be required to reset the bank's hands in the manner submitted to the Commission pursuant to Section 9 so that the round of play may be completed.
- (k) If a card is exposed while the dealer is dealing the seven stacks in accordance with Section 8a, the cards shall be reshuffled.
- (l) If an automated card shuffling device is being used and the device jams, stops shuffling during a shuffle, or fails to complete a shuffle cycle, the cards shall be reshuffled in accordance with procedures approved by the Commission.
- (m) If an automated dealing shoe/machine is being used and the device jams, stops dealing cards, or fails to deal all cards during a round of play, the round of play shall be void, and the cards shall be removed from the device and reshuffled with any cards already dealt, in accordance with procedures approved by the Commission.

12. A player wagering on more than one betting area

- (a) Except as provided in Section 10(f), a gaming licensee may, in its discretion, permit a player to wager on no more than two betting areas at a pai gow poker table, which areas must be adjacent to each other.
- (b) If a gaming licensee permits a player to wager on two adjacent betting areas, the cards dealt to each betting area shall be played separately. If the two wagers are not equal, the player shall be required to rank and set the hand with the larger wager before ranking and setting the other hand. If the amounts wagered are equal, each hand shall be played separately in a counterclockwise rotation with the first hand being ranked and set before the player proceeds to rank and set the second hand. Once a hand has been ranked and set and placed face down on the appropriate area of the layout, the hand may not be changed.

13. Permissible additional wager

- (a) If a gaming licensee, pursuant to Section 8c, uses a random number generator to determine the starting position for the dealing of cards or the delivery of stacks of cards, the gaming licensee may in its discretion offer to every player at the pai gow poker table the option to make an additional wager as to which one of the numbers 1 through 7 will be selected and displayed by the random number generator at the beginning of a round of play.

- (b) The following procedures shall be observed by any gaming licensee offering the additional wager authorized by this section:
- (1) Prior to the activation of the random number generator at the beginning of a round of play, any player who has made a pai gow poker wager pursuant to Section 7 may, at the same time, make the additional wager authorized by this section. A player may make an additional wager on more than one number during each round of play.
 - (2) A player shall make an additional wager by placing gaming chips, and if permitted by the gaming licensee, a match play coupon, on the number selected by the player in the area designated for additional wagers on the pai gow poker table layout. No verbal additional wagers or cash additional wagers shall be permitted.
 - (3) An additional wager shall win if the number selected by the player in (b)(2) above is the same number selected and displayed by the random number generator as the first player position to receive cards during that round of pai gow poker. All other additional wagers shall lose.
 - (4) After the dealer announces "No more bets" and the random number generator selects and displays the position number for that round of play, any losing additional wagers shall be immediately collected by the dealer.
 - (5) Any winning additional wagers shall be paid immediately after collection of any losing additional wagers, and prior to any card being dealt to any player at the table.
 - (6) A gaming licensee shall pay off winning additional wagers at odds of no less than 5 1/2 to 1 and no more than 6 to 1, and in accordance with the payout odds imprinted on the pai gow poker table layout; provided however, that payouts for any additional winning wagers shall be rounded down to the nearest whole dollar.
- (c) Any additional wager made pursuant to this section shall have no bearing upon any other wager made by a player at the game of pai gow poker.

14. Progressive payout wager

- (a) A gaming licensee may, in its discretion, offer to every player at a pai gow poker table who has placed a pai gow poker wager the option to make a progressive payout wager on whether the player will be dealt a hand type as set forth in (d) below. The progressive payout wager shall, in the discretion of the gaming licensee, be either a \$1.00 or \$5.00 wager.
- (b) Prior to the first card or stack of cards of a round being dealt and once all wagers including progressive payout wagers have been placed, the dealer shall announce "No more bets" and press the lock-out button on the table controller panel. The dealer shall then remove any wagers placed on the progressive payout from the table inventory return device, verify, on the layout in front of the table inventory container, that the number of gaming chips wagered equals the number of lights illuminated on the acceptor devices and place the gaming chips into the table inventory container.
- (c) A winning progressive payout wager shall be paid in accordance with the payout table listed in (d) below and the provisions of Section 9. A winning progressive payout wager shall be paid irrespective of the outcome of the player's pai gow poker wager. Prior to paying a winning progressive payout wager, the dealer shall:

- (1) Verify that the light on the correct acceptor device has been illuminated;
 - (2) Verify that the hand is a winning hand; and
 - (3) Require a casino supervisor to validate any payouts to be deducted from the progressive meter pursuant to (e) below and the gaming licensee's approved internal controls.
- (d) A gaming licensee shall pay winning \$1.00 and \$5.00 progressive payout wagers at no less than the amounts listed below:

Hand Type	Payout
Natural Royal Flush and Pair	100 percent of meter
Five Aces and Pair	100 percent of meter
Natural Royal Flush	10 percent of meter
Five Aces	10 percent of meter
Royal Flush and Pair	\$200.00
Royal Flush	\$100.00
Straight Flush and Pair	\$50.00
Straight Flush	\$25.00
Four-of-a-Kind and Pair	\$40.00
Four-of-a-Kind	\$20.00
Full House and Pair	\$10.00
Full House	\$5.00
Flush and Pair	\$6.00
Flush	\$3.00
Straight and Pair	\$4.00
Straight	\$2.00
Three-of-a-Kind	\$2.00

Hand Type	Payout
Natural Royal Flush and Pair	100 percent of meter
Five Aces and Pair	100 percent of meter
Natural Royal Flush	10 percent of meter
Five Aces	10 percent of meter
Royal Flush and Pair	\$1,000.00
Royal Flush	\$500.00
Straight Flush and Pair	\$250.00
Straight Flush	\$125.00
Four-of-a-Kind and Pair	\$200.00
Four-of-a-Kind	\$1,000.00
Full House and Pair	\$50.00
Full House	\$25.00
Flush and Pair	\$30.00
Flush	\$15.00
Straight and Pair	\$20.00
Straight	\$10.00
Three-of-a-Kind	\$10.00

- (e) The rate of progression of the progressive meter used to determine the progressive payouts required by (d) above shall be no less than 21 percent of the amount wagered for the \$1.00 progressive wager and 27 percent of the amount wagered for the \$5.00 progressive wager. Any progressive wager payout of \$50.00 or more or for a straight flush for a \$1.00 progressive wager, and any progressive wager payout of \$250.00 or more or for a straight flush for a \$5.00 progressive wager, shall be deducted from the progressive meter.
- (f) The initial and reset amounts for the progressive meter shall be established by each gaming licensee and approved pursuant to 205 CMR 138.62. In no instance shall the initial or reset amount on the progressive meter that is funded by the gaming licensee be less than \$10,000.
- (g) Any payout determined by 205 CMR 138.62 the amount on the progressive meter shall be based upon the amount that is on the meter at the time the player's progressive payout wager is paid, irrespective of the amount that was on the meter when the player placed the wager or when the dealer dealt the player's cards.

~~14.a Fortune Pai Gow Poker Progressive wager~~

- ~~(a) A gaming licensee may, in its discretion, offer to every player at a pai gow poker table who has placed a pai gow poker wager the option to make a Fortune Pai Gow progressive wager on whether the player will be dealt a hand type as set forth in (d) below. The progressive payout wager shall, in the discretion of the gaming licensee, be at a minimum of \$5.00 up to \$200.00.~~

Commented [TC2]: This section, including table, has been moved to Section 20a.

- (b) ~~Prior to the first card or stack of cards of a round being dealt and once all wagers including the Fortune Pai Gow progressive wagers have been placed, the dealer shall announce "No more bets" and press the lock-out button on the table controller panel. The Dealer will place a specially designed ENVY BUTTON on top of any bonus wager of \$5.00 or more.~~
- (c) ~~A winning progressive payout wager shall be paid in accordance with the payout table listed in (d) below and the provisions of Section 9. A winning Fortune Pai Gow progressive wager shall be paid irrespective of the outcome of the player's pai-gow poker wager. If a Fortune Bonus wager has been placed, the Dealer will act on the bonus wager first after exposing the player's hand. Prior to paying a Fortune Pai Gow progressive wager, the dealer shall determine:~~
- ~~(1) If the Fortune Bonus wager loses, the Dealer will place the wager in the rack immediately. Leaving the envy button in the circle. Proceed with the pai-gow wager. If the pai-gow hand loses. The wager will be collected and the cards will be gathered and placed in the discard rack. If the pai-gow hand pushes, leave the wager, and the cards will be gathered and placed in the discard rack. If the pai-gow hand wins leave the cards spread and leave the envy button in the circle.~~
 - ~~(2) If the Fortune Bonus wager wins, the Dealer will cut out the payout in front of the rack, stack up the payout, and slide the payoff to the Player. Leaving the envy button in the circle. Proceed to the pai-gow wager. If the pai-gow hand loses the wager will be collected and the cards will be gathered and placed in the discard rack. If the pai-gow hand pushes leave the wager, and the cards will be gathered and placed in the discard rack. If the pai-gow hand wins leave the cards spread and leave the envy button in the circle.~~
 - ~~(3) Envy bonuses will be paid as they are hit in order. If more than one player has at least Four-of-a-kind, then all players with a "Envy" button will win multiple payouts.~~
 - ~~(4) After all hands have been acted on the dealer will collect all envy buttons.~~
 - ~~(5) Players cannot win an envy bonus on their own hand.~~
 - ~~(6) The joker may be used to replace any card in a straight or flush or as an Ace for the Bonus hand. The value for the Bonus hand of the joker may be different than in the regular hand.~~
- (d) ~~A gaming licensee shall pay winning Fortune Pai Gow progressive wagers at no less than the amounts listed in section 16(b) paytable.~~
- (e) ~~Each betting position will also have a sensor for players to make a progressive wager.~~
- ~~(1) Players must make wager prior to cards being delivered to the first player.~~
 - ~~(2) Wagers are \$5.00~~

(f) ~~Prior to delivering the first hand the dealer will press the start game icon on the keypad and then collect any wagers that have been made.~~

(g) ~~All winning progressive wagers will pay at odds from the paytable below:~~

Hand	Odds	Payout
Seven Card Straight Flush		100% Mega
Five Aces		100% Major
Royal Flush		100% Minor
Straight Flush	100 For 1	
Four of a Kind	75 For 1	
Full House	4 For 1	

~~14b. Commission Free Fortune Pai gow poker version~~

(a) ~~This is a variation of Fortune Pai Gow poker game that it is commission free and offers two optional bonus bets: Fortune Bonus and Tiger 9. Commission Free Fortune Pai Gow poker features head to head play against the dealer where the winning bets do not pay 5% commission. Instead, all players push when the dealer plays 9 high in his two card hand (low).~~

(b) ~~If the player wishes to play the optional Tiger 9 bet, the Tiger 9 bet wins if the dealer plays 9 high in his two card hand (low).~~

(c) ~~If the dealer has a Tiger 9 hand, or a hand with a 9 high two card front hand, then all main wagers push, and all Tiger 9 optional side bets are paid 30 to 1.~~

(d) ~~If the dealer does not have a Tiger 9 hand, any optional Tiger 9 wagers are collected, and the player versus dealer hands are resolved following standard pai gow poker procedures. All winning player's hands are paid 1 to 1 with no commission paid.~~

(e) ~~While reconciling the main wager and the Tiger 9 wager, the Fortune bonus wager is also resolved. The Fortune bonus wager is paid according to a paytable based on the highest five card hand available from the player's seven cards, regardless of how the hands are set. There are seven non progressive paytables for Fortune Pai Gow, and two progressive paytables for Fortune Pai Gow Progressive. These are given in Table 1 through Table 3 below. All paytables are available at a minimum of \$1 per wager, but only wagers of \$5 or more are eligible for envy bonus pays, if applicable.~~

Commented [TC3]: This section and tables have been moved to Sections 20 and 20a.

Table 1. Fortune Pai Gow Bonus Paytables

Hand	Paytable 1	Paytable 2	Paytable 3	Paytable 4	Paytable 6	Paytable 7	Paytable 9
7 Card Straight Flush	5000 to 1	8000 to 1	5000 to 1	2500 to 1	5000 to 1	5000 to 1	1000 to 1
Royal Flush + Royal Match*	1000 to 1	2000 to 1	2000 to 1	1000 to 1	1000 to 1	2000 to 1	750 to 1
7 Card Straight Flush with Joker	750 to 1	1000 to 1	1000 to 1	750 to 1	500 to 1	1000 to 1	500 to 1
5 Aces	250 to 1	400 to 1	400 to 1	250 to 1	300 to 1	400 to 1	250 to 1
Royal Flush	100 to 1	150 to 1	150 to 1	125 to 1	110 to 1	150 to 1	150 to 1
Straight Flush	50 to 1	50 to 1	50 to 1	50 to 1	45 to 1	50 to 1	50 to 1
4 of a Kind	20 to 1	25 to 1	25 to 1	25 to 1	25 to 1	25 to 1	25 to 1
Full House	5 to 1	5 to 1	5 to 1	5 to 1	5 to 1	5 to 1	5 to 1
Flush	4 to 1	4 to 1	4 to 1	4 to 1	4 to 1	4 to 1	4 to 1
3 of a Kind	3 to 1	3 to 1	3 to 1	3 to 1	3 to 1	3 to 1	3 to 1
Straight	2 to 1	2 to 1	2 to 1	2 to 1	2 to 1	2 to 1	2 to 1
Three Pair	Push	-1 to 1	-1 to 1	-1 to 1	-1 to 1	-1 to 1	Push
Others	-1 to 1	-1 to 1	-1 to 1	-1 to 1	-1 to 1	-1 to 1	-1 to 1

Table 2. Fortune Pai Gow Bonus Envy Paytables

Hand	Paytable 1	Paytable 2	Paytable 3	Paytable 4	Paytable 6	Paytable 7	Paytable 9
7 Card Straight Flush	\$1,000	\$5,000	\$3,000	\$1,000	\$2,500	\$2,500	\$500
Royal Flush + Royal Match*	\$250	\$1,000	\$1,000	\$750	\$500	\$500	\$250
7 Card Straight Flush with Joker	\$100	\$500	\$500	\$250	\$250	\$250	\$150
5 Aces	\$50	\$250	\$250	\$100	\$150	\$150	\$100
Royal Flush	\$25	\$50	\$50	\$50	\$55	\$55	\$50
Straight Flush	\$10	\$20	\$20	\$20	\$25	\$25	\$20
4 of a Kind	\$5	\$5	\$5	\$5	\$6	\$6	\$5

Table 3. Fortune Pai Gow Progressive Bonus Paytables

Hand	Paytable 1	Paytable 3
7 Card Straight Flush	100%	100%
5 Aces	10%	10%
Royal Flush	500 for 1	500 for 1
Straight Flush	100 for 1	100 for 1
Four of a Kind	75 for 1	75 for 1
Full House	4 for 1	4 for 1
Seed amount	\$10,000	\$2,000

15. Pai gow insurance wager; optional bonus wager; payment of envy bonus

- (a) A gaming licensee may, in its discretion, offer to each player at a pai gow poker table the opportunity to make a pai gow insurance wager and/or a bonus wager and receive an envy bonus payment in accordance with the provisions of this section. The optional bonus wager authorized by this section may not be offered by a gaming licensee on any pai gow poker table which offers the optional three-card bonus wager and the seven-card bonus wager authorized by Section 17.
- (b) Any player who has made a pai gow poker wager pursuant to Section 7 may, at the same time, make a pai gow insurance wager and/or a bonus wager by placing gaming chips in the area designated for a bonus wager at their betting position. A bonus wager shall be no less than \$1.00.
- (c) Any player who makes a bonus wager of at least \$5.00 shall qualify to receive an envy bonus payment. The dealer shall place an envy bonus marker immediately in front any bonus wager of \$5.00 or more.
- (d) If a pai gow insurance wager and/or a bonus wager has been made by one or more players, the dealer shall observe the procedures set forth in Section 9 but with the following modifications.
 - (1) The dealer shall, starting from the dealer's right and moving counterclockwise around the table, settle the pai gow poker wager of each player and collect any vigorish that is due; provided, however, that:
 - (i) The cards of any player who has placed a bonus wager shall remain on the layout regardless of the outcome of their pai gow poker wager until removed in accordance with the provisions of (d)(2) or (3) below; and
 - (ii) If any player has placed a pai gow insurance wager or a bonus wager of at least \$5.00, the cards of each player shall remain on the layout regardless of the outcome of their pai gow poker wager until removed in accordance with the provisions of (d)(2) or (3) below.
 - (2) After settling the pai gow poker wager of a player who has placed a pai gow insurance wager or a bonus wager, the dealer shall rearrange the seven cards of the player to form the best possible hand and shall be ultimately responsible for creating such hand for purposes of the pai gow insurance wager and the bonus wager. Except for the pai gow insurance wager, a joker may be used as any card to complete any straight, flush, straight flush or royal flush other than a seven-card straight flush with no joker. If any player at the table has placed a bonus wager of at least \$5.00, the dealer shall rearrange the cards of each player at the table regardless whether that player has placed a bonus wager.
 - (i) If the player does not have a qualifying poker hand or a pai gow, the dealer shall collect the bonus wager and/or pai gow insurance wager, if applicable, and place the cards of the player in the discard rack.
 - (ii) If the player has a qualifying poker hand or a pai gow, the dealer shall, if and as applicable, pay the winning bonus wager in accordance with Section 16(a) and/or the winning pai gow insurance wager in accordance with Section 16(c) and place the cards of the player in the discard rack.

- (iii) If the player has a premium qualifying poker hand, the dealer shall verbally acknowledge the premium qualifying poker hand and leave the bonus wager, if applicable, and the cards of the player face up on the table.
- (3) After all other bonus wagers and pai gow insurance wagers have been settled, the dealer shall, starting from the dealer's right and moving counterclockwise around the table, settle with each player who has an envy bonus marker at their betting position or who has a bonus wager and a premium qualifying poker hand.
 - (i) If the player has an envy bonus marker, the dealer shall pay the player the appropriate envy bonus payment set forth at Section 16(b) and collect the envy bonus marker.
 - (ii) If the player has a bonus wager and a premium qualifying poker hand, the dealer shall pay the winning bonus wager in accordance with Section 16(a) and place the cards of the player in the discard rack.
 - (iii) After all envy bonuses and premium qualifying poker hands are paid, the dealer shall collect the cards of any player who had a premium qualifying poker hand but did not place a bonus wager and place the cards of the player in the discard rack.

16. Payout odds for bonus wagers; envy bonus payments; pai gow insurance wagers

- (a) A licensee shall pay each winning pai gow poker wager at odds of 1 to 1, except that the licensee shall extract a vigorish from the winning players in an amount equal to 5% of the amount won. When collecting the vigorish, the licensee may round off the vigorish to 25¢ or the next highest multiple of 25¢. A licensee shall collect the vigorish from a player at the time the winning payout is made.
- (b) The licensee shall pay out winning Fortune Bonus Wagers and Envy Bonus payouts at the odds and amounts in one of the following paytables selected by the licensee in its Rules Submission filed:

Hand	Paytable A	Envy Bonus
Seven card straight flush	8000 to 1	\$5,000.00
Royal flush and Royal Match	2000 to 1	\$1,000.00
Seven-card straight flush with joker	1000 to 1	\$500.00
Five aces	400 to 1	\$250.00
Royal flush	150 to 1	\$50.00
Straight flush	50 to 1	\$20.00
Four-of-a-kind	25 to 1	\$5.00
Full house	5 to 1	
Flush	4 to 1	
Three-of-a-kind	3 to 1	
Straight	2 to 1	

Hand	Paytable B	Envy Bonus
Seven card straight flush	5000 to 1	\$3,000.00
Royal flush and Royal Match	2000 to 1	\$1,000.00
Seven-card straight flush with joker	1000 to 1	\$500.00
Five aces	400 to 1	\$250.00
Royal flush	150 to 1	\$50.00
Straight flush	50 to 1	\$20.00
Four-of-a-kind	25 to 1	\$5.00
Full house	5 to 1	
Flush	4 to 1	
Three-of-a-kind	3 to 1	
Straight	2 to 1	

Hand	Paytable C	Envy Bonus
Seven card straight flush	5000 to 1	\$1,000.00
Royal flush and Royal Match	1000 to 1	\$250.00
Seven-card straight flush with joker	750 to 1	\$100.00
Five aces	250 to 1	\$50.00
Royal flush	100 to 1	\$25.00
Straight flush	50 to 1	\$10.00
Four-of-a-kind	20 to 1	\$5.00
Full house	5 to 1	
Flush	4 to 1	
Three-of-a-kind	3 to 1	
Straight	2 to 1	
Three pair	Push	

Hand	Paytable D	Envy Bonus
Seven card straight flush	2500 to 1	\$1,000.00
Royal flush and Royal Match	1000 to 1	\$750.00
Seven-card straight flush with joker	750 to 1	\$250.00
Five aces	250 to 1	\$100.00
Royal flush	125 to 1	\$50.00
Straight flush	50 to 1	\$20.00
Four-of-a-kind	25 to 1	\$5.00
Full house	5 to 1	
Flush	4 to 1	
Three-of-a-kind	3 to 1	
Straight	2 to 1	

- (c) The licensee shall pay out winning Emperor's Treasure Wagers and envy bonus payouts at the odds and amounts in one of the following paytables selected by the licensee in its Rules submission:

Hand	Paytable A	Envy Bonus
Seven card straight flush	8000 to 1	\$5,000.00
Royal flush and ace king suited	2000 to 1	\$1,000.00
Seven-card straight flush with joker	1000 to 1	\$500.00
Five aces	400 to 1	\$250.00
Royal flush	150 to 1	\$50.00
Straight flush	50 to 1	\$20.00
Four-of-a-kind	25 to 1	\$5.00
Full house	5 to 1	
Flush	4 to 1	
Three-of-a-kind	3 to 1	
Straight	2 to 1	

Hand	Paytable B	Envy Bonus
Seven card straight flush	5000 to 1	\$3,000.00
Royal flush and ace king suited	2000 to 1	\$1,000.00
Seven-card straight flush with joker	1000 to 1	\$500.00
Five aces	400 to 1	\$250.00
Royal flush	150 to 1	\$50.00
Straight flush	50 to 1	\$20.00
Four-of-a-kind	25 to 1	\$5.00
Full house	5 to 1	
Flush	4 to 1	
Three-of-a-kind	3 to 1	
Straight	2 to 1	

Hand	Paytable C	Envy Bonus
Seven card straight flush	5000 to 1	\$1,000.00
Royal flush and ace king suited	1000 to 1	\$250.00
Seven-card straight flush with joker	750 to 1	\$100.00
Five aces	250 to 1	\$50.00
Royal flush	100 to 1	\$25.00
Straight flush	50 to 1	\$10.00
Four-of-a-kind	20 to 1	\$5.00
Full house	5 to 1	
Flush	4 to 1	
Three-of-a-kind	3 to 1	
Straight	2 to 1	

Hand	Paytable D	Envy Bonus
Seven card straight flush	2500 to 1	\$1,000.00
Royal flush and ace king suited	1000 to 1	\$750.00
Seven-card straight flush with joker	750 to 1	\$250.00
Five aces	250 to 1	\$100.00
Royal flush	125 to 1	\$50.00
Straight flush	50 to 1	\$20.00
Four-of-a-kind	25 to 1	\$5.00
Full house	5 to 1	
Flush	4 to 1	
Three-of-a-kind	3 to 1	
Straight	2 to 1	

- (d) The licensee shall pay out winning pai gow insurance wagers at the odds in one of the following paytables selected by the licensee in its Rules submission provided that if the licensee is offering Emperor's Challenge Pai Gow poker, the licensee may select from paytables a or b or if the licensee is offering Fortune Pai Gow poker, the licensee may select from paytables C, D or E:

Hand	Paytable A	Paytable B	Paytable C	Paytable D	Paytable E
Nine-high	100 to 1	100 to 1	100 to 1	100 to 1	100 to 1
Ten-high	25 to 1	25 to 1	40 to 1	50 to 1	40 to 1
Jack-high	15 to 1	15 to 1	10 to 1	10 to 1	10 to 1
Queen-high	6 to 1	7 to 1	7 to 1	7 to 1	7 to 1
King-high	5 to 1	5 to 1	6 to 1	5 to 1	5 to 1
Ace-high	3 to 1	3 to 1	3 to 1	3 to 1	3 to 1

- (e) If the licensee offers the Progressive Payout Wager:
- (1) The licensee shall pay out winning Progressive Payout Wagers at the odds in the following payable:

Hand	Payout
Seven-card straight flush	100%
Five aces	10%
Royal flush	500 for 1
Straight flush	100 for 1
Four-of-a-kind	75 for 1
Full house	4 for 1

- (2) The initial and reset amount must be in the licensee's Rules Submission and be at least \$2,000.
- (3) Winning Progressive Payout Wagers shall be paid the amount on the meter when it is the player's turn to be paid in accordance with Section 9(1)(4) irrespective of the amount that was on the meter when the player placed the wager or when the dealer dealt the player's cards.
- (f) The licensee shall pay out winning Queen's Dragon Wagers at odds of 50 to 1.
- (g) The licensee shall pay out winning Dynasty Bonus Wagers and envy bonus payouts at the odds and amounts in the following payable:

Hand	Payout	Envy Bonus
Ace/five natural straight flush and a natural ace/queen suited	2000 to 1	\$500.00
Seven-card natural straight flush	2000 to 1	\$400.00
Natural royal flush and natural ace/queen suited	1000 to 1	\$300.00
Seven-card straight flush	1000 to 1	\$200.00
Five aces	500 to 1	\$100.00
Ace/five natural straight flush	120 to 1	\$75.00
Royal flush	120 to 1	\$50.00
Straight flush	50 to 1	\$20.00
Four-of-a-kind	25 to 1	\$5.00
Full house	5 to 1	
Flush	4 to 1	
Three-of-a-kind	3 to 1	
Straight	2 to 1	

(h) The licensee shall pay out winning Protection Wagers at the odds in the following payable:

Hand	Payout
Ace/five natural straight flush	120 to 1
Nine-high	100 to 1
Ten-high	25 to 1
Jack-high	15 to 1
Queen-high	7 to 1
King-high	5 to 1
Ace-high	3 to 1

(i) The licensee shall pay out winning Red/Black Wagers at the odds in the following payable:

Hand	Payout
Seven cards of the chosen color	5 to 1
Six cards of the chosen color	1 to 1
Five cards of the chosen color	1 to 1
Four cards of the chosen color	1 to 1

- (j) Notwithstanding the payout odds in (b) - (i) above, a licensee may, in its Rules Submission, establish a maximum amount that is payable to a player on a single hand. The maximum payout amount shall be at least \$50,000 or the maximum amount that one player could win per round when betting the minimum permissible wager, whichever is greater. Any maximum payout limit established by a licensee may not apply to Envy Bonus payouts.

17. Dealing procedures for three-card bonus wager and seven-card bonus wager

- (a) A gaming licensee may, in its discretion, offer to each player at a pai gow poker table the opportunity to place an optional three-card bonus wager and/or a seven-card bonus wager and to receive payouts on such winning wagers as set forth in Section 18. The bonus wagers authorized by this section may not be offered by a gaming licensee on any pai gow poker table which offers the optional bonus wager authorized by Section 15. The three-card bonus wager and the seven-card bonus wager shall have no bearing on any other wager made by a player at the game of pai gow poker.
- (b) Notwithstanding any other provision of 205 CMR 146 or this section, the dealing procedures set forth in this section shall apply to any pai gow poker game that offers the optional bonus wagers authorized by this section. The first three cards dealt to each player shall be dealt from an automated dealing shoe which dispenses cards in stacks of three cards, provided that the shoe, its location and the procedures for its use are approved by the Commission.
- (c) Once the procedures required by Sections 5 and 6 have been completed, the cards shall be placed in the automated dealing shoe. The dealer shall then announce “No more bets.”
- (d) The dealer shall deliver the first stack of three cards dispensed by the automated dealing shoe face down to the player at the starting position. The starting position shall be the player position farthest to the left of the dealer at which a pai gow poker wager has been placed in accordance with Section 7
- (e) As the remaining stacks of three cards are dispensed to the dealer by the automated dealing shoe, the dealer shall, moving clockwise around the table, deliver a stack face down to each of the other players who has placed a pai gow poker wager. The dealer shall then deliver a stack of three cards face down to the area designated for the dealer’s hand.
- (f) Each player who has placed a three-card bonus wager shall, after examining their cards,

determine whether the three-card hand qualifies for a three-card bonus wager payout as defined in Section 18 and as displayed on the sign required by 205 CMR 146.21. Each player who has placed a three-card bonus wager and who has a winning hand shall place their cards face up on the layout. The dealer shall collect all three-card bonus wagers from players with losing three-card hands and then pay all winning three-card bonus wagers in accordance with the payouts set forth at Section 18.

- (g) After each stack of three cards has been dispensed and delivered and each three-card bonus wager has been resolved in accordance with this section, the dealer shall complete the dealing of the cards by observing one of the following procedure.
 - (1) The dealer shall deliver the first stack of four additional cards dispensed by the automated dealing shoe face down to the player farthest to their left who has placed a pai gow poker wager in accordance with Section 7. As the remaining stacks are dispensed to the dealer by the automated dealing shoe/machine, the dealer shall, moving clockwise around the table, deliver a stack of four cards face down to each player who has placed a pai gow poker wager. The dealer shall then deliver a stack of four additional cards face down to the area designated for the dealer's hand. The round of play shall then proceed in accordance with the procedures set forth in Sections 9 and 18.
- (h) The dealer shall be required to count the stub at least once every five rounds of play in order to determine whether the correct number of cards are still in the deck. The dealer shall determine the number of cards in the stub by counting the cards face down on the layout.
 - (1) If the count of the stub indicates that 53 cards are in the deck, the dealer shall place the stub in the discard rack without exposing the cards.
 - (2) If the count of the stub indicates that the number of the cards in the deck is incorrect, the dealer shall determine if the cards were misdealt. If the cards have been misdealt (a player or the dealer has more or less than seven cards) but 53 cards remain in the deck, all hands shall be void pursuant to Section 11(h). If the cards have not been misdealt, all hands shall be considered void and the entire deck of cards shall be removed from the table pursuant to 205 CMR 146.49.
- (i) Notwithstanding the provisions of (h) above, the counting of the stub shall not be required if an automated card shuffling device is used that counts the number of cards in the deck after the completion of each shuffle and indicates whether 52 cards, plus the joker, are still present. If the automated card shuffling device reveals that an incorrect number of cards are present, the deck shall be removed from the table in accordance with the provisions of 205 CMR 146.49.

18. Payout odds for optional three-card bonus wager and seven-card bonus wager

- (a) The payout odds for winning the optional bonus wagers authorized by Section 17 when printed on any sign or in any brochure or other publication distributed by a gaming licensee shall be stated through the use of the word "to" or "win," and no odds shall be stated through the use of the word "for."
- (b) A gaming licensee shall pay off winning three-card bonus wagers at no less than the

following odds:

Hand Type	Payout Odds
Three-card straight flush, with no joker	40 to 1
Three-of-a-kind	25 to 1
Three-card straight flush	5 to 1
Three-card straight	4 to 1
Three-card flush	3 to 1
One pair	1 to 1

(c) A gaming licensee shall pay winning seven-card bonus wagers at no less than the odds in accordance with one of the following payout tables:

Hand Type	Table A
Five aces	500 to 1
Royal flush	250 to 1
Straight flush	50 to 1
Four-of-a-kind	25 to 1
Full house	5 to 1
Flush	4 to 1
Three-of-a-kind	3 to 1
Straight	2 to 1
Hand Type	Table B
Five aces	500 to 1
Royal flush	200 to 1
Straight flush without joker	50 to 1
Straight flush with joker	30 to 1
Four-of-a-kind	25 to 1
Full house	5 to 1
Flush	4 to 1
Three-of-a-kind	3 to 1
Straight	2 to 1

(d) Notwithstanding the minimum payout odds required in (c) above, a gaming licensee may establish a maximum payout amount as approved by the Commission that is payable to a player for one round of play, which amount shall be at least \$50,000 or the maximum amount that one player could win per round when betting the minimum permissible wager, whichever is greater. If the established payout limit is not included on the layout, each gaming licensee shall provide notice of any decrease in the payout limit in accordance with 205 CMR 147.03. Any maximum payout limit established by a gaming licensee shall apply only to payouts of the seven-card bonus wager placed pursuant to Section 17.

19. Face up Fortune Pai Gow Poker Variation: Progressive

- (a) Game play begins with players placing the Main Hand wager, as well as the Ace-High wager which may be optional or mandatory at the sole discretion of the operator. Any other optional wagers are also placed at this time. After all wagers have been placed, each player and the dealer receive seven cards. After all cards are dealt, the dealer will turn over their cards and set their hand according to a predefined house-way. Players then set two hands – a two-card low/front hand and a five-card high/back hand. The only restriction on the player hand setting is that the five-card back hand must be of a higher Poker ranking than the two-card front hand.
- (b) If the dealer has an ace high pai gow hand (a 7-card hand with ace high, no pairs, straights, or flushes), then all main wagers push.
- (c) If the dealer does not have an ace high pai gow hand, the players versus dealer hands are resolved following standard Pai gow poker procedures. All winning players' hands are paid 1 to 1 with no commission paid.
- (d) If the dealer has an ace high pai gow hand (a 7-card hand with ace high, no pairs, straights, or flushes), all side wagers are paid according to one of the paytables below in Table 1.

Table 1. Ace-High Paytables

Result	Paytable 1	Paytable 2	Paytable 3	Paytable 4	Paytable 5
Both dealer and player have Ace High	20 to 1	40 to 1	30 to 1	25 to 1	40 to 1
Only dealer has Ace High, with Joker	10 to 1	15 to 1	15 to 1	10 to 1	12 to 1
Only dealer has Ace High, no Joker	8 to 1	5 to 1	6 to 1	7 to 1	5 to 1
All others	Loss	Loss	Loss	Loss	Loss

- (e) The licensee may offer the optional Fortune Bonus as well as the Ace-High Bonus wager. Table 2 has the optional paytables for this wager.

Table 2 Fortune Bonus Paytables

Table 1. Fortune Pai Gow Bonus Paytables

Hand	Paytable 1	Paytable 2	Paytable 3	Paytable 4	Paytable 6	Paytable 7	Paytable 9
7 Card Straight Flush	5000 to 1	8000 to 1	5000 to 1	2500 to 1	5000 to 1	5000 to 1	1000 to 1
Royal Flush + Royal Match*	1000 to 1	2000 to 1	2000 to 1	1000 to 1	1000 to 1	2000 to 1	750 to 1
7 Card Straight Flush with Joker	750 to 1	1000 to 1	1000 to 1	750 to 1	500 to 1	1000 to 1	500 to 1
5 Aces	250 to 1	400 to 1	400 to 1	250 to 1	300 to 1	400 to 1	250 to 1
Royal Flush	100 to 1	150 to 1	150 to 1	125 to 1	110 to 1	150 to 1	150 to 1
Straight Flush	50 to 1	50 to 1	50 to 1	50 to 1	45 to 1	50 to 1	50 to 1
4 of a Kind	20 to 1	25 to 1	25 to 1	25 to 1	25 to 1	25 to 1	25 to 1
Full House	5 to 1	5 to 1	5 to 1	5 to 1	5 to 1	5 to 1	5 to 1
Flush	4 to 1	4 to 1	4 to 1	4 to 1	4 to 1	4 to 1	4 to 1
3 of a Kind	3 to 1	3 to 1	3 to 1	3 to 1	3 to 1	3 to 1	3 to 1
Straight	2 to 1	2 to 1	2 to 1	2 to 1	2 to 1	2 to 1	2 to 1
Three Pair	Push	-1 to 1	-1 to 1	-1 to 1	-1 to 1	-1 to 1	Push
Others	-1 to 1	-1 to 1	-1 to 1	-1 to 1	-1 to 1	-1 to 1	-1 to 1

Table 2. Fortune Pai Gow Bonus Envy Paytables

Hand	Paytable 1	Paytable 2	Paytable 3	Paytable 4	Paytable 6	Paytable 7	Paytable 9
7 Card Straight Flush	\$1,000	\$5,000	\$3,000	\$1,000	\$2,500	\$2,500	\$500
Royal Flush + Royal Match*	\$250	\$1,000	\$1,000	\$750	\$500	\$500	\$250
7 Card Straight Flush with Joker	\$100	\$500	\$500	\$250	\$250	\$250	\$150
5 Aces	\$50	\$250	\$250	\$100	\$150	\$150	\$100
Royal Flush	\$25	\$50	\$50	\$50	\$55	\$55	\$50
Straight Flush	\$10	\$20	\$20	\$20	\$25	\$25	\$20
4 of a Kind	\$5	\$5	\$5	\$5	\$6	\$6	\$5

(f) If the dealer does not have an ace high pai gow hand, any optional Ace-High wagers are collected.

(g) Each player that placed a progressive wager is paid according to a paytable based on the best hand possible among all the player's cards. The joker is considered semi wild. If a joker is present in the player's hand, it can only be used as an ace or to complete a straight, flush or straight flush.

(h) The available paytables for *Face Up Pai gow poker Progressive* are in Table 1 below. A wager size of \$1 is used for the seed amount for Paytable 1 and \$5 for Paytable 3.

Table 1. Face Up Pai Gow Poker Progressive Paytables

Hand	Paytable 1	Paytable 3
7 Card Straight Flush	100% of Progressive	100% of Progressive
5 Aces	10% of Progressive	10% of Progressive
Royal Flush	500 for 1	500for 1
Straight Flush	100 for 1	100 for 1
Four of a Kind	75 for 1	75 for 1
Full House	4 for 1	4 for 1
Contribution Percent	28%	29%
Seed Amount	\$10,000	\$10,000

20. Fortune Pai Gow Poker Bonus Wager

- (a) A gaming licensee may, in its discretion, allow for the Fortune Pai Gow Poker Bonus wager (also referred to herein as Fortune Bonus wager) on their Pai Gow poker tables.
 - (1) A Fortune Pai Gow Poker Bonus wager may be an amount no less than \$5.00 and no more than \$200.00. The Player determines the amount they wish to wager.
 - (2) A Fortune Pai Gow Poker Bonus wager of \$5.00 automatically qualifies as an Envy Bonus wager. When a Player qualifies for the Envy Bonus, they will be entitled to receive an additional bonus on any Player's hand of four-of-a kind or higher.
 - (3) The Banker's hand never qualifies for an Envy bonus payout.
 - (4) A Fortune Pai Gow Poker Bonus wager must be placed prior to commencement of that round of play. The Player will place their Bonus wager in the designed area of the layout for the Fortune Bonus wager.
 - (5) The dealer will place a specially designed Envy button on top of any bonus wager of \$5.00 or more.
 - (6) All seven cards in the hand qualify for all bonuses.
 - (7) Due to the Envy Bonus feature of this game, all hands must be exposed.

Commented [TC4]: This section was relocated from Section 3

Table 1. Fortune Pai Gow Bonus Paytables

Hand	Paytable 1	Paytable 2	Paytable 3	Paytable 4	Paytable 6	Paytable 7	Paytable 9
7 Card Straight Flush	5000 to 1	8000 to 1	5000 to 1	2500 to 1	5000 to 1	5000 to 1	1000 to 1
Royal Flush + Royal Match*	1000 to 1	2000 to 1	2000 to 1	1000 to 1	1000 to 1	2000 to 1	750 to 1
7 Card Straight Flush with Joker	750 to 1	1000 to 1	1000 to 1	750 to 1	500 to 1	1000 to 1	500 to 1
5 Aces	250 to 1	400 to 1	400 to 1	250 to 1	300 to 1	400 to 1	250 to 1
Royal Flush	100 to 1	150 to 1	150 to 1	125 to 1	110 to 1	150 to 1	150 to 1
Straight Flush	50 to 1	50 to 1	50 to 1	50 to 1	45 to 1	50 to 1	50 to 1
4 of a Kind	20 to 1	25 to 1	25 to 1	25 to 1	25 to 1	25 to 1	25 to 1
Full House	5 to 1	5 to 1	5 to 1	5 to 1	5 to 1	5 to 1	5 to 1
Flush	4 to 1	4 to 1	4 to 1	4 to 1	4 to 1	4 to 1	4 to 1
3 of a Kind	3 to 1	3 to 1	3 to 1	3 to 1	3 to 1	3 to 1	3 to 1
Straight	2 to 1	2 to 1	2 to 1	2 to 1	2 to 1	2 to 1	2 to 1
Three Pair	Push	-1 to 1	-1 to 1	-1 to 1	-1 to 1	-1 to 1	Push
Others	-1 to 1	-1 to 1	-1 to 1	-1 to 1	-1 to 1	-1 to 1	-1 to 1

Table 2. Fortune Pai Gow Bonus Envy Paytables

Hand	Paytable 1	Paytable 2	Paytable 3	Paytable 4	Paytable 6	Paytable 7	Paytable 9
7 Card Straight Flush	\$1,000	\$5,000	\$3,000	\$1,000	\$2,500	\$2,500	\$500
Royal Flush + Royal Match*	\$250	\$1,000	\$1,000	\$750	\$500	\$500	\$250
7 Card Straight Flush with Joker	\$100	\$500	\$500	\$250	\$250	\$250	\$150
5 Aces	\$50	\$250	\$250	\$100	\$150	\$150	\$100
Royal Flush	\$25	\$50	\$50	\$50	\$55	\$55	\$50
Straight Flush	\$10	\$20	\$20	\$20	\$25	\$25	\$20
4 of a Kind	\$5	\$5	\$5	\$5	\$6	\$6	\$5

20a. Fortune Pai Gow Poker Progressive Wager

- (a) A gaming licensee may, in its discretion, offer to every player at a pai gow poker table who has placed a pai gow poker wager the option to make a Fortune Pai Gow progressive wager on whether the player will be dealt a hand type as set forth in (g) below. The progressive payout wager shall, in the discretion of the gaming licensee, be either a \$1.00 or \$5.00 wager.
- (b) Prior to the first card or stack of cards of a round being dealt and once all wagers including the Fortune Pai Gow progressive wagers have been placed, the dealer shall announce “No more bets” and press the lock-out button on the table controller panel.
- (c) A winning progressive payout wager shall be paid in accordance with the payout table listed in (g) below and the provisions of Section 9. A winning Fortune Pai Gow progressive wager shall be paid irrespective of the outcome of the player’s pai gow poker wager. If a Fortune Bonus wager has been placed, the Dealer will act on the bonus wager first after exposing the player’s hand. Prior to paying a Fortune Pai Gow progressive wager, the dealer shall determine:
 - a. If the Fortune Bonus wager loses, the Dealer shall place the wager in the rack

Commented [TC5]: This section was relocated from Section 14a

immediately, leaving the envy button in the circle, and proceed with the pai gow wager. If the pai gow hand loses, the Dealer shall collect the wager, gather the cards, and place the gathered cards in the discard rack. If the pai gow hand pushes, the Dealer shall leave the wager, gather the cards, and place the gathered cards in the discard rack. If the pai gow hand wins, the Dealer shall leave the cards spread and leave the envy button in the circle.

- b. If the Fortune Bonus wager wins, the Dealer shall cut out the payout in front of the rack, stack up the payout, and slide the payout to the Player. The Dealer shall leave the envy button in the circle and proceed to the pai gow wager. If the pai gow hand loses, the Dealer shall collect the wager, gather the cards, and place the gathered cards in the discard rack. If the pai gow hand pushes, the Dealer shall leave the wager, gather the cards, and place the gathered cards in the discard rack. If the pai gow hand wins, the Dealer shall leave the cards spread and leave the envy button in the circle.
- c. Envy bonuses will be paid as they are hit in order. If more than one player has at least Four-of-a kind, then all players with an "Envy" button will win multiple payouts.
- d. After all hands have been acted on, the Dealer shall collect all envy buttons.
- e. Players cannot win an envy bonus on their own hand.
- f. The joker may be used to replace any card in a straight or flush or as an Ace for the bonus hand. The value for the bonus hand of the joker may be different than in the regular hand.

(d) A gaming licensee shall pay winning Fortune Pai Gow progressive wagers at no less than the amounts listed in (g) below.

(e) Each betting position will also have a sensor for players to make a progressive wager.

- a. Players must make wager prior to cards being delivered to the first player.
- b. Wagers are either \$1.00 or \$5.00

(f) Prior to delivering the first hand, the Dealer shall press the start game icon on the keypad and then collect any wagers that have been made.

(g) All winning progressive wagers will pay at odds from either one of the paytables below:

Paytable 1

Table 3. Fortune Pai Gow Progressive Bonus Paytables

Hand	Paytable 1	Paytable 3
7 Card Straight Flush	100%	100%
5 Aces	10%	10%
Royal Flush	500 for 1	500 for 1
Straight Flush	100 for 1	100 for 1
Four of a Kind	75 for 1	75 for 1
Full House	4 for 1	4 for 1
Seed amount	\$10,000	\$2,000

Paytable 2

Hand	Odds	Payout
Seven Card Straight Flush		100% Mega
Five Aces		100% Major
Royal Flush		100% Minor
Straight Flush	100 For 1	
Four of a Kind	75 For 1	
Full House	4 For 1	

* If a licensee uses Paytable 2, the seed amount for the Royal Flush must be greater than or equal to \$500 for a \$1 progressive, or \$2,500 for a \$5 progressive wager.

20b. Commission Free Fortune Pai gow poker version

- (f) Commission Free Fortune Pai Gow poker is a variation of Fortune Pai Gow poker that it is commission free and offers two optional bonus bets: Fortune Bonus and Tiger 9. Commission Free Fortune Pai Gow poker features head-to-head play against the dealer where the winning bets do not pay 5% commission. Instead, all players push when the dealer plays 9-high in his two-card hand (low).
- (g) If the player wishes to play the optional Tiger 9 bet, the Tiger 9 bet wins if the dealer plays 9-high in his two-card hand (low).
- (h) If the dealer has a Tiger 9 hand, or a hand with a 9-high two-card front hand, then all main wagers push, and all Tiger 9 optional side bets are paid 30 to 1.
- (i) If the dealer does not have a Tiger 9 hand, any optional Tiger 9 wagers are collected, and the player versus dealer hands are resolved following standard pai gow poker procedures. All winning player's hands are paid 1 to 1 with no commission paid.
- (j) While reconciling the main wager and the Tiger 9 wager, the Fortune Bonus wager is also resolved. The Fortune Bonus wager is paid according to a payable based on the highest five-card hand available from the player's seven cards, regardless of how the hands are set.

Commented [TC6]: This section was relocated from Section 14b